
IN THE MATTER OF:

BMS Case # 24POA2021 Kuske

Law Enforcement Labor Services, Union.

and

DECISION AND AWARD

City of Edina, Employer.

APPEARANCES:

For Law Enforcement Labor Services:

Renee Zachman

For City of Edina:

Joan Quade

Arbitrator:

Debra J. Heisick

DATE OF AWARD:

March 6, 2025

FACTS

This case arises out of an incident that occurred on Friday, September 29, 2023 involving two Edina off-duty police officers. The officers and their spouses drove from a nearby Oktoberfest celebration to Dusty's bar in Minneapolis. While parking his car, Sergeant Boosalis struck the parked car in front of his car. The contact moved the car in front of his forward then backward. This occurred at 18:42 (6:42 pm). Passenger Sergeant Kuske jumped out of the car and headed into the bar. Sgt. Boosalis took a very quick look at the car in front of his, a one to two second look in the dark, then went into the bar. Sgt. Boosalis was standing at the side of his car when he glanced toward the cars to look for damages. Mrs. Boosalis looked at the cars for a longer period of time. The group is joined by other members inside the bar who arrived in separate cars.

The group includes Edina PD Sgt. Boosalis, Mrs. Boosalis, Edina PD Sgt. Kuske, Mrs. Kuske, Former Edina PD Lt. Dan Conboy, Brian Conboy, brother of Dan Conboy and others, including a retired out-of-state police officer.

They order food and drinks. Bartender/cook Marianne serves them and cheerfully cleans-up a drink spilled by them. She is friendly. The officers' group occupies a large table in the bar, but some members also moved to the bar at various times throughout their stay.

There is video tape evidence of the car accident and the actions inside and outside the bar, absent a blind spot in the front entrance. There is no sound.

The group enjoyed drinks and sandwiches at Dusty's Bar for about one hour.

When bartender Dominic¹ left the bar to serve the patrons on the outside patio, two regular patrons who witnessed the accident inform him of it. This occurred at 19:21. Dominic then took photographs of the cars involved in the accident and realizes that the car struck by Boosalis is owned by the other bartender/cook, Marianne. He then talks to Brian Conboy, a member of the group that he had conversations with earlier. This occurred at 19:35. This is 53 minutes after the group arrived at the bar. He shows Brian Conboy the photographs on his cell phone. Brian Conboy then walks to a table where the larger group had gathered, including Sgt. David Boosalis, Dan Conboy, and Katie Kuske, and he talks to Dan Conboy while pointing to Marianne. Sgt. Boosalis then walks to the bar and talks to Sgt. Kuske and Mrs. Boosalis. This conversation between Sgt. Boosalis and Sgt. Kuske took place over 96 seconds. The union contends that Kuske could not hear most of the conversation between Boosalis and Mrs. Boosalis and that Kuske was interacting with someone else at the end of the bar during this time. That does appear to be the case for part of this time. The union also contends that it was noisy in the bar as the result of conversations and music from the jukebox. They contend that this prevented Kuske from hearing the content of these conversations. They also contend that because Sgt. Kuske and Mrs. Boosalis "high-fived" each other after the conversation, the topic of the conversation was probably different from what the City contends—that Boosalis informed Kuske that Marianne wanted insurance information from them for

¹ The surnames of witnesses Marianne and Dominic are not relevant and are therefore not given in the interest of their privacy.

the car accident. At 19:37, Sgt. Boosalis appears to have had a more serious conversation with Sgt. Kuske during which their body language changed.

At some point, a non-officer member of the group Brian Conboy tells Dominic, "Don't worry they are all police officers and will play by the rules."

At 19:38, Sgt. Boosalis gave the group a hand signal to get out of the bar now. The group hugged each other and said their goodbyes. Dominic handed Brian Conboy a piece of paper so that Boosalis could write down his contact and insurance information. Brian Conboy then gestured to Boosalis, gave the paper to Boosalis who crumpled it and tossed it on the floor. At 19:39, Sgt. Kuske made a slicing motion across his neck to the group that some understand as a signal to leave. Kuske explains the gesture as a reaction to a song his wife played on the juke box for him. Sgt. Boosalis went outside, then returned to hug members of his group. Kuske paid his tab with his credit card. Dominic realized they are now leaving, and he did not yet have insurance information for the car accident. Six members of the group were at the bar and were in conversation with Dominic and now, Marianne too. Marianne went to the back of the bar, got her phone and called the bar manager. The bar has a policy to not call the police unless it is absolutely necessary. Up until the officers' group was leaving, it was Dominic the bartender who was working the front of the bar who was asking for the information, while Marianne worked the grill in the kitchen area. It was not until the group was leaving the bar without providing the insurance information that Marianne became angry, and her demeanor and behavior changed.

Sgt. Kuske was in the back of the bar away from the group, but his wife went up to him and talked to him after she heard Conboy tell the group that Marianne and Dominic want contact and insurance information.

The two patrons who reported the accident to Dominic passively observed the departure of the group. They made no aggressive moves and stayed back from the action at all times. These are the two men Sgt. Boosalis and Sgt. Kuske claim were "Hell's Angels" types.

At 19:46, Sgt. Boosalis ran out to his car in the rain. Marianne followed him while on the phone with the bar manager. She confronted Boosalis at his car. Boosalis returns to the bar with Marianne. Marianne believes that her car was damaged. Testimony then has Boosalis at the front entrance of the bar, without video footage, in conversation with Marianne. Two minutes later, Boosalis then left the bar without giving his insurance information to Marianne.

There is conflicting testimony about what happened next in the blind spot in the front entrance to the bar. At 19:48, Mrs. Boosalis and Mrs. Kuske got into a physical and verbal scuffle with Marianne. This will be addressed later in the investigation section. Sgt. Kuske says Marianne was angry and out of control, shouting obscenities, so he tried to play "peacemaker" even though he says he had no idea what she was mad about. Kuske stated that he heard Marianne say she wanted a phone number, but said he didn't know why. When he offered his phone number, Marianne responded; **"Why would I want your number? You're not the one who hit my car."**

In Kuske's interview during the IA process, he stated that he did not know until the following day what Marianne was upset about. In his direct testimony, he repeatedly testified that he did not know until the following day what it was that Marianne was upset about. However, when asked at the hearing what it meant to him when Marianne answered "Why would I want your number? You're not the one who hit my car" he admitted he was "starting to piece it together" then. Sgt. Kuske left the bar at 19:49.

Dominic stated that he did not think Kuske knew that Marianne was upset because she had not been provided insurance and contact information. Dominic was not in a position to observe Kuske during all of Kuske's time in the bar because he was occupied with bartending in a busy bar staffed by only two people. Nor was Dominic able to listen to all of Kuske's conversations.

Kuske contended in his interview by Lt. Venne that he had a conversation with Dominic that was "totally cool and then all of the sudden he said I don't know what's going on, but you guys got to go." Kuske then closed his tab and left. It is implausible that Dominic did not know what the dispute was about as he is the one who was repeatedly asking the group for car insurance and contact information.

No member of the Boosalis/Kuske party took pictures of the vehicles involved in the accident. Boosalis and Kuske contend there was no damage. Boosalis admits that pictures would be the best evidence of this. Boosalis testified that if he had just provided the insurance information the situation would not have "amped up." He wishes he had given Marianne his insurance information. He testified that the situation did not become "amped up" until they were leaving [without providing Marianne his insurance information], then it changed. Boosalis said he did not know if Kuske was aware of the nature of the dispute between Boosalis and Marianne. He testified he did not remember whether he told Kuske about the dispute while they were at the bar, but said; **"It could have happened, and I could not say that it did not happen."** Boosalis did not say they left suddenly because they had babysitter issues. Kuske contended for the first time at the arbitration that they left because they had babysitter issues. Kuske in his recorded statement said they left suddenly because there were two intimidating "Hell's Angels" types that might cause trouble, referring to the two bar regulars who reported the accident to bartender Dominic.

After the group was first told that they hit was Marianne the bartender's car and Dominic and Marianne wanted insurance and contact information, Sgt. Boosalis spent 11 minutes before leaving during which he spoke with other members of the group and paid his bar tab. On his first attempt to leave, Marianne coaxed him back to the bar. He left 2 minutes later. The entire group was gone within 15 minutes after first being asked for the information.

Members of the police group met the following day for lunch and discussed the previous night's events. At that meeting, Boosalis said he would provide his information if the Minneapolis Police asked him for it. Kuske did not encourage Boosalis to affirmatively offer his contact information to Marianne at this meeting.

Because no name or contact information was provided to Marianne, Marianne identified the name of the officer who she thought hit her car by looking at the credit card receipt for the tab paid by Sergeant Kuske.

THE INVESTIGATION

Marianne reported the accident as a "hit and run" to the Minneapolis Police Department, along with an assault by the officers' wives. She also sent photos and videos of the cars involved in the accident to the Edina Police Department via its Facebook non-public messenger page. This brought the issue to the attention of the Edina Police Department. Marianne also filed a written complaint.

Marianne also called the Edina Police Department several times, speaking to dispatch officers and to Sergeant Sussman. Dispatch reported to Sussman that Marianne had called several times on a very busy night and was taking them away from their duties to respond to emergencies. Sussman called Marianne back. In total, Sussman had three calls with her and decided to hang up when she was verbally abusive. In the second call, she hung up on Sussman. Marianne started out frustrated saying she had been calling since last night and got angrier when Sussman stated he did not have any record of those calls. Marianne stated that a police officer hit her car and would not give his insurance information to her. She stated that the officer said, "I'm the best drunk driver in town!" She stated that Sussman was the only one who was not just blowing her off, but she also stated that she thought all the police were working together to figure out a way to get the officer off the hook. Sussman provided her with the steps to file a written complaint and she did so. Due to Marianne's abusive language, repeated calls, and failure to allow Sussman to finish his sentences when he was trying to help her and give her information on how to file a complaint, he stated that she would be charged with making harassing phone calls if she called again.

Marianne accused Kuske of driving into her car and the car behind his car. Sussman tried to get her to identify Kuske by giving a physical description because he knew Kuske and believed he would not be involved in this because of his level of integrity. It was a serious allegation, and he wanted to make sure it really was Kuske she was complaining about. This angered Marianne as she had the pictures, videos, and credit card receipt to show who he was, and she interpreted this as challenging her. She said, "He looks like an old white guy cop." She also swore at the officer during these calls. Eventually she was given information on how to file a complaint online. In her complaint, she continues to misidentify Boosalis by the name Kuske, the name on the credit card receipt from the officers' group. She also states **that the officers' group told her that the person who hit her car was gone, even though the car was still there behind her vehicle.** When she noticed the group quickly trying to leave, she again asked for the insurance information and followed Boosalis out to his car. She convinced him to return to the bar, but he still would not give her his insurance information. Then, in the front entranceway to the bar where there is no video or sound, Marianne says that the blonde woman from the group "got into her face and poked her chest and shoulder with her fingers and then grabbed a fistful of her shirt, called her stupid and told her she was wrong, and they did not hit her car, and they would call the Minneapolis Police and have her arrested." Marianne claims that the blonde woman also said, "You're just someone who works in a bar, don't mess with us." She also had to tell a dark-haired woman from that group to stop touching her.

These were the wives of Officer Kuske and Officer Boosalis. It is unclear whether Kuske was present while this was happening, but he was in the vicinity. Kuske is not seen inside the bar, nor had he left the bar yet. Kuske testified that his wife claimed that it was Marianne who touched her in the bar entranceway as they were leaving. Dominic confirmed that the officers' wives were being aggressive toward Marianne in the entranceway. Kuske stated that he could not believe that Chris Boosalis, being a mild-mannered Sunday school teacher, would behave that way and that the women were "nose to nose" yelling.

Marianne stated that after the scuffle in the doorway as the group was leaving, a large silver SUV pulled up next to the building and everyone ran to get into this car, the driver's friend (Sgt. Kuske) "the one we decided not to serve anymore" offered his information. She responded, "If you didn't hit my car, I don't know why I would need it." She said **they dodged the question again and left.**

Lieutenant Venne received a phone call from Sergeant Sussman on Sunday after Sussman's phone calls with Marianne. He instructed Sergeant Sussman to not say anything to anyone else about this event, and he called

Deputy Chief Aaron White and informed him of the complaint then alleged against Sergeant Kuske. When Venne next went in to work, Sergeant Epstein was waiting for him with the Facebook messenger information from Marianne. Venne understood that Marianne was upset that the person who hit her car was a police officer and that he had not provided his insurance and personal information. He knew he needed to speak with Marianne to get her version of events. He spoke with Chief Milburn and Deputy Chief Aaron White and he was assigned to investigate the matter. This would be his first IA investigation. One of the previous investigators (Lt. Dan Conboy) had just retired and they were short investigators. Venne was given examples of past investigations to help him conduct this investigation. He found out that Marianne had spent most of the evening in the back kitchen of the bar cooking. She did not get involved in the accident situation until she saw Sergeant Boosalis go to his car to leave. She had called the manager of the bar, the father of her child, and her insurance company. She stated that the bar manager, Tony, had videos of the bar and he was trying to convert the videos to a transportable mode. Marianne sent Venne the photos Dominic had taken of the cars. Marianne felt that that the officers were taking advantage of their status as police officers. Marianne stated; **“They did everything in their power to NOT give me the insurance information.”**

Venne also interviewed Dominic. Dominic described the group as fun but intoxicated. He told Venne that one of them [Brian Conboy] had told him; “Don’t worry, we are all police officers, and we follow the rules.” Dominic did not think that the officers said this in order to take advantage of their status as police officers, but because they were rowdy. Venne felt Dominic made a very credible witness.

Venne reviewed the videos. He saw Boosalis trying to parallel park but crashes into the vehicle in front of him. Kuske jumped out, did not look at the cars, and ran into the bar. Boosalis gives a very quick look, but Mrs. Boosalis takes more time to examine the cars. Venne says Sergeant Boosalis tried to minimize the events, saying that he thought their claim of damages was a “joke”, even though he knew he had hit the car. There were many attempts by Dominic and Marianne to get the insurance information.

When reviewing the video and seeing Boosalis approach and talk to Kuske at the bar after Dominic showed Dan Conboy the photos of the car damages, and Dan Conboy then talked to Boosalis, Kuske could not remember what they had talked about. Venne thought this showed that Kuske remembered many details that helped himself and Boosalis, but “forgot” details that were not helpful to them. Kuske was in the car and knew they had struck the car in front of them. He thought Kuske was “gaslighting” Marianne when he pretended not to know what was upsetting her. Instead, he said Kuske painted Marianne as crazy. Kuske claims to have stepped in to be a “peacemaker”, but never asked her what the issue was and took no steps to find out what the issue was. Knowing the issue would be the first thing a peacemaker needs to know to try to make peace.

Venne also watched the videos with Marianne. Marianne then identified Sergeant Boosalis as the driver. She previously thought Boosalis’ name was Kuske, the name she found on the credit card receipt. Venne described this as an “ah ha” moment for Marianne who had initially made the complaint against Kuske thinking he was Boosalis. She cannot be faulted for identifying him incorrectly when they refused to identify themselves. It is clear that she knew it was not Kuske who hit her car from the conversation they had at the bar entrance. She just got his name wrong.

Venne tried to interview the two bar regulars, but they do not trust police officers and would not cooperate.

Venne did not believe that the officers used their positions as police officers to leverage this situation nor did they identify themselves as officers. He left it to the Chief and Deputy Chief to determine whether Kuske violated Policy 320.

Venne reviewed the photographs showing minor damages to Marianne's vehicle. The visible damage included scuff marks and small scratches.

In Kuske's Garrity² statement on 11-22-23 with his attorney present, he was asked what he would do if an officer came to him saying he has this same situation in a motor vehicle accident. He stated he would *verify there was a crash, look for evidence of damages, try to find the owner of the car and encourage them to exchange information. Get them to exchange information.*

Minneapolis Police Investigation

Marianne reported a hit and run and an assault to the Minneapolis Police Department. A squad was dispatched to Dusty's Bar. Marianne reported that the suspect vehicle hit her parked vehicle, and the group identified themselves as police officers. They left without giving insurance or contact information, but she used the credit card receipt to identify them. She also reported that Christine Boosalis grabbed her by the shirt to prevent her from catching up with the driver.

The final report from the Minneapolis Police Department by John Sullivan dated 1-17-24 states that the MPD does not investigate misdemeanor crimes, but since one suspect was a police officer in Edina, they did investigate as a professional courtesy ordered by Commander Olson. Sullivan reviewed the video showing the car accident. He said Boosalis looked at both cars briefly, then went into the bar. When the officers left the bar without providing contact information, Marianne used the credit card receipt to google their names and found the connection with the City of Edina PD. Sullivan contacted Marianne several times over the following months, explained that Boosalis is now fully cooperating and this matter can be resolved with or without criminal charges, but he needed evidence of damages. He offered to meet up with her to obtain a copy, leave a copy at her workplace that he would then pick-up, or have her scan and email a copy to him. He states that the more he contacted Marianne, the more hostile and belligerent she became. He notes that there were no injuries as a result of the alleged assault from the shirt grabbing incident. Sullivan also spoke with Lt. Venne. The Minneapolis Police Department's report was finalized by Sullivan who was retiring the day the report was finalized. He said he had 1,000 open cases and they were very busy.

The Minneapolis City Attorney decided not to prosecute. The report of Assistant City Attorney Judd Gushwa notes that the video shows a tap of the vehicle, that Boosalis checked for damages, and apparently none were visible to him. It states that Boosalis made no attempt to deny or hide the incident. Marianne failed to comply with repeated requests for information. The city attorney concluded that without information regarding

² **Garrity v. New Jersey**, 385 U.S. 493 (1967) Employees are compelled to answer questions but are protected against use of their answers in criminal proceedings.

damages, there would be no obligation to provide information under Minn. Stat. 169.09. They City attorney did not conclude that there were no damages, just that no evidence of damages was presented to them after multiple requests.

Venne presented his report to Chief Milburn and Deputy Chief White, but White had a conflict with the initial meeting. Venne met with White later to answer all of his questions. The question they all had was how to prevent this behavior in the future. They decided that a written warning would accomplish that. They understood that the perception of the integrity of police officers by the community could be damaged by this behavior and they wished to dissuade it. They concluded that Sgt. Kuske did not do anything to assist in the situation and that he could have done more to alleviate the situation, and he could have been more helpful in the investigation that followed. If called as an officer to the identical situation, he would have insisted the parties exchange insurance information. They concluded he should have done the same here. They also concluded that Kuske played a part in preventing Marianne from obtaining the insurance information she sought from Boosalis.

Chief Milburn's Actions and Analysis

Chief Milburn first heard of the complaint against his police officers on a Sunday or Monday when he got a call from Deputy Chief about a complaint involving a hit and run with alcohol involved. There were videos of the incident on social media, and this was a big concern as information, whether correct or incorrect, moves fast in that venue. He was concerned about eroded trust in the public eye. Even off-duty conduct affects trust of police in the community. The complainant, Marianne, was very persistent and was alleging criminal wrongdoing. She saw the Edina Police as being cohorts with the Minneapolis Police. He was concerned that City Council members would be concerned about whether he was holding his officers accountable. After the George Floyd incident, trust in police officers fell. He assigned Lieutenant Venne to investigate as the former Lieutenant involved in investigations was Dan Conboy. Conboy left the department, and he was involved in this case as a potential witness. It was a great training experience for Venne who was already experienced in other investigations. Venne also oversees both Boosalis and Kuske. Chief Milburn testified that he was not a fan of having the investigator coming up with a final disposition in a case. He prefers the investigator to be a fact finder only. The process could be clouded by personal relationships, either for or against the subject. The final determination as to discipline is for the chief to make.

The chief followed the process set forth in Policy 365.06 subd. 1 that sets forth what *should* be in the report versus what *must* be in the report. He found flaws in the old process and was in the process of updating the policies. He said he did not have time to implement new policies right away as he was a new chief which brings lots of change and the old policies were functional for now. The new investigation policy involved assigning an investigator, getting the facts, having a panel review and discuss the facts, deciding whether additional investigation is needed, and only after all that is done, bringing the report to the chief. The old policy did not explicitly say that the Deputy Chief was to be involved in the investigation and disciplinary process, but as chief he has the right to bring anyone into the process, even under the old policy.

With regard to Sergeant Boosalis, the chief said this is a case where “the cover up is worse than the crime.” Boosalis admitted to driving and hitting Marianne’s vehicle but found an opportunity to get out of providing her his insurance information. As an officer you know your obligations once you hit a car. You have an obligation to

put a note on a car and to do the right thing. Boosalis had the opportunity to do the right thing the day of the accident and the next day.

The Chief said Kuske should have pieced together these things and known why Marianne was upset. Kuske was inside the vehicle when it hit her vehicle. He knew there was an accident. There was dialog inside the bar about the accident and about Marianne and Dominic's requests for insurance information. Kuske should have told Boosalis to provide the insurance information. If he truly did not know why Marianne was upset, he should have asked. Marianne was not upset until their group was going to leave without providing her the insurance information. Marianne frequently deals with intoxicated people, she did not know the extent of the damage, or what damage existed behind the bumper, but it's "Accidents 101" that even with minor collisions there could be unseen damage, and you leave a note. The public's expectation is that officers do the right thing. The trouble is, if you were to ask Marianne today what she thinks of police officers and the Edina Police Department, it won't be good. That's the problem. There was a skirmish at the doorway that almost turned into a fight. She would be justified in thinking that officers acted in concert to prevent her from obtaining the necessary information. One of the Chief's concerns was about how these actions would be perceived by the public. Videos of the officers could be made public. The statement from one member of the group that they were police officers could also be interpreted as "we are police officers, leave us alone." They acted together as a group to prevent Marianne from getting Boosalis' insurance information. Chief Milburn surmised that the group was concerned about Boosalis getting a DUI. Boosalis is normally a very good driver.

The Chief decided on a written reprimand for Kuske. He indicated violations of Edina Police Department Policy 320.03 "professional conduct" and 320.08 "dignity." He did not discipline Kuske for dancing, drinking, wearing a potentially offensive t-shirt, but for unprofessional conduct in not providing Marianne with insurance information and his role in preventing her from getting it. These policies are not a surprise to the officers. They have to sign off that they have read the policies. As a sergeant, Kuske can discipline and reward other officers using these policies. Kuske violated 320.08 subd. 1 by discrediting the agency with his actions in this situation. The disposition by the Minneapolis Police Department's investigation does not exonerate Kuske for his misconduct. The Minneapolis Police Department was investigating a potential crime (hit and run, failure to provide insurance information) and the standard of proof in a criminal case is different, "beyond a reasonable doubt". A retiring Lieutenant completed the report on his last day of work, after not receiving any proof of damages from Marianne. The discipline standard is different and it's a different issue. Kuske violated the conduct policy, not State law. He created mistrust at a time when public trust in police needs to be restored. "This cuts us off at the knees", the Chief explained, he cannot tell the public to trust police when officers behave this way.

Chief Milburn stated that he made the ultimate decision to discipline Kuske. He said Deputy White oversees all operations and his duties include overview of all staff. Chief Milburn described Deputy White as intelligent and great assistant who has command of the big picture whose goal is to make the organization and its public image better. Chief Milburn stated that he and Deputy White are trying to hit the sweet spot to correct behavior, without being overly punitive. Kuske had multiple opportunities to do the right thing. He was not forthcoming in the investigation and did not accept responsibility for his actions. The department needs the trust of the public to do their jobs and Kuske's behavior eroded this trust. He considered Kuske's good past record with the Department and the fact that alcohol was probably contributing factor in his behavior that night when determining the type of discipline to impose.

POLICY VIOLATIONS

The Edina Police Operations Manual issued regulations as guidelines for the exercise of the authority and discretion delegated to the employees of the City of Edina in accordance with the training and discipline of members of the department. Relevant sections of these policies include:

320.03 Professional Conduct

Department members are expected to maintain a level of conduct in keeping with the highest standards of the law enforcement profession. Members should refrain from conduct, whether on or off duty, which tends to impair their ability to perform as department members or which bring discredit to themselves or disrepute or the department.

320.04 Procedure

This policy applies to all officers of this agency engaged in official duties whether within or outside of the territorial jurisdiction of this agency. Unless otherwise noted the policy also applies to off duty conduct. Conduct not mentioned under a specific rule but that violates a general principle is prohibited.

320.08 Dignity

Peace officers shall not, whether on or off duty, exhibit any conduct which discredits themselves or their agency or otherwise impairs their ability or that of other officers or the agency to provide law enforcement services to the community.

On March 27, 2024, Kuske received a Written Reprimand from Deputy Chief White that cited policy violations of 320.03 and 320.04. It is unclear when Kuske received a copy of the March 8, 2024, memo from Deputy Chief White to Chief Milburn that detailed the basis for the violations of these policies.

March 8, 2024, Memo from Deputy Chief White to Chief Milburn

That memo references Lt. Venne's extensive investigation including taking statements, reviewing video footage of the events in and outside the bar, and written complaints. White notes that the video shows Boosalis receiving a request for insurance information, then walking to Kuske and talking to him for 48 seconds. Boosalis then talks to retired Lt. Dan Conboy for 25 seconds during which Kuske remains present. Then, Conboy walks away and Kuske and Boosalis talk for another 23 seconds. Kuske says he cannot recall anything other than Boosalis saying it is time to leave during these conversations. After these conversations, the mood of the group has shifted, and it appears that the entire group is likely well aware of the request for insurance information and the growing tension. White concludes that it is highly unlikely that Kuske was unaware of what was going on. White notes that Marianne stated that she confronted Brian Conboy and Kuske outside of the bar near the car they were departing in and asked for insurance information. Conboy responded that he didn't do it so he could not give the information. Kuske offered his phone number and Marianne responded, why would I need your number if you didn't hit my car. Kuske responded, maybe you want to call me sometime.

White also notes that Kuske claimed in his statement that he and Boosalis checked for damages but didn't see any. The video shows that Kuske did not check the cars for damages but walked immediately to the bar. Kuske claims he looked over the hood, but the video does not show him doing this outside the car and even if he had, one could not see damages in that manner.

White notes that the complainant, Marianne, was further inflamed by the belief that these individuals were police officers who one might reasonably expect to be cooperative in the situation.

The memo notes that Kuske acknowledged in his statement that if he had responded to a collision situation like this he would "try to find the owner of the car and encourage them to exchange information."

White goes on to address the contributions of alcohol to the behavior. He notes that Kuske left the car "flapping both of his arms repeatedly from below waist level to above his head" wearing a t-shirt with the word "Butthole whisperer" and that this might be inconsistent with his workers' compensation claims for injuries to his back, right shoulder and rotator cuff. White notes that this is "outside the scope of this investigation" but indicates impairment.

The memo notes that Kuske is a sergeant and front-line leader and is expected to hold himself to a higher standard than he did the evening of this incident. White states that Kuske's conduct not only reflects poorly on himself, but also on the department and the law enforcement profession.

ISSUE: Did the City of Edina Police Department have just cause to issue the written warning to Sergeant Kuske?

The answer to this question depends upon what the relevant policies say.

Policy 320 defines misconduct at **365.02 subd. 6 Misconduct** where it says;

Any act or omission by an employee or appointee of the department that may result in disciplinary action. This may be a violation of a rule, procedure or order of the department policy or it may be a violation of a law, whether codified by city code or federal/state laws. Examples of such acts or omissions include, but are not limited to:

- a) Incompetence or negligence in the performance of a duty.
- b) Insubordination
- c) Use of offensive conduct or language toward the public, city officials or employees
- d) The use of abusive, insulting language or conduct which is derogatory of a person's race, religion, lifestyle, gender or national origin
- e) Carelessness or negligence in the use, handling, control or protection of city property.
- f) Dishonesty in the performance of duties
- g) Asking for, expecting, or accepting compensation, gifts, or gratuities unless approved by the chief of police
- h) Engaging in harassment, intimidation or practical jokes that may discomfort another employee
- i) Violation of federal, state or city statutes/ordinances/codes defining criminal offenses
- j) The use of unnecessary or excessive force
- k) Abuse of authority
- l) Conduct that violates a person's civil rights
- m) Failure to act, negligence or failure to carry out a duty
- n) Continued violations of department policies
- o) Conduct which threatens the safety of the public or of department personnel

- p) Conduct of an employee, on or off duty, which seriously violates ordinary, reasonable rules or expectations of good conduct, and would bring discredit or embarrassment to the employee and the department. (emphasis added)

The question here is whether Kuske is in violation of section P by his actions of failing to help provide Marianne with Boosalis' name, address and insurance information; affirmatively denying her the information; and/or assisting Boosalis in denying her the information.

The requirements to provide information are found in the following statute.

Minnesota Statutes § 169.09 Collisions

Subdivision 2. **Driver to stop for collision; attend vehicle.** The driver of any motor vehicle involved in a collision shall immediately stop the motor vehicle at the scene of the collision, or as close to the collision as possible, and reasonably investigate what was struck. If the driver knows or has reason to know the collision involves damage to a vehicle driven or attended by another, the driver in every event shall remain at the scene of the collision until the driver has fulfilled the requirements of this section as to the giving of information. The stop must be made without unnecessarily obstructing traffic.

Subdivision 3. **Driver to give information.** (a) The driver of any motor vehicle involved in a collision the driver knows or has reason to know results in bodily injury to or death of another, or damage to any vehicle driven or attended by another, shall give the driver's name, date of birth, mailing address or email address, and the registration plate number of the vehicle being driven. The driver shall, upon request and if available, exhibit the driver's license or permit to drive to any peace officer at the scene of the collision or who is investigating the collision. The driver shall render reasonable assistance to any individual injured in the collision.

(b) If not given at the scene of the collision, the driver, within 72 hours after the accident, shall give, on request to any individual involved in the collision or to a peace officer investigating the collision, the name and address of the insurer providing vehicle liability insurance coverage, and the local insurance agent for the insurer.

Subdivision 4. **Driver to stop for collision; unattended vehicle.** The driver of any motor vehicle involved in a collision shall immediately stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck. If the driver knows or has reason to know the collision resulted in damage to any unattended vehicle, the driver must either locate and notify the driver or owner of the vehicle of the name and address of the driver and registered owner of the vehicle striking the unattended vehicle, report this same information to a peace officer, or leave in a conspicuous place in or secured to the vehicle struck, a written notice giving the name and address to the driver and of the registered owner of the vehicle doing the striking. The stop must be made without unnecessarily obstructing traffic.

The Union asserts that no one in the Boosalis/Kuske party saw any damages, so there was no obligation to provide their name and address to the owner or through a note on the vehicle. Furthermore, they argue that the Minneapolis PD and Minneapolis City Attorney concluded that there was no damage, so their conclusion are binding in this proceeding.

The union interprets the driver's obligations under this statute to be that the driver only has an obligation to provide insurance and contact information if the offending driver determines that there is damage. The statute does not explicitly address the situation in which the owner sees damage, or a third-party witness sees damage, but the offending driver does not or would prefer not to recognize any damage. It would be an absurd interpretation to allow the offending tortfeasor to be the sole finder-of-fact on whether there is any damage when others allege that damage exists. This is clearly not what was intended by the statute. There is an obligation to provide information if damage is alleged. In this case, damage was alleged.

Another issue here is whether anyone in the Boosalis/Kuske group conducted a "reasonable investigation" as required under subd. 4. A one to two second glance by Boosalis at night while standing along the drivers' side of

the car does not satisfy this requirement. It is possible that Mrs. Boosalis' actions constitute a "reasonable investigation." The best evidence of damages are photos of the damages. Dominic provided photos. The photos show scuffs, scratches, and possibly paint transference on Marianne's vehicle. The damages are minor, but there are damages. The statute provides no exemption language for situations in which the damages exist but are only minor. It is also possible that in addition to the visible yet minor damages, there could be damages to electrical elements or other parts not visible without an examination underneath the car.

The union argues that Boosalis complied with this statute where it states *If not given at the scene of the collision, the driver, within 72 hours after the accident, shall give, on request to any individual involved in the collision or to a peace officer investigating the collision, the name and address of the insurer providing vehicle liability insurance coverage, and the local insurance agent for the insurer.* Boosalis did later provide his information to the Minneapolis Police Department. In addition, he knew at the bar that Marianne already had his plate number.

It is clear that Boosalis had a legal obligation to provide Marianne his name, date of birth, mailing address or email address. Kuske did not have an obligation under the criminal statute Minn. Stat. 169.09 to provide this information. But, under the Edina Police Operations Manual Policy 320, 365.02 subd. 6 (P) Misconduct he did have an obligation to see that his colleague, the offending driver, provided the information. During his 11-22-23 statement under Garrity warning with Lt. Venne he was asked what he would do if he had been called to this scene as an officer. He said he would verify that there was actually a crash, try to see evidence of an impact or damages, try to find the owner of the car and encourage them to exchange information. If they did not exchange information, then have them file a citizen's arrest report for hit and run. As an officer with decades of experience, he knew what to do in this situation. He also knew that this was an important part of the City's investigation when he was asked this question.

It is reasonable for the City to expect its officers to behave in the same manner when confronted with this accident situation while off-duty. Kuske was in the car that struck the Marianne's car. He knew there was an accident. The evidence shows it is more likely than not that he knew that Marianne and Dominic were requesting Boosalis' contact information as required by statute when they refused or failed to provide it while they were in the bar. The evidence is clear that Kuske knew for sure that Marianne wanted the contact information of the person who hit her car after she told Kuske she didn't want his information but that of the person who hit her car. This occurred before they left the bar, albeit toward the end of their visit. Kuske testified multiple times on direct examination that he did not know until the next day what Marianne wanted. Kuske also testified that he "pieced together" what Marianne wanted when they spoke in the bar. Kuske had multiple opportunities to assist as an officer would be expected to do, in getting the information for Marianne. Instead, he participated in the group's efforts to gaslight and intimidate Marianne. Even after he knew that Marianne only wanted insurance and contact information for the offending driver, he persisted in blaming her for the situation and even asserting that she should be charged with a crime for making a false complaint. Presumably this would be for claiming that he was the driver of a car that hit her car, but it would be difficult to fault Marianne for getting the driver's name wrong when they refused to identify themselves. Kuske knew there was an accident. He was in the car. He knew she had misidentified him as the driver and that there was a basis for a complaint against his friend and colleague, Boosalis.

This was a missed opportunity for an officer to correct the behavior of another officer, Boosalis, who failed to provide insurance and contact information to the owner of the car he hit. The public relies on police officers to

help each other to get it right. Sergeant Kuske had the opportunity to create a positive image of police officers in the community by being helpful in this situation, even if it meant holding his fellow officer to account.

JUST CAUSE

Pursuant to the Labor Agreement between City of Edina and Law Enforcement Labor Services Local No. 486, the employer may only discipline an employee if it is for just cause. (Jt. Ex. 1). A requirement of just cause “exclude[s] discharge for mere whim or caprice.” Elkouri & Elkouri, *How Arbitration Works* 15-4-5-5 (8th Ed. 2016) (citing *Worthington Corp.*, 24 LA 1, 6-7 (McGoldrick, Sutton & Tribble, 1955)). “The ‘just cause test mandates that the punishment assessed be reasonable in light of all the circumstances.’” *Id.* (quoting *City of Portland, Bureau of Police*, 77 LA 820, 826 (Axon, 1981)). See also *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002)

An employee may be disciplined for both on and off-duty conduct, so long as there is just cause. Edina policy states that employees can be disciplined for off-duty conduct. Management may discipline an employee for off-duty conduct if there is a “‘nexus’ between the conduct and the employer’s legitimate business interests.” Elkouri at 15-12. One such nexus occurs when the conduct could seriously damage an employer’s public interest. *Id.* This concept is also reflected in Edina Policy 320, which states, “Peace officers shall not, whether on or off duty, exhibit any conduct which discredits themselves or their agency or otherwise impairs their ability or that of other officers or the agency to provide law enforcement services to the community.” (Jt. Ex. 9). The connection between the off-duty misconduct and the effect on the business must be reasonable and discernible, not merely speculative. Elkouri at 15-12. The degree of penalty should align with the seriousness of the offense. Elkouri at 15-44.

The City contends that Kuske was disciplined not just for a single action but for the sum of his actions that night that led to a citizen’s complaint. The City sets forth their reasons for discipline in their post-trial brief as follows:

Brandon Kuske was disciplined for:

- Taking actions to attempt to cover up bad behavior, such as minimizing the impact of the collision to justify Boosalis’ refusal to give out insurance information to the victim and Kuske’s own failure to intervene and do the right thing.
- Attacking the victim’s credibility in the IA by referring to her as “crazy” and yelling obscenities in an attempt to justify his and Boosalis’ behavior, even though any reaction by Marianne was caused by them refusing to provide information.
- Unjustifiably denying the existence of damage, despite there being photos of the damage. Any dispute over the extent and cause of the damage should be left to insurance adjusters.
- Interestingly, no one from the Kuske/Boosalis group took their own picture of the “lack of damage” even after being informed that Marianne believed there was damage and has photos.
- Kuske gave unconvincing IA statements that he did not know what was going on regarding the requests for contact or insurance information, despite clear evidence in the videos, but he could recall the victim’s “crazy” behavior.
- Unconvincingly, and for the first time at the hearing, Kuske stating that they had to leave because they had babysitters, not due to the escalating tensions from their behavior and Boosalis’ “round it up” sign to everyone so he could leave the scene.

- Kuske's inconsistent statements in the IA and at the hearing that he didn't know what was going on. Kuske said he did not know what the victim was asking for but testified that when Marianne was "upset and yelling," he asked if she wanted his phone number and that she replied, "why would I want your phone number if you did not hit my car." This testimony shows he knew exactly what she was asking for and why.
- At the hearing Kuske tried to justify his lack of memory being because of the amount of alcohol he consumed. However, he had a good memory for the "facts" that undermined the victim's credibility and minimization of the impact of the collision. Conveniently, it seems that the only part of the night that he cannot remember was that key conversation at the bar between himself, Sergeant Boosalis, and Christine Boosalis right after Sergeant Boosalis learns of the pictures of the damage and the request for information from Marianne.
- Kuske tried to support his lack of knowledge by showing he was by the restroom when the victim was trying to get information at the end of the night. However, his wife was right at the bar at that time. It is not believable that they did not discuss what occurred.
- The video supports the statements given by Marianne and Dominick and does not support Kuske and Boosalis.
- Marianne's behavior is not crazy or out of line until Boosalis, Kuske and the group are leaving without giving the information.
- The Union tried to insinuate that Brian and Dan Conboy should have been interviewed but the Union did not have them testify either, so one may clearly conclude they had nothing to provide under oath to assist Kuske.
- The reality is that the victim and her coworker both knew that the group were police officers. Their actions led the victim to believe the officers were above the law and were covering up for each other.
- Kuske is an experienced sergeant, which is an important frontline leadership position, setting an example for young officers. The City has high expectations for all of its officers but especially leaders. Kuske's behavior in the IA and on the night of the collision did not meet those expectations and degraded himself, the department and the reputation of police in general.

The Union adamantly argues that Kuske did not know what he was being disciplined for and that it appeared he was being disciplined by Deputy Chief White due to personal animus, and by Chief Milburn because he was "smokin' drunk" in public, causing embarrassment to the department. The Union contends that the City has created a moving target and initially only identified Kuske's drunken behaviors as the basis for his discipline, creating confusion. The Union states: *Venne's investigative report, White's memo, and the written reprimand issued to Kuske on March 27, 2024 are clear and unmistakable proof that Kuske was not disciplined for the reasons later asserted by the Employer; but rather, because Department administration was displeased and embarrassed by its view that Kuske behaved drunkenly at a bar, and that his behavior was captured on video that could have been made public.*

Kuske is charged with violating policy 320 which requires him to maintain a high level of conduct in keeping with the highest standards of the law profession, on or off duty. It also requires him to refrain from conduct that brings discredit to himself of the police department. It is understandable that Kuske would initially be confused by the one-page March 27, 2024, memo from Deputy Chief White citing the conduct rules and summarily concluding that Kuske's behavior violated them without a factual basis as to how the rules were violated. Kuske thought he would be cleared once it was established that Boosalis was driving. It is unclear when Kuske was made aware of the contents of the basis for the conclusions in that memo as set forth in the memo from White

to Milburn on March 8, 2024. It is clear that he was made aware that he was being disciplined for failure to act in providing insurance and contact information to Marianne when he knew that Boosalis caused the accident, and that Marianne and Dominic were claiming damages. It is understandable that he would question whether the extraneous materials in the memo from White to Milburn on March 8, 2024, are the true cause for the discipline. Those materials include “flapping his arm repeatedly” and wearing a “butthole whisperer” t-shirt and possibly violating his restrictions for his work-related back injury. However, the key materials setting forth Kuske’s failure to act, knowledge of Marianne’s complaint that she was not being given the driver’s information and Kuske complicity in that, are also clearly present in that memo. Kuske went through three grievance steps before the hearing that also addressed the specific reasons for his discipline.

The Union also argues that Kuske was told during his Garrity statement that he was “only” a witness in this investigation. They cite page 9 of the statement where Lt. Venne states that “you are a witness um to this and I need to find out some more information about the scope of it, right.” Venne was then asking about whether Brandon [Kuske] had identified himself as a police officer. It is not uncommon to be both a witness and the subject of an investigation. Although this may have created a moment of hope for Kuske and his attorney, he was under a Garrity warning. Garrity warnings are for employees who are being investigated for misconduct. Garrity warnings are not given to people who are witnesses only. The one question that stands out above the others in his statement was when he was asked about what his actions would be if he had been called to handle an accident like this. He answered with the police protocol for the situation. He was on notice that failing to follow this protocol was a basis for discipline.

The Union argues that because Lt. Venne did not recommend any discipline in his report, he did not find that any was warranted. Venne testified that he left it to the Chief to decide whether discipline was warranted. The Chief stated that he assigned Venne only the investigative duties and not the job of determining discipline. The Union contends that the existing rules for investigations did not have a role for any Deputy Chief to perform, and that the Deputy Chief inserted himself into the process because he has personal animus toward Kuske. The City through the Chief of Police says that the new rules expressly state that the Deputy Chief has a role in internal investigations but that even under the old rules he can delegate authority to his Deputy or any other officer, as he sees fit. Chief Milburn delegated some of the investigation duties to Lt. Venne, some to Deputy Chief White, and relied on White in part to provide his interpretation of whether and how the factual findings of Venne fit under the conduct rules.

The union argues that City policy cannot be to require inebriated officers to insert themselves into civil situations when they are off duty. They argue this would be effectively leveraging their status as police officers to influence outcomes and this would violate policy rules. They presented a hypothetical where two officers are drinking in on officer’s home when they hear a glass-shattering sound, and a neighbor says one officer’s son threw a baseball through his window. Should the visiting officer encourage the other officer to pay for the damages? Have his son write an apology letter? This analogy fails. The obligation of an officer in each of these situations is to exchange information—not to evade identification or help the fellow officer avoid responsibility. The obligation of an officer in the car accident case is to share information. No one was suggesting that any officer should be judge and jury on the scene or leverage any power other than to encourage the parties to share legally required information and then allow the insurers to do their job of assessing liability. The Union does have a valid point when questioning how involved the City would want an inebriated officer to become in an off-duty situation. However, in this situation, Kuske did more than stay out of the situation—he inserted himself into it. Under the pretense of playing

peacemaker, he gaslit or ridiculed Marianne. This may also have allowed Boosalis to exit the bar while keeping Marianne occupied. Even Kuske and Boosalis' wives knew what was happening and created a physical and verbal altercation with Marianne thwarting her last attempt to obtain the information from Boosalis. Kuske may have been present in the entrance vestibule as this occurred as he had not yet left the bar and was no longer in the bathroom area. It is unlikely that the only person in this group of police officers and their spouses who did not know what the issue was is Sgt. Kuske.

The fair and reasonable standard for determining just cause is often expressed in the "seven tests" of just cause adopted by Arbitrator Carroll Daugherty in 1966. These defined criteria include:

(1) forewarning or foreknowledge of possible consequences of misconduct, (2) a rule reasonably related to proper business goals and reasonable employee expectations, (3/4) a reasonable effort to discover whether misconduct occurred and if so, a fair and objective investigation of alleged conduct, (5) discipline is based on a sufficient level of evidence, (6) that rules and penalties be applied in an even-handed manner and (7) the penalty is consistent with the offense and the employee's past work history.

Enterprise Wire Co. and Enterprise Independent Union, 46 LA 359 (Daugherty, 1966); *Just Cause: The Seven Tests*, Koven & Smith (2nd Ed. 1992).

Kuske knew the possible consequences of misconduct. He knew police protocol for handling auto accident cases, but did not follow the protocol. As a sergeant, he is charged with enforcing the rules for officers under his authority and with setting behavioral example. The rules he violated reasonably related to proper business goals of police integrity and reasonable employee expectations to do the right thing in this auto accident case despite the fact that the involved party was a friend and colleague. The City is legitimately concerned with creating and maintaining public trust in their department and in policing in general. A fair and objective investigation of the alleged conduct was conducted by Venne and analyzed by the Chief and Deputy Chief. There is a sufficient level of evidence in the form of video tapes of the accident, the in-bar behavior, and statements of interested and neutral witnesses, and photographs of the damages to the cars. The Chief was aware that the Union was alleging personal animus by Deputy Chief White toward Kuske but concluded that was not the case. Chief Milburn found that there was sufficient evidence of misconduct, even if there had been issues with personal animus. He took into account that Sergeant Kuske had been drinking and not making good decisions that night, when weighing the type of discipline to impose. The Chief weighed his options as to the type of discipline to render to accomplish the goal of maintaining integrity on and off the job. Each officer has his own duty to act within the law, even when a fellow officer is not doing so.

The rules and penalties were applied in an even-handed manner. Kuske received a written reprimand. This is a low level of discipline and is appropriate for this violation. The City's exhibits show discipline involving 3-day suspensions for other City employees who struck vehicles and did not provide information, and verbal reprimands for persons goofing around during training classes and using swear words with the public. This fits in between. The written reprimand was necessary to impress on the officer that one must follow protocol off duty, even when friends or family are involved, and maintain integrity in his actions. The written reprimand was necessary to impress on the officer that he must fairly and honestly participate in an internal investigation even when it involves

a fellow officer. Finally, this penalty is consistent with the offense and the employee's past work history. Kuske had a record that included Distinguished Service Awards, Departmental Commendation Awards, and Integrity Awards. The City did not seek out information and reason to discipline this employee—it came to them.

CONCLUSION

The City of Edina had just cause to discipline Sergeant Kuske for his actions and for the level of discipline imposed.

AWARD

For the forgoing reasons, the grievance is denied.

Dated March 6, 2025

A handwritten signature in black ink, appearing to read "D. Heisick", written in a cursive style.

Debra Heisick, Arbitrator