IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

BETWEEN

BMS Case Number 19-PA-0530

Law Enforcement Labor Services, Inc., Brooklyn Center, Minnesota [Travis Serafin]

And

City of Eden Prairie, Minnesota

ARBITRATOR
Joseph L. Daly

APPEARANCES
On behalf of Law Enforcement Labor Services, Inc.
Isaac Kaufman, Esq.
LELS
Brooklyn Center, Minnesota

On behalf of City of Eden Prairie, Minnesota
Joseph A. Nilan, Esq.
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JURISDICTION

In August 2018 Law Enforcement Labor Services, Inc. organized the police officers in the City of Eden Prairie, Minnesota. Pending negotiation of a Collective Bargaining Agreement, and pursuant to an agreement between LELS and the City of Eden Prairie, Minnesota, dated October 8, 2018, a grievance process was agreed to using the Collective Bargaining Agreement between the City of Eden Prairie and IUOE, Local 49. The reason for using another contract agreement is that LELS had not yet completed negotiating a new Collective Bargaining Agreement with the City of Eden Prairie. Officer Travis Serafin was terminated on November 6, 2018. The grievance, using the IUOE grievance process, was filed by LELS and Officer Travis Serafin on November 9, 2018.

Before this arbitration hearing a jurisdictional question concerning "Arbitrability" was submitted to Joseph L. Daly, Arbitrator, by letter briefs dated February 15, 2019, [City of Eden Prairie] and February 22, 2019 [Law Enforcement Labor Services, Inc.]. A decision on the

question of "arbitrability" was rendered on March 5, 2019. This arbitrator ruled that Law Enforcement Labor Services did not waive any steps or timelines in filing the grievance on behalf of Officer Travis Serafin. LELS fulfilled the required notice and timelines. It was held that the matter was "procedurally arbitrable" and would proceed to arbitration.

On September 9, 2019, three more pre-arbitration hearing jurisdictional decisions were made by this arbitrator. It was held: 1) The grievance is "substantively arbitrable;" 2) Mr. Serafin is not an "at-will employee;" and, 3) the "just cause standard" will be applied in the upcoming arbitration hearing on the merits.

The arbitration hearing on the merits was held under the jurisdiction of the State of Minnesota Bureau of Mediation Services, St. Paul, Minnesota, at the offices of the State of Minnesota Bureau of Mediation Services. The arbitration hearing was held on November 4, 2019, November 5, 2019, November 6, 2019, December 9, 2019, and December 13, 2019. Post-hearing briefs on the merits were submitted by the union and the City of Eden Prairie on January 22, 2020. After the Post-hearing briefs were filed both parties filed Reply briefs submitted on February 7, 2020– the "City of Eden Prairie's Brief in Response to LELS Post-Hearing Brief" and the "Union's Reply Brief." The Opinion & Award was rendered by the arbitrator on March 12, 2020.

ISSUES

LELS states the issue as:

Did the City of Eden Prairie terminate Travis Serafin without just cause?

If so, what is the appropriate remedy? [Post-hearing brief of union at 4].

The City of Eden Prairie states the issue as:

The only question for the arbitrator in this proceeding is whether [Travis] Serafin's inability to perform an essential function of his job as a police officer – provide courtroom testimony – constitutes "just cause" for his termination. [Post-hearing brief of City of Eden Prairie at 20].

RELEVANT CONTRACT PROVISIONS

On September 9, 2019, in the jurisdictional "Decision and Award on the Questions of Substantive Arbitrability and "Just Cause Standard vs At-Will Employment" it was held that the parties had previously agreed, pending negotiation of a collective bargaining agreement between LELS and the City of Eden Prairie, Minnesota, to use the IUOE contract grievance process pending a finalized CBA between the LELS and the City of Eden Prairie. It was determined by this arbitrator that the IUOE, Local 49 contract explicitly provides for "just cause." "To understand Article VI the grievance process in the "49ers" contract necessarily includes a dispute or disagreement as to whether the City has complied with the 'just cause' standard defined in Article XV [of the 49ers contract]." The "49ers" contract explicitly provides "[t]he EMPLOYER will discipline employees for just cause only." Page 4-5. Consequently, this arbitrator determined that the matter was substantively arbitrable.

Further, it was determined that to understand Article VI, the grievance procedure in the 49ers contract, necessarily includes a dispute or disagreement as to whether the city has complied with the "just cause" standard defined in Article XV. Therefore, this arbitrator determined that Mr. Serafin was not an "at-will employee"; rather Mr. Serafin was an employee who would be protected by the "just cause" standard in the arbitration hearing on the merits. It was held that the relevant language to be applied is the language in the IUOE Local 49 and City of Eden Prairie Section 15.1 of the 49ers contract which explicitly provides that "[t]he EMPLOYER will discipline employees for just cause only."

INTRODUCTION

Eden Prairie Police Officer Travis Serafin, a 17-year employee of the City of Eden Prairie Police Department, was terminated in November 2018, after Law Enforcement Labor Services, Inc., had been certified in August 2018 as the Eden Prairie Officers' exclusive representative, but before the parties had finalized their first Collective Bargaining Agreement (CBA). At the time the grievance was filed, the parties had agreed to utilize the grievance procedure set forth in the contract between the City of Eden Prairie and the International Union Operating Engineers, Local No. 49. Prior to the arbitration hearing, this arbitrator made a number of procedural decisions. First, it was held that the matter was "procedurally arbitrable" and that the matter would proceed to arbitration. No timelines were violated. Second, in a separate

motion, it was held that the matter was "substantively arbitrable." Third, it was determined that the "just cause" standard would be applied and that Mr. Travis Serafin would not be treated as an "at-will employee"; rather as an employee with procedural rights i.e. the "just cause standard" would be applied under the contract between the City of Eden Prairie and the International Union of Operating Engineers, Local No. 49, Article VI, Employee Rights – Grievance Procedure.

The arbitration hearing was held on November 4, November 5, November 6, December 9, and December 13, 2019.

The City of Eden Prairie alleges that Eden Prairie Police Officer Travis Serafin falsified a search warrant, lied about the warrant under oath, and will no longer be called to testify in court in support of any case brought by the Hennepin County Attorney's Officer or the Eden Prairie Prosecutor's Office. As a result of his inability to fulfill an essential function of his job i.e. being able to testify in court, the City of Eden Prairie terminated Mr. Serafin's employment. Law Enforcement Labor Services filed a grievance on behalf of Mr. Serafin.

LELS alleges that Mr. Serafin's involvement in the investigation of a heroin overdose death in 2017, and his handling of a warrant to search the residence of the primary suspect in that case, led to an error he made in drafting and the execution of the warrant and lying in his subsequent testimony at the suppression hearing. The union and Mr. Serafin allege that he simply made a mistake and his testimony was incorrect because he was confused, not because he intentionally lied at the suppression hearing. The Hennepin County Attorney's Office decision that Travis Serafin is a "*Brady/Giglio* officer" who will be precluded from testifying in future criminal cases was an incorrect decision based on his mistake and his unintentional, but incorrect, testimony in court. Further, LELS contends that the *Brady/Giglio* status is not in and of itself grounds for termination and does not permit the City of Eden Prairie to circumvent the contractual "just cause" standard.

The union contends that Mr. Serafin's termination is also impermissible because it amounts to "arbitrable double jeopardy." Mr. Serafin had already been disciplined, and that discipline was final. Termination was not part of that "final discipline."

LELS contends that Mr. Serafin's underlying conduct does not present "just cause" for termination because the City of Eden Prairie cannot prove by clear and convincing evidence that Mr. Serafin's conduct was intentional.

Regarding Mr. Serafin's testimony at the suppression hearing, the union contends that the Assistant Hennepin County Prosecutor in the heroin overdose case stated that he believed Mr. Serafin had made a mistake and had not acted intentionally. Until this mistake Mr. Serafin had an unblemished employment record of exemplary service with no history of being untruthful or cutting corners in his investigations. Each Eden Prairie officer who testified, including supervisors, testified that they trust Mr. Serafin and do not believe that he would ever knowingly falsify a warrant or give false testimony in court.

The union and Mr. Serafin allege that there is not "just cause" to terminate Travis Serafin.

POSITION OF CITY OF EDEN PRAIRIE

Because this case has received a great deal of notoriety with dramatic consequences to Travis Serafin, the City of Eden Prairie, the Hennepin County Attorney's Office and the citizens of Minnesota it is necessary to examine in detail the exact reasons that the City of Eden Prairie allege and has used to terminate Travis Serafin. I will list and detail, at length, the facts and arguments the City of Eden Prairie uses to justify the termination of Travis Serafin.

I. Statement of Facts alleged by the City of Eden Prairie

Since 2014 Mr. Serafin was assigned to work as an investigator with the Southwest Hennepin Drug Task Force ("DTF"). In September 2017, DTF was conducting a homicide investigation into suspect Mr. Timothy Holmes related to a heroin overdose death.

A. Creation of the Original Warrant

On September 13, 2017, Mr. Serafin printed out a five-page document from his County-issued LaptopA entitled "AFFIANT DOCUMENT SW Penn AveN.doc." (EP-3 at 3-14; EP-56.) This document contained the affidavit and probable cause portion of a search warrant for Mr. Holmes's residence, with pages numbered Application 1-2, Application 1-2A, Application 1-2B, Application 1-2C, Application 1-2D (EP-56.)

On September 14, 2017, Mr. Serafin went to the Drug Task Force (DTF) office located within the Eden Prairie Police Department. (EP-3 at 3-14.) At 9:03 a.m., he saved and printed a three-page document on his SOTA thumb drive entitled "SEARCH WARRANT FORM.docx." (*Id.*; EP-61) This document contained the contents of the three-page application and search warrant for the Holmes residence, including the pages Application 1-1, Application 1-3, and

Search Warrant 2-1. (EP-61.) At 9:05 a.m., Mr. Serafin again printed out the "AFFIANT DOCUMENT SW Penn AveN.doc" document. (EP-3, at 3-15.)

These documents contained all of the pages necessary to present the search warrant application to a judge:

1. Application 1-1 (the first page of the affidavit);
2. Application 1-2 (five pages containing the probable cause portion);
3. Application 1-3 (the final page of the affidavit); and
4. Search Warrant 2-1 (the actual warrant to be signed by the judge).

Importantly, the Application 1-1 page that was printed on September 14, 2017 does not request permission to search any vehicles or "curtilage" associated with Holmes's residence. (EP-61 at 61-1.)

On September 14, 2017, between 9:05 a.m. and 12:46 p.m., Mr. Serafin took the warrant application to the Hennepin County Government Center and presented it to Judge Jay Quam, who signed the warrant. (EP-3 at 3-15.)

B. VOTF Language

On September 14, 2017, Mr. Serafin returned to the DTF office at 12:46 p.m., (*Id.*) At 1:03 p.m., he printed from his laptop a five-page document entitled "AFFIANT DOCUMENT Holmes.doc." (*Id.*; EP-57) This document was identical to the "AFFIANT DOCUMENT SW Penn AveN.doc" document with one exception. In the second full paragraph of page Application 1-2C, there now appeared the phrase "from The Hennepin County Violent Offenders Task Force" after "Det. Sleavin." (EP-3 at 3-15–16; EP-57 at 57-4.) The forensic investigation conducted by Captain Bill Wyffels [then Lt. Wyffels] determined that this "VOTF" language was added by Mr. Serafin *after* the search warrant had already been signed by Judge Quam. (EP-3 at 3-16.)

At 1:04 p.m., after printing this document that now contained the VOTF language, Mr. Serafin scanned the complete eight-page, signed search warrant into his computer. (EP-3 at 3-16.)

At 1:21 p.m., Mr. Serafin emailed the warrant to Kevin Angerhoffer of the Minneapolis Police Department. (EP-3 at 3-16; EP-59.) The warrant did not contain the vehicle or "curtilage" language and did not permit the search of any vehicles on the premises. (EP-59 at 59-2.)

C. Execution of the Warrant

On September 15, 2017, at approximately 11:45 a.m., Mr. Serafin, members of the DTF and the Minneapolis Police Department executed the search warrant at Mr. Holmes's residence. (EP-3 at 3-17.) Mr. Serafin was the case agent involved in managing the scene of the search. (Serafin testimony.) At no time prior to or during the search did Mr. Serafin tell the other officers that the search warrant did not authorize the search of vehicles. (*Id*.) There was a "drop copy" of the warrant that was left at the residence, but Mr. Serafin did not read the "drop copy" or the original at the time of the search. (*Id.*) Despite the lack of authority to search vehicles or curtilage, officers searched a vehicle parked at Mr. Holmes's residence and discovered drugs and a handgun inside the vehicle. (EP-8 at 8-1.) After the search, Mr. Serafin completed the receipt, inventory, and return pages, and returned to the DTF office at 2:43 p.m. (EP-3 at 3-17.)

On September 15, 2017, at 9:39 p.m., Mr. Serafin scanned to PDF the executed warrant and the four receipt, inventory, and return pages, and saved the document to his laptop and his SOTA thumb drive as "17008575-SW Page 5-09152017213931.pdf." (EP-3 at 3-18; EP-58.) As packaged, this document contained all pages necessary to file the search warrant with the Clerk of Court. (EP-3 at 3-18.) Mr. Serafin also filled out the "E-Filing Clerical Work Request," which is a blue, half-sheet of paper that must be attached to the warrant for it to be filed with the court. (EP-3 at 3-18; EP-10.) Although the package was now complete, Mr. Serafin did not send the warrant downtown for filing. (EP-5 at 5-10, 5-16–17.) Instead, he attached the blue half-sheet to the paper copy of the warrant with a paper clip and placed it in his physical file. (EP-5 at 5-16; Serafin testimony.)

On September 16, 2017, in the early morning hours, Mr. Serafin uploaded documents, including the search warrant, into the "LETG" system, which is the Hennepin County Sheriff's Office's document management system. (EP-5 at 5-17; EP-6 at 6-4; EP-11.)

On September 16, 2017, at 8:43 a.m., Mr. Serafin emailed a copy of his reports, including the signed search warrant package, to Mr. Michael Radmer, the prosecutor from the Hennepin County Attorney's Office ("HCAO"). (LELS 49.) Mr. Serafin testified that he sent this email to ensure that Mr. Radmer would have a copy of the reports and the warrant as he drafted the criminal complaint against Mr. Holmes, which had to be filed two days later. (Serafin testimony.)

On September 16, 2017, Detective Carter Staaf, another Eden Prairie investigator working on the Holmes case, submitted a "New World Activity" request to the Eden Prairie Police records department, requesting that the Holmes case be submitted to the Hennepin County Attorney's Office (HCAO). (EP-3 at 3-18; EP-60.) This request included the signed search warrant. (EP-60 at 60-15.)

On September 18, 2017, Eden Prairie records staff sent the warrant to HCAO per Det. Staaf's request. (EP-3 at 3-18, 3-20.) As a result, although the search warrant had not yet been filed with the Clerk of Court, the original warrant was placed in the HCAO's file through both Mr. Serafin's email to Mr. Radmer on September 16, 2017 and through the Eden Prairie Police records management system on September 18, 2017.

D. Camp Ripley

In the afternoon of September 16, 2017, Mr. Serafin left for a police field training trip at Camp Ripley. He took with him the paper search warrant with the blue half-sheet paper clipped as the first page. (Serafin testimony.)[1]

On September 17, 2017, at 10:27 p.m., Mr. Serafin updated his report in LETG to state that he "presented a search warrant application" to Judge Quam on September 14, 2017 and that Judge Quam "reviewed and signed the search warrant that I presented." (EP-3 at 3-19; EP-12.) In this report, Mr. Serafin makes no mention of having the Judge sign two search warrants. (EP-12.)

On September 18, 2017, at 6:47 a.m., Mr. Serafin emailed a copy of the signed search warrant to himself from his iPhone. (EP-3 at 3-19.) The email, which had no subject line, was found only in Mr. Serafin's "Sent Items" folder. (*Id.*) It was not located in his Inbox. It was not found in his "Deleted" folder. (*Id.*) Serafin's email account does not automatically delete emails. It was not Mr. Serafin's typical practice to delete emails from his Deleted folder. (Captain Wyffels testimony.) Mr. Serafin could not explain why he deleted this email or any of the other related emails which he deleted. The only reasonable conclusion is that he did so intentionally to hide the emails. (EP-5 at 5-18; Serafin testimony.)

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[1] In his April 2018 interview with City investigators, Mr. Serafin stated that he took the paper warrant with him because he "didn't want to lose anything." (EP-5 at 5-17.) In his testimony at the arbitration hearing, however, Mr. Serafin stated that he took the warrant with him because he was planning to work on the case while he was at Camp Ripley. (Serafin testimony.)

E. Alteration of the Search Warrant

On September 20, 2017, Heidi Stahnke, a paralegal from HCAO who was working with Mr. Radmer on the Holmes case, emailed Eden Prairie Police Records, Mr. Serafin and Det. Staaf, requesting the search warrant for vehicles. (EP-13 at 13-1.) HCAO had the original search warrant from the September 16 email to Mr. Radmer and the case submission from Eden Prairie Records. (LELS-49; EP-3 at 3-20.) But there was no search warrant for the vehicles.

On September 22, 2017, two days after Ms. Stahnke's email, Mr. Serafin entered the DTF office at 5:51 a.m. (EP-3 at 3-20.) At 5:56 a.m., Mr. Serafin printed a one-page document from his laptop from a file entitled "SEARCH WARRANT FORM.docx." (*Id.*) This is the default name for all search warrant templates and the same name under which Mr. Serafin saved other drafted search warrants. (*Id.*) The search warrant template is a three-page document that includes Application 1-1 (which describes the items and location to be searched), Application 1-3 (which includes the signatures of the affiant and the judge), and Search Warrant 2-1 (which includes the judge's signature). (*Id.* at 3-20–21.) Mr. Serafin printed only one of these pages, which was page Application 1-1. (*Id.* at 3-20.)

One minute later, at 5:57 a.m., Mr. Serafin scanned a new 12-page document and titled it "Filed SW 17008575-09222017055757." (*Id.* at 3-21; EP-62.) This new document was identical to the original Holmes search warrant, down to each comma and period, with one major exception. Application 1-1 now included the following language after the address of the residence to be searched:

> . . . to include but not limited to any garages, outbuildings, storage sheds associated with the address. Any person(s) currently occupying the residence. Any vehicles associated with the residence or the person(s) found within.

(EP-62 at 62-1.) This document, created seven days after the search warrant was executed, is the first time this "vehicle and curtilage" language existed in the search warrant anywhere in Mr. Serafin's emails, electronic devices, or in the case files. (EP-3 at 3-21–22.)

On September 22, 2017, at 6:20 a.m., Mr. Serafin emailed this altered search warrant to Heidi Stahnke and Eden Prairie Police Records. (EP-15.) After receiving Mr. Serafin's email, Eden Prairie Records technician Stacy Boyer added the altered search warrant to the Eden Prairie case file in the New World system. (EP-3 at 3-23.) Subsequently, Mr. Serafin attached

the blue half-sheet to the altered warrant. The altered warrant was submitted to the Clerk of Courts on September 27, 2017. (EP-3 at 3-23; EP-10.)

On October 5, 2017, Heidi Stahnke again emailed Mr. Serafin requesting a copy of the search warrant for the vehicles. (EP-16.) Mr. Serafin deleted this email from both his Inbox and Deleted folders but failed to delete it from his Sent folder. (EP-3 at 3-23.) Mr. Serafin responded less than 30 minutes later, stating "I sent you the filed sw and it states we can search all vehicles connected to residence." (EP-17.)

On November 29, 2017, Ms. Stahnke emailed Police records, copying Mr. Serafin, Det. Staaf, and Mr. Radmer, requesting for the third time the "SW for vehicles." (EP-18.) Mr. Serafin responded the next day, stating "The sw for Holmes residence included the vehicles under the curtilage . . . ." (EP-19.) Again, Mr. Serafin deleted this email exchange from his Inbox and Deleted folders. It was only found in his Sent folder. (EP-3 at 3-25.)

F. *Brady/Giglio* Memorandum of Understanding

On December 8, 2017, HCAO, the Eden Prairie Police Department, and the Eden Prairie City Attorney's Office entered into a Memorandum of Understanding (MOU) regarding the prosecutors' obligations under *Brady/Giglio*. (EP-26.) Under the MOU, the Eden Prairie Police Department is required to advise HCAO and the City Attorney of any administrative files with sustained findings of misconduct against police officers. (*Id.*) If an officer with sustained findings is called to testify, HCAO and the City Attorney will then review the file and determine whether the findings must be disclosed to the defense to satisfy the prosecutor's *Brady/Giglio* disclosure obligations. (*Id.*) On December 13, 2017, then Chief Jim DeMann sent an email to all Eden Prairie police officers, including Mr. Serafin, explaining the MOU. (EP-27.) As of December 13, 2017, if not earlier, Mr. Serafin knew that any misconduct on his part could raise *Brady/Giglio* concerns.

G. False Supplemental Report

On January 11, 2018, Mr. Radmer emailed Mr. Serafin asking to meet regarding the Holmes case. (EP-3 at 3-27.) Mr. Serafin deleted this email exchange from his Inbox and Deleted folders. (*Id.*)

On January 29, 2018, Mr. Radmer emailed Mr. Serafin again, stating: "Travis - there are two search warrants for Holmes' residence. Can you put a supp in detailing why that is?" (EP-3 at 3-28.) The next day, Mr. Serafin scanned in a copy of the altered search warrant that had been

filed with the Clerk of Court, indicating that he investigated Mr. Radmer's request that day. (EP-3 at 3-29.)

On February 13, 2018—more than two weeks after his first request—Mr. Radmer emailed Mr. Serafin again asking for the supplemental report explaining the two search warrants. (EP-3 at 3-29; EP-21.)

A short time later on February 13, 2018, Mr. Serafin emailed Mr. Radmer, stating "let me know if it makes sense or we need it tweaked." and attached a supplemental report. (EP-21.) In the February 13, 2018 supplemental report, Mr. Serafin states for the first time that he had two search warrants signed by Judge Quam. (EP-20.) The report states:

> During the investigation, I had 2 versions of a warrant for Holmes person and the property at 3316 4th Ave s #1 in Minneapolis. The warrants were reviewed and signed by Judge Quam of the Hennepin County District court. ***I had both versions signed at the same time***. The version that included the vehicles and outbuildings associated with the property was the final version of the warrant. That is the version that the warrant was executed under and filed with Hennepin County by me.

(*Id. (*emphasis added)). All of the statements contained in the supplemental report are false.

H. False Testimony

On February 23, 2018, Mr. Serafin testified at a pretrial hearing in the *Holmes* case in front of Judge Fred Karasov. (EP-3 at 3-31; EP-1.) One of the issues in the hearing was the existence of the two search warrants, one with and one without the vehicle and curtilage language. When questioned by Mr. Radmer, Mr. Serafin testified that he had both versions signed by Judge Quam on September 14, 2017. (EP-1 at 1-29, Line 19.) Mr. Serafin continued with his false testimony, even after being questioned by Judge Karasov about why he would get two warrants signed. (EP-1 at 1-34–36.) Mr. Serafin falsely testified that he first realized that his draft warrant did not contain vehicle and curtilage language when he was en-route to get the warrant signed. (*Id.* at 1-49.) He falsely testified that he then stopped at the VOTF office near the government center and created the "second" version of the warrant that included vehicle and curtilage language. (*Id.* at 1-50–51.) The City's later investigation revealed that this was false testimony. Mr. Serafin never entered the VOTF office on September 14, 2017. (EP-6 at 6-13–14.)

Judge Karasov then asked Mr. Serafin why he would give Judge Quam two search warrants, rather than the "right one." (EP-1 at 1-52, Line 2.) Mr. Serafin responded, "I handed him them both. I don't know why I did that." (*Id.* at Line 8.) The defense attorney then pointed out that Judge Quam's signatures on the two versions of the search warrant were identical, down to each dot and the separation of the letters. (*Id.* at 1-53, Line 16–25.) Mr. Serafin acknowledged that the two versions are identical, except for the additional vehicle and curtilage language on the first page. (*Id.* at 1-54, Line 7.)

At the end of Mr. Serafin's testimony, Judge Karasov pointed out that the two versions of the warrant are identical, except for the vehicle and curtilage language, but it looked like it was only signed once. (*Id.* at 1-70.) At that point, Mr. Serafin changed his testimony. He testified that he did not know whether he had one warrant signed or two. (*Id.*at 1-70–71.)

I. After the Hearing

After the hearing in front of Judge Karasov, Mr. Serafin sent Mr. Radmer three emails about his testimony.[2] The first email was shortly after the hearing, at 10:42 a.m. on February 23, 2018. (EP-3 at 3-31; EP-22.) Mr. Serafin asked Mr. Radmer what the Judge will do about the warrants. (EP-3 at 3-31; EP-22.) Mr. Serafin asked whether he has "Brady stuff to think about" and states, "Eating me up." (*Id.*) Mr. Serafin emailed Mr. Radmer again just four minutes later, at 10:46 a.m., stating that his testimony, "could now effect my other cases." (EP-3 at 3-31.)

The next day, Saturday, February 24, 2018, at 1:28 a.m., Mr. Serafin emailed Mr. Radmer a third time. (EP-3 at 3-31–32; EP-22 at 22-2.) In the email, Mr. Serafin fabricated a new story about what happened with the warrant. He wrote:

> In my haste to get the documents for charging the 1st page of the application without the curtilage was inadvertently added to my file by me (due to multiple drafts in my working file) and I corrected the issue with the correct one to be filed with court (Page 1 with curtilage) with the supporting documents of the search warrant.

(EP-22 at 22-2.) This is the first time that Mr. Serafin claimed he had "multiple drafts" in his working file. (Captain Wyffels' investigation determined that there were not "multiple drafts" in Mr. Serafin's working file.) Mr. Serafin expressed his concern about "being labeled a liar" and

[2] Mr. Radmer later told investigators that Mr. Serafin also called him five or six times trying to explain what happened. (EP-6 at 6-17.)

the effect on his credibility in the future. (*Id.*) Mr. Serafin forwarded this email to himself one minute after he sent it, then deleted the forwarded email from his Inbox. (EP-3 at 3-31.)

On March 29, 2018, Mr. Timothy Holmes pled guilty to the felony drug charge. The murder charge was dismissed. Mr. Radmer told the City's investigator that the concerns about the search warrant were the reason that the HCAO agreed to this plea deal. (EP-6 at 6-17.)

J. Judge Karasov Letter to Chief DeMann

On March 29, 2018, the same day that Mr. Holmes pled guilty, Judge Karasov sent a letter to Chief Jim DeMann expressing his concerns regarding Mr. Serafin's testimony about the two search warrants. (EP-1.) Judge Karasov attached to his letter copies of the original search warrant, the altered search warrant and the transcript of Mr. Serafin's testimony. (*Id.*) In the letter, Judge Karasov concluded that Mr. Serafin included a new first page on the search warrant that was already signed by Judge Quam, which meant that he "searched the vehicles at that residence when he knew he did not have prior judicial authorization and mislead everyone by representing that he got Judge Quam's authority to search the vehicles." (*Id.* at 1-2.)

K. First Administrative Investigation

On April 6, 2018, after receiving Judge Karasov's letter, Chief DeMann authorized an internal administrative investigation into Mr. Serafin's conduct. (EP-6 at 6-2.) Chief DeMann sent Mr. Serafin a letter placing him on an alternative duty assignment while the investigation was pending. (EP-24.)

Retired Eden Prairie Police Investigator Al Larson and Investigator Mike Bosacker were assigned to conduct the investigation. (EP-6.) Captain Bill Wyffels, who has extensive education, training and experience in computer forensics, was tasked with conducting a forensic investigation into Mr. Serafin's electronic devices. Captain Wyffels' investigation included Mr. Serafin's email account, his County-issued laptop, and two thumb drives on which he stored his case files. (EP-6 at 6-4; EP-3.) The investigation revealed the following facts:

- The warrant signed by Judge Quam on September 14 did not contain vehicle or curtilage language; (EP-3 at 3-16.)
- Mr. Serafin added the "VOTF" language to the warrant after it was signed (EP-3 at 3-15–16.);
- The search of Mr. Holmes's residence on September 15 included the search of vehicles on the premises, despite the lack of authorization for such search in the warrant;

- Mr. Serafin created a new page Application 1-1 on September 22, one week after the search was executed, now authorizing the search of vehicles and curtilage (EP-3 at 3-20; EP-6 at 6-5);
- Mr. Serafin attached this new page 1-1 to the warrant that was signed on September 14 (EP-3 at 3-21);
- Mr. Serafin submitted this altered warrant to HCAO and to the Clerk of Court, asserting that it was the warrant signed by Judge Quam (EP-3 at 3-22–23);
- Mr. Serafin's February 13 supplemental report stating that he had two warrants signed was false;
- Mr. Serafin was being untruthful when he testified in court that he got both versions of the warrant signed by Judge Quam; and
- Mr. Serafin deleted several emails related to the search warrant, in an apparent attempt to cover-up the altering of the warrant.

L. Serafin Interview

Mr. Larson and Mr. Bosacker interviewed Mr. Serafin as part of the investigation. (EP-5.) Mr. Serafin's statement was a compelled "Garrity" statement. He was told that he could be disciplined, up to and including discharge from employment, for refusing to answer the questions. (EP-5 at 5-2.) Mr. Serafin told the investigators that, after the search warrant without the vehicle and curtilage language was signed on September 14 and executed on September 15, he brought the paper warrant with him to Camp Ripley because he "didn't want to lose anything." (*Id.* at 5-17.) Mr. Serafin stated that he lost the first page while at Camp Ripley. He then printed off a new page 1 that included vehicle and curtilage language because "that is the way I usually do it." (*Id.* at 5-19–20.) This interview is the first time Mr. Serafin fabricated his story about losing the first page of the warrant.

Mr. Serafin agreed, consistent with Captain Wyffels' investigation, that he created a new page Application 1-1, with vehicle and curtilage language on September 22. (EP-5 at 5-21–22.) Instead of just printing page Application 1-1 from the original warrant, Mr. Serafin testified that he created a new Application 1-1 and added the vehicle and curtilage language. (*Id.* at 5-22, 5-32; Serafin testimony.) This "lost page" story is the one that Mr. Serafin told at the arbitration hearing. (Serafin testimony.)

The interview then moved forward to January and February 2018, Mr. Larson asked Mr. Serafin why it took him more than two weeks to respond to Mr. Radmer's request for a supplemental report explaining the two search warrants. (*Id.* at 5-24.) Mr. Serafin answers: "Probably because I was trying to figure out where my mistake was because I showed one filed search warrant I couldn't figure out where the second search warrant was coming from." (*Id.*) This explanation is materially different than the one Mr. Serafin gave in his testimony at the arbitration hearing. At the hearing, Mr. Serafin stated that he did not know why it took him two weeks to respond and he was "busy." (Serafin testimony.)

M. Outcome of First Investigation

On April 30, 2018, Mr. Larson and Mr. Bosacker submitted their report to Chief DeMann. (EP-6 at 6-1.)

On May 31, 2018, Chief DeMann issued a letter to Mr. Serafin detailing the sustained findings from the investigation. (EP-25.) After an appeal by Mr. Serafin, City Manager Rick Getschow slightly modified and affirmed the findings in a letter dated July 25, 2018. (EP-29.) The City sustained the following findings: (1) Mr. Serafin knowingly changed the probable cause portion of the warrant by adding the VOTF language after the judge had signed the warrant; (2) Mr. Serafin was untruthful stating in his February 13 supplemental report and in his February 23 testimony that he had two warrants signed by Judge Quam; and (3) on September 15, a search of vehicles occurred during the execution of the warrant without authorization in the warrant. (*Id*.)

As a result of the sustained findings, the City removed Mr. Serafin from DTF and reassigned him to the patrol division. (*Id.* at 29-2.) It also removed Mr. Serafin from his secondary assignments, including DTF, and required him to complete ethics training and work with a supervisor on future search warrants. (*Id.* at 29-2.) The July 25 letter also informed Mr. Serafin that, pursuant to the MOU, the sustained findings would be shared with HCAO and with the City prosecutor's office. (*Id.*) The letter explicitly states: "If you cannot fulfill your duty to testify in court as a result of the sustained findings, you have 24 hours to notify your sergeant of this and you may be subject to termination." (*Id.*)

N. HCAO Review and Decision

Chief DeMann then shared the sustained findings with HCAO. (Mr. Brown testimony.) In August and September 2018, HCAO supervising attorneys Ms. Marlene Senechal and Mr. Al Harris and Chief Criminal Deputy Attorney David Brown all reviewed the City's administrative

investigation file, and later consulted with Hennepin County Attorney Mike Freeman. (Mr. Brown testimony.) They concluded that Mr. Serafin had intentionally altered the search warrant in September 2017 and provided untruthful testimony in February 2018. (*Id.*; EP-32.) Because of the serious nature of this conduct, they determined that the sustained findings would need to be disclosed to the defense in every case that Mr. Serafin was involved in going back to September 22, 2017 (the date on which he falsified the warrant) and in any future case in which Mr. Serafin may be called as a witness. (Mr. Brown testimony.) HCAO determined that it cannot permit Mr. Serafin to ever be called as a witness in any case prosecuted by the office. (*Id.*; EP-32.) As Mr. Brown testified, this is an "extreme step" and one that HCAO had never taken before in response to officer misconduct. (Mr. Brown testimony.)

Mr. Brown communicated this decision to the City in a letter to new Chief Greg Weber in a letter dated October 11, 2018. (EP-32.) As detailed in this letter, as a result of Mr. Serafin's conduct, HCAO dismissed five pending cases, invited motions to vacate 17 convictions with the intention of dismissing them, dismissed eight cases that had been sent to diversion, and canceled four active warrants and dismissed the cases. (*Id.*) In 14 other cases where Mr. Serafin was a non-essential witness, HCAO determined that it will have to disclose the sustained finding of discipline to the defense. (*Id.*) As Mr. Brown testified, many of these cases involved very serious felonies. (Mr. Brown testimony.) In addition, HCAO referred the matter to the McLeod County Attorney for consideration of criminal charges against Mr. Serafin. (EP-32.)

O. Second Administrative Investigation

In response to the October 11, 2018 letter from Mr. Brown, Chief Weber opened a second administrative investigation to determine whether Mr. Serafin could continue to fulfill the essential duties of his position as a police officer for the City if he could no longer testify for HCAO. (EP-34 at 34-13, 34-15.) Captain Wyffels was assigned to conduct the investigation. (*Id.* at 34-15.)

Captain Wyffels interviewed Mr. David Brown, who described HCAO's consideration of the matter and reiterated the findings and conclusions set forth in his October 11 letter to Chief Weber. (EP-34 at 34-4–5, 34-33–35.) Captain Wyffels also interviewed the lead City prosecutor, Mr. Jesse Berglund, and his supervisor, City Attorney Ric Rosow. (*Id.* at 34-5–6.) Mr. Berglund told Captain Wyffels that he had already dismissed one case where Mr. Serafin was a witness and declined to charge another. (EP at 34-38–39.) Mr. Berglund stated that, if he were sent future

cases that involved Mr. Serafin as a material witness, he would dismiss or decline to charge the cases. (*Id.* at 34-39.) Captain Wyffels also learned that the Ramsey County Attorney's Office had dismissed two felony cases in which Mr. Serafin was a material witness, because of the search warrant issue in the Holmes case. (*Id.* at 34-6; EP-36.)

P. City Decision to Terminate

On October 26, 2018, Captain Wyffels submitted the results of his investigation to Chief Weber. (EP-34 at 34-8.) Chief Weber reviewed the investigation report and consulted with the City Manager, who has the authority to hire and fire City employees. (Chief Weber testimony.)

On October 30, 2018, the City Manager sent Mr. Serafin a letter informing him of the City's intent to terminate his employment because he did not meet the essential functions of his position. (EP-43.) Mr. Serafin declined a meeting with the City Manager to explain why he should not be terminated or supply additional information. (EP-43; EP-44.)

In a letter dated November 1, 2018, Chief Weber informed Mr. Serafin of the sustained findings from Captain Wyffels investigation and terminated his employment. (EP-45.) The letter stated: "[a]s a direct result of your conduct you are no longer able to perform all of the essential functions of your position and can no longer be employed by the City of Eden Prairie." (EP-45 at 45-2.) Mr. Serafin's employment was terminated effective November 6, 2018. (*Id.* at 45-3.)

Q. Grievance

The Eden Prairie Police patrol officers voted to form a union in August 2018 and chose LELS as its exclusive representative. On November 9, 2018, LELS filed a grievance of the termination on Mr. Serafin's behalf. Despite the lack of a Collective Bargaining Agreement, this arbitrator ruled on September 9, 2019 that the matter is substantively arbitrable and that a "just cause" standard applies to Mr. Serafin's termination. The City has reserved its right to challenge this ruling in District Court.

R. Return of Forfeiture Funds

Additional fallout from Mr. Serafin's misconduct included the return of forfeited assets to criminal defendants. (Chief Weber testimony.) In February 2019, HCAO decided to return all the funds it received as a result of civil forfeiture on cases in which Mr. Serafin's involvement resulted in dismissal. (EP-50.) HCAO encouraged DTF to do the same. (*Id.*) On March 6, 2019, the DTF Governing board voted to follow HCAO's lead and return $21,904 plus $294 representing 70% of the fair market value of seized firearms. (*Id.*)

S. McLeod County Decision

As Mr. Brown noted in his October 11, 2018 letter to Chief Weber, HCAO referred the Serafin matter to the McLeod County Attorney's Office for consideration of criminal charges against Mr. Serafin. (EP-32.) In May 2019, the McLeod County Attorney's Office announced its decision that it was declining to file criminal charges against Mr. Serafin. (EP-65.) This was not because it did not believe Mr. Serafin did not commit a crime. Rather, the office determined that it could not successfully pursue criminal charges because of Mr. Serafin's compelled *Garrity* statement given during the first administrative investigation, which was publicly available. (*Id.*) The McLeod County Attorney stated that this result was "distasteful for several reasons. An officer falsified an application for a search warrant and does not face criminal punishment. An officer intentionally gave false testimony and cannot be charged." (EP-65 at 65-6.)

II. Legal Argument of City of Eden Prairie

1. The City had just cause to terminate Mr. Serafin's employment because he can no longer perform an essential function of his position i.e. testify in court. The City of Eden Prairie did not terminate Mr. Serafin's employment for the alteration of the search warrant, the submission of a false report, and subsequent lies under oath. Rather, Mr. Serafin was terminated because he can no longer fulfill an essential function of his job as a police officer for the City of Eden Prairie, that is he can no longer give court testimony. Court testimony is an essential function of the position of police officer.

2. Mr. Serafin's *Brady/Giglio* status. In *Brady v. Maryland*, 373 U.S. 83 (1963), the U.S. Supreme Court stated that the prosecution has an affirmative duty to discover and turn over to the defense all evidence that might exonerate a defendant. 373 U.S. 83 (1963). In *Giglio v. United States*, 405 U.S. 150 (1972), the Court held that this disclosure obligation extended to any evidence that may impeach a witnesses' credibility. Because of a prosecutor's obligations under *Brady/Giglio*, the City's sustained findings of untruthfulness will have to be disclosed to the defense in any case in which Mr. Serafin testifies. "The findings so impinge on [Mr.] Serafin's credibility that the prosecutor would seriously risk losing a case by putting [Mr.] Serafin on the stand." [City of Eden Prairie post-hearing brief at 19].

While the evidence shows clearly and compellingly that Mr. Serafin altered the search warrant after it was signed, submitted a false report, and then lied under oath, the arbitrator need not make such a finding to determine that the City has just cause to terminate Mr. Serafin's

employment. The Hennepin County Attorney's Office has determined that it will never again call Mr. Serafin as a witness in any case prosecuted by that office. The City of Eden Prairie prosecutor has made a similar determination. The arbitrator does not have the authority or power to change the prosecutors' determinations. Consequently, the only question for the arbitrator in this proceeding is whether Mr. Serafin's inability to perform an essential function of his job as a police officer—provide courtroom testimony—constitutes "just cause" for his termination. In similar circumstances, other arbitrators have answered this question with "yes." [A number of arbitration decisions cited and discussed].

3. The evidence shows that Mr. Serafin's misconduct and false testimony was intentional. Mr. Serafin changed his story several times. When first confronted with the existence of two warrants by Mr. Radmer in January 2018, Mr. Serafin fabricated a story about getting two search warrants signed by Judge Quam and he prepared a supplemental report with this explanation. Mr. Serafin stuck with the fabricated story in his initial testimony in front of Judge Karasov on February 23, 2018. When pushed by defense council and the judge about the implausibility of Judge Quam signing two nearly identical warrants, and the facts that the warrants were identical other than the vehicle and curtilage language, Mr. Serafin changed his testimony. As we now know, from the forensic investigation and from Mr. Serafin's testimony at the arbitration hearing, Judge Quam only signed one warrant – the one that did not authorize the search of vehicles and curtilage.

If Mr. Serafin needed a copy of page Application 1, he could have accessed page Application 1 of the original signed search warrant from different electronic locations:

- The scanned warrant that was saved on Mr. Serafin's County-issued laptop (EP-3 at 3-5, 3-22.)
- Two locations on his SOTA thumb drive (EP-3 at 3-11, 3-12, 3-22.)
- The September 14 email to Officer Kevin Angerhoffer (EP-59)
- The LETG system (EP-5 at 5-17; EP-6 at 6-4; EP-11; Mr. Serafin testimony)
- The September 16, 8:43 a.m. email to Mr. Radmer (LELS 49)
- The September 18, 6:47 a.m. email to himself (EP-3 at 3-19);
- The Eden Prairie "New World" case file (Mr. Serafin testimony.)

Mr. Serafin could have pulled up a search warrant from any of these locations and simply printed out Application 1 to add to the other pages. Instead, Mr. Serafin inexplicably chooses to

create a new page Application 1 from the new template and cut-and-paste the vehicle and curtilage language from another document.

Second, Mr. Serafin has no explanation for why he did not report the "lost" first page to his supervisor or to the prosecutor handling the case the moment he realized it was missing.

Third, the fabricated story about the lost page is simply not credible considering Mr. Serafin's prior stories and his testimony at the arbitration hearing. Mr. Serafin testified at the arbitration hearing that, when he realized the first page was missing on the evening of September 21, he conducted a "frantic" search of his home, vehicles, and personal property for the lost page. When questioned by Mr. Radmer about the two warrants in late-January 2018, Mr. Serafin claimed he did not remember losing the page and frantically searching for it. During his testimony in front of Judge Karasov, Mr. Serafin did not remember this "frantic" search.

4. Mr. Serafin deleted emails to cover his tracks. He attempted to cover his tracks by deleting several emails related to the warrant issued. Captain Wyffels' forensic investigation revealed that Mr. Serafin deleted the following emails from his Inbox and Deleted folders, did not delete them from his Sent folder:

- September 18, 2017, 6:47 email to Mr. Serafin from himself to which a copy of the original search warrant, without vehicle and curtilage language on the first page, was attached. (EP-3 at 3-19.)
- October 5, 2017, 10:47 email from Ms. Heidi Stahnke containing her second request for the search warrant for the vehicles. (EP-3 at 3-23–24.)
- November 29, 2017, 17:43 email from Ms. Heidi Stahnke containing her third request for the search warrant for the vehicles. (EP-3 at 3-25–26.)
- January 11, 2018, 9:57 and 13:31 emails from Mr. Michael Radmer asking to speak with Mr. Serafin about the *Holmes* case. (EP-3 at 3-27–28.)
- January 29, 2018, 8:58 email from Mr. Radmer asking why there are two search warrants for the residence and requesting a supplemental report. (EP-3 at 3-28–29.)
- February 13, 2018, 8:28 email from Mr. Radmer asking Mr. Serafin to email him the supplemental report. (EP-3 at 3-29.)
- February 22, 2018, 9:51 email from Mr. Radmer asking Mr. Serafin to come early for the hearing the next day. (EP-3 at 3-30.) This email was deleted from the Inbox but was located in the Deleted folder. (*Id.*)

- February 24, 2018, 1:24 am email from Mr. Serafin to Mr. Radmer attempting to explain his testimony. (EP-3 at 3-31–32.) Mr. Serafin forwarded this email to himself after he sent it, then deleted it from his Inbox. It was located in the Deleted folder. (*Id.*)

As Captain Wyffels noted in his report and testimony, deleting an email from the deleted folder takes a separate intentional act. Mr. Serafin did not normally delete emails from his deleted folder. Mr. Serafin has over a thousand emails in his deleted folder yet chose to permanently delete several emails related to this case.

If this was really all just a big "mistake" caused by Mr. Serafin being "busy" and "confused," it does not explain why Mr. Serafin intentionally deleted these emails in an apparent, albeit unsuccessful, attempt to erase them from the electronic record. Mr. Serafin has offered no explanation for deleting these emails. The deletions are further evidence that his misconduct was intentional.

5. Mr. Serafin's conduct constitutes a serious violation of the rules applicable to Eden Prairie Police Officers. The "Code of Conduct Principles" in Police Directive 3.02 provides that "peace officers shall not knowingly disobey the law or rules of criminal procedure in such areas as interrogation, arrest, detention, searches, seizures, use of informants and preservation of evidence" and "peace officers shall truthfully, completely, and impartially report, testify, and present evidence including exculpatory evidence, in all matters of an official nature." (EP-6 at 6-1.)

By lying under oath, Mr. Serafin's conduct also violates the Directive, as well as basic rules of ethics and criminal procedure. Mr. Serafin is a *Brady/Giglio*-impaired officer, the credibility of whose testimony would be challenged in any future case.

6. Conclusion

Mr. Serafin conducted an unauthorized search, altered the search warrant after the fact to purportedly authorize that search, created and submitted a false police report, and testified untruthfully under oath. The Hennepin County Attorney's Office and the Eden Prairie City Attorney's Office have determined that Mr. Serafin can no longer be called as a witness to testify in court. Consequently, Mr. Serafin cannot fulfill an essential function of the position of a police

officer for the City of Eden Prairie. The City has just cause to terminate Mr. Serafin's employment. The grievance must be denied.

POSITION OF LELS AND TRAVIS SERAFIN

Again, because this case has had such wide-spread ramifications to Mr. Serafin, the City of Eden Prairie, the Hennepin County Attorney's Office and the citizens of Minnesota, it is important to list in detail the facts, arguments and contentions of Mr. Serafin and the Union.

I. Facts

Background

The grievant, Travis Serafin ("Serafin") was employed by the Eden Prairie Police Department ("EPPD") beginning in 2000. Mr. Serafin initially served in the EPPD's Patrol and Retail Crimes units. He joined the EPPD's SWAT team in 2002, and in 2004 was appointed as Assistant Team Leader on the SWAT team. *Testimony of Travis Serafin ("T. Serafin").* Sergeant (later Lieutenant) Jim Morrow, who supervised Mr. Serafin as both a patrol officer and as a member of the SWAT team, describes him as a reliable, trusted, "high energy" officer and good team leader. *Union Ex. 46 (Statement of Lt. Jim Morrow ["Morrow Statement"] at 3:30, 5:10).*[3]

Mr. Serafin's personnel file contains dozens of commendations and letters of appreciation from EPPD supervisors, other law enforcement agencies and members of the public. *Union Exs. 9-11*; *Testimony of Eden Prairie Police Chief Greg Weber ("T. Weber").* In 2011, Mr. Serafin was named EPPD's Officer of the Year. *Union Ex. 9, pp.27-28.* Prior to the events in 2017-2018 leading up to his termination, Mr. Serafin had worked for the EPPD for 17 years and had never been disciplined.

The Southwest Hennepin Drug Task Force ("Task Force") is comprised of detectives from the Hennepin County Sheriff's Office and five cities in the West Metro area, including Eden Prairie. *T. Serafin*; *Testimony of Hennepin County Lieutenant Brady Sweitzer ("T.*

[3] Because of scheduled surgery, Lt. Morrow was unavailable to testify at the arbitration hearing. The parties took a recorded statement from Lt. Morrow on October 30, 2019 and marked the recording as an exhibit in lieu of live testimony.

Sweitzer"). In 2014, Mr. Serafin applied for an opening on the Task Force, and was selected over several other candidates. *T. Serafin*; *Testimony of Eden Prairie Detective Carter Staaf ("T. Staaf").* He was initially appointed to a three-year term on the Task Force. The training that Mr. Serafin received and the experience that he developed as a member of the Task Force included developing probable cause for search warrants and other warrants; completing applications for warrants and submitting them to be signed by a judge; executing warrants, including on residences; and testifying in court regarding the drafting and execution of warrants. *T. Serafin.*

Mr. Serafin quickly became recognized as a highly effective drug enforcement officer, receiving a commendation award during his first year on the Task Force "in recognition of [his] efforts in combatting the heroin threat in Hennepin County." *Union Ex. 9, p.11.* Jim DeMann, who was the EPPD's Deputy Chief when Mr. Serafin joined the Task Force and was promoted to Chief in 2016, received reports that Mr. Serafin was doing an excellent job, making numerous arrests and taking a high volume of narcotics off the street. *Testimony of Former Eden Prairie Police Chief Jim DeMann ("T. DeMann").* Hennepin County Sergeant (now Lieutenant) Brady Sweitzer, the supervisor in charge of the Task Force when Mr. Serafin was first appointed to the Task Force in 2014, testified that of the six detectives reporting to him, Mr. Serafin was one of the most effective at drug enforcement. Although Mr. Serafin had a large workload and was always willing to take on new cases, this never resulted in him being sloppy or cutting corners in his investigations. *T. Sweitzer.* Carter Staaf, an EPPD detective and longtime colleague of Mr. Serafin's, testified that Mr. Serafin was the hardest worker he had ever seen, always the first to arrive on a crime scene and the last to leave, and driving other officers to perform at a higher level. *T. Staaf.* Det. Staaf and other EPPD officers, including supervisors, testified that they had never known Mr. Serafin to be untruthful, and had never had any concerns with Mr. Serafin's honesty or credibility. *T. Staaf*; *Testimony of Eden Prairie Sergeant Eric LeBlanc ("T. LeBlanc")*; *Testimony of Former Eden Prairie Detective Andy Rohde ("T. Rohde")*; *Union Ex. 46 (Morrow statement at 5:40).* As an example of Mr. Serafin always playing by the rules and not cutting corners, Det. Staaf particularly recalls an incident in 2015 when, during the execution of a search warrant in connection with a theft and credit card fraud investigation, officers discovered a small amount of marijuana at the residence; recognizing that this was outside the scope of the search warrant and could jeopardize the case, Mr. Serafin paused the search and left to obtain a new warrant. *T. Staaf*; *Union Ex. 50.*

It was Sgt. Sweitzer's practice, as the supervisor in charge of the Task Force, to review all official documents drafted by the detectives who reported to him before those documents were filed. In the case of warrant applications, Sgt. Sweitzer would insist on reviewing a draft before the application was submitted to be signed by a judge. On occasion, Sgt. Sweitzer would identify errors in these draft documents – including those drafted by Mr. Serafin – and would make sure that those errors were corrected before the documents were filed. *T. Serafin*; *T. Sweitzer.*

Sgt. Sweitzer had regular meetings with the EPPD supervisors and kept them apprised of how well Mr. Serafin was doing on the Task Force. *T. Sweitzer.* Mr. Serafin continued to receive outstanding performance reviews. On his 2014 review, Mr. Serafin's direct supervisor at the EPPD, Sergeant Eric LeBlanc, wrote that Mr. Serafin "is often the leader in these [narcotics] investigations" and "may want to start to consider a sergeant's position in the near future." *Union Ex. 7*; *T. LeBlanc.* (Lt. Morrow confirmed that Mr. Serafin was being strongly considered for promotion to sergeant, and that this would not have been the case if the command staff did not believe that he was trustworthy. *Union Ex. 46 [Morrow statement at 35:10].*) On his 2016 performance review, Sgt. LeBlanc wrote that "there should be strong consideration made for [Serafin] to maintain an assigned position such as the [Task Force]." *Union Ex. 6*; *T. LeBlanc.*

In 2016, Mr. Serafin was involved in the investigation into a heroin overdose death that led to Beverly Burrell – the drug dealer who had sold heroin to the decedent – being charged and convicted for 3rd degree murder. *Union Ex. 12*; *T. Serafin.* Beginning with the Burrell case, Mr. Serafin developed expertise and became the Task Force's "go-to guy" for heroin investigations, particularly overdose/homicide cases. Mr. Serafin estimates that he investigated 10 to 15 such overdose cases, including five in Eden Prairie alone[4]; prior to the Mr. Timothy Holmes' case in 2017-2018, all of these had resulted in 3rd degree murder convictions. *T. Serafin.*

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[4] Lt. Morrow, who was head of the EPPD Investigations unit while Mr. Serafin was on the Task Force, had a strong focus on heroin overdose cases, including keeping the names of the five Eden Prairie victims written on a white board in his office. Lt. Morrow particularly recalls the death of Margaret Lane – the investigation of which by Mr. Serafin is the subject of this arbitration – because Ms. Lane was a high school classmate of Lt. Morrow's daughter. *Union Ex. 46 (Morrow statement at 14:25).*

After Mr. Serafin had completed his initial three-year stint on the Task Force, his assignment was extended for one year in 2017 – based in part on Sgt. Sweitzer's recommendation, and with Lt. Morrow's approval -- and again in 2018. The extension to a fourth year on the Task Force was highly unusual; the fifth year was "unheard of". *T. Serafin*; *T. Sweitzer*; *Union Ex. 46 (Morrow statement at 11:15).*

In 2017, Sgt. Sweitzer was replaced by Hennepin County Sergeant Matthew Steffens as the supervisor in charge of the Task Force. Sgt. Steffens discontinued Sgt. Sweitzer's practice of reviewing warrant applications and other official documents drafted by the Task Force detectives before those documents were filed. *T. Serafin.*

In December 2017, the EPPD entered into a Memorandum of Understanding (MOU) with the City Attorney and the Hennepin County Attorney, which has remained in effect since that date. *City Ex. 26*; *T. Weber.* The MOU requires the EPPD to disclose any sustained findings made against department personnel to the City and County prosecutors, and for the prosecutors review those findings to determine the presence of *Brady* material. The MOU states in part:

> "The identification of an Eden Prairie PD employee as being the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecuting agency's discovery obligations. The identification is not, in and of itself, related to the employee's employment and will not be used by Eden Prairie PD for disciplinary purposes."

City Ex. 26. On December 13, 2017, Chief DeMann sent a department-wide email advising EPPD employees of the content of this MOU. The email included a statement substantially identical to the MOU itself, *i.e.*, that "being identified as the subject of *Brady* material . . . will not be used by the department for disciplinary purposes." *Union Ex. 32*; *T. DeMann.*

In August 2018, the EPPD's police officers organized as a collective bargaining group and certified Law Enforcement Labor Services, Inc. ("Union") as their exclusive representative. Prior to that, the City's officers had not belonged to a union. *T. Serafin*; *Union Ex. 1.*

Lane Overdose Investigation

On June 16, 2017, EPPD officer responded to the reported death of a 27-year-old female, Margaret Lane. Because the death was determined to be a possible drug overdose, Mr. Serafin – who by that time had developed considerable expertise in drug overdose cases – was assigned to investigate, along with Det. Staaf from the EPPD Street Crimes unit. *T. Serafin*; *Union Ex. 13.*

Mr. Serafin and Det. Staaf soon learned through an informant that Mr. Timothy Holmes was the likely source of the drugs on which Ms. Lane had overdosed, which would potentially be grounds for a charge of 3rd degree homicide against Mr. Holmes. *Id.*; *Union Ex. 14.*

Once a suspect has been identified in a case like this, detectives frequently seek to search the suspect's residence to obtain evidence that would link the suspect to the underlying crime. Such a search typically requires a search warrant. *T. Serafin.* On or about September 13, 2017, Mr. Serafin drafted a probable cause statement ("PC statement") for the search of Mr. Holmes' residence at 3312 4th Avenue South in Minneapolis; the PC statement articulated in detail the information that Mr. Serafin and Det. Staaf had gathered through their investigation over the preceding three months, and the relevant items that they reasonably expected to find by searching the residence. *Id.*; *Union Ex. 18, pp.2-6.* The search of a residence as part of a drug enforcement investigation usually includes a search of vehicles on the premises, because drug dealers often keep drugs, as well as cell phones and other evidence, in those vehicles. *T. Serafin*; *Union Ex. 46 (Morrow statement at 24:45).* The PC statement for the Holmes residence specifically identified four vehicles, by model, color and license plate, that Mr. Serafin had observed located behind the residence while conducting surveillance of the property. *T. Serafin*; *Union Ex. 15*; *Union Ex. 18, p.4.* It was Mr. Serafin's intent to include those vehicles in the search, and he believed, based on his training and experience, that he had articulated probable cause to search the vehicles. *T. Serafin.*

Events of September 14, 2017

On the morning of Thursday, September 14, 2017, Mr. Serafin went to the Task Force office to assemble an application for a warrant to search the Holmes residence. He used the Hennepin County-issued laptop that he used for most of his work on Task Force cases. At that time, Mr. Serafin was extremely busy, with between 10 and 20 other active drug enforcement cases. *T. Serafin.* In addition, he and Det. Staaf were both scheduled to be at Camp Ripley[5] beginning on Saturday, September 16 to serve as lead trainers at a state-wide SWAT training exercise. *Id.*; *T. Staaf.* Mr. Serafin and his wife also had plans to leave on Wednesday, September 20, immediately after his return from Camp Ripley, for a trip to the Caribbean to celebrate their wedding anniversary (although these plans later had to be cancelled due to an

[5] Camp Ripley is located in Morrison County, about 108 miles from Eden Prairie.

impending hurricane). For these reasons, Mr. Serafin was in a hurry to complete the Holmes warrant application in time for it to be signed by a judge on September 14, so that the warrant could be executed, and the search of the Holmes residence completed on Friday, September 15. *T. Serafin.*

The standard warrant application packet includes a one-page application; a PC statement; and the warrant itself on the final page. The process followed by a detective completing a warrant application includes selecting a template off of a drop-down menu, then tabbing through the template to enter the information specific to that warrant; some of that information, including the location to be searched and the scope of the search, auto-populates to the warrant page, which ensures that the information on the application page and the warrant page are identical. *T. Serafin*; *Testimony of Eden Prairie Captain Bill Wyffels ("T. Wyffels").* One of the boxes on the search warrant template allows the detective to add "curtilage language," which expands the proposed scope of the search to include not only the residence itself, but also outbuildings, persons occupying the residence, and vehicles associated with the residence. *T. Serafin.*

During his time on the Task Force, Mr. Serafin had completed dozens of applications for warrants to search residences. On every other one of those applications, he had included boilerplate curtilage language, which specifically refers to vehicles on the premises – again, because vehicles are frequently where drugs and other evidence are hidden and located. *T. Serafin*; *Testimony of computer forensics expert Mark Lanterman ("T. Lanterman").* (Sgt. Sweitzer, formerly the supervisor in charge of the Task Force, confirmed that this was standard practice for all detectives on the Task Force. *T. Sweitzer.* Mr. Serafin usually included the curtilage language by copying it from another source and pasting it into the appropriate box on the template, in which case the same curtilage language would auto-populate to the warrant page. *T. Serafin.* In drafting the Holmes warrant application, because he was in such a hurry – needing to have the warrant signed and executed in time to attend the SWAT training at Camp Ripley that weekend – Mr. Serafin mistakenly omitted the curtilage language from the application. *Id.*; *Union Ex. 18.*[6] He scanned the application packet and saved it onto the County-issued laptop, as well as onto a thumb drive. *T. Serafin.*

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[6] Mr. Serafin used a premises template, on which the term "motor vehicle" is automatically crossed out in the description of the scope of the proposed warrant. Mr. Serafin testified that

Mr. Serafin then printed out a hard copy of the warrant application packet. The same afternoon, Thursday, September 14, 2017, he took the hard copy to be signed by Hennepin County District Court Judge Jay Quam. *T. Serafin*; *Union Ex. 18.* Judge Quam was already familiar with the Holmes case, having reviewed and signed a tracking warrant for Mr. Holmes' cell phone only two days earlier. *Union Ex. 14*; *T. Serafin*; *T. Staaf.* Mr. Serafin was sworn in and affirmed under oath the accuracy of the PC statement. Judge Quam signed Mr. Serafin's search warrant without raising any questions about the omission of the standard curtilage language. *T. Serafin*; *Union Ex. 18.* Mr. Serafin then returned to the Task Force office and scanned the application and warrant – now with his and Judge Quam's signatures – and saved them onto the laptop and thumb drive. Mr. Serafin emailed the signed warrant to Minneapolis Officer Kevin Angerhofer, a member of the SWAT team that was scheduled assist with the execution of the warrant on the Holmes residence the following day. *T. Serafin.*

Events of September 15, 2017

On the morning of Friday, September 15, 2017, Mr. Holmes was arrested and taken into custody. The arrest took place near 2925 Park Avenue South in Minneapolis, roughly a half mile from Mr. Holmes' residence. *T. Serafin*; *Union Ex. 16.* Shortly following the arrest, officers executed the search warrant and completed a search of the residence. *Id.*; *Union Ex. 17.*

Approximately 8-9 officers were involved in the search, including Det. Staaf. *T. Serafin*; *T. Staaf.* Mr. Serafin served as the case agent, meaning that he was the detective responsible for overseeing the execution of the warrant, the collection and processing of evidence, and the completion of reports. Prior to the search of the Holmes residence, Mr. Serafin held a briefing with the involved officers over the radio. (Briefing over the radio rather than in person is somewhat unusual but was necessary in this case because of the complexity of the scenario and the fact that the officers were at multiple locations performing surveillance and completing other

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while he has used this template in the past, he has always included the standard curtilage language, which specifically includes vehicles associated with the residence. In Mr. Serafin's experience, there have never been any issues or problems with searching vehicles based on a search warrant that includes the curtilage language, even where "motor vehicle" is crossed out on the application page. *T. Serafin.*

tasks.) Because this was authorized as a "no-knock" warrant,[7] the briefing focused on the steps to be followed in approaching and entering the residence, and the possibility of encountering armed individuals and other threats to officer safety. Mr. Serafin was not then aware that he had omitted the curtilage language from the warrant, and so did not mention this during the briefing. *T. Serafin.*

At the time of the search of the Mr. Holmes residence, officers completed service of a "drop copy" of the warrant. The same drop copy was available for officers to check, if there were any questions or concerns regarding the scope of the search. None of these offices noticed that the curtilage language was missing; according to Mr. Serafin, this is not surprising, in that the other officers would be expected to follow his lead as the case agent and as an experienced Task Force detective. *T. Serafin.* Det. Staaf adds that when he arrived at the residence, the search was already underway, including the search of the vehicles, so he had no reason to review the drop copy or to ask any questions about the scope of the warrant. *T. Staaf.*

As officers completed the search of the Holmes residence, they filled out inventory sheets listing each item of evidence that they had seized; in his role as the case agent, Mr. Serafin collected the inventory sheets and later signed them and had them notarized to affirm their accuracy. Some of the items listed on the inventory sheets were taken from the vehicles on the premises, including drugs, weapons and cell phones. *Union Ex. 19*; *T. Serafin.* Mr. Serafin did not personally search any of the vehicles, but he was aware that they were included in the scope of the search. Again, Mr. Serafin did not realize at that time that in this case – unlike the dozens of other warranted searches that he had been responsible for -- he had omitted the standard curtilage language from the search warrant. *T. Serafin.*

After the search was completed, Mr. Serafin returned to the Task Force office, taking with him the original hard copy of the search warrant, the inventory sheets, and all of the drugs and other evidence that had been collected during the search. He was responsible for labeling and logging each item of evidence. With respect to the drugs that had been seized, this meant testing each sample to confirm that it was the narcotic that it appeared to be. *T. Serafin.* Mr. Serafin also completed supplemental reports detailing both the arrest and the search. *Union Exs.*

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[7] The warrant states that officers are "commanded to enter without announcement of authority or purpose." *Union Ex. 18, p.8.*

16-17. After all of these tasks had been completed, Mr. Serafin scanned the warrant packet and the inventory sheets and saved these items together as a single .PDF file on his County laptop and thumb drive. All of these steps were standard protocol for documenting a drug investigation. *T. Serafin.* Forensic records show that the scan took place at 2139 hours; by then, Mr. Serafin had been awake for about 17 hours working non-stop on the Holmes case. *Id.*; *Union Ex. 30, p.18.* He was due at Camp Ripley the following morning for SWAT training. *T. Serafin.*

After a search warrant has been executed, it must be filed with the district court clerk to be made part of the official criminal case file. To accomplish this, it is standard practice for a detective to complete a "blue slip" with the date and case number, and to place the complete executed warrant packet in a bin, located either at the Task Force office or at the courthouse in downtown Minneapolis, with the blue slip attached. *T. Serafin.* Before leaving the Task Force office on the night of September 15, 2017, Mr. Serafin completed and signed a blue slip and attached it to the executed warrant packet with a paper clip. *Id.*; *City Ex. 10.* Mr. Serafin knew that, with Mr. Holmes in custody as of Friday morning, the prosecutor assigned to the case would have to draft a criminal complaint over the weekend in time to file it by noon on Monday, September 18, and would likely require assistance from Mr. Serafin and Det. Staaf. For that reason, Mr. Serafin did not place the warrant packet with the blue slip in the filing bin, but instead took the packet with him to Camp Ripley. *T. Serafin.* Even though the blue slip bore the date when it was completed and attached to the executed warrant (September 15, 2017), it was Mr. Serafin's intent to file these materials with the court clerk after returning from Camp Ripley. *Id.*; *City Ex. 10.*

Events of September 16-20, 2017

Mr. Serafin's original intent was to leave for Camp Ripley on the morning of Saturday, September 16, 2017. First, he had to pack, including not only his personal effects, but also equipment for the training scenarios that he would be leading and other materials for the SWAT training. *T. Serafin.* That same morning, Mr. Serafin's seven-year-old daughter suffered an injury and had to be taken to the emergency room, which delayed Mr. Serafin's departure for Camp Ripley. *Id.*; *Union Ex. 20.* Mr. Serafin describes the situation that day – having worked 17 non-stop hours on the Holmes case the day before, then scrambling to pack and leave for Camp Ripley in the morning, only to have his daughter wind up in the hospital – as "chaos". *T. Serafin.*

At 0843 hours on the morning of September 16, Mr. Serafin sent an email to Assistant County Attorney Michael Radmer, the prosecutor assigned to the Holmes case. *Union Ex. 49.* Mr. Serafin and Attorney Radmer had worked on other drug enforcement cases in the past. *T. Serafin*; *Testimony of Chief Deputy County Attorney David Brown ("T. Brown").* Attached to Mr. Serafin's email were copies of the supplemental reports from the search of the Holmes residence. Also attached to the email was a copy of the executed search warrant – which Mr. Serafin had drafted and had signed by Judge Quam on September 14, with the curtilage language mistakenly omitted, and which had been executed on the Holmes residence on September 15 – along with the inventory sheets from the search. *Union Ex. 49.* The purpose of sending these materials to Attorney Radmer was to assist him in drafting his criminal complaint over the weekend. *T. Serafin.* Both the supplemental reports and the inventory sheets attached to Mr. Serafin's email listed the items of evidence seized from the Holmes residence, including the items taken from the vehicles on the premises. *Id.*; *Union Ex. 49*. Attorney Radmer did not raise any issues or concerns regarding the scope of the warrant or the legality of the search. *T. Serafin.*

At approximately 1600 hours on September 16, Mr. Serafin went to the County jail and attempted to execute a DNA search warrant by obtaining a saliva swab from Mr. Holmes. The DNA sample would potentially help the County build its case against Mr. Holmes by linking him to the drugs associated with the decedent, Ms. Lane. Mr. Holmes refused to cooperate with the DNA search warrant. *T. Serafin*; *Union Ex. 52.*

Mr. Serafin then left for Camp Ripley, arriving late on the night of Saturday, September 16. He brought with him the entire Holmes case file, including the executed search warrant packet, held together with a paper clip with the blue slip on top. He also brought along case files for other active drug enforcement cases. *T. Serafin.*

There were approximately 300 SWAT officers from around the state at the Camp Ripley training event. Mr. Serafin remained at Camp Ripley until Wednesday, September 20, 2017. *T. Serafin.* He and Det. Staaf were busy running three to four SWAT teams through large-scale training scenarios, which Det. Staaf describes as stressful. *Id.*; *T. Staaf.* When he was not serving as a trainer, Mr. Serafin also acted as a safety officer at the firing ranges and performed other duties as needed. *T. Serafin.* Meanwhile, he and Det. Staaf continued working on the Holmes case, assisting Attorney Radmer in drafting the criminal complaint against Mr. Holmes.

Id.; *T. Staaf.* Mr. Serafin recalls having at least one phone conversation with Attorney Radmer while at Camp Ripley, in which he briefed Attorney Radmer on the total amounts of narcotics that had been seized from the Holmes residence. *T. Serafin.* In the course of working on the Holmes case, Mr. Serafin and Det. Staff referenced and utilized the paper file that Mr. Serafin had brought with him to Camp Ripley, including the search warrant packet. (Under the circumstances, referencing these hard copies was considerably easier than looking up the .PDF files on their computers.) On Monday, September 18, 2017, Det. Staaf signed the criminal complaint, charging Mr. Holmes with 3rd degree murder in the death of Ms. Lane, and emailed the signed complaint back to Attorney Radmer. (This email exchange took place on the hood of Det. Staaf's car, connecting to the internet using a hot spot from Mr. Serafin's cell phone.) This enabled the County to keep Mr. Holmes in custody. *Id.*; *T. Staaf.*

Events of September 21-22, 2017

Mr. Serafin brought the Holmes file back with him from Camp Ripley, but realized on or about Thursday, September 21, 2017 that the application page from the search warrant packet had gone missing. The missing page had to be replaced before the executed warrant packet could be filed with the court clerk. Mr. Serafin frantically searched his car, duty bag, etc. for the missing page, but could not find it. *T. Serafin.*

On Friday, September 22, 2017, Mr. Serafin had work to do on other drug enforcement cases unrelated to the Holmes case, including the execution of a search warrant on a residence in Minnetonka. *T. Serafin*; *Union Ex. 53.* For this reason, he went to the Task Force office early that morning with the intent of resolving the problem with the missing application page for the Holmes warrant. *T. Serafin.* At this point, Mr. Serafin still did not realize that the standard curtilage language had been omitted from the warrant application that he drafted on September 14; because the curtilage language had been included on every one of the dozens of other search warrants that he had applied for, he had no reason to think that the Holmes warrant was any different. *Id.*; *T. Lanterman.* Accordingly, he opened the premises template and tabbed through the boxes on the template to create a new application page, this time including the standard curtilage language.[8] *T. Serafin*; *Union Ex. 21.* (Because the materials from the warrant drafted

[8] The new application page that Mr. Serafin created on September 22, 2017 included Mr. Holmes' full name, date of birth, height and weight. Although Mr. Serafin does not specifically

on September 14 and executed on September 15 had been saved at multiple locations – including the County laptop, the thumb drive, and as an email attachment to Attorney Radmer – Mr. Serafin acknowledges that he could have printed off a copy of the original application page to replace the page that he had lost. At the time, however, because he had drafted so many warrants during his time on the Task Force, Mr. Serafin determined that the simplest and fastest way to replace the missing page would be to create a new application page. *T. Serafin.*

After creating the new application page – now including the curtilage language – Mr. Serafin printed it out, added it to the original warrant packet, and again scanned the packet and saved it as a .PDF file on his County laptop. He emailed the .PDF file to Attorney Radmer's administrative assistant, Heidi Stahnke. He then placed the packet in the bin to be filed with the district court clerk, along with the same blue slip that he had completed on the night of September 15. *T. Serafin*; *Union Ex. 21*; *City Ex. 10.*

Holmes Court Proceedings

Between September and November 2017, Mr. Serafin received and responded to a series of emails from Ms. Stahnke at the County Attorney's office. In these emails, Ms. Stahnke requested items for the case file in preparation for the prosecution of the Holmes case, including the search warrant for the vehicles at the Holmes residence. *City Exs. 16-19.* Because he mistakenly assumed that the standard curtilage language – which specifically references vehicles associated with a property – had been included on the Holmes search warrant all along, and because he was unaware that there were by then two non-identical versions of the warrant packet, Mr. Serafin believed that he had already provided what Ms. Stahnke was requesting in her emails. He responded to the emails accordingly. *Id.*; *T. Serafin.*

On January 29, 2018, Mr. Serafin received an email from Attorney Radmer stating: "Travis – there are two search warrants for Holmes' residence. Can you put a supp in detailing why that is?" Eight minutes later, Mr. Serafin responded: "Mike – I'll give you a call after super bowl brief." *Union Ex. 22, p.1.* This was in reference to Mr. Serafin's attendance at a law enforcement security briefing for the Super Bowl, which was being held in Minneapolis that year. Mr. Serafin called Attorney Radmer shortly after the briefing. In that conversation,

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recall where he obtained these data points, they are discernible from various other documents in the Holmes case file.

Attorney Radmer again referenced what he perceived to be two different warrants in the case file (rather than two different versions of the same warrant). By that time, more than four months had elapsed since the drafting and execution of the search warrant on the Holmes residence, and since the warrant application page had been lost and replaced. During that time, Mr. Serafin had continued serving on the Task Force, working on major narcotics enforcement cases, including other 3rd degree homicide cases. Mr. Serafin had little recollection of the details surrounding the Holmes search warrant; specifically, he had no recollection of losing and replacing the application page from the warrant packet. *T. Serafin.*

On February 13, 2018, Mr. Serafin emailed Attorney Radmer a supplementary report, as requested. The supplementary report stated in part:

> "During the investigation I had 2 versions of a warrant for Holmes person and the property at 3316 [sic] 4th. Ave s #1 in Minneapolis. The warrants were reviewed and signed by Judge Quam of the Hennepin County District court. I had both versions signed at the same time."

Union Ex. 22, pp.2-3. Mr. Serafin was aware that the supplemental report would be part of the record in the Holmes homicide case. Based on his recollection at the time, the supplemental report was Mr. Serafin's best explanation for the "two search warrants" that Attorney Radmer had asked him about, although he now acknowledges that the report was not accurate. Mr. Serafin was not deliberately untruthful, nor was he trying to deceive the court or to violate Mr. Holmes' rights as a criminal defendant. *T. Serafin.*

On February 23, 2018, Mr. Serafin was called to testify at a suppression hearing (a.k.a. a *Rasmussen* hearing or *Franks* hearing) in the *Holmes* case, before District Court Judge Fred Karasov. Mr. Serafin met with Attorney Radmer prior to his testimony. *T. Serafin.* (Det. Staaf, who was scheduled to testify at the same hearing, was also present. *T. Staaf.*) Attorney Radmer continued to refer to two separate search warrants and did not seem concerned about the outcome of the hearing. *T. Serafin.*

During his testimony at the suppression hearing, Mr. Serafin was asked about the two different versions of the Holmes search warrant, one with the standard curtilage language and one without. At that time, Mr. Serafin still did not remember losing and replacing the application page from the warrant. *T. Serafin.* Mr. Serafin provided the same explanation in his testimony as he had in the supplementary report requested by Attorney Radmer – which Mr.

Serafin now acknowledges was inaccurate – *i.e.*, that he had presented two warrants to Judge Quam and had them both signed. *Id.*; *Union Ex. 22, p.3.* Again, Mr. Serafin was at no time being deliberately untruthful, nor was he trying to deceive the court or to violate Mr. Holmes' rights. *T. Serafin.* Toward the end of the hearing, Judge Karasov noted that the two versions of the warrant, including the signatures by Mr. Serafin and Judge Quam, were identical except for the application page. The following exchange took place:

> THE COURT: I mean, you're saying you and he signed two search warrants. This looks like it's exactly the same one. Is it or isn't it? Or you don't know?
> THE WITNESS: I don't know. It looks like it's exactly the same one, and I'm trying to recall how I – I had multiple copies ready to go.
> THE COURT: Well, it's kind of important, because if they're identical, and it was only signed once – I mean, did you add the other part of the searching the curtilage and the car and just put the other one onto that one? I mean, it's kind of a serious accusation.
> THE WITNESS: Right. Yeah. No, no.
> THE COURT: But they look exactly the same.
> THE WITNESS: Yeah.
> THE COURT: Meaning it looks like it was signed once.
> THE WITNESS: Right, right. And I'm trying to recall the day we were in there and making all that happen. I wrote multiple, and I just can't – with all of them laying out in front of me, I'm trying to recall if it was the two signed or the one signed. . . .

City Ex. 1, pp.69-70. At this point in the hearing, Mr. Serafin relates that he was "utterly confused".

Immediately after the suppression hearing, Mr. Serafin, Det. Staaf and Attorney Radmer met again in the County Attorney's office, upstairs from the courtroom. *T. Serafin*; *T. Staaf.* Det. Staaf recalls that Mr. Serafin appeared genuinely flustered and unable to understand what had just happened during the hearing. According to Det. Staaf, Attorney Radmer asked Mr. Serafin if he had falsified the warrant, and Mr. Serafin provided "a genuine no". *T. Staaf*; *Union Ex. 26, pp.12-14.* Attorney Radmer told Mr. Serafin not to worry, and that everything would be fine. *T. Serafin.*

Later the same morning, Mr. Serafin emailed Attorney Radmer asking about the potential fallout from his testimony at the suppression hearing. In his email, Mr. Serafin mentioned "Brady stuff". *Union Ex. 23.* He understood that there had been discrepancies in his testimony,

and that based on *Brady*, when an officer lies it can impact his or her credibility if he or she is called to testify in future cases. However, by asking about *Brady*, Mr. Serafin was not admitting that he had lied or had given false testimony. *T. Serafin.* In the same email, Mr. Serafin stated that the problems with his testimony were "eating [him] up". *Union Ex. 23.* Attorney Radmer did not respond to Mr. Serafin's email. *T. Serafin.*

That night, Mr. Serafin was unable to sleep and went into his files looking for an explanation for the two different version of the Holmes search warrant. *T. Serafin.* At 0128 hours on the morning of February 24, 2018, Mr. Serafin sent Attorney Radmer another email, stating in part:

> ". . . I looked back at the case and dug deeper into my actions on [September] 14th when the warrant was signed and the 15th when it was executed. I testified that I had 2 warrants signed when as I recall the events while reviewing the case further (after Rasmussen hearing) I may have only had 1 warrant signed the filed warrant. . . . In my haste to the documents for charging the 1st page of the application without the curtilage was inadvertently added to my file by me (due to multiple drafts in my working file) and I corrected the issue with the correct one to be filed with court (Page 1 with curtilage) with the supporting documents of the search warrant."

Union Ex. 24. The "multiple drafts in my working file" was in reference to drafts of documents from the numerous other active investigations that Mr. Serafin was working on, which were kept on the same County laptop and thumb drive as the Holmes documents. At the time of this email, although Mr. Serafin was still piecing together the details of what had taken place, he realized that Judge Quam had only signed one warrant, and that a new application page with the curtilage language had been added before the warrant packet was filed with the court. *T. Serafin.*

Mr. Serafin and Det. Staaf had multiple phone conversations over the weekend, during which Mr. Serafin expressed that he was trying to figure out what had gone wrong with the Holmes search warrant. *Union Ex. 26, p.15.* Mr. Serafin also attempted to call Attorney Radmer numerous times and left him several voicemail messages. *Union Ex. 58, p.15.*

On Monday, February 26, 2018, Mr. Serafin met with Attorney Radmer at his office. Mr. Serafin showed Attorney Radmer the different versions of the Holmes warrant that were saved on his laptop, including time stamps to show when the different versions of the warrant had been created, relative to the execution of the warrant on the Holmes residence. Attorney Radmer

asked Mr. Serafin if he had done this intentionally; when Mr. Serafin told Attorney Radmer that he had not, Attorney Radmer replied that "we will take care of this." *T. Serafin.*

The record shows that after the suppression hearing in the Holmes case, Attorney Radmer discussed the issues concerning Mr. Serafin's testimony with Judge Karasov, with Mr. Holmes' defense attorney, and with Attorney Radmer's supervisors at the County Attorney's office, including Managing Attorney Al Harris and Senior Attorney Gretchen Gray-Larson. All agreed that although Mr. Serafin had made a mistake, there was nothing "nefarious" about his conduct. *Union Exs. 29, 57*; *T. Brown.* The County Attorney's office did not make a complaint or take any other action against Mr. Serafin at that time. *T. Brown.*

On March 16, 2018, while the motion to suppress was still pending, Mr. Holmes pled guilty to a count of First-Degree Drug Sales. During his allocution at the plea hearing, Mr. Holmes admitted to being in possession of more than 10 grams of heroin, with the intent to sell or distribute the drugs to others. *Union Ex. 58, pp.4-5.*

Internal Affairs Investigation and Discipline

On March 29, 2018, Chief DeMann received a letter from Judge Karasov raising concerns about the testimony that Mr. Serafin had given about the Holmes search warrant at the February 23 suppression hearing. *Union Ex. 25.* On April 6, 2018, Chief DeMann initiated an Internal Affairs investigation. He notified Mr. Serafin of Judge Karasov's letter and placed Mr. Serafin on a special duty assignment. *City Ex. 24.* While on his special duty assignment, Mr. Serafin continued to work on reports and other administrative tasks for his drug enforcement cases, as well as providing training and school presentations on behalf of the EPPD. *T. Serafin*; *T. DeMann.*

The Internal Affairs investigation was assigned to two retired EPPD detectives, Al Larson and Mike Bosacker. The investigators did not interview the complainant, Judge Karasov. *Testimony of Eden Prairie Investigator Al Larson ("T. Larson").*

On April 9, 2018, Investigators Larson and Bosacker interviewed Sergeant Chris Wood, one of Mr. Serafin's former supervisors. The investigators learned that shortly after the February 23 suppression hearing, Det. Staaf had told Sgt. Wood that Mr. Serafin was upset about his testimony, where he had been "caught off guard" and was "beating himself up" over the incident. When Sgt. Wood approached Mr. Serafin to ask him about this, Mr. Serafin owned his mistake, "but couldn't believe what had happened." Sgt. Wood "had the impression that Serafin had

made an honest mistake." *Union Ex. 28, p.2*; *T. Larson.* According to Mr. Serafin, Sgt. Wood also told him, "With as busy as you are, I'm surprised nothing like this has happened before." *T. Serafin.*

On April 19, 2018, Investigator Larson took a statement from Det. Staaf. Det. Staaf stated that he had been present at the meeting between Mr. Serafin and Attorney Radmer immediately following the February 23, 2018 suppression hearing. According to Det. Staaf, when Attorney Radmer asked Mr. Serafin if what had happened during the hearing was deliberate, Mr. Serafin replied, "Absolutely not, I'm just confused." *Union Ex. 26, p.13.* Afterward, while Mr. Serafin and Det. Staaf were riding in the elevator together, Det. Staaf "recalled Serafin saying he had testified to what he thought was right but got it wrong and was super nervous about it." *Id., p.14.*

On April 23, 2018, Investigator Larson took a statement from Mr. Serafin. Another retired EPPD detective, Andy Rohde, was present at the interview at Mr. Serafin's request; because Mr. Serafin "assumed positive intent" on the part of the City, he did not arrange for an attorney to represent him. *T. Serafin.* Mr. Serafin and Mr. Rohde requested a copy of the letter from Judge Karasov, but the letter was not provided. *Id.*; *T. Rohde.*

Mr. Serafin was given a *Garrity* warning and understood that he was required to be truthful in his statement to Investigator Larson. He was truthful at all times to the best of his ability. *T. Serafin.* Mr. Serafin gave the following consistent explanations for how he had wound up with two different versions of the Holmes search warrant:

Q: Ok, it's 6 o'clock in the morning [on September 22, 2017], you access your county laptop. Tell me how this all came about.
A: So prior to that I had been missing my top page of the signed warrant. Page 1 without the curtilage. Um, and ultimately, I couldn't find it. Printed, created the new one, printed the new one, just the first page with no intention of doing anything wrong. Just doing it the way I normally do it, like I had thought the original one had and printed it off.
Q: So let's back up. The original warrant did not have curtilage and cars information, correct?
A: Correct.
Q: And on [September] 22nd at 6 o'clock in the morning, when you printed out page 1-1, did you add some language to page 1-1?
A: Yeah.
Q: And that would have been the curtilage.
A: The curtilage.

Q: Ok. And after you, you printed that out and added that information, what did you do with this newly created page?
A: Held onto it and got it down um, ultimately to be filed downtown.
. . . .
Q: So once again, just briefly I'd like you to explain how that happened.
A: Ok.
Q: That, and the key we need to stay on is that you brought a warrant to the judge on [September] 14th that didn't have curtilage information and it did have curtilage information show up in files on [September] 22nd.
A: Ok. Um…so ultimately, on the 14th I drafted a warrant and had it signed by the judge without the curtilage information on the cover page. And um, executed that warrant. Printed it, executed that warrant and then ah filled out the paperwork and had it with me in my um paper file so to speak. And then I um, ultimately went to Camp Ripley, was continuing to work on stuff for the case um…and other cases just 'cause I was in the middle of think three or four 3rd degree murder cases at the time. Um…and basically working continuously at Camp Ripley while I was in training. Um, ultimately lost Page 1 and um on the 22nd, I, because I couldn't find Page 1 and it was bugging me I created and printed a Page 1 with the curtilage like I normally would and usually would have on there and um got that filed downtown. Um, unintentionally and not realizing that actually the originally signed warrant had been scanned and sent through the case file through the County, not to be filed downtown.
. . . .
Q: Ok. But then I have to actually ask you, if in fact you searched something that wasn't described in the search warrant was it intentional or unintentional?
A: It was unintentional.

Union Ex. 27, pp.22, 30, 35. Mr. Serafin told the investigators that he had been truthful to the best of his ability throughout the process:

Q: Ok. Now when you sign a search warrant we talked about this earlier that you raise your right hand, right. What does the judge say to you when you raise your right hand?
A: I really need to…I couldn't say it verbatim.
Q: Something about true and correct to the best of your knowledge.
A: True and correct knowledge, yes.
Q: So you're basically swearing it's true?
A: Yeah. To the best of my knowledge. Yes.

Q: Ok. Ah, that bears the question then, when you rose your right hand and the judge swore you in and asked you to tell…were you testifying to the judge at that point being sworn in truthfully?
A: Yes.
Q: Ok. And did you tell the truth in your police report?
A: Yes. To the best of my recollection at the time and with all the confusion that was going on, I did.
Q: And when you were talking with the County Attorney about this case were you being truthful?
A: Yes.
Q: Ok. With respect to the two warrants/one warrant issue.
A: Correct.
Q: And then when you testified in court at the evidentiary hearing were you testifying truthfully?
A: Yes. I was. I believe I was.
. . . .
Q: If you had discovered that this warrant didn't contain the curtilage prior to the execution, would you have gone ahead and executed it?
A: No, I wouldn't. I would'a went and got the curtilage put into it.
Q: And redrafted a new warrant?
A: Yes, I would have.
Q: That'd be the right thing to do.
A: Yes.

Id., p.33. At the end of the interview with Investigator Larson, Mr. Serafin read the following prepared statement:

> "Ok. Um in mid-September I was reviewing the documents that I usually do for a murder, or I was reviewing the documents for a murder case. Um, at that time I found that I could not locate the cover page of the search warrant that had already been served. I reviewed my case file but could not locate the page. I ended up printing a new cover page and the language that I usually or normally use for the original page and submitted that one for filing. The warrant had already been sent through the Records system and had been forwarded to the Hennepin County Attorney's Office as part of the case file. When I testified in court to the best of my recollection at the time the issue arose of the possibility of two warrants had been served because the language of the file warrant [was] different from the warrant provided to the county attorney. I became confused in my testimony and incorrectly testified that two warrants must have been served. Immediately following my testimony I realized the error in the warrants and reviewed my records. I continued to review those records and I discovered my error, my mistake regarding the warrants and immediately disclosed those discrepancies to the county attorney who was

> prosecuting the case. I next disclosed the error to Sergeant Chris Wood of the Eden Prairie Police Department. After I advised both of them they advised me it was fine and to not worry about it and mistakes happen. The error was an unintentional mistake on my part and at no time was I intending to intentionally deceive the county attorney, defense or court as a whole, just as I stated to the county attorney when I advised him of the mistake."

Id., p.37.

Mark Lanterman, the computer forensics expert retained by the Union, later reviewed all of the data that the City had compiled regarding the drafting, saving, scanning and printing of the two versions of the Holmes search warrant. Mr. Lanterman testified that he found nothing to contradict the explanation given by Mr. Serafin at his Internal Affairs interview. *T. Lanterman.*

Chief DeMann assigned Lieutenant (now Captain) Bill Wyffels to complete a computer forensic analysis as part of Mr. Serafin's Internal Affairs investigation. Lt. Wyffels (now Captain Wyffels) submitted his computer forensic report on April 26, 2018. *Union Ex. 30.* The timeline included in Lt. Wyffels report was later found to contain several significant errors. For one, the report stated that the arrest of Mr. Holmes on September 15, 2017 took place at his residence, when in fact Mr. Holmes was arrested about a half mile away, at 2925 Park Avenue South in Minneapolis. *Union Ex. 16*; *Union Ex. 30, p.17*; *T. Serafin.* Regarding the email that Mr. Serafin sent to Attorney Radmer on the morning of September 16, 2017, before leaving for Camp Ripley, Lt. Wyffels timeline states that "the email DID NOT include a copy of the search warrant." *Union Ex. 30, p.18* (capitals in original). This is wrong: the record clearly shows that the original warrant – which had been drafted and signed on September 14 and executed on September 15 – was included as an attachment to the September 16 email. *Union Ex. 49.* In addition to these errors in his timeline, Lt. Wyffels noted in his report that all of the files in the subfolder system on Mr. Serafin's County-issued laptop had the same "File Created" date of November 21, 2017. *Union Ex. 30, p.4.* To explain this, Lt. Wyffels made the erroneous finding that Mr. Serafin had copied all of those files from another source back onto his laptop; in fact, according to Mr. Lanterman's analysis, the "File Created" date was the result of the computer being reformatted. *Id.*; *T. Lanterman.*

Investigators Larson and Bosacker completed their Internal Affairs report on April 30, 2018, incorporating the findings from Lt. Wyffels' forensic analysis. *Union Ex. 28.* In the summary of their investigation, Investigators Larson and Bosacker wrote: "The question to be

resolved is, did [Serafin] knowingly change the search warrant to now include outbuildings and vehicles after the search had been conducted or was he merely replacing the [application] page that was lost." *Id., p.16.* The investigators did not reach any conclusions to answer this question, as that was outside the scope of their directive from Chief DeMann. *T. Larson.*

On May 8, 2018, Investigators Larson and Bosacker interviewed Attorney Radmer by phone and summarized that interview in an addendum to their Internal Affairs report. Attorney Radmer related his discussions with Managing Attorney Harris, Judge Karasov, and Mr. Holmes' defense attorney, all of whom agreed that there was nothing "nefarious" about Mr. Serafin's court testimony. Attorney Radmer characterized Mr. Serafin's handling of the Holmes case as "sloppy police work" and "negligence more than anything else." When asked if he thought that Mr.Serafin had misled, deceived or been untruthful in his testimony, Attorney Radmer replied "100% no". Attorney Radmer added that "he would happily take Mr. Serafin's cases" and "[did] not have any concerns about Detective Serafin testifying in the future." *Union Ex. 29.*

On or about May 30, 2018, Mr. Serafin called Attorney Radmer to apologize for his error in regard to the Holmes case. Attorney Radmer replied that he "had no issues with [Serafin] as mistakes happen – again, based on his repeated representations that this was an inadvertent mistake." *Union Ex. 57.*

On May 31, 2018, Chief DeMann issued a written reprimand to Mr. Serafin. The reprimand notified Mr. Serafin that the charges against him in connection with his handling of the Holmes case had been sustained, including that he had allowed the search of vehicles that he did not have the authority to search; and that he had given inaccurate testimony at the February 23 suppression hearing regarding the drafting and signing of the search warrant. As a penalty for these alleged violations, Chief DeMann ordered that Mr. Serafin be removed from his special assignments, including the Task Force and the SWAT team; required to attend additional ethics training; and required to work with a supervisor during the creation and execution of future search warrants. Chief DeMann did not terminate or even suspend Mr. Serafin. *Union Ex. 33*; *T. DeMann.* At the arbitration hearing, he acknowledged that as the City's chief law enforcement officer, he had the authority to impose such discipline if he thought there were sufficient grounds. *T. DeMann.*

The written reprimand informed Mr. Serafin that he had the right to appeal the reprimand through the City's internal appeal process. *Union Ex. 33.* (Because at that time EPPD officers had not yet joined the Union, there was no contractual grievance process to follow.) Mr. Serafin filed an appeal, not to challenge the discipline itself, but because he disagreed with some of the factual findings contained in the written reprimand. Mr. Serafin met with City Human Resources Director Alecia Rose to discuss the appeal process; during that meeting, Ms. Rose told Mr. Serafin, "If we thought you had lied, we would have fired you." *T. Serafin.*

While Mr. Serafin's appeal was pending, he continued to work regular patrol duties. *T. Serafin*; *T. DeMann.* On June 20, 2018, Chief DeMann received a call from a woman expressing her appreciation for the "professionalism and kindness" that Mr. Serafin had shown, and that Mr. Serafin had gone "above and beyond" in responding to a car crash that she and her husband had been involved in the day before. *Union Ex. 9, p.1*; *T. DeMann.*

On July 25, 2018, City Manager Rick Getschow issued a letter advising Mr. Serafin of the outcome of his appeal. Per Mr. Getschow's letter, the City sustained all of the findings and alleged violations in Chief DeMann's May 31, 2018 reprimand. Mr. Getschow's letter also sustained the same penalty that Chief DeMann had imposed in his reprimand, *i.e.*, removal from special assignments, along with additional required training and supervision. *Union Ex. 34.* Mr. Getschow's letter specifically stated that "this discipline is final" and subject to the MOU between the EPPD and the City and County prosecutors regarding *Brady* disclosures. *Id.*; *City Ex. 26.* In delivering this letter, Mr. Getschow told Mr. Serafin that he was a "valued employee". *T. Serafin.*

For almost three months after Mr. Getschow's letter, Mr. Serafin worked full duty as a patrol officer. *T. Serafin*; *T. Weber.*

Mr. Serafin's father, Tom Serafin, is a retired law enforcement officer who was employed by the Ramsey County Sheriff's Office for 29 years, including five years as an investigator in the Internal Affairs unit. He knew and had a friendly relationship with Judge Karasov, who was a Ramsey County Deputy at or about the time. *Testimony of Tom Serafin ("T. Tom Serafin").* In August 2018, after Travis Serafin had completed the appeal process for his reprimand, Tom Serafin contacted Judge Karasov to ask about the letter to Chief DeMann that had initiated the City's disciplinary proceeding; Tom Serafin later sent an email memorializing his conversation with Judge Karasov. According to that email, as well as Tom Serafin's testimony at the

arbitration hearing, Judge Karasov was surprised to hear that his letter had resulted in Travis Serafin being investigated. Judge Karasov said that "he was sure [Travis] Serafin was a fine officer and he wasn't looking to get anyone in trouble." Tom Serafin related that a previous EPPD Chief had told him that "the only problem with Travis was that 'he works so hard that he made it look like everyone else wasn't doing anything.'" Judge Karasov said he would call Chief Weber to address the situation. *Union Ex. 41*; *T. Tom Serafin.* But a short time later, Judge Karasov left Tom Serafin a voice mail message stating that he had decided not to contact Chief Weber and would not take any further action. Judge Karasov reiterated that "I didn't want [Travis] fired" and "I hope he doesn't lose his job." *Union Ex. 44.*

Termination Following Intervention by the County Attorney

Following the issuance of Mr. Getschow's letter, pursuant to the December 2017 MOU, the County Attorney was provided a copy of the file from Mr. Serafin's Internal Affairs investigation. *T. Brown.* On September 17, 2018, Chief DeMann was notified that the Ramsey County Attorney's Office had dismissed two Task Force cases that Mr. Serafin had worked on based on Mr. Serafin's *Brady* status, *City Ex. 36* – but the City did not open a new investigation or take any further action against Mr. Serafin at that time.

On or about October 1, 2018, Chief DeMann retired and was replaced by Chief Weber, who had previously been the EPPD's Deputy Chief. On or about October 9, 2018, Chief Weber received a phone call from Chief Deputy County Attorney David Brown, indicating that the Hennepin County Attorney's Office intended to dismiss a number of Mr. Serafin's cases, and that a letter would follow to that effect. Attorney Brown also told Chief Weber that the matter would be referred for a criminal investigation. *T. Weber.* Based on that phone call, Chief Weber placed Mr. Serafin on administrative leave. *Id.*; *City Ex. 31.*

On October 11, 2018, Chief Weber received a letter from Attorney Brown. According to the letter, the County Attorney's Office purportedly had determined that Mr. Serafin had intentionally made material alterations to the Holmes search warrant after it had been signed by a judge; and, had given false testimony concerning the changes to the warrant. Attorney Brown's letter stated that, based on these conclusions, the County Attorney would dismiss numerous other felony cases that Mr. Serafin had investigated, and would no longer permit Mr. Serafin to appear as a witness in any future County cases. *City Ex. 32.*

On or about the same day as his letter to Chief Weber, Attorney Brown gave a press conference announcing the actions that his office would be taking against Mr. Serafin.[9] Because the City had already made a final decision regarding discipline -- *i.e.*, the written reprimand issued by Chief DeMann and sustained by City Manager Getschow -- Attorney Brown treated the information from Mr. Serafin's Internal Affairs investigation as public data and discussed the investigation openly at the press conference. Yet in response to a question from a reporter at the same press conference, Attorney Brown said he believed the City was "in the process of terminating" Mr. Serafin. *T. Brown.*

On October 16, 2018, Chief Weber sent Mr. Serafin a letter notifying him of Attorney Brown's October 11 letter. Chief Weber advised Mr. Serafin that he had authorized Lt. Wyffels to conduct another Internal Affairs investigation into the issues raised in Attorney Brown's letter. *Union Ex. 35*; *T. Weber.* Lt. Wyffels completed this follow-up investigation in 10 days and submitted a report on October 26, 2018. *City Ex. 34.* According to that report, Lt. Wyffels did not uncover any new information regarding Mr. Serafin's handling of the Holmes case (which the EPPD had already investigated in April 2018). The findings in the report were limited to Mr. Serafin's designation as a "*Brady* witness" and the resulting decisions to dismiss and/or forgo the prosecution of cases that Mr. Serafin had worked on. *Id.*; *T. Wyffels.*

On October 30, 2018, City Manager Getschow notified Mr. Serafin of the City's intent to terminate him. *City Ex. 43.* After Mr. Serafin declined a *Loudermill* hearing on the advice of his Union representative, he was terminated effective November 6, 2018. *T. Serafin*; *Union Ex. 36.* The Union filed a grievance on November 9, 2018, asserting that there was no just cause for the termination. *Union Ex. 4.*[10] After efforts to resolve the grievance were unsuccessful, the matter proceeded to an arbitration hearing on November 4-6, December 9 and December 13, 2019.

Publication of the Investigation File

On November 9, 2018, City Attorney Richard Rosow submitted a request to the Minnesota Department of Administration for an advisory opinion regarding the classification of the data from the disciplinary action taken against Mr. Serafin. Attorney Rosow wrote:

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[9] *See https://www.youtube.com/watch?v=eAasGtnZqQs&feature=youtu.be*

[10] The copy of the Union's Step 3 grievance in the record has an incorrect date. The Correct date is referenced in the City's response to the Step 3 grievance on November 16, 2018.

> "In March 2018, the City received a complaint against an employee ('Employee'), a police officer employed by the City, related to potential employment misconduct. The City conducted an administrative investigation and prepared a report. As a result of the investigation, the City took disciplinary action against Employee, issuing a letter containing the final disposition of the action on July 25, 2018. *The final disposition did not include termination of Employee's employment*. . . . "

Union Ex. 56 (emphasis added). Attorney Rosow made these representations to the Department of Administration even though Mr. Serafin had been terminated effective three days before Attorney Rosow submitted his request, and even though that termination as subject to challenge through the grievance process.

On December 6, 2018, based on Attorney Rosow's representations, the Department of Administration issued an advisory opinion that data related to Mr. Serafin's disciplinary proceeding were public. The City then posted the entire investigative file on its website. *Union Ex. 56*; *T. Weber.*

Criminal Investigation

In addition to being discharged from his employment, Mr. Serafin was also investigated criminally for his handling of the Holmes case. On October 22, 2018, Mr. Serafin underwent a polygraph examination at the request of his criminal defense attorney. The examination was conducted by Stephen Crow of Diversified Polygraph Services, Inc., who has received extensive training and has conducted more than 4,000 such examinations during 13 years in the field. *Union Exs. 37-40, 45.*[11] Mr. Serafin's polygraph examination included the following questions and answers:

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[11] Mr. Crow was unavailable to testify at the arbitration hearing due to a professional obligation in Alaska. The Union took a statement from Mr. Crow, and the transcript of that statement was entered into evidence in lieu of live testimony, along with Mr. Crow's *curriculum vitae* and a video recording of Mr. Serafin's polygraph examination. *Union Exs. 37-40, 45.* All of these items had been provided to the City's attorney prior to the hearing. *Union Ex. 39.* Mr. Crow's statement lays out his credentials, as well as the methodology that he followed in conducting Serafin's polygraph examination, and the conclusions that he drew from that examination with a reasonable degree of professional certainty. *Union Ex. 40.*

Q: Did you re-draft page 1 of the Holmes warrant to mislead or lie to the county or county attorney?
A: NO
Q: Did you intentionally misrepresent information about page 1 of the Holmes warrant to the Court or authorities?
A: NO

Based on the resulting polygrams, Mr. Crow issued a report stating that "it is this examiner's opinion that Mr. Serafin did not illustrate a significant response to the above listed questions when he answered 'No,' indicating his answers were truthful." *Union Ex. 37.*

Due to conflicts of interest, the criminal investigation was conducted by Detective James Schilling of the Anoka County Sheriff's Office. *Union Ex. 58.* Det. Schilling's investigation included an interview with Attorney Radmer on February 7, 2019. Attorney Radmer had not seen any of the materials from the City's Internal Affairs investigation, but told Det. Schilling that at the time of the suppression hearing in the Holmes case, "it seemed possible when Serafin said that he must have put the wrong application with the search warrant." Attorney Radmer "believed this to be a clerical error and not a deliberate lie." *Id., p.18.*

On the same day, February 7, 2019, Det. Schilling interviewed Ms. Heidi Stahnke, the paralegal who had worked with Attorney Radmer on the Holmes case. Ms. Stahnke did not recall her exchange of emails with Mr. Serafin; but confirmed that when a case is being reviewed by a prosecutor for charging, it was her practice to send the investigators a list of evidence that the prosecutor would need. *Union Ex. 58, p.19.*

On February 14, 2019, Det. Schilling interviewed Det. Staaf. In his report, Det. Schilling included Det. Staaf's description of the events immediately after Mr. Serafin's testimony at the suppression hearing:

> "He said they went up to the County Attorney's Office and had a meeting after that. I asked what it was about and he said that Radmer and Serafin were trying to figure out what happened. He said that he has been close to Serafin for 20 years and knows when Serafin is confused versus trying to mitigate a situation. He said that Radmer asked him if Serafin had falsified the warrant. He said that Serafin provided what he believed to be a genuine no. He said Radmer asked what he thought happened and Serafin responded that he did not know.
> "He said that when they went to leave, he was in the elevator with Serafin. He said he told Serafin that he didn't know what happened but he needed to go back upstairs and get things figured

> out with Radmer. He said that he knew that this situation was eating Serafin up. He said there were numerous calls between he and Serafin over the weekend. He said it didn't seem like it was Serafin knowing what happened, but trying to figure out what happened. He said it was Sunday or Monday that Serafin thought he figured it out. He said that based on past experience with Serafin he had no reason to question that Serafin had figured it out.
> . . . .
> "He said that with leaving for Camp Ripley for SWAT and the large scenarios they were running it is possible that it is in the realm of possibility to lose a sheet of paper. In reference to making the new cover page, it isn't the right way to go about it. . . . He said that he could see this happening not out of malice, but out of ignorance. I asked [if] he had any reason to believe that Serafin learned the vehicles were not included and made a copy to include them. He said absolutely not."

Union Ex. 58, pp.21-22.

On or about February 21, 2019, Det. Schilling forwarded his investigation report to the McLeod County Attorney's Office to review for potential criminal charges. *Union Ex. 58.* On May 31, 2019, the McLeod County Attorney issued a statement declining to file charges against Mr. Serafin. *City Ex. 65.*

II. The county attorney's designation of Mr. Serafin as a *Brady* officer does not present just cause for termination.

It is undisputed that the Chief of Police has the authority, as delegated to him by the City administration, to discipline police officers up to and including termination. *T. DeMann*; *T. Weber.* Chief DeMann exercised that authority on May 31, 2018 by issuing Mr. Serafin a written reprimand, as well as by removing Mr. Serafin from his special assignments and ordering him to attend additional training. *Union Ex. 33.* This disciplinary decision came after the City had completed its Internal Affairs investigation; at that point, Chief DeMann was fully aware of Mr. Serafin's conduct in connection with the Holmes case, specifically the discrepancies between the two versions of the Holmes search warrant application and Mr. Serafin's supplemental report and court testimony at the February 23, 2018 suppression hearing, as well as the findings from Lt. Wyffels computer forensic analysis. *T. DeMann*; *Union Exs. 28-30.* Moreover, after Mr. Serafin filed an appeal to challenge the content of the reprimand through the City's internal appeal procedure, he was told by City officials – who, like Chief DeMann, were

fully aware of Mr. Serafin's conduct and the findings from the Internal Affairs investigation -- that he was "a valued employee," and that "if we thought you had done this on purpose, we would have fired you". *T. Serafin.* When City Manager Getschow issued a decision on July 25, 2018 sustaining Chief DeMann's decision in its entirety, including the level of discipline, Mr. Getschow stated that "*[t]his discipline is final*". *Union Ex. 34* (emphasis added). For the next two and a half months, Mr. Serafin worked full duty as a patrol officer, without incident. *T. Serafin*; *T. DeMann.*

Chief DeMann's successor, Chief Weber, openly acknowledged that the written reprimand was within the scope of Chief DeMann's authority and was the *final discipline* for Mr. Serafin's mishandling of the Holmes search warrant. According to Chief Weber, the subsequent termination was a penalty not for the problems pertaining to the Holmes warrant, but rather for the County Attorney's designation of Mr. Serafin as a *Brady* officer[12] who would be precluded from testifying in future criminal cases.[13] *T. Weber.*

This argument is specious, because the City spent more than three days at the hearing taking testimony about Mr. Serafin's underlying conduct, including repeatedly going over the minutia of Mr. Serafin's computer files, emails, reports, etc. If, as Chief Weber claims, the written reprimand issued by Chief DeMann were the final discipline for this conduct, and if the termination were based solely on the County Attorney's prohibition against Mr. Serafin testifying in future cases, then most or all of this protracted testimony by the City's witnesses would have been irrelevant. Nonetheless, Chief Weber's assertion regarding the reason for Mr. Serafin's termination must be taken at face value and responded to.

For multiple reasons, the Arbitrator must conclude that Mr. Serafin's *Brady* status does not *in and of itself* justify his termination. First, the July 25, 2018 letter from Mr. Getschow

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[12] Under the U.S. Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963), a criminal prosecutor must disclose exculpatory evidence to the defendant as a matter of constitutional due process. In subsequent cases, including *Giglio v. United States*, 405 U.S. 150 (1972), the *Brady* doctrine has been expanded to include information that could be used to impeach the prosecution's witnesses.

[13] In his statement prior to the arbitration hearing, Lt. Morrow described the dismissal of Serafin's cases as "a political ploy". *Union Ex. 46 (Morrow statement at 36:10).*

states that "[t]his discipline is final and therefore subject to the Memorandum of Understanding." *Union Ex. 34.* This is in reference to the December 2017 MOU that requires the City Police Department to notify both City and County prosecutors of sustained findings against police officers, enabling the prosecutors to review those findings for potential *Brady* material. *City Ex. 26.* The record shows that on December 13, 2017, Chief DeMann sent a department-wide email advising officers of the terms of this MOU, stating in part:

> "Being identified as the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecutor's discovery obligations. It is not, in and of itself, related to an employee's employment and *will not be used by the department for disciplinary purposes*."

Union Ex. 32 (emphasis added). The MOU itself contains substantially similar language. *City Ex. 26.* Based on the October 11, 2018 letter to Chief Weber from Chief Deputy County Attorney Brown, *City Ex. 32*, the determination that Mr. Serafin cannot testify in future criminal cases clearly stems from Mr. Serafin's identification as the subject of *Brady* material; accordingly, if the prohibition against testifying in future cases is the "real" reason that the City opened a new investigation and ultimately terminated Mr. Serafin, as Chief Weber claims, then there can be no question that the City has used the *Brady* identification "for disciplinary purposes". This directly contradicts the terms of the MOU, as described in Chief DeMann's department-wide email. *City Ex. 26*; *Union Ex. 32.*

Second, according to Chief DeMann's department-wide email, the EPPD has "six Administrative Investigations with sustained findings which have been provided to the City and County Prosecutors." *Union Ex. 32.* At the arbitration hearing, Chief DeMann testified that one or two of these six officers had been found by the prosecutors to be subjects of *Brady* material, but that the City had not taken any further disciplinary action against those officers. *T. DeMann.* Meanwhile, Attorney Brown testified that once an officer has been determined to be the subject of *Brady* material, that officer's name is "flagged" in the County Attorney's subpoena system, to alert prosecutors that disclosure of the *Brady* material will be required if the officer is called to testify in a criminal case. *T. Brown.* Presumably, some (or most) of these officers continue to be employed by their home agencies; if being designated as a *Brady* officer meant automatic termination, then there would be little need for such a protocol, because those officers would no

longer be working in law enforcement. The City has not provided a cogent explanation for which *Brady* officers remain employable, and which ones purportedly do not.

Third, and most significantly, there is overwhelming arbitral precedent that an officer's *Brady* status is not a substitute for just cause and is not in and of itself grounds for termination. In recent years, law enforcement agencies have increasingly sought to "weaponize" *Brady* by asserting, as the City does in the present case, that a *Brady*-impaired officer is effectively disqualified from employment because he or she will be unable to testify in future criminal cases. But Minnesota arbitrators have repeatedly rejected this argument, holding that a *Brady* designation cannot be construed as a "silver bullet" for employers. Most directly on point is the case of *Benton County and Law Enforcement Labor Services, Inc.*, BMS Case #18-PA-0058 (Miller), in which a deputy assigned to the Violent Offender Task Force fell behind on his reports and search warrant filings and made inaccurate representations to his supervisor regarding the status and location of those documents. Arbitrator Miller ruled that there was no just cause for termination, holding in part:

> "Clearly, just cause for a discharge cannot be automatically established by the County claiming credibility issues. . . . The record does not show a pattern of dishonesty on the part of the Grievant. . . . . [T]here is no convincing argument that this isolated lying incident would make the Grievant [*Brady*] impaired and unable to testify credibly on behalf of the County. Even if a court were to conclude that this incident could be used in an effort to impeach the Grievant's testimony in a criminal proceeding, it is entirely speculative whether a defense [attorney] would attempt to do so. . . . Therefore, the County's argument that there is no role that the Grievant could be used in and continued employment is not a possibility has not been proven by the evidence."

Similarly, just last year, in *University of Minnesota and Law Enforcement Labor Services, Inc.*, BMS Case #19-PA-0046 (Finkelstein), an officer with 20 years' experience and no prior discipline was terminated following an off-duty altercation. The employer asserted that the officer's conduct would have to be disclosed under *Brady* and would undermine the prosecution of future criminal cases. But Arbitrator Finkelstein sustained the grievance, holding in part that "*Brady* disclosures alone are not enough to solely support a termination." And in *Metropolitan Council and Teamsters Local 320*, BMS Case #16-PA-0581 (Powers), an officer was terminated after engaging in a dangerous high-speed pursuit and failing to report the incident; although

Arbitrator Powers ultimately upheld the discipline, she explicitly rejected the employer's reliance on *Brady*: "Just cause must be determined independently of any determination of *Brady* impairment. The contract requires such a determination."

Arbitrator Powers' reasoning – that the Collective Bargaining Agreement itself requires an independent determination of just cause, irrespective of *Brady* status – highlights the importance of this principle, and why the arbitral precedent described above must be followed. While arbitrators differ somewhat as to how the "just cause" standard should be applied, it is well established that the standard mandates consideration of a range of relevant factors, including sufficiency of notice, thoroughness and fairness of the investigation, proof of alleged misconduct, consistency of enforcement, and the employee's record of service. *See* Brand, *Discipline and Discharge in Arbitration* 31-33 (1998) (discussion of Arbitrator Daugherty's "seven tests" of just cause); St. Antoine, *The Common Law of the Workplace* §6.12 (2nd ed. 1998) (similar); *AFSCME, Council 5 and MN Department of Veteran Affairs*, BMS Case #19-PA-0310 (Laumeyer); *Mower County and Law Enforcement Labor Services, Inc.*, BMS Case #18-PA-0986 (Anderson). When parties to a labor contract agree that discipline will be for just cause only, it is understood that any dispute over a disciplinary action will be subject to a complete just-cause analysis. By asserting that *Brady* alone justifies Mr. Serafin's termination, the City is attempting an "end run" around the just cause standard and asking the Arbitrator to ignore all the other considerations that ordinarily factor into arbitration of disciplinary grievances. This would render the just cause standard negotiated in good faith by the parties[14] to be largely meaningless.

The City is expected to rely on the recent award in the matter of *City of Cloquet and Teamsters Local 346*, BMS Case #19-PA-1769 (Toenges). In that case, Arbitrator Toenges upheld the termination of an officer, based on findings that, because of the officer's *Brady* status,

[14] Although the City and the Union did not yet have a collective bargaining agreement in place at the time of Mr. Serafin's termination, the Arbitrator made a ruling on the City's pre-hearing motion that the "just cause" standard had been adopted from the 49ers contract and was therefore applicable to this case.

he would be unable to perform an essential function of his job, *i.e.*, testifying in criminal cases.[15] In reaching that conclusion, Arbitrator Toenges found both that "the Police Department is without authority to change the County Attorney's position," and that "the County Attorney's decision is not subject to the Arbitrator's review". This line of reasoning is frankly very troubling, in that it vests unlimited power in a local prosecutor to make *Brady* determinations that may result in the end of a law enforcement officer's career, without any mitigating considerations or meaningful due process. *City of Cloquet* is also distinguishable from the present case, because Arbitrator Toenges specifically found that "the Police Department does not have the resources necessary to employ an officer who cannot perform essential duties"; whereas the City here – whose police department is somewhat larger than Cloquet's -- has presented no evidence that it would be unable to place Mr. Serafin in an assignment that would not require him to testify in court.[16] Most importantly, the *City of Cloquet* award is clearly an outlier, and must be viewed as such. As discussed above, the weight of arbitral opinion on this topic supports the conclusion that an officer's *Brady* status may not be substituted for just cause.

III. Because of the City's final decision to reprimand Mr. Serafin, his subsequent termination for the same conduct violated the arbitral principle of "double jeopardy".

Chief Weber's assertion regarding the reason for Mr. Serafin's termination – that Mr. Serafin's *Brady* status is grounds for discipline separate and independent from his underlying conduct – is specious. The October 11, 2018 letter from Assistant Hennepin County Attorney Brown, which led to the follow-up investigation and ultimately to Mr. Serafin's termination, specifically references Mr. Serafin's alteration of the search warrant application and his inaccurate testimony at the suppression hearing in the Holmes case. In other words, the conduct that formed the basis for Mr. Serafin's termination was precisely the same conduct for which he

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[15] The Arbitrator should take notice that the terminated Cloquet officer has filed a federal lawsuit against Carlton County and the City of Cloquet, including the assertion that the County's *Brady* policy violates his constitutional right to due process. *See* http://www.startribune.com/fired-cloquet-cop-sues-county-attorney-others-for-4-million/567077332/

[16] On information and belief, the EPPD has had a longstanding past practice of assigning officers to desk duties.

had already been investigated, and which Chief DeMann had already been aware of in May 2018 when he issued the written reprimand.

Under these circumstances, terminating Mr. Serafin subjects him to the arbitral equivalent of "double jeopardy". The principle of double jeopardy is straightforward: "Disciplining an employee twice for the same act constitutes double jeopardy and is a due process basis for invalidating the discipline." *Discipline and Discharge in Arbitration* at 47.

Elkouri explains that where an employee is subject to double jeopardy, there cannot be just cause for discipline:

> "Once discipline for a given offense is imposed and accepted, it cannot thereafter be increased, nor may another punishment be imposed, lest the employee be unfairly subjected to 'double jeopardy'. The same is true where the employee does not accept the original penalty. The double jeopardy doctrine also prohibits employers from attempting to impose multiple punishments for what is essentially a single act. . . . The key to this arbitral [double jeopardy] doctrine is not the Constitution but rather fundamental fairness, as guaranteed by the contractual requirement of 'just cause' for discipline. Thus when an employee has suffered a suspension for an offense, it would be unfair . . . to fire him before he has committed a second offense." Elkouri & Elkouri, *How Arbitration Works* §15.3.F.vii (8th ed. 2016) (internal citations omitted).

In the present case, the record shows that Mr. Serafin's termination was the consequence of the same infractions for which he had already been reprimanded, *i.e.*, his mishandling of the Holmes warrant application and his testimony at the suppression hearing. The follow-up investigation later ordered by Chief Weber did not unearth any additional relevant facts. An employee's *Brady* status cannot be substituted for just cause and does not, in and of itself, justify termination.

The handling of Mr. Serafin's personnel data, both by the City and by the County, further supports the conclusion that his termination was an act of double jeopardy. Pursuant to the Minnesota Government Data Practices Act, Minn. Stat. § 13.43, Subd. 2, where a final decision on a disciplinary action has not yet been made, and/or where the grievance process has not yet been completed, information pertaining to that disciplinary action is considered private data and not subject to public disclosure; the data do not become public until there has been a "final disposition" of the disciplinary action. On or about October 11, 2018, three weeks *before* Mr. Serafin's termination, Chief Deputy County Attorney Brown gave a press conference in which he openly discussed the results of the City's original Internal Affairs investigation. *T. Brown.*

By treating this information as public data, the County Attorney's Office was acknowledging that Chief DeMann's written reprimand, as sustained by City Manager Getschow, was in fact the "final disposition" of the action. Similarly, on November 9, 2018, City Attorney Richard Rosow wrote to the Minnesota Department of Administration requesting an administrative opinion on the classification of the data from the City's investigation. In his request letter, Attorney Rosow stated: "As a result of the investigation, the City took disciplinary action against [Serafin], issuing a letter containing the *final disposition* of the action on July 25, 2018. *The final disposition did not include termination of [Serafin's] employment.*" *Union Ex. 56* (emphasis added). This is extraordinary, because at the time that Attorney Rosow made these representations to the Department of Administration, Mr. Serafin *had* in fact been terminated -- effective on November 6, 2018 -- and a grievance had been filed to challenge the termination. *Union Exs. 4, 36.* Despite these glaring omissions by the City Attorney, the Department of Administration took the request at face value and issued an advisory opinion that the data from the Internal Affairs investigation were public. *Union Ex. 56.* The City then posted the entire investigative file on its website, long before Mr. Serafin and the Union had had the opportunity to challenge the findings from the investigation through arbitration. *T. Weber.* The City wants the Arbitrator to accept that the prohibition against Mr. Serafin testifying in future cases is a separate disciplinary matter, independent of the underlying conduct for which he had already been disciplined – but the sequence of events related above, and the handling of Mr. Serafin's personnel data by both the City and the County, shows that this argument leads to absurd results and is fundamentally unjust.

The City's contempt for Mr. Serafin's due process rights has been evident throughout this proceeding. As described above, the City publicized the entire investigative file on its website – with the attendant damage to Mr. Serafin's reputation and that of his family -- after making blatant misrepresentations to the Department of Administration as to the status of the proceeding. *Union Ex. 56*; *T. Weber.* (The conduct of the Hennepin County Attorney's Office toward Mr. Serafin is similarly inexcusable: Attorney Brown's press conference was contemporaneous with his letter to Chief Weber which, based on Attorney Brown's statement to a reporter at the press conference, he believed would result in Mr. Serafin's termination, *T. Brown*; in other words, Attorney Brown discussed the data from Mr. Serafin's Internal Affairs proceeding even though he *knew* at the time that Mr. Serafin would receive further discipline.) In addition, prior to the

arbitration hearing, the City made two meritless motions seeking to have the Union's grievance dismissed on procedural grounds, without affording Mr. Serafin the opportunity to respond to the allegations against him at a hearing on the merits. It should come as no surprise, then, that the City contends that it was allowed to terminate Mr. Serafin for the same conduct for which he had already been investigated; and based on which Chief DeMann had already issued a written reprimand. But as discussed in detail *supra*, this amounts to double jeopardy and is impermissible.

IV. The City has not sufficiently proven that Mr. Serafin's conduct was intentional.

As discussed *supra*, Chief Weber asserted at the arbitration hearing that Mr. Serafin's termination was not discipline for his alleged underlying conduct in connection with the Holmes case, but rather for the preclusion against him testifying in future criminal cases based on his *Brady* status. Nonetheless, it is assumed that the City will rely at least in part on the underlying conduct as grounds for the termination.

The burden of proof is on the employer to prove guilt of wrongdoing in a disciplinary case. *How Arbitration Works* §15.3.D.i. Here, even if the Arbitrator determines that double jeopardy does not apply to invalidate Mr. Serafin's termination, the City must still be required to satisfy the appropriate quantum of proof. Whereas the burden of proof applicable to ordinary disciplinary cases is "preponderance of the evidence," in cases of alleged falsification, many arbitrators believe that a stricter standard of proof (such as proof beyond a reasonable doubt) is necessary. *Discipline and Discharge in Arbitration* at 335 (internal citation omitted). Because the central allegations against Mr. Serafin – that he intentionally made material changes to the Holmes warrant after it had been signed by Judge Quam, and that he gave false testimony regarding these changes, all of which Mr. Serafin has steadfastly denied – bear directly on his character and credibility, the City must be required at a minimum to prove those allegations by clear and convincing evidence. *See The Common Law of the Workplace* §6.10(2) ("When the employee's alleged offense . . . would be viewed as moral turpitude sufficient to damage an employee's reputation, most arbitrators require a higher quantum of proof, typically expressed as 'clear and convincing evidence'"); *How Arbitration Works* §15.3.D.ii.a (in cases involving criminal conduct or stigmatizing behavior, many arbitrators apply "clear and convincing evidence" standard); *City of Faribault and Law Enforcement Labor Services, Inc.*, BMS Case #s

15-PA-0524 and 15-PA-0742 (Powers) (clear and convincing evidence standard is appropriate, where allegations of untruthfulness "will likely make it very difficult for officer to obtain further employment in the field"); *City of Oakdale and Law Enforcement Labor Services, Inc.*, BMS Case #09-PA-0836 (Orman) and *SuperValu, Inc. and Teamsters Local 120*, BMS Case #10-RA-0104 (Scoville) (similar). Based on the evidence in the record, the City cannot meet that burden of proof.

It is critical to note that the City's Internal Affairs investigators explicitly left the question of intentionality unanswered. "The question to be resolved," according to Investigators Larson and Bosacker's report, "is, did [Serafin] *knowingly* change the search warrant to now include outbuildings and vehicles after the search had been conducted, or was he merely replacing the [application] page that was lost?" *Union Ex. 28, p.16* (emphasis added); *T. Larson.* The accusation that Mr. Serafin had acted intentionally did not come until the letter from Attorney Brown on October 11, 2018, based on the County Attorney's Office's independent review of the investigation file. *City Ex. 32.* But Mr. Serafin was a City employee, not a County employee, and it is undisputed that the County Attorney had no authority to make disciplinary findings against him. *T. Brown.* As already discussed, the complete record of the Internal Affairs investigation had already been provided to Chief DeMann, and it was Chief DeMann's delegated responsibility to decide the nature of Mr. Serafin's violations and the appropriate discipline, if any. *T. DeMann.* The fact that an entirely different agency -- namely, the County Attorney's Office – later concluded that Mr. Serafin had acted intentionally should be given little or no weight.

Further, in attempting to prove its case, the City relies heavily on Lt. Wyffels' computer forensic analysis. The record shows that Lt. Wyffels has received no training in computer forensics in the last 10 years; the Union's expert, Mr. Mark Lanterman, testified that in his opinion, Lt. Wyffels' training is outdated, making him unqualified to conduct computer forensic investigations. *Union Ex. 43*; *T. Lanterman.* The City has made no effort to refute this expert opinion.

It is not surprising, then, to find that Lt. Wyffels' forensic analysis is significantly flawed. In the timeline contained in his report, Lt. Wyffels wrote that on September 16, 2017, at 0843 hours, "Travis [Serafin] emails a copy of his reports (to date) to [Attorney] Michael Radmer and cc'd [Detective] Crater Staaf. The email DID NOT include a copy of the search warrant." *Union Ex.*

30, p.17. The use of capital letters indicates that Lt. Wyffels thought this was an important piece of information – presumably because it showed that Mr. Serafin knew that the warrant did not include the standard curtilage language and was taking deliberate steps to prevent the prosecutor from seeing the warrant and to avoid getting "caught". But evidence presented at the arbitration hearing shows conclusively that Lt. Wyffels was wrong: Mr. Serafin *did* include the warrant as an attachment to his September 16, 2017 email to Attorney Radmer. *Union Ex. 49.* Although Attorney Brown testified that correcting this error by Lt. Wyffels would not have changed the County Attorney's Office's conclusions, *T. Wyffels*, this testimony is self-serving and not credible.

Lt. Wyffels' forensic report also included the following:

> "Upon review of all 176,488 files stored in Travis [Serafin]'s personal Desktop subfolder system, it appeared that on 11-21-2017 between 1432 and 1524 he copies all existing files from another source back to his Desktop. As a result, the Creation Date for any of these files [is] listed as 11-21-2017. . . . I am uncertain of the original source drive of these files or why he restored his Desktop on that date."

Union Ex. 30, p.4. In fact, according to Mr. Lanterman, the files on the computer all shared the same File Created date because the computer had been reformatted by the County. *T. Lanterman.* Lt. Wyffels was apparently unaware of this. This is significant because Lt. Wyffels' report, as written, insinuates that Mr. Serafin moved these files on and off the computer in an effort to hide his activities. Finally, Lt. Wyffels erroneously stated in his report that Mr. Holmes was arrested at his residence, *Union Ex. 30, p.16*, when in fact the arrest took place about a half mile away; while not relevant to the forensic analysis itself, this error reflects an overall lack of attention to detail by Lt. Wyffels.

Mr. Serafin's assertion that his mishandling of the Holmes search warrant was an inadvertent mistake is bolstered by all the surrounding circumstances. During the period of time most relevant to this case – September 14 to September 22, 2017 – the record shows that Mr. Serafin's life was, as he described it, "chaos". He was handling between 10 and 20 active drug enforcement cases, including the Holmes case. Meanwhile, he had to scramble to get the Holmes search warrant drafted and signed on September 14; complete his duties as the case agent for the Holmes arrest and the search of his residence on September 15, resulting in a 17-hour work day; plan for an anniversary trip with his wife that was eventually cancelled due to a

hurricane; delay his departure for Camp Ripley on September 16 after his seven-year-old daughter had to be taken to the hospital with an injury; and continue to work on the Holmes case after arriving at Camp Ripley, in order to ensure that a criminal complaint would be filed in time to keep Mr. Holmes in custody, all while running training scenarios, serving as a safety officer at the firing range, and performing other duties for the SWAT training. *T. Serafin.* Considering this chaotic sequence of events, it is entirely plausible that Mr. Serafin mistakenly omitted the standard curtilage language from the Holmes warrant application, and that while referencing the warrant packet at Camp Ripley (which was held together with a paper clip, *T. Serafin*), he misplaced the application page.

Equally plausible is Mr. Serafin's explanation for the difference between the original version of the warrant application page and the replacement page that he drafted on September 22, 2017 to replace the missing page. *Union Exs. 18, 21.* It was standard practice for Task Force detectives to include curtilage language on search warrants for residences, because suspects in drug crimes frequently keep drugs, weapons and other evidence in outbuildings, vehicles, etc. *T. Serafin*; *T. Sweitzer*; *Union Ex. 46 (Morrow statement at 24:45).* According to Mr. Lanterman's forensic analysis – and confirmed by Mr. Serafin in his testimony – Mr. Serafin had drafted 48 other search warrants prior to the Holmes warrant, and had included the curtilage language on *every one. T. Lanterman*; *T. Serafin.* Mr. Serafin credibly maintains that, when he realized that the application page had gone missing from the warrant packet, he was unaware that he had mistakenly omitted the curtilage language from that page, *T. Serafin*; in fact, he had every reason to assume that the missing page *had* included the curtilage language, and drafted the replacement page accordingly. This also explains why, when Ms. Stahnke emailed Mr. Serafin from the County Attorney's Office requesting the search warrant for the vehicles, Mr. Serafin replied – truthfully, as far as he knew -- that the warrant had already been provided. *City Exs. 16-19*; *T. Serafin.*

More than four months after Mr. Serafin had filed the warrant packet with the replacement application page, Attorney Radmer contacted him to inquire about "two search warrants for Holmes' residence." *Union Ex. 22.* During the intervening time, Mr. Serafin had continued to serve on the Task Force and had maintained a heavy load of narcotics enforcement investigations, including 3rd degree homicide cases. *T. Serafin.* It is reasonable and credible that when he received Attorney Radmer's January 29, 2018 email, Mr. Serafin did not recall what

had happened to the Holmes warrant, or why there were two different versions of the warrant in the case file. It is certainly true that, in hindsight, Mr. Serafin and Attorney Radmer should have reviewed the two versions more closely and taken the time to piece together what had happened before Mr. Serafin testified at the suppression hearing; but this hindsight does mean that Mr. Serafin knowingly gave false testimony at that hearing. The allegation that Mr. Serafin gave false testimony has not been sufficiently proven to justify termination.

Over the course of a 17-year career in law enforcement, there is no evidence that Mr. Serafin had ever engaged in the sort of conduct that he is now being accused. Indeed, the record contains numerous statements by City and County officials that Mr. Serafin did not, and would not, intentionally alter the terms of a warrant or give false testimony. Sgt. Wood, who spoke with Mr. Serafin shortly after the February 23, 2018 suppression hearing, later told investigators that he "had the impression that Mr. Serafin had made an honest mistake" – not surprisingly, considering how busy Mr. Serafin had been with important Task Force cases. *Union Ex. 28, p.2*; *T. Larson.* Moreover, after Mr. Serafin had filed his appeal to challenge the wording of Chief DeMann's written reprimand, HR Director Alecia Rose informed him of the City's determination that Mr. Serafin had *not* been deliberately untruthful ("If we thought that you had lied, we would have fired you"). *T. Serafin.* Numerous current and former EPPD officers, including supervisors, testified at the arbitration hearing that they knew Mr. Serafin well and did not believe that he would ever falsify a warrant or lie under oath. *T. LeBlanc*; *T. Staaf*; *T. Rohde*; *Union Ex. 46 (Morrow statement at 34:45)*. Det. Staaf related an especially relevant story from a case that he and Mr. Serafin worked on together in 2015: when officers were executing a search warrant on a residence and discovered drugs that were outside the scope of the original warrant, rather than cutting corners or altering the terms of the warrant, Mr. Serafin followed the correct protocol by pausing the search and leaving to obtain a second warrant. *T. Staaf*; *Union Ex. 50.*

It is significant that the City opted not to call Attorney Radmer as a witness at the arbitration hearing. Attorney Radmer had direct knowledge of the contents of the two versions of the Holmes search warrant and – unlike Attorney Brown, who later accused Mr. Serafin of giving knowingly false testimony -- was present during Mr. Serafin's testimony at the February 23, 2018 suppression hearing. *T. Brown.* "The failure of a party to call a witness available to it gives rise to a presumption that the witness' testimony would be adverse to the position of the party who could have called him." *Discipline and Discharge in Arbitration* at 339. The record

shows that, when meeting with Mr. Serafin after the suppression hearing, Attorney Radmer accepted Mr. Serafin's explanation for the discrepancies in his testimony and told him not to worry. *T. Serafin*; *T. Staaf*; *Union Ex. 26, p.13.* Similarly, Judge Karasov, Mr. Holmes' defense attorney, and Attorney Radmer's supervisors from the County Attorney's Office all expressed their agreement with Attorney Radmer that there was nothing "nefarious" about Mr. Serafin's testimony. *Union Exs. 29, 57.* Attorney Radmer later told both Internal Affairs and criminal investigators that he was "100%" certain that Mr. Serafin had not been untruthful, that he "believed this to be a clerical error and not a deliberate lie," and that he had no concern with having Mr. Serafin testify in future cases. *Union Ex. 29*; *Union Ex. 58, p.18.* Based on all this, the Arbitrator should adopt the presumption that, had Attorney Radmer been called to testify at the arbitration hearing, his testimony would have been damaging to the City's position.

Finally, in ruling on the credibility of Mr. Serafin's version of events, the Arbitrator should give proper consideration to the results of Mr. Serafin's polygraph examination. At that examination, Mr. Serafin denied deliberately altering the Holmes search warrant and making intentional misrepresentations to the court regarding those changes. The polygraph examiner, who has conducted more than 4,000 such examinations, determined with a reasonable degree of professional certainty that Mr. Serafin was being truthful. *Union Exs. 37-40, 45.* The Union acknowledges that polygraph results have limited probative value; nevertheless, "[a]rbitrators are not totally inhospitable to the receipt, consideration and evaluation of evidence obtained by the use of the polygraph." *How Arbitration Works* §8.9.C (internal citation omitted). In this case, the Arbitrator should note that the answers that Mr. Serafin provided to the polygraph examiner were consistent with the statement that he gave to the City's Internal Affairs investigators, as well as his sworn testimony at the arbitration hearing. *Id.*; *T. Serafin*; *Union Ex. 27.*

V. Upholding Travis Serafin's termination would mean the loss of an exceptionally skilled and dedicated peace officer.

"Discharge is the most extreme industrial penalty since the employee's job, seniority, and other contractual benefits and reputation are at stake. It was once referred to as 'industrial capital punishment,' but at least one arbitrator has suggested that 'a more accurate equivalent to discharge is permanent exile." *Discipline and Discharge in Arbitration* at 67. *See also Ramsey*

County and Law Enforcement Labor Services, Inc., BMS Case #16-PA-0124 (Anderson); *Crow Wing County and Law Enforcement Labor Services, Inc.*, BMS Case #12-PA-0072 (Kapsch).

By terminating Mr. Serafin, the City seeks to impose "permanent exile" on an officer who had established himself as one of the top drug enforcement detectives in Minnesota. The value of Mr. Serafin's service to the EPPD and to the community cannot be overstated. The evaluations, commendations and thank-you letters in Mr. Serafin's file, along with testimony taken at the hearing, describe an officer with an extraordinary commitment to building cases against drug dealers, apprehending them and taking narcotics off the street. This invaluable work led the Task Force leadership to take the unprecedented step of granting Mr. Serafin two extensions beyond his initial three-year assignment on the Task Force. The work that Mr. Serafin has done on heroin overdose cases is especially noteworthy: the record shows that he investigated and helped obtain convictions in 10 to 15 of those cases. Just as importantly, other EPPD officers gave sworn testimony at the arbitration hearing that they trust Mr. Serafin and would welcome him back to the department. *T. Staaf*; *T. LeBlanc.*

In his recent award in *Minnesota Public Employees Association, et al. and City of Owatonna*, 19-VP-0696, 19-PA-0678 and 19-PA-0737 (Daly), this Arbitrator discussed a philosophical debate affecting modern-day policing, namely the debate between police as "warriors" and police as "guardians". The police chief in that case testified -- and the Arbitrator agreed -- that he was trying to instill a "guardian mentality" in his officers, because their job was to "protect citizens, rather than conquer them". The grievant officer, however, openly displayed a "warrior mentality" and appeared "unwilling and possibly unable" to conform to the laws, standards and expectations of a law enforcement officer. Based largely on these findings, the Arbitrator upheld the officer's termination.

Mr. Serafin's employment record stands in sharp contrast to that of the officer in *City of Owatonna*. Mr. Serafin has truly established himself as a "guardian" who is dedicated to protecting citizens, especially from the pervasive threat of narcotics. In weighing the question of whether there was just cause to terminate Mr. Serafin, the Arbitrator should recognize that he is an exceptional officer who would be difficult, if not impossible, to replace.

VI. Conclusion

For the reasons set forth above, the termination of Travis Serafin was without just cause and in violation of the grievance procedure agreed upon by the parties. The Arbitrator should sustain the Union's grievance and direct that Mr. Serafin be reinstated to his position with the Eden Prairie Police Department and made whole.

REPLY BRIEFS OF CITY OF EDEN PRAIRIE AND LELS

On January 22, 2020, both the city of Eden Prairie and LELS submitted simultaneous post-hearing briefs. On February 7, 2020, both sides submitted reply briefs to the other side's post-hearing brief.

City of Eden Prairie's Brief in Response to LELS Post-Hearing Brief

Again, because of the very public nature and significant response by various prosecutors in dropping serious criminal cases and reimbursing alleged criminals, and because of the dramatic effect this case has had on Mr. Serafin, the City of Eden Prairie, the Hennepin County Attorney's Office, and the citizens of Minnesota, it is again necessary to list in detail the arguments of the City of Eden Prairie in response to the LELS post-hearing brief.

1. The city did not use Mr. Serafin's *Brady* status as grounds for his termination. LELS argues that the city terminated Mr. Serafin because of his *Brady* status, in violation of the memorandum of understanding. The relevant portion of the MOU states:

> The identification of an Eden Prairie PD employee as being the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecuting agency's discovery obligations. The identification is not, in and of itself, related to the employee's employment and will not be used by the Eden Prairie PD for disciplinary purposes.

In compliance with the MOU, the city did not terminate or discipline Mr. Serafin because he was identified as the subject of *Brady* material. It terminated him because he could not fulfill an essential function of his job as a police officer for the city after the Hennepin County Attorney's Office and the City Prosecutor's Office determined that they would not call him as a witness in any future case.

The MOU means that the police department will not discipline an employee solely because the Hennepin County Attorney's Office and/or the City Attorney's Office have

determined that an officer is the subject of *Brady* material. LELS correctly notes that there are six other Eden Prairie Officers who have been identified as the subjects of *Brady* material. They were not disciplined for this designation and continued to work for the department. The difference between these officers and Mr. Serafin is that no prosecuting authority determined that they could not be called as witness. In other words, the prosecuting authorities determined that, despite these officers' *Brady* designation, they can be called as witnesses. They can still fulfill the essential functions of their jobs. Mr. Serafin cannot.

Mr. Serafin was not terminated because he was identified as the subject of *Brady* material. He was terminated because prosecutors made the determination based on Mr. Serafin's conduct, which included altering a search warrant after it was signed, submitting a false report, and lying under oath, that the conduct so seriously impinged on his credibility that they cannot call him again as a witness. This determination – which the city has no power to challenge or reverse – renders Mr. Serafin unable to fulfill an essential function of his job, i.e. testify in court.

LELS cites several decisions as "overwhelming arbitral precedent" that an officer's *Brady* status cannot be used as the sole grounds for termination. The city does not dispute this contention. Mr. Serafin's *Brady* status was not the reason for his termination. It was the fact that he cannot testify and therefore cannot fulfill an essential function of his job.

2. Because the city did not discipline Mr. Serafin twice for the same conduct, the concept of arbitral double jeopardy does not apply. LELS is correct that Mr. Serafin was disciplined on July 25, 2018, for his actions involving the altered warrant, false report, and false testimony. His later termination was based not on these actions, but on the determination of the Hennepin County Attorney's Office and the City Attorney's Office that they would no longer call Mr. Serafin as a witness and the city's subsequent finding that he could not fulfill an essential function of his job.

Arbitral authority holds that, for double jeopardy to apply, the employer must have disciplined an employee twice "for the same act," "for the same offence," or "for what is essentially a single act." While Mr. Serafin did not engage in any additional misconduct between the July 25 discipline and the November 1 termination, his termination was not based on misconduct. The facts of the second investigation were not the same set of facts that the city was working with prior to July 25, 2018. Rather, the city was informed after the first investigation was final that Mr. Serafin would no longer be called to testify because of his misconduct and

sustained a finding that he could no longer fulfill an essential function of his job. The new facts were not known, and could not have been known, to the city prior to July 25, 2018.

It is the responsibility of the prosecutors to exercise prosecutorial discretion, and not the responsibility of the police department, to determine if and to what extent an officer's misconduct affect his *Brady* status. The city could not have known on July 25, 2018, before the findings had been sent to the Hennepin County Attorney's Office and the City Prosecutor as required by the MOU, that Mr. Serafin would not be able to fulfill the essential function of his position. After the first investigation was final, the *Brady* review process under the MOU revealed a new fact that was not and could not have been known on July 25, 2018. As a result, a second investigation was required.

LELS argues that the city's classification of its July 25, 2018, decision as the "final disposition" of the disciplinary action under Minnesota Government Data Practices Act demonstrates that Mr. Serafin was placed in double jeopardy when it later terminated him. The city does not dispute that the July 25, 2018, discipline was the final disposition of the first investigation. The city's actions under the Data Practices Act reflect this. The term "final disposition" is a term specifically used in the Data Practices Act to establish when data is public and subject to release and is no relationship to a double-jeopardy argument.

They city received many requests for data relating to the first Serafin investigation. Under section 13.43 of the Data Practices Act, which governs personnel data, the "final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action" is public data. Minn. Stat. §13.43, subd. 2(5).

LELS argues that the city's posting of data to its website before Mr. Serafin and LELS had the opportunity to challenge the findings through arbitration shows the city's contempt for Mr. Serafin's due-process rights. This contention is without merit. First, due to the high number of data requests the city received regarding the first Serafin investigation and discipline and the large size of the file. The city chose to make the public data available on its website rather than responding individually to each person requesting this data. Cities do this regularly. Second, neither Mr. Serafin nor LELS had any right to challenge the outcome of the first investigation. The Eden Prairie Patrol Officers did not vote unionize until August 2018. Mr. Serafin was not a union employee on July 25, 2018 and had no right to challenge the initial discipline through arbitration.

Double jeopardy does not apply to bar Mr. Serafin's termination. He was not disciplined twice for the same conduct. Rather, the second discipline – termination – was based on the prosecutor's decision not to call him as a witness and his consequent inability to fulfill an essential function of his job, i.e. testify in court.

3. The city has proven by clear and convincing evidence that Mr. Serafin intentionally altered the search warrant, submitted a false report, and lied under oath. The city will not repeat the arguments made in its post-hearing brief of January 22, 2020 but will respond to the main points raised by LELS in its post-hearing brief of January 22, 2020.

A. Wyffels's Qualifications

Captain Wyffels, [then Lt. Wyffels when he did the forensic examination of Mr. Serafin's devices as part of the first investigation], is more than qualified to conduct such an investigation. Capt. Wyffels analysis in evidentiary productions only involved email, Microsoft Word documents, and PDF files stored on various hard drives managed by a Microsoft Windows NTFS file system. These types of data were introduced in the early 1900s, long before then Lt. Wyffels began his training and experience in digital forensics. None of these methodologies, file formats, or storage procedures have changed since that time.

There is also no merit to LELS's argument that Capt. Wyffels analysis was "significantly flawed." As pointed out at the hearing and not disputed by the city or Capt. Wyffels, his report did contain errors, but these were minor and inconsequential errors. This included the location of Timothy Holmes' arrest and the statement that the original search warrant was not attached to a particular email. These were immaterial errors. Both Chief Weber and Assistant Hennepin County Attorney Brown testified at the arbitration hearing that the errors would have had no impact on their ultimate decision regarding Mr. Serafin.

B. Lanterman Review and Testimony

LELS contends that Mr. Lanterman "reviewed all the data that the city had compiled regarding the drafting, saving, scanning and printing of the two versions of the Holmes search warrant" and "found nothing to contradict the explanation given by Mr. Serafin at his Internal Affairs interview." This contention is false, as indicated by the testimony of Mr. Lanterman himself. Mr. Lanterman's testimony at the arbitration hearing related only to the addition of the "VOTF" language to the warrant. Mr. Lanterman testified that because LELS did not ask him to

look at any forensics surrounding the alteration of the search warrant to add vehicle and curtilage language, he had no opinion on these matters.

Mr. Lanterman testified that the VOTF language could have been in the document that was presented to Judge Quam on September 14, 2018. This opinion is unpersuasive. Mr. Lanterman failed to offer an explanation, however, of why Mr. Serafin would have printed the probable cause portion of the warrant again at 1:03 p.m. – after he had already gotten the warrant signed. LELS offered Exhibit 51, which is a screen shot prepared by Mr. Lanterman. The screen shot purports to depict internal metadata properties and a portion of the text of the "Affiant Document Holmes.doc" document, city exhibit EP-57. The screen shot shows that the document was last "modified" on November 5, 2019, at 6:08 p.m. As this arbitrator is aware, November 5, 2019, was the second day of the arbitration hearing and the day on which Mr. Lanterman testified. The arbitrator heard testimony from Mr. Lanterman and Capt. Wyffels that any manipulation or saving of the document after it is initially created changes this "modified" date. The screen shot shows that Mr. Lanterman, an "expert" who testified about conducting computer forensics and preserving original data, manipulated the document.

This manipulation not only calls into question Mr. Lanterman's credibility as an expert witness, it also covered up some very important information that counters Mr. Lanterman's testimony that the VOTF language was in the search warrant when it was presented to Judge Quam. The original, unmanipulated file metadata showed that the file was last modified on September 14, 2017, at 1:07:21 p.m. after the warrant was signed by the judge. Further, the Lanterman screen shot shows "total editing time" of six minutes. The unmanipulated file, however, reflects a total editing time of only four minutes.

Mr. Lanterman testified that is was his "opinion" that the VOTF language was added to the warrant application before it was printed at 9:05:02 a.m. on September 14 when it was still named AFFIANT DOCUMENT SW Penn AveN.doc. He went on to opine that it was then saved under the new name of AFFIANT DOCUMENT Holmes.doc at 9:06 a.m. At that point this electronic draft portion of the warrant should never been needed again as a printed version was then signed. However, it was opened and edited again. The original metadata for AFFIANT DOCUMENT Holmes.doc provided that it was edited for four minutes after it was created. Four minutes cannot possibly exist between 9:05 a.m. and 9:06 a.m. Furthermore, AFFIANT DOCUMENT Holmes.doc was again printed at 1:03:25 p.m. Neither Mr. Lanterman nor Mr.

Serafin were able to explain why this portion of the search warrant that was already signed needed to be reprinted. In sum, not only was Mr. Lanterman's opinion countered by the original facts, his manipulations of the screen shot covered up the fact that countered his opinion.

C. Michael Radmer

LELS makes much of the opinion of Assistant Hennepin County Attorney Prosecutor Michael Radmer, who handled the Holmes case. In support of its argument that Mr. Serafin's actions and lies were not intentional, LELS points to the fact that Mr. Radmer told Al Larson that he did not believe that Mr. Serafin intentionally altered the warrant or lied under oath. Like most of LELS's witnesses, Mr. Radmer had not read Capt. Wyffels report when he gave that opinion to Mr. Larson. Similarly, he had not read the report when he gave a similar statement to the Anoka County Investigation nine months later. Mr. Radmer simply did not have the background information necessary to give an informed opinion because he did not know that the forensics showed that Mr. Serafin altered the warrant after it was already signed by the judge.

D. Mr. Serafin's testimony is not credible

In arguing that Mr. Serafin's conduct in altering the search warrant was not intentional, LELS cites the "chaos" in Mr. Serafin's life around the time of the creation, execution and alteration of the warrant. Perhaps Mr. Serafin did make a mistake in drafting the original warrant and then a second mistake by losing the application for the warrant. What Mr. Serafin had no explanation for, however, is why he did not print out another copy of the original application for a warrant from one of the several electronic locations on his laptop and thumb drives. It defies logic to think in an officer as chaotically busy as Mr. Serafin would choose to complete a new application for a warrant when he could have just printed-out the original document.

E. Opinions of other officers

Several of the current and former law enforcement officers who gave statements in the investigation or testified at the arbitration hearing stated that they did not think Mr. Serafin was capable of doing what the evidence showed that he did: altered a search warrant after it was signed, submitted a false report, and testified falsely under oath. None of these officers have read Capt. Wyffels forensic report.

F. Polygraph Test

The results of the polygraph examination that Mr. Serafin took on October 22, 2018, is without merit. As discussed in the city's "Motion in limine" dated October 30, 2019 [which the

arbitrator denied and permitted introduction of the polygraph test], polygraph tests are notoriously unreliable and should not be considered as probative evidence of the truth or falsity of a given fact. Mr. Serafin's polygraph tests in particular should be disregarded. Again, the city of Eden Prairie concludes that because Mr. Serafin can no longer be called as a witness to testify in court, he therefore cannot fulfill an essential function of the position of police officer for the city of Eden Prairie. The city has just cause to terminate Mr. Serafin's employment. The grievance must be denied.

Union Reply Brief

For the same reasons stated above, it is equally important to list in detail the union's reply brief to the city's post-hearing brief.

1. By basing Mr. Serafin's termination on his non-reviewable *Brady* status, the city is impermissibly attempting to circumvent the just cause standard. As discussed at length in the union's post-hearing brief, the city cannot prove by clear and convincing evidence that Mr. Serafin's errors in connection with the investigation and prosecution of the Holmes case were intentional. The city makes explicit in its brief that this should not matter: According to the city, the arbitrator "need not make…a finding" regarding Mr. Serafin's underlying conduct, because the County Attorney's decision not to call Mr. Serafin as a witness in future criminal cases based on his *Brady* status amounts in and of itself to just cause for termination. The city is plainly asking the arbitrator to substitute *Brady* for just cause.

The County Attorney's determination that Mr. Serafin is *Brady* impaired is non reviewable as is the decision not to call him as a witness in future criminal cases. The city contends that, in order to hold Mr. Serafin's termination and end his career in law enforcement, all that the arbitrator needs to do is recognize that the County Attorney has made these non-reviewable determinations, and that testifying in court is an essential function of a police officer's job. The other well-established elements of a full just-cause analysis – the thoroughness and fairness of the investigation, the employee's length of service and overall work record, etc. – have not importance and should be given no consideration whatsoever.

The arbitrator has already ruled in response to the city's pre-hearing motion that the just cause standard applies to this case, meaning that the city is required to meet that standard to justify Mr. Serafin's termination. Just cause is "the touchstone by which arbitrators judge

employer actions." Brand, *Discipline and Discharge in Arbitration* 29 (1998). The city is asking the arbitrator to disregard these essential principles.

It is difficult to overstate the threat that would be posed by endorsing the city's position. The County Attorney's Office made its determination that Mr. Serafin is *Brady* -impaired after Assistant Hennepin County Attorney Brown and others from that office had reviewed the city's investigation file. But as pointed out in the union's main brief, the investigation that the Hennepin County's determination was based on – particularly Lt. Wyffels's computer forensic examination for which Lt. Wyffels lacked the proper qualifications – was significantly flawed. Yet, the city wants the arbitrator to accept the county attorney's determination, standing alone, as sufficient grounds for discharge. This would be a precedent giving law enforcement agencies the green light to "weaponize" *Brady* by using that designation to circumvent the proper application of the contractual just-cause standard.

The arbitrator is reminded that there is a Memorandum of Understanding (MOU) in place between the Eden Prairie Police Department, the city attorney, and county attorney regarding *Brady* disclosures. The MOU, as well as the December 13, 2017, department-wide email advising officers of the terms MOU, both explicitly state that identification as a subject of *Brady* material "will not be used by Eden Prairie PD for disciplinary purposes." The termination of Mr. Serafin – which the city now asserts is based solely on his identification as a subject of *Brady* material – is in direct violation of the MOU.

2. The city has not proven by clear and convincing evidence that Mr. Serafin's conduct was intentional. Mr. Serafin made serious mistakes in handling of the Holmes case, and has acknowledged those mistakes throughout this proceeding. But in order to establish just cause for termination, the city must show by clear and convincing evidence that Mr. Serafin's conduct was intentional.

In trying to convince the arbitrator that Mr. Serafin acted intentionally, the city repeatedly misstates and mischaracterizes the evidence in the record. The city credits Lt. Wyffels, who conducted the computer forensic investigation on the city's behalf, as having "extensive education, training and experience in computer forensics," but disregards the fact that Lt. Wyffels has not received any training in the field during the past ten years. Computer forensics is a rapidly advancing and constantly changing area of technology; the computer forensics expert, Mark Lanterman, whose credentials are undisputed, testified persuasively that Lt. Wyffels' lack

of training makes him unqualified to conduct computer forensic examinations. Accordingly, the city's reliance on Lt. Wyffels' report as proof of Mr. Serafin's misconduct is misplaced.

Mr. Lanterman was able to identify several specific errors in Lt. Wyffels' forensic analysis, most noteably, the finding that Mr. Serafin's September 16, 2017, email to attorney Radmer had not included the Holmes search warrant. As demonstrated at the arbitration hearing and discussed in the union's post-hearing brief, the search warrant was in fact included as an attachment to the September 16, 2017, email. The city will probably argue that this error had no impact on the outcome of the investigation. But the arbitrator should note that one of the city's allegations is that Mr. Serafin deleted emails related to the search warrant "in an attempt to cover his tracks." This allegation of an intentional cover-up would only be plausible if, at the time the emails were deleted, Mr. Serafin had not already shared the original version of the search warrant (without the curtilage language) with Attorney Radmer. That would have enabled Mr. Serafin to pretend there was only one version of the warrant – that the version he altered after the fact (to include the curtilage language on the application page) was the same as the warrant that he and other members of the task force had executed on the Holmes residence. But because the record shows – contrary to Lt. Wyffels' flawed report – that Mr. Serafin had shared the original version of the warrant with Attorney Radner, the allegation that Mr. Serafin tried to "cover his tracks" by deleting emails does not make any sense. There is no clear and convincing evidence of such a deliberate cover-up.

Based on Lt. Wyffels computer forensics' report, the city further alleges that after the Holmes search warrant had been signed by Judge Quam, Mr. Serafin added the phrase "from Hennepin County Violent Offender Task Force" after "Det. Sleavin" on the probable cause portion of the warrant (the so-called "VOTF language"). This change added absolutely nothing to the substance or scope of the warrant and Mr. Serafin would have no reason to make such a change, given that the probable cause statement had already been sufficient for Judge Quam to authorize the search. More importantly, Mr. Lanterman testified with a reasonable degree of professional certainty that Lt. Wyffels was incorrect, and that the VOTF language had not been added after Judge Quam had signed the warrant and after Mr. Serafin had returned to the task force office that afternoon. The city cannot prove this allegation by clear and convincing evidence.

The city states that "at no time prior to or during the search [of the Holmes residence] did [Mr.] Serafin tell the police officers that the search warrant did not authorize the search of vehicles." This is consistent with Mr. Serafin's explanation, i.e., that he was unaware at the time that the curtilage language – which he typically cut and pasted onto warrant applications for residences and had just included pro forma on dozens of other warrants – had accidently been omitted from the Holmes warrant. Similarly, the city points out that when Ms. Stahnke emailed Mr. Serafin in October and November 2017 requesting the search warrant for the vehicles be included in the Holmes case file, Mr. Serafin replied that he had already submitted the requested documents. This too is consistent with Mr. Serafin's explanation that, at that time, he believed the warrant signed by Judge Quam and eventually filed with the court clerk had included the standard curtilage language.

The city states that after Attorney Radmer emailed Mr. Serafin on January 29, 2018, regarding "two search warrants for Holmes' residence," more than two weeks passed before Attorney Radmer sent Mr. Serafin another email on February 13, 2018. This insinuates that Mr. Serafin deliberately delayed or avoided responding to Attorney Radmer's request as Mr. Serafin's alleged intentional cover-up regarding the alteration of the Holmes warrant. Similarly, during opening statement at the arbitration hearing, the city attorney claimed that Mr. Serafin had "refused to respond" to Attorney Radmer's request. But in fact, Mr. Serafin responded to Attorney Radmer's January 29 email within a matter of minutes and then called Attorney Radmer shortly after he had completed his Super Bowl security detail to discuss the "two search warrants" and the need for a supplemental report.

At 1:28 a.m. the night after the suppression hearing, Mr. Serafin sent Attorney Radmer an email explaining that "the 1st page of the application without the curtilage was inadvertently added to the file by me (due to multiple drafts in my working file)…." The city contends that this was untruthful because Lt. Wyffels forensic investigation showed that there were no "multiple drafts" of the Holmes warrant in Mr. Serafin's working file. But as Mr. Serafin explained in his testimony, the "multiple drafts" cited in his email to Attorney Radmer were documents from other drug enforcement cases that he was working on at the time, of which there were ten to twenty such cases. The allegation by the city misconstrues the record.

Finally, there is substantial evidence in the record supporting Mr. Serafin's credibility and honesty. First, Attorney Radmer knows Mr. Serafin from prior drug enforcement cases and

was present prior to, during, and after Mr. Serafin's testimony in the Holmes case; although the city opted not call Attorney Radmer as a witness at the arbitration, there are multiple statements by Attorney Radmer in the record to the effect that Mr. Serafin made a mistake and was not intentionally untruthful. Second, Mr. Serafin underwent a polygraph examination the results of which indicated that his answers to questions concerning his handling of the Holmes warrant and his testimony at the suppression hearing were truthful. Third, in his seventeen years with the Eden Prairie Police Department has no history whatsoever of lying and has never his coworkers or supervisors any reason to question his honesty or integrity.

The termination of Travis Serafin was without just cause and in violation of the grievance procedure agreed upon by the parties. The arbitrator should sustain the union's grievance and direct that Mr. Serafin be reinstated to his position with the Eden Prairie Police Department and made whole.

DECISION AND RATIONALE

This case centers on the credibility of Travis Serafin. The reason given by the City of Eden Prairie for his termination is "because prosecutors made the determination based on Serafin's conduct, which included altering a search warrant after it was signed, submitting a false report, and lying under oath, that the conduct was so seriously impinged on his creditability that they cannot call him again as a witness." [City of Eden Prairie's brief in response to LELS's post-hearing brief at 3]. The facts are to a large extent determined by the weight and credibility accorded to the testimony of Mr. Serafin, the witnesses, and the documentary evidence offered by the parties. Arriving at the truth in this case, the arbitrator must consider whether conflicting statements ring true or false; Mr. Serafin's demeanor while testifying; the impressions of Mr. Serafin's veracity and the interpretation of various actions of Mr. Serafin.

Because this case involves the very future of Mr. Serafin as a police officer not only in the City of Eden Prairie, the arbitrator will apply the "clear and convincing evidence" standard rather than the "preponderance of the evidence" standard. In is not uncommon in such cases that arbitrators apply the higher quantum of proof required in such cases. "…[I]n cases involving [alleged] criminal conduct or stigmatizing behavior, many arbitrators apply a higher burden of proof, typically a 'clear and convincing evidence' standard, with some arbitrators imposing the

'beyond a reasonable doubt' standard." Elkouri & Elkouri, *How Arbitration Works Sixth Edition* at 950-951(citations omitted).

This arbitrator will take into consideration whether a witness speaks from first-hand information; whether the documents support the conclusions by clear and convincing evidence; whether the witness is credible in his testimony; and whether the conclusions drawn by the investigators and the decision-makers clearly and convincingly are based upon the evidence. Essentially, the duty of this arbitrator is to determine the truth respecting material matters in controversy, as the arbitrator believes it to be, based on a full and fair consideration of the entire body evidence after according each witness and each piece of documentary evidence the weight, if any, to which the arbitrator believes it is to be entitled. See Elkouri and Elkouri, *How Arbitration Works Sixth Edition* at 950-952 (The Bureau of National Affairs 2003), citations omitted.

Where the testimony is highly contradictory, it "becomes incumbent upon the arbitrator to sift and evaluate the testimony to the best of his ability, and reach the best conclusion, he can as to the actual fact situation." *Elkouri* at 415 citing *Texas Elec. Steel Casting Co.,* 28 LA 757, 758 (Abernethy, 1957) (Other citations omitted).

It is recognized that testimony may conflict even where all witnesses have testified honestly and in good faith. *Elkouri* at 416. The same evidence may lead honestly to differing conclusions. Thus, arbitrators sometimes have explained that in resolving conflicts in testimony and evidence, "we do not mean to cast the slightest doubt on the veracity or good faith of any witness appearing before us." Id. at 416, *citing Coordinating Comm. Steel Cos*., 70 LA 442, 454 (Aaron, Garrett and Seward, 1978).

> Arbitrators are not equipped with any special divining rod, which enables them to know who is telling the truth and who is not where a conflict in testimony develops. They can only do what the [judges] have done in similar circumstances for centuries. A judgement must finally be made, and there is a possibility that that judgment when made is wrong. Id. at 416 citing *General Cable Co.*, 28 LA 97, 99 (Fleming 1957).

As a result, it is necessary to analyze the testimony of the Mr. Serafin, the witnesses, various documents, and impressions of the arbitrator which support or not support the credibility of Mr. Serafin and the differing conclusions drawn from the evidence.

The sole issue presented by the City of Eden Prairie is whether Mr. Serafin can no longer fulfill an essential function of his position as a police officer in the City of Eden Prairie, i.e. provide courtroom testimony and does this fact alone prove just cause for his termiantion. The Hennepin County Attorney's Office, the City of Eden Prairie City Attorney's office, and the Ramsey County Attorney's Office (St. Paul) have each determined based on the facts of this case they will no longer call Mr. Serafin to testify in court. Why? Because his credibility is no longer accepted by these various prosecutors. From the perspective of these prosecutors, he is subject to *Brady/Giglio.* Based on their respective judgments that Mr. Serafin is not credible these prosecutors have determined they will no longer call him to testify in court. The City of Eden Prairie deems Mr. Serafin's ability to testify in court by a police officer an essential function of the job of police officer of the city of Eden Prairie. Consequently, because he can no longer testify in court, they have terminated him.

I will analyze the credibility of Mr. Serafin and the conclusions drawn by the City of Eden Prairie based on the facts, evidence and arguments presented by the City of Eden Prairie and the Union. If the City of Eden Prairie has proven by clear and convincing evidence that Mr. Serafin "falsified a search warrant, lied about the warrant under oath, and will no longer be called to testify in court in support of any case brought by the respective prosecutors' offices" then the City of Eden Prairie has proven its case and has just cause to terminate Travis Serafin, despite the "double jeopardy" contention of the union. On the other hand, if it is determined that Travis Serafin is credible and is telling the truth, then the City of Eden Prairie does not have just cause to terminate Travis Serafin, despite the fact that various prosecutors have erroneously concluded that he is a *Brady/Giglio* officer. The contract clause applicable in this case is that if an officer is to be terminated there must be just cause. That language, by mutual agreement of the City of Eden Prairie and LELS, is the applicable language to justify the termination or any other discipline of an officer working for the City of Eden Prairie.

1. Creation of the original warrant

On September 13, 2017, Mr. Serafin created the five-page document which contained the application for a warrant, the affidavit and probable cause statement, and the search warrant itself. The application was printed on September 14, 2017, and erroneously did not request permission to search any vehicles or "curtilage" associated with Mr. Holmes residence.

On September 14, 2017, Mr. Serafin took the warrant application and the other papers attached [probable cause statement and the warrant itself] to the Hennepin County Government Center, Minneapolis, Minnesota, and presented it to Judge Quam, who signed the warrant.

Did Mr. Serafin intentionally not "X out" the "vehicle" or curtilage box requesting searching vehicles and outbuildings on the property? Mr. Serafin testified he had filled out dozens of such warrants in the past and had never forgotten to place an "X" in the curtilage section of the warrant. Here he simply forgot. No one contends that Mr. Serafin intentionally eliminated the curtilage portion of the warrant. Even though in every previous drug search warrant he had requested search of the curtilage, here he made a mistake. His testimony was credible in admitting he made a mistake and did not notice it.

2. Addition of VOTF language

On September 14, 2017, after Judge Quam had signed the warrant, Mr. Serafin returned to the Southwest Hennepin Drug Task Force Office. He printed from his laptop a five-page document entitled "AFFIANT DOCUMENT Holmes.doc." This document was identical to the document which Judge Quam had signed, with one exception. In the second full page of application, there now appeared the phrase "from the Hennepin County Violent Offenders Task Force" after "Det. Sleavin." When Capt. Wyffels [then Lt. Wyffels] did a forensic investigation of these two documents, he determined that this "VOTF" language was added by Mr. Serafin after the search warrant had already been signed by Judge Quam. However, Mr. Mark Lanterman, a computer expert who testified on behalf of the union and Mr. Serafin at the arbitration hearing, testified "with a reasonable degree of professional certainty" that Lt. Wyffels was incorrect and that the "VOTF" language had not been added after Judge Quam had signed the warrant and after Mr. Serafin had returned to the Drug Task Force office that afternoon. Union Reply brief at 10. During the arbitration hearing and in the various Post-hearing briefs and Reply briefs an argument centered around who exactly was the true computer forensic expert in this matter. LELS contends that Capt. Wyffels has not had any advanced education in the area of computer forensics for the last 10 years. The City of Eden Prairie alleges that Mr. Lanterman's "own opinion regarding the VOTF language is unpersuasive. Mr. Lanterman testified that the VOTF language could have been in the document that was presented to Judge Quam on September 14, 2017. Mr. Lanterman failed to offer an explanation, however, of why Serafin

would have printed the probable cause portion of the warrant again at 1:03 p.m. – after he had already gotten the warrant signed."

Also, the City of Eden Prairie alleges "[t]he screen shot shows that Lanterman, an 'expert' who testified about conducting computer forensics and preserving original data, manipulated the document. This manipulation not only calls into question Lanterman's credibility as an expert witness, it also covered up some very important information that counters Lanterman's testimony that the VOTF language was in the search warrant when it was presented to Judge Quam."

During the arbitration hearing and in the reading of the Post-hearing briefs and Reply briefs, this arbitrator was presented with a "battle of the experts." From the testimony of both experts and the documents themselves it is impossible to conclude one way or the other whether Mr. Serafin added the VOTF language just after the original warrant was signed by Judge Quam. Mr. Serafin during his testimony said he did not do so. He was credible in that testimony. Based on the differing conclusions of both experts i.e. Captain Wyfells and Mr. Lanterman; the credibility of Mr. Serafin with respect to his testimony; the fact that in the past, when a mistake in the warrant was noted during the execution, Mr. Serafin stopped the search and went back to the court to get the warrant corrected (See Testimony of Det. Staff, page 23 of this Opinion & Award); and, the documents themselves, it is concluded the allegation that Mr. Serafin added the VOTF language just after Judge Quam signed the warrant has not been proven by clear and convincing evidence.

3. Execution of the warrant.

On September 15, 2017, at approximately 11:45 a.m., Mr. Serafin, members of the Southwest Hennepin Drug Task Force and the Minneapolis Police Department executed the search warrant at Mr. Holmes residence. Mr. Serafin was the case agent involved in managing the scene of the search according to his testimony. However, he was not present at the search itself because of other duties he was facing. He was in touch by phone. This is not unusual in the execution of a warrant. While the City of Eden Prairie points out that "[a]t no time prior to or during the search did Mr. Serafin tell the other officers that the search warrant did not authorize the search of vehicles", there was a "drop copy" of the warrant that was left at the residence. But Mr. Serafin did not read the "drop copy" or the original at the time of the search. Nor did the

team executing the warrant read the drop copy. Despite a lack of authority to search vehicles or curtilage, the officers did search a vehicle parked at Mr. Holmes residence and discovered drugs and a handgun inside the vehicle. After the search, Mr. Serafin completed the receipt, inventory, and return pages and returned to the Drug Task Force office at 2:43 p.m. on September 15, 2017.

Mr. Serafin testified that he still had not realized that the curtilage box had not been "Xed out". He testified he simply assumed that the warrant was the usual type of warrant he had presented in all the other dozens of cases which included both the residence and the curtilage. Obviously, the other members of the search team made a similar assumption since the curtilage was searched. In other words, all of the members of the search team also made a mistake. Mr. Serafin's testimony regarding the execution of the warrant and his lack of knowledge that the curtilage had not been requested in the warrant is credible.

On September 15, 2017, at 9:39 p.m., Mr. Serafin scanned to PDF the executed warrant and the four receipts, inventory, and return pages and saved the document to his laptop and his SOTA thumb drive. As a package, this document contained all pages necessary to file the search warrant with the clerk of court. Mr. Serafin also filled out the "E-Filing clerical work request," which is a blue, half-sheet of paper that must be attached to the warrant for it to be filed with the court. Although the package was now complete, Mr. Serafin did not send the warrant downtown for filing. Instead, he attached the blue half-sheet to the paper copy of the warrant with a paperclip and placed it in his physical file to be brought with him to Camp Ripley the next day where he was going to participate in statewide police SWAT training courses.

In the early morning hours of September 16, 2017, Mr. Serafin uploaded documents, including the search warrant, into the LETG System, which is the Hennepin County Sheriff's Office document management system.

On September 16, 2017, at 8:43 a.m., Mr. Serafin emailed a copy of his reports, including the signed search warrant package, to Mr. Michael Radmer, a prosecutor from the Hennepin County Attorneys Office. Mr. Serafin testified at the arbitration hearing that he sent this email to ensure that Mr. Radmer would have a copy of the reports and the warrant as he drafted the criminal complaint that weekend against Mr. Holmes, which under the law had to be filed by that Monday.

Mr. Serafin testified that still he did not realize that original warrant had not requested curtilage in the application for the warrant itself. He still assumed that he had properly filled out

both the residence and the curtilage language as he had done in the more than two dozen warrants that he had executed since joining the Drug Task Force. Mr. Serafin is credible in this testimony.

4. Camp Ripley

Mr. Serafin testified that his original intent was to leave for Camp Ripley on the morning of Saturday, September 16, 2017. But first he had to pack, including not only his personal effects, but also equipment for the training scenarios that he would be leading and other materials for the SWAT training. That same morning, Mr. Serafin's seven-year-old daughter suffered an injury and had to be taken to the emergency room which delayed his departure for Camp Ripley. Mr. Serafin testified that the situation that day -- having worked 17-nonstop hours on the Holmes case the day before, then scrambling to pack and leave for Camp Ripley in the morning, only to have his daughter wind up in the hospital -- as "chaos."

Mr. Serafin also testified that at approximately 4 p.m. on September 16, 2017, he went to the county jail and attempted to execute a DNA search warrant by obtaining a saliva swab from Mr. Holmes. The DNA sample would potentially help the county build its case against Mr. Holmes by linking him to the drugs associated with the decedent, Ms. Lane. Mr. Holmes refused to cooperate with the DNA search warrant.

Finally, Mr. Serafin left for Camp Ripley, arriving late on the night of Saturday, September 16. He testified that he brought with him the entire Holmes files, including the executed search warrant package, held together with a paper clip with the blue slip on top. He also brought along case files for other active drug enforcement cases.

Mr. Serafin remained at Camp Ripley until Wednesday, September 20. He and Det. Staaf, who also went with him to Camp Ripley, were busy running three to four SWAT teams through large-scale training scenarios, which Det. Staaf described during the arbitration hearing as stressful. When he was not serving as a trainer, Mr. Serafin testified he acted as the safety officer at the firing ranges and performed other duties as needed. Mr. Serafin testified he had at least one phone conversation with Attorney Radmer while at Camp Ripley, in which he briefed Attorney Radmer on the total amount of narcotics that had been seized from Mr. Holmes' vehicle. He testified that in the course of working on the Holmes case, he and Det. Staaf referenced and utilized the paper file that Mr. Serafin had brought with him to Camp Ripley, including the

search warrant packet. He testified that referencing these hard copies was considerably easier than looking up the PDF files on the computer. In fact, the WiFi reception is not good at Camp Ripley. Mr. Serafin had to go to a particular spot in the field to get proper WiFi and iPhone reception. On Monday, September 18, 2017, Det. Staaf signed the criminal complaint charging Mr. Holmes with 3rd degree murder in the death of Ms. Lane and emailed the signed complaint back to Attorney Radmer.

Mr. Serafin's testimony during the arbitration hearing concerning the above events that took place just prior to going to and at Camp Ripley is credible.

5. Alteration of search warrant

Mr. Serafin brought the Holmes file back with him from Camp Ripley. He realized on or about Thursday, September 21, that the application page from the search warrant packet had gone missing. The missing page had to be replaced before the executed warrant packet could be filed with the court clerk. Mr. Serafin testified he searched his car, duty bag, etc. for the missing page, but could not find it. He testified it was quite stressful realizing he had lost the application page of the warrant.

On September 20, 2017, Heidi Stahnke, a paralegal from the Hennepin County Attorney's Office was working with Assistant County Attorney Radmer on the Holmes case, emailed Eden Prairie Police Records, Mr. Serafin and Det. Staaf requesting the search warrant for vehicles. The Hennepin County Attorney's Office had the original search warrant from September 16 emailed to Mr. Radmer and the case submission from Eden Prairie records. As discussed previously, there was no application for vehicles on the original application and search warrant.

On September 22, 2017, Mr. Serafin testified he had work to do on other drug enforcement cases unrelated to the Holmes case, including the execution of a search warrant on a Minnetonka residence that morning. For this reason, he testified he went very early to the Drug Task Force office at approximately 5:50 a.m. that morning. At this point, he testified he still did not realize that the standard curtilage language had been omitted from the warrant application that he drafted on September 14. Consequently, he testified he opened the "premises template" and tapped through the boxes on the template to create a new application page, this time including the standard curtilage language. He testified he did this because he thought he was

simply creating the exact application page he had created in the original. The judge signs the warrant as the last page of the packet of documents. He testified that because the materials from the warrant drafted on September 14 and executed on September 15 had been saved at multiple locations, he acknowledged that he could have printed and probably should have used a copy of the original application to replace the page that he had lost. However, he testified that at the time he had drafted so many warrants during his time on the Drug Task Force, that he determined that the simplest and fastest way for him to replace the missing page was simply to open up a new application page and "X out" both the residence and the curtilage. He testified that he did that because he thought that is what he had done on the original application and warrant and that is the way he does it. He is credible in this testimony.

Mr. Serafin testified that after creating this new application page which now included the curtilage language, - which parenthetically he thought was exactly the same as the original application - he added it to the original warrant packet and again scanned the packet and saved it to a PDF on his county laptop. He emailed this PDF file to Heidi Stahnke. He then placed the packet in the bin to be filed with the district court clerk, along with the same blue slip that he had completed the night of September 15 and taken with him to Camp Ripley. In carefully observing Mr. Serafin testifying at the arbitration hearing concerning his actions of September 22, 2017, and carefully examining the documentary evidence created, this arbitrator concludes that Mr. Serafin is credible in his testimony on this matter. He still did not know that the original warrant did not include the curtilage request. Mr. Serafin was telling his truth to the best of his ability, that is, the facts that he believed were true even though in fact he had not "Xed" the box requesting the curtilage in the original application. His testimony is credible that he believed that the original application page included the curtilage material. He also is credible in his testimony that while it would have been easier to open up his file and simply print off the first application page, for him and the way he typically prepares a warrant application it was simply easier to print out a new application and "X" the curtilage box, which he believed is exactly what he had done in the first application. Some people work better in the same method that they have always worked. In this case, simply opening up the computer and filing out the first page as he had always done in the many search warrants of this type was easier for him. Mr. Serafin is credible in this testimony.

Between September and November 2017, Mr. Serafin received and responded to a series of emails from Ms. Stahnke at the Hennepin County Attorney's office. In these emails, Ms. Stahnke requested items for the case file in preparation for the prosecution of the Holmes case, including the search warrant for the vehicles at the Holmes residence. Because Mr. Serafin still mistakenly assumed that the standard curtilage language – which specifically references vehicles associated with the property – had been included in the original Holmes search warrant all along, and because he was unaware that there were by then two non-identical versions of the warrant packet, Mr. Serafin believed that he had already provided what Ms. Stahnke was requesting in her emails.

He testified at the arbitration hearing that he responded to the September 22, 2017, email from Ms. Stahnke, the October 5, 2017, email from Ms. Stahnke, and the November 29, 2017, email from Ms. Stahnke requesting for a third time the "SW [search warrant] for vehicles." Mr. Serafin responded on November 30, 2017, stating "the sw for Holmes residence included the vehicles under the curtilage…". Mr. Serafin testified he thought that the material he sent included the curtilage warrant, which he thought was in the original warrant.

Again, carefully observing Mr. Serafin during his testimony this arbitrator concludes that he is credible in telling the truth as best he could, even though what he told Ms. Stahnke was not, in fact, true. This does not make him a liar. It makes Mr. Serafin a person who thought he was telling the truth, but simply was mistaken. He is credible in this matter.

6. *Brady/Giglio* Memorandum of Understanding

On December 8, 2017, the Hennepin County Attorney's Office, the Eden Prairie Police Department, and the Eden Prairie City Attorney's Office entered into a Memorandum of Understanding regarding the prosecutors' obligations under *Brady/Giglio*. Under the MOU, the Eden Prairie Police Department is required to advise the Hennepin County Attorney's Office and the City Attorney of any administrative files with sustained findings of misconduct against police officers. If an officer with sustained findings is called to testify, the Hennepin County Attorney's Office and the City Attorney will then review the file and determine whether the findings must be disclosed to the defense to satisfy the prosecutor's *Brady/Giglio* disclosure obligations. On December 13, 2017, then Chief Jim DeMann sent an email to all Eden Prairie police officers,

including Mr. Serafin, explaining the MOU. As of December 13, 2017, if not earlier, Mr. Serafin knew that any misconduct on his part could raise *Brady/Giglio* concerns.

7. On January 11, 2018, Assistant Hennepin County Attorney Radmer emailed Mr. Serafin asking him to meet regarding the Holmes case.

On January 29, 2018, Mr. Radmer emailed Mr. Serafin again, stating: "Travis – there are two search warrants for Holmes' residence. Can you put a supp in detailing why that is?" The next day, Mr. Serafin scanned in a copy of the altered search warrant that had been filed with the clerk of court indicating that he investigated Mr. Radmer's request that day. On February 13, 2018, two weeks after his first request, Mr. Radmer emailed Mr. Serafin again asking for a supplemental report explaining the two search warrants.

A short time later on February 13, 2018, Mr. Serafin emailed Mr. Radmer, stating "let me know if it makes sense or we need it tweaked." He attached the requested supplemental report. In the February 13, 2018, supplemental report, Mr. Serafin states for the first time that he had two search warrants signed by Judge Quam. The supplemental report states:

> During the investigation, I had two versions of a warrant for Holmes person and the property at 3316 4th Ave. s#1 in Minneapolis. The warrants were reviewed and signed by Judge Quam of the Hennepin County District Court. I had both versions signed at the same time. The version the vehicles and outbuildings associated with the property was the final version of the warrant. That is the version that the warrant was executed under and filed with Hennepin County by me.

Mr. Serafin testified he was aware that the supplemental report would be part of the record in the Holmes homicide case. He testified that based on his recollection at the time, the supplemental report was his best explanation for the "two search warrants" that Attorney Radmer had asked him about, although he acknowledged during the arbitration hearing that the report was not accurate. He testified that he was not deliberately untruthful, nor was he trying to deceive the court to violate Mr. Holmes' rights as a criminal defendant.

In analyzing this situation, the arbitrator paid particularly careful attention to Mr. Serafin's testimony. What did he mean when he said "I had both versions signed at the same time" by Judge Quam. Was he being deliberately untruthful? Was he trying to deceive the court or Mr. Radmer? Was he willing to violate Mr. Holmes' rights as a criminal defendant? It must be remembered that it was now almost four months since the execution of the original search

warrant without the curtilage language included. Mr. Serafin was still operating as a highly efficient and capable member of the Drug Task Force. Did he intentionally lie in his supplemental report? In carefully observing and analyzing his testimony, this arbitrator concludes that he is credible, even though he was incorrect in his supplemental report. He was confused. But he was not lying.

8. False testimony?

On February 23, 2018, Mr. Serafin testified at a pretrial constitutional hearing in the Holmes case in front of Judge Fred Karasov. The purpose of the hearing, as is typical in criminal cases, was to determine whether the evidence seized could be presented at trial, in other words, was the search and seizure constitutional. Mr. Serafin was called to testify at the suppression hearing (also known as a *Rasmussen* hearing or *Franks* hearing in Minnesota) in the Holmes case. Mr. Serafin met with Attorney Radmer prior to his testimony. Det. Staaf, was also scheduled to testify at the same hearing and was present. Assistant Hennepin County Attorney Radmer continued to refer to two separate search warrants and did not seem concerned about the outcome of the hearing. During his testimony at the suppression hearing, Mr. Serafin was asked about the two different versions of the Holmes search warrant, one with the standard curtilage language and one without. At the arbitration hearing, Mr. Serafin testified he still did not remember losing and replacing the application page from the warrant. Mr. Serafin provided the same explanation in his testimony as he had in the supplementary report requested by Assistant Hennepin County Attorney Radmer – which Mr. Serafin during his testimony at the arbitration hearing acknowledged was inaccurate – i.e. that he had presented two warrants to Judge Quam and had them both signed. Mr. Serafin testified that at no time was he being deliberately untruthful, nor was he trying to deceive the court or to violate Mr. Holmes' rights. Toward the end of the hearing, Judge Karisov noted that the two version of the warrant including signatures by Mr. Serafin and Judge Quam, were identical except for the application page. The City of Eden Prairie contends that Mr. Serafin knowingly and intentionally falsely testified that he first realized that his draft warrant did not contain vehicle and curtilage language when he was enroute to get the warrant signed. The City of Eden Prairie further alleges that he also falsely testified that he then stopped at the VOTF office near the government center and created the

"second" version of the warrant that included vehicle and curtilage language. The city's later investigation revealed that this was false testimony. The first investigation by Captain Wyffels proved that Mr. Serafin never entered the VOTF office on September 14, 2017.

The City of Eden Prairie also argues that Judge Karisov when he asked Mr. Serafin why he would give Judge Quam two rather than the "right one", Mr. Serafin responded, "I handed him them both. I don't know why I did that." This the City of Eden Prairie contends was an intentional lie. Later in his testimony, Mr. Serafin changed his testimony. He testified that he did not know whether he had one warrant signed or two.

Immediately after the suppression hearing, Mr. Serafin, Det. Staaf, and Assistant Hennepin County Attorney Radmer met again in the County Attorney's Office, upstairs from the courtroom. Det. Staaf recalls that Mr. Serafin appeared genuinely flustered and unable to understand what had just happened during the hearing. According to Det. Staaf, Attorney Radmer asked Mr. Serafin if he had falsified the warrant and Det. Staff testified that Mr. Serafin provided "a genuine no". Assistant Hennepin County Attorney Radmer then told Mr. Serafin not to worry, that everything would be fine.

This testimony before Judge Karisov is troubling. Did Mr. Serafin, as alleged by the City of Eden Prairie, give intentionally false testimony before Judge Karisov? Again, in observing Mr. Serafin's testimony during the arbitration hearing, he came across as credible. In analyzing the documents provided, they also support his credibility. Why? Between January 29 and February 13, Mr. Serafin was asked to write up a supplemental report explaining the two search warrants. To the best of his recollection, he wrote the supplementary report on February 13, 2018, stating he had two versions of the warrant signed by Judge Quam. This turned out to be incorrect, but that is what he could recall from a warrant he had had signed more than four months ago by Judge Quam. He knew between then and February 23, 2018, the date he testified at the *Rassmussen/Franks* hearing, that there were going to be questions about the warrants. He could have manufactured an explanation, but he did not. He was genuinely confused in his testimony because he couldn't remember and because he thought he was telling the truth to Judge Karisov. After the hearing, he was rattled. Yet even Assistant County Attorney Radmer told Mr. Serafin not to worry and that everything would be fine. In observing Mr. Serafin during the arbitration hearing about his testimony before Judge Karisof and his supplemental report, this arbitrator concludes that he is credible. While he was wrong in his testimony before Judge

Karasov about having two warrants signed, he was wrong because he was mistaken not because he was intentionally giving false testimony. He just did not remember. He believed he had offered two warrants. Why? In his mind he remembered losing the first page of the packet, i.e. the application for the warrant. Perhaps his "two warrant" idea came from that memory. This arbitrator concludes that during his testimony before Judge Karasov he was credible, but wrong. Also, during his testimony at the arbitration hearing trying to explain this confusion he was credible.

9. After the hearing before Judge Karisov

After the hearing in front of Judge Karisov and on the same day, February 23, 2018, Mr. Serafin sent Assistant County Attorney Radmer three emails concerning his testimony. He understood there had been discrepancies in his testimony, and that based on *Brady*, when an officer lies it can impact his or her credibility if he or she is called to testify in future cases. However, Mr. Serafin testified that by asking about *Brady* he was not admitting that he had lied or given false testimony. Mr. Serafin stated that the problems with his testimony were "eating [me] up". Attorney Radmer did not respond to Mr. Serafin's emails of February 23, 2018.

That night, Saturday, February 24, 2018, at 1:28 a.m., Mr. Serafin was unable to sleep and went into his files looking for an explanation for why two different versions of the Holmes search warrant existed. At 1:28 on the morning of February 24, Mr. Serafin sent Mr. Radmer another email stating in part:

> …I looked back at the case and dug deeper into my actions on [September] 14th when the warrant was signed and the 15th when it was executed. I testified that I had two warrants signed when as I recalled the events when reviewing the case further (after Rasmussen hearing) I may have only had one warrant signed the filed warrant…. In my haste to the documents for charging the first page of the application without the curtilage was inadvertently added to my file by me (due to multiple drafts of my working file) and I corrected the issue with the correct one to be filed with the court (Page 1 with curtilage) with the supporting documents of the search warrant.

Mr. Serafin testified the "multiple drafts in my working file" was in reference to drafts of documents from the numerous other active investigations that Mr. Serafin was working on, which were kept on the same county laptop and thumb drive as the Holmes documents. At the time of this email, although Mr. Serafin was still trying to piecing together the details of what

had taken place, he realized that Judge Quam had only signed one warrant, and that a new application page with the curtilage language had been added before the warrant package was filed with the court.

Mr. Serafin and Det. Staaf had multiple phone conversation over the weekend, during which Mr. Serafin expressed that he was trying to figure out what had gone wrong with the Holmes search warrant. Mr. Serafin also attempted to call Attorney Radmer numerous times and left him several voicemail messages. Mr. Serafin testified he was very stressed about this matter.

On Monday, February 26, 2018, Mr. Serafin met with Attorney Radmer at his office. Mr. Serafin showed Attorney Radmer the different versions of the Holmes warrant that were saved on his laptop, including timestamps that show when the different versions of the warrant had been created, relative to the execution of the warrant on the Holmes residence. Attorney Radmer asked Mr. Serafin if he had done this intentionally. Mr. Serafin told Mr. Radmer he had not. Attorney Radmer then replied that "we will take care of this."

Mr. Serafin and the Union point out that the record shows that after the suppression hearing in the Holmes case, Attorney Radmer discussed the issues concerning Mr. Serafin's testimony with Judge Karisov, with Mr. Holmes' defense attorney, and with Attorney Radmer's supervisors at the Hennepin County Attorney's office, including Managing Attorney Al Harris and Senior Attorney Gretchen Gray-Larson. All agreed that although Serafin admitted a mistake, there was nothing "nefarious" about his conduct. The Hennepin County Attorney's office did not make a complaint or take any other action against Mr. Serafin at that time. Just as the attorneys at the Hennepin County Attorney's Office concluded that at that time there was nothing "nefarious" about Mr. Serafin's confusing, mistaken and incorrect testimony, this arbitrator agrees. Mr. Serafin was by then confused and stressed that he had performed so poorly before Judge Karasov. He has always held himself to high standards and was upset with himself for performing so poorly in his testimony before Judge Karasov. He is a person who is used to performing at a very high level of professionalism and here he clearly has done very poorly. But this poor performance does not make him a liar. It makes him a human being who made a costly mistake. He realized this mistake not only cost him his unblemished reputation as a highly competent police officer, it also potentially put in in jeopardy of being labelled a *Brady* officer, no status any police officer wants. His testimony on this matter is credible. His poor performance before Judge Karasov flowed out of his lack of remembering what happened in the initial

drafting of the application for the search warrant, not from intentionally lying or falsely testifying. I find him credible in his testimony about this matter.

On March 16, 2018, while the motion to suppress was still pending, Mr. Holmes plead guilty to a count of first-degree drug sales. Mr. Holmes admitted to being in possession of more than 10 grams of heroin, with intent to sell or distribute the drugs to others.

10. Judge Karisov's letter to Chief DeMann

On March 29, 2018, Chief DeMann received a letter from Judge Karisov raising concerns about the testimony that Mr. Serafin had given about the Holmes search warrant at the February 23, 2018, suppression hearing. On April 6, 2018, Chief DeMann initiated an internal affairs investigation. He notified Mr. Serafin of Judge Karisov's letter and placed Mr. Serafin on a special duty assignment. While on his special duty assignment, Mr. Serafin continued to work on reports and other administrative tasks for his drug enforcement cases, as well as providing training and school presentations on behalf of the Eden Prairie Police Department. This letter from Judge Karasov was the beginning of a devastating reality for Mr. Serafin. It put in motion a number of terrible consequences for him. When a Chief of Police receives such a letter from a highly respected judge it can have very serious consequences, just as it did in this case. This letter began to color the entire investigation and laid the foundation for a series of incorrect conclusions by various decision makers which has had devastating consequences to Mr. Serafin.

11. First Administrative Investigation

On April 6, 2018, after receiving Judge Karisov's letter, Chief DeMann authorized an internal administrative investigation into Mr. Serafin's conduct.

Retired Eden Prairie Police Investigators Al Larson and Mike Bosacker were assigned to conduct the investigation. Capt. Bill Wyffels, who has extensive education, training, and experience in computer forensics, was tasked with conducting a forensic investigation into Mr. Serafin's electronic devices. All the investigators and Mr. Serafin understood this was very serious.

12. Serafin Interview

Mr. Larson and Mr. Bosacker interviewed Mr. Serafin as part of the investigation. Mr. Serafin was given a *Garrity* warning and understood that he was required to be truthful in his statement to Investigator Larson. Mr. Serafin testified he was truthful to the best of his ability at all times.

At the end of the interview with Investigator Larson, Mr. Serafin read the following prepared statement:

> "Ok. Um in mid-September I was reviewing the documents that I usually do for a murder, or I was reviewing the documents for a murder case. Um, at that time I found that I could not locate the cover page of the search warrant that had already been served. I reviewed my case file but could not locate the page. I ended up printing a new cover page and the language that I usually or normally use for the original page and submitted that one for filing. The warrant had already been sent through the Records system and had been forwarded to the Hennepin County Attorney's Office as part of the case file. When I testified in court to the best of my recollection at the time the issue arose of the possibility of two warrants had been served because the language of the file warrant [was] different from the warrant provided to the county attorney. I became confused in my testimony and incorrectly testified that two warrants must have been served. Immediately following my testimony, I realized the error in the warrants and reviewed my records. I continued to review those records and I discovered my error, my mistake regarding the warrants and immediately disclosed those discrepancies to the county attorney who was prosecuting the case. I next disclosed the error to Sergeant Chris Wood of the Eden Prairie Police Department. After I advised both of them, they advised me it was fine and to not worry about it and mistakes happen. The error was an unintentional mistake on my part and at no time was I intending to intentionally deceive the county attorney, defense or court as a whole, just as I stated to the county attorney when I advised him of the mistake."

13. Outcome of First Investigation

On April 30, 2018, Mr. Larson and Mr. Bosacker submitted their report to Chief DeMann. On May 31, 2018, Chief DeMann issued a letter to Mr. Serafin detailing the sustained findings from the investigation. After an appeal by Mr. Serafin, City Manager Rick Getschow slightly modified and affirmed the findings in a letter dated July 25, 2018. The city sustained the following findings: (1) Mr. Serafin knowingly changed the probable cause portion of the warrant by adding the VOTF language after the judge had signed the warrant; (2) Mr. Serafin was untruthful stating in his February 13 supplemental report and in his February 23 testimony that

he had two warrants signed by Judge Quam; and (3) on September 15, a search of vehicles occurred during the execution of a warrant without authorization in the warrant.

As a result of the sustained findings, the city removed Mr. Serafin from the Drug Task Force and reassigned him to patrol division. It also removed Mr. Serafin from a secondary assignment, including the Drug Task Force and required him to complete ethics training and work with a supervisor on future search warrants. The July 25 letter also informed Mr. Serafin that, pursuant to the MOU, the sustained findings would be shared with the Hennepin County Attorney's Office and with the city prosecutor's office. The letter explicitly states: "if you cannot fulfill your duty to testify in court as a result of the sustained findings, you have 24-hours to notify your sergeant of this and you may be subject to termination."

14. Hennepin County Attorney's Office Review and Decision

Chief DeMann then shared the sustained findings with the Hennepin County Attorney's Office. In August and September 2018, Hennepin County Attorney's Office Supervising Attorneys Ms. Marlene Senechal and Mr. Al Harris and Chief Criminal Deputy Attorney David Brown all reviewed the city's administrative investigation file and later consulted with Hennepin County Attorney Mike Freeman. They concluded that Mr. Serafin had intentionally altered the search warrant in September 2017 and provided untruthful testimony in February 2018. Because of the serious nature of this conduct, they determined that the sustained findings would need to be disclosed to the defense in every case that Mr. Serafin was involved in going back to September 22, 2017 (the date on which he allegedly falsified the warrant) and in any future case in which Mr. Serafin may be called as a witness. The Hennepin County Attorney's Office determined that it cannot permit Mr. Serafin to ever be called as a witness in any case prosecuted by that office. As Mr. Brown testified, this is an "extreme step" and one that the Hennepin County Attorney's Office had never taken before in response to officer misconduct.

Mr. Brown communicated this decision to the city in a letter to Chief Greg Weber dated October 11, 2018. As detailed in this letter and as a result of Mr. Serafin's conduct, the Hennepin County Attorney's Office dismissed five (5) pending cases, invited motions to vacate seventeen (17) convictions with the intention of dismissing them, dismissed eight (8) cases that had been sent to diversion, and cancelled four (4) active warrants and dismissed the cases. In fourteen (14) other cases where Mr. Serafin was a nonessential witness, the Hennepin County Attorney's

Office determined that it will have to disclose the sustained findings of discipline to the defense. As Mr. Brown testified, many of these cases involved very serious felonies. In addition, the Hennepin County Attorney's Office referred the matter to the McLeod County Attorney for consideration of criminal charges against Mr. Serafin.

It is understandable that the Hennepin County Attorney's Office might conclude, based on the various investigations and conclusions of the internal investigation of the City of Eden Prairie that Mr. Serafin intentionally altered the application page of the warrant and intentionally lied in his testimony before Judge Karasov. But this arbitrator has concluded he did not intentionally and knowingly alter the application for the warrant, not did he intentionally lie during his testimony before Judge Karasov. The investigators reached incorrect conclusions, the City Manager relying on those incorrect conclusions sustained the findings. Then the Hennepin County Attorney's Office, relying on the incorrect conclusions of the City of Eden Prairie, labeled Mr. Serafin a *Brady* officer. In the judgement of this arbitrator Mr. Serafin should not be labeled a *Brady* officer. Mr. Serafin is credible in this matter.

15. Second Administrative Investigation

In response to the October 11, 2018 letter from Mr. Brown, recently appointed Chief Weber opened a second administrative investigation to determine whether Mr. Serafin could continue to fulfill the essential duties of his position as a police officer for the city if he could no longer testify for the Hennepin County Attorney's Office. Capt. Wyffels was again assigned to conduct this second investigation. During his second investigation, Capt. Wyffels learned that the Ramsey County Attorney's Office also had dismissed two felony cases in which Mr. Serafin was a material witness, because of the search warrant issue on the Holmes case. And the Ramsey County Attorney's Office, apparently premised on the actions of Hennepin County decide that Mr Serafin would not be called to be a witness again.

The October 11, 2018, letter from Chief Criminal Deputy Attorney David Brown to now Chief Weber determined that Mr. Serafin had intentionally made material alterations to the Holmes search warrant after it had been signed by a judge and had given false testimony concerning the changes to the warrant. Mr. Brown's letter stated that, based on these conclusions, the Hennepin County Attorney would dismiss other felony cases that Mr. Serafin

had investigated and would no longer permit Mr. Serafin to appear as a witness in any future Hennepin County Attorney cases.

On or about the same day, October 11, 2018, Attorney Brown gave a press conference announcing the actions that his office would be taking against Mr. Serafin. Because the city had already made a final decision regarding discipline, i.e., the written reprimand issued by Chief DeMann and sustained by City Manager Getschow, Attorney Brown treated the information from Mr. Serafin's Internal Affairs investigation as public data and discussed the investigation openly at the press conference. In response to a question from a reporter at the press conference, Attorney Brown said he believed the city was "in the process of terminating" Mr. Serafin.

The letter to Chief Weber from the Hennepin County Attorney's Office now has destroyed Mr. Serafin's reputation as a very fine police officer. He is now not only labelled a *Brady* officer, and it has now been determined that he will never be called by that office to testify in court. Other prosecutor's offices followed suit. Yet all of this is based on the incorrect conclusions that Mr. Serafin knowingly and intentionally altered a search warrant and lied in court testimony, which this arbitrator has determined the City of Eden Prairie has not proven by clear and convincing evidence. Mr. Serafin is credible in his testimony.

16. City Decision to Terminate

On October 26, 2018, Capt. Wyffels submitted the results of his second investigation to Chief Weber. Chief Weber reviewed the investigation report and consulted with the City Manager, who has the authority to hire and fire city employees.

On October 30, City Manager Getschow notified Mr. Serafin of the city's intent to terminate him. In a letter dated November 1, 2018, Chief Weber informed Mr. Serafin of the sustained findings from Capt. Wyffels' second investigation and terminated his employment effective November 6, 2018.

The Union alleges that this is double jeopardy since Mr. Serafin had already been punished. But this is not double jeopardy. This is an entirely new situation.

17. Grievance

On November 9, 2018, the Union (LELS) filed a grievance on the termination of Mr. Serafin. This arbitrator ruled in a Motion on September 9, 2019, that the matter was substantively arbitrable and that the "just cause" standard applies to Mr. Serafin's termination.

18. Return of Forfeiture Funds

Additionally, fall-out from Mr. Serafin's conduct included the return of forfeited assets to alleged criminal defendants. On February 2019, Hennepin County Attorney's Office decided to return all the funds it received as a result of civil forfeiture on cases in which Mr. Serafin's involvement resulted in dismissal. Hennepin County Attorney's Office encouraged the drug taskforce to do the same. On March 6, 2019, the Drug Task Force governing body voted to follow Hennepin County Attorney's lead and return $21,904 + 294 representing 70% of the fair market value of the seized firearms.

19. McLeod County Decision

In May 2019, McLeod County Attorney's Office announced the decision that it was declining to file criminal charges against Mr. Serafin. This was not because it did not believe Mr. Serafin did not commit a crime. Rather, the office determined that it could not successfully pursue criminal charges because of Mr. Serafin's compelled *Garrity* statement given during the first administrative investigation. The McLeod County Attorney stated this result was "distasteful for several reasons". The Mc Cloud County Attorney was concerned about an "officer who falsified an application for a search warrant and does not face criminal punishment. An officer intentionally gave false testimony and cannot be charged."

While the evidence presented at the arbitration hearing was the report of the McLeod County Attorney's office, it is clear that their report was based in part on the incorrect conclusions of the internal investigation by the City of Eden Prairie. This report cannot be relied upon as proof by clear and convincing evidence that Mr. Serafin did falsify a search warrant or give false testimony. In fact, this arbitrator holds, as a matter of fact, that he did not do either and that the City of Eden Prairie has not proven by clear and convincing evidence that Mr. Serafin has done so.

20. Polygraph Examination

On October 22, 2018. Mr. Serafin underwent a polygraph examination at the request of his criminal defense attorney who was handling the case during the McLeod County investigation. The examination was conducted by Steven Crow of Diversified Polygraph Services, Inc., who has received training and has conducted more than 4,000 such examinations during 13 years in the field. Mr. Serafin's polygraph examination included the following questions and answers:

> Q: Did you re-draft page 1 of the Holmes warrant to mislead or lie to the county or county attorney?
> A: No.
> Q: Did you intentionally misrepresent information about page 1 of the Holmes warrant to the court or authorities?
> A: No.

Based on the resulting polygraph, Mr. Crow issued a report stating that "it is this examiner's opinion that Mr. Serafin did not illustrate a significant response to the above listed questions when he answered 'No,' indicating his answers were truthful.

Assistant County Attorney Radmer during the criminal investigation told the investigator that he "believed this to be clerical error and not a deliberate lie."

The City of Eden Prairie contends that a polygraph examination cannot be relied upon. While that may be true, and is the reason that courts typically reject such evidence, nevertheless they are used in sensitive government job applications and by police agencies to eliminate suspects. "Some arbitrators reject lie detector test results on the basis that it is the arbitrator's duty as a factfinder to determine the credibility of the witnesses." Elkouri & Elkouri, *How Arbitration Works Sixth Edition* at 420. However, "[a]rbitrators are not totally inhospitable to the receipt, consideration and evaluation of evidence obtained by use of the polygraph." Id. at 421, citing *Avis Rent A Car Sys*., 85 LA 435, 439 (Alsher, 1985). In this case Mr. Serafin passed the lie detector test. This further supports previous conclusions I have arrived at that Mr. Serafin is credible in these matters.

21. The Deleted emails

The City of Eden Prairie concludes that by deleting the emails it proves, ipso facto,

that Mr. Serafin is guilty of all he is accused of doing. When asked at the arbitration hearing why he deleted the emails Mr. Serafin testified "I do not know". There are other conclusions one can reasonably come to why he deleted the emails related to his mistake. He is embarrassed by his mistake. He is used to being among the very best. Yet, he made a mistake. He deleted the email before the investigation of his mistakes began. He was embarrassed and wanted to clean up his file. While he should not have deleted the emails, it can be explained by a conclusion other than guilty of all the allegations against him.

In the four decades I have been doing work as an arbitrator, this is one of the most challenging cases of my career. Mr. Serafin has been thought of as "the hardest working" officer in the Drug Task Force. A man who by made an initial error in the search warrant and then was accused of falsifying and lying. The case involves a police officer with a sterling reputation. A police officer who was highly valued by his supervisors and by his coworkers. A police officer who had never been disciplined in his 17-years on the job.

The City of Eden Prairie concludes that Mr. Serafin is guilty of knowingly and intentionally altering an application for search warrant and intentionally lying at the hearing before Judge Karasov, and now has been classified as a *Brady/Giglio* officer who the Hennepin County Attorney's Office, the City of Eden Prairie Prosecutor's Office, and the Ramsey County Attorney's Office will no longer call to testify in court. The City of Eden Prairie is a police department which justly and proudly values professionalism, honesty and integrity. A police department which initially punished Officer Serafin by removing him from the Drug Task Force and putting him back on patrol. After receiving notice from the Hennepin County Attorney's Office that Mr. Serafin would no longer

called to be a witness in any of the Hennepin County Attorney cases, opened a new investigation and ultimately, because he can no longer fulfill an essential function of his job, i.e., testifying in court, terminated Mr. Serafin.

The citizens of the state of Minnesota are also rightly concerned because a number of extremely serious criminal cases have been dismissed due to an officer of the law allegedly falsifying a search warrant, lying about a warrant under oath, and no longer being able to testify in court.

The basic question before this arbitrator is to determine whether just cause exists to terminate Officer Serafin because he can no longer testify in court in Hennepin County, Ramsey County, or the City of Eden Prairie. The basis of the respective counties' decisions to not permit Mr. Serafin to testify in court begins with a mistake. The mistake is Mr. Serafin's failure to" X-out" a box that called for search of vehicles and curtilage. All of the other allegations flow from that admitted mistake.

If the evidence, testimony, and judgement on credibility led to the conclusion that Mr. Serafin, in fact, falsified a search warrant and lied about the warrant under oath then there is no question he should and must be terminated. The foundation of policing lies in the ability of prosecutors and "We the people" to rely on truth-telling by its police officers. Today's policing is centered on a police officer being the guardian of the people. This requires "we the people" to trust the police. Falsification and lies by police do great harm to the safety and protection of the people. The Constitution, the courts and the prosecutors act as guardians for the professionalization of the police as guardians of "we the people". After all, the very purpose of the police is to protect and serve the people, and that includes making sure that the Constitutional rights of the accused are also protected. If I thought for one moment that Mr. Serafin had falsified the search warrant and had lied under oath, the inevitable conclusion is that he should never be allowed to testify in court. And I would uphold the termination on the basis that just cause exists to show he could not do an essential function of his job, i.e. testify in court. But I have come to the conclusion that Mr. Serafin made a mistake. He did not knowingly and intentionally alter the application for the search warrant by replacing a lost page. He replaced the page honestly, believing he was simply replacing an exact similar copy as the original. He did

not lie in his testimony before Judge Karasov. Mr. Serafin could not remember what happened and was testifying to the best of his very confused memory. He should not have deleted the emails. Yet, he testified honestly at the arbitration hearing when he said "I don't know" why I deleted the emails. The City of Eden Prairie did not prove by clear and convincing evidence just cause to terminate Mr. Serafin. Essentially, he is a credible person and testified credibly.

I reach this conclusion from: 1) the testimony; 2) the background of Mr. Serafin and his 17 years of very honorable service as a police officer; 3) the "chaos" on the days in question when he prepared the application for a warrant and executed the warrant; 4) the evidence offered at the arbitration hearing; 5) the credibility of Mr. Serafin; 6) the mistake that was made in the second investigation by the City of Eden Prairie Police Department; 7) the reality of the pressure the letter from Judge Karasov put on the City of Eden Prairie and the Chief of police; 8) the incorrect conclusions of the City of Eden Prairie in its second investigation; 9) the incorrect conclusions the City Manager of Eden Prairie which came about by relying on the incorrect conclusions of the second investigation; and, 10) the ultimate incorrect conclusions and incomplete investigation by the Hennepin County Attorney's Office, that there is not just cause to terminate Officer Travis Serafin.

Even though he has been declared as a *Brady/Giglio* officer that does not, in and of itself, take away his rights under the just cause provision of the contract. The majority opinion of arbitrators in Minnesota is that simply because a police officer has been declared a *Brady/Giglio* officer by a prosecutor(s) does not mean the officer can be terminated without just cause per a CBA. In fact, the evidence in this case shows there are other *Brady/Giglio* officers presently working in the Eden Prairie Police Department. Because the County Attorneys in Hennepin County and Ramsey County and the prosecutor in the City Attorney's Office in Eden Prairie determined they would no longer call Mr. Serafin to testify, this does not take away his contractual right per the 49ers Article, as agreed to by the City of Eden Prairie and LELS, not to be terminated except for just cause.

Based on all of the above, including five days of intense testimony, two extensive post-hearing briefs and two reply briefs, it is my conclusion based on the testimony of Mr. Serafin and the various witnesses, that the City of Eden Prairie has not proven by clear and convincing evidence that just cause exists to terminate Mr. Serafin.

It is this arbitrator's conclusion that rather than being a liar, and a falsifier of a search warrant, Mr. Serafin is a credible witness who made a mistake. The mistake was failing to "X out" a box from a drop-down menu on the application page of the packet for a search warrant. He failed to recognize that, and he continued to fail to recognize that until a series of dreadful consequences occurred which was based on a simple human mistake. He did not lie, he did not falsify, and he credibly testified at the arbitration hearing.

This arbitrator has no authority to tell the Hennepin County Attorney's Office, the Ramsey County Attorney's Office, or the City of Eden Prairie City Attorney's Office what witnesses they may call. But he does have the authority to opine that Mr. Serafin has faced a grave injustice in being classified as a *Brady/Giglio* officer. He should not be classified as an incredible officer. Just the opposite. His entire professional experience as a police officer, his hard work, his training, the very high opinion that his fellow officers hold of him, and his testimony show he is highly credible and capable. If this arbitrator had the authority to order the Hennepin County Attorney's Office, the Ramsey County Attorney's Office, and the City of Eden Prairie Attorney's Office to remove its label of *Brady/Giglio* as applied to Officer Serafin and change each decision to no longer call Officer Serafin to testify, I would do so. But I do not have that authority. On the other hand, I would hope that Officer Serafin would have an opportunity to continue his work as a skilled and respected police officer in the City of Eden Prairie or in some other city he chooses to work. At least if he is called in a serious case for which he has critical evidence, such as murder in the first degree case, and the defense attorneys are given the information about his unfortunate mistake in the Holmes search warrant, he can use some of the language in this arbitration hearing to let the judge and jury know that at least an arbitrator who heard the facts in-full has concluded that Officer Serafin is a highly credible police officer who was terminated without just cause. It is ordered that Officer Serafin be returned to his job on or before April 1, 2020.

On the other hand, there is no question that Officer Serafin's mistake caused no end of problems for himself, the City of Eden Prairie, the Hennepin County Attorney's Office, and the Ramsey County Attorney's Office, and the citizens of Minnesota. It likely came about because of the chaos he was facing for two days in a row. Yet, just as a doctor who makes a mistake during a chaotic day, albeit unintentional mistake, must still face the consequences of possible serious injuries or death which he/she might have caused to a patient; so also, must Officer Serafin face

the very serious consequences his unintentional mistake caused. Because this serious mistake led to so many unfortunate consequences, he will not receive any back pay. His discipline of termination will be lowered to a long-term suspension without pay for the entire time he has been out of work with the Eden Prairie Police Department. The Grievance is granted in part (the Termination is overturned) and denied in part (he is Suspended without pay).

The remedy to rectify this termination without just cause is to order him to be returned to work, without backpay, as a police officer with the Eden Prairie Police Department, effective immediately. He will return to work with no loss of seniority.

As an addendum, it is the suggestion and hope of this arbitrator, who has been dealing with this matter for more than a year by various conference calls; motions; multiple days of hearings listening to testimony and closely examining documents; Post-hearing briefs; Reply briefs; and many, many days of study, consideration and writing of this decision that the *Brady/Giglio* label be lifted by each prosecutor based on the facts, based on justice and based on the law. If I had the authority to do so, I would lift the *Brady/Giglio* label. This is a good man and a good police officer who made an incredibly consequential mistake; but a mistake, nevertheless. He did not lie, falsify or knowingly and intentionally do anything to bring disrepute to himself, the City of Eden Prairie Police Department, the Hennepin County Attorney's Office nor the other prosecutors' offices. Judge Karasov was right when he told Officer Serafin's father that he hoped Officer Serafin did not get in any trouble. But Judge Karasov was wrong in the fact that Officer Serafin did get into a whole lot trouble because of his mistake. Assistant Hennepin County Attorney Radmer was right when he concluded that there was nothing "nefarious". The initial Investigators Larson and Bosacker were equally correct when they said in their investigative report: "The question to be reached is, did [Officer Serafin] knowingly change the search warrant to now include the outbuilding and vehicle after the search had been conducted, or was he merely replacing the [application] page that was lost?" (See page 57 of this Opinion & Award.) This arbitrator has concluded he replaced the page that was lost. What Officer Serafin did was make an unintentional mistake and did not recognize what his mistake was for many months. He did not lie or falsify during the entirety of this matter.

March 12, 2020

Date

Joseph L. Daly

Arbitrator