
In the Matter of Interest Arbitration Between

ROSEAU COUNTY

Maurstad Discharge Grievance
BMS Case No. 09-PA-0588

LAW ENFORCEMENT LABOR SERVICES, Inc.

APPEARANCES:

Ratwik, Roszak & Maloney, P.A., by Mr. Terrence J. Foy and Ann R. Goering,
Attorneys at Law, appearing on behalf of the County

Mr. Isaac Kaufman, General Counsel, Law Enforcement Labor Services, Inc.,
appearing on behalf of the Union

ARBITRATION AWARD

Roseau County, hereinafter County or Employer, and Law Enforcement Labor Services, Inc., hereinafter the Union, are parties to a collective bargaining agreement providing for the submission of grievances to final and binding arbitration before an arbitrator selected by them. A hearing in the captioned matter was held in Roseau, Minnesota, on May 12, 13, 14, and 15, 2009, and the parties submitted their post-hearing briefs the last of which was received by the undersigned on July 24, 2009.

ISSUE:

The parties stipulated to the following statement of the issue to be resolved:

“Whether the County had just cause to terminate the grievant? If not, what is the appropriate remedy?”

PERTINENT CONTRACT LANGUAGE:

ARTICLE V. EMPLOYER AUTHORITY

1. It is recognized that, except as expressly stated herein, the Employer shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the Employer in all its various aspects, including, but not limited to, the right to direct the working forces; to plan, direct and control all the operations and services of the Employer; to determine the methods, means, organization and number of personnel by which such operations and services are to be conducted; to assign overtime; to determine whether goods or services should be made or purchased; to hire, promote, demote, suspend, discipline, discharge or relieve employees due to lack of work or other legitimate reasons; to make and enforce rules and regulations; and to change or eliminate existing methods, equipment or facilities.

ARTICLE XII. DISCIPLINE

1. The Employer will discipline employees for just cause only.
Discipline will be in one or more of the following forms:

- A. Oral reprimand;
 - B. Written reprimand;
 - C. Suspension;
 - D. Demotion; or
 - E. Discharge.
2. The employer and the Union agree that the foregoing list of types of discipline is not meant to imply a sequence of events. Suspensions, demotions and discharges will be in written form.
 3. Employees may examine their own individual personnel files at reasonable times under the direct supervision of the Employer.
 4. Written reprimands, notices of suspension and notices of discharge which are to become part of an employee's personnel file shall be read and acknowledged by signature of the employee. Employees and the Union will receive a copy of such reprimands and/or notices.
 5. Grievances relating to a suspension or discharge may be initiated by the Union at Step 3 of the grievance procedure under Article VII.

Roseau County Sheriff's Department Policy 2-900

- I.
- II. Policy ...

These regulations are not designed to make every irregular, mischievous, or improper act a disciplinary offense. Rather, the reach is limited to conduct that illustrates malfeasance in office and behavior that is prejudicial to good order, discipline, morale, and efficiency, and undermines public respect and confidence.

Department personnel comprise a special class of public employee. Members of the department are conspicuous and visible representatives of government. Members conduct is closely scrutinized, and when it is found to be excessive, unwarranted, or unjustified, criticism is more severe than it would be for similar conduct of persons in other walks of life. The end result of criticism is lost community support and respect, both of which are necessary ingredients to the department's ability to perform the law enforcement function. Therefore close adherence to department regulations is absolutely essential to guarantee community support and to maintain effective services.

In determining what disciplinary action may be taken, the Sheriff may consider the following:

1. All circumstances surrounding the case.
2. The seriousness of the employee's conduct in relation to the employee's particular duties and record with the department.
3. What action the department has previously taken to prevent this type of conduct.
4. The contemplative corrective action in light of its training value, rather than strictly as punishment for the offense.
5. The disciplinary action of a corrective nature that the department has taken in similar incidences.
6. The probable cause of the employee's behavior.
7. What corrective action will most likely eliminate the cause and prevent a reoccurrence.
8. The employee's expected reaction to the corrective measure.

9. The probable reaction of other employees to the corrective action.

Disciplinary action. If disciplinary action is determined to be necessary it will be in the form of one or more of the following.

1. Oral reprimand;
2. Written reprimand;
3. Suspension;
4. Demotion;
5. Discharge.

These disciplinary measures, as listed, are not to be considered to be a prescribed progressive order of application of discipline. The appropriate action(s) will be determined by the circumstances and/or merits of each situation.

II. Procedure

A. GENERAL WORK RULES ... ***

4. Relations with members of the public.

Members of the department shall not be overbearing, oppressive, or tyrannical in their relations with members of the community. This will include within its prohibition all clearly recognizable actions that serve to breed disrespect for the department and its members. Actions are clearly recognizable if they constitute gross breaches of the public support. Examples of gross breaches of the public support include: Unreasonable orders given to citizens; an attempt to control conduct not within the scope of the member's lawful authority; or the appearance of favoritism. These examples are not intended to be all-inclusive...

6. Inappropriate language.

Members of the department shall not use insulting, defamatory, offensive, or obscene language in the performance of their duties. This regulation is intended to cover citizen contacts and inter- departmental contacts. ***

13. Untruthfulness.

Members of the department are required to speak the truth at all times and under all circumstances, whether under oath or

otherwise, unless an undercover role or other operation requires deception to further an investigation.

This regulation prohibits withholding of evidence from a judicial proceeding, perjury, untruthful statements made within the department, false public statements, and any other misrepresentations made by members of the department. This regulation does not require divulgence of matters prohibited.

14. False or improper information.

Members of the department shall not knowingly make false or incomplete official reports or knowingly enter or cause to be entered in any departmental book, record, or electronic recording device any inaccurate, false, or improper information. ***

19. Insubordination.

Members of the department shall properly obey any lawful order emanating from any superior. ***

Roseau County Sheriff's Department Policy 3-1900

I. It is the policy of the Roseau County Sheriff's Office to investigate circumstances that suggest an officer has engaged in unbecoming conduct, and impose disciplinary action when appropriate.

II. Procedure ***

B. Principle Two. Peace officers shall refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system.

1: Community cooperation with the police is a product of its trusted officers who act honestly and with impartiality. The peace officer, as the public's initial contact with the criminal justice system, must act in a manner that instills such trust.

2: Rules ***

b. Peace officers shall not knowingly make false accusations of any criminal, ordinance, traffic or other law violation. This provision shall not prohibit the use of deception during criminal investigations or interrogations as permitted under law. ***

D. Principle Four. 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.

1. Rationale: A peace officer's ability to perform his or her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general. Peace officers must conduct themselves in a manner consistent with the integrity and trustworthiness expected of them by the public.

2. Rules ***

c. Peace officers, while on duty/off duty, shall not engage in any conduct which the officer knows, or should reasonably know, constitutes sexual harassment as defined under Minnesota law, including but not limited to; making unwelcome sexual advances, requesting sexual favors, engaging in sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature. ***

E. Principle Five. Peace officers shall treat all members of the public courteously and with respect.

1. Rationale: Peace officers are the most visible form of local government. Therefore peace officers must make a positive impression when interacting with the public and each other.

2. Rules:

a. Peace officers shall exercise reasonable courtesy in their dealings with the public, fellow officers, superiors and subordinates.

Roseau County Sheriff's Department Policy 3-2200

Ridealong Policy

III. Procedure

Time

No ridealong will exceed four hours, unless specified by the sheriff. An officer may end a ride-along at any time if it hampers, interferes, or otherwise reduces the efficiency of the officer. A supervisor should be contacted and the incident documented.

Roseau County Sheriff's Department Policy 3-3000

- I. Policy. It is the policy of the Roseau County Sheriff's Department to provide our officers with guidelines for the use of force and deadly force in accordance with: ***
- II. Procedure. ***
 - C. Use of non-deadly force. It is the policy of this agency to accord officers discretion in the use of non-deadly force to the extent permitted by MN Statutes, Section 609.06, which permits police officers to use reasonable force in:
 - effecting a lawful arrest; or
 - the execution of legal process; or
 - enforcing an order of the court; or
 - executing any other duty imposed upon the public officer by law.

In determining the degree of force that is reasonable under the circumstances, officers should consider:

- the severity of the crime at issue;
 - whether the subject poses an immediate threat to the safety of the officers or others; and
 - whether the subject or that the suspect is actively resisting arrest or attempting to evade arrest by flight.
- D. General rules governing use of force
 - 1. Officers should use the least amount of force reasonably necessary to accomplish the intended objective without impairing the safety of others. This provision should not be construed to require officers to first attempt using types and degrees of force that reasonably appear inadequate to accomplish the intended objective. ***

BACKGROUND:

Sergeant Maurstad, the grievant in this matter was hired into the Roseau County Sheriff's Department as part-time deputy on April 27, 1993 and worked from 1993 to

1995 as a part-time or seasonal employee. He became a full time deputy on January 3, 1995. He was subsequently promoted to Sergeant on January 9th, 2008. Prior to being hired by the County, he had worked for the Greenbush Police Department for a year, and still works for the Greenbush Police Department on a part-time basis. He also worked for the Warren Police Department until the department was abolished.

Sergeant Maurstad was placed on Administrative Leave on August 4, 2008, pending investigation of a complaint of alleged use of excessive force. The County arranged for Thief River Falls Police Chief, Murphy, to conduct an internal affairs investigation into the allegations of the complaint alleging use of excessive force. During the course of his investigation of that complaint, the County received three additional complaints relating to other on-duty incidents involving Sergeant Maurstad, and Murphy was assigned to investigate those complaints as well. Murphy submitted his written investigation reports to the Sheriff on November 14, 2008, wherein he concluded Sergeant Maurstad had violated Departmental Policies and sustained most of the complaints' allegations. Then, on November 19, 2008, Roseau County Sheriff, Hanson, notified Sergeant Maurstad that he was considering terminating Maurstad and offered him an opportunity for himself and his Union Representative to meet with County legal representative Goering, and the Sheriff on December 4, 2008, at which time Sergeant Maurstad could provide any additional information that he wanted the County to consider.

On December 11, 2008 Roseau County Sheriff Hanson advised Sergeant Maurstad that he was being terminated effective immediately:

“December 11, 2008

Sergeant Chad Maurstad

26789 300th Street

Badger, Minnesota 56714

RE: Notice of Termination of Employment

Sergeant Chad Maurstad:

This letter is to notify you that your employment with Roseau County is hereby terminated effective today.

The basis for the termination of your employment is as follows:

1. Excessive force on a woman who had questioned the grounds for your seizure of a vehicle;
2. Refusing to explain the authority for your actions in seizing a vehicle from private property;
3. Accusing a citizen of committing the crime of taking state property when you were aware that no one at the scene of the July 6, 2008 DWI arrest underlying your later seizure of the vehicle had been told that the vehicle was subject to forfeiture;
4. Making false statements to the County attorney and Captain Eidsmore regarding the above-referenced incident, including the fact that Trooper Maurstad had not intended to seize the vehicle until after she had left the scene and you informed her that she could do so;
5. Failing to write a report regarding the above referenced incident until after you were aware that the woman had called to make a complaint against you. Writing a report regarding the incident which contained false and misleading information, including self-serving statements, falsehoods and omitting information known to you;
6. Being rude and overbearing to members of the public during the July 6, 2008 incident;
7. Repeated instances of sexual harassment/conduct unbecoming a peace officer while on duty and in uniform:
 - a. Inappropriate comments and questions of a sexual nature towards a twenty year old woman who was riding in your squad car to complete alcohol compliance checks and showing her explicit pictures and jokes on your cell phone in December 2007;
 - b. Sexually explicit comments and questions towards a twenty year old female criminal justice student doing a ride along with you in March 2008 and showing her a sexual joke which you sent via text to another deputy; and
 - c. Sexually explicit comments, questions and sexual innuendoes towards an eighteen year old waitress in a restaurant in May 2008;
8. The use of offensive or obscene language in the performance of your duties in violation of Sheriff's Department policy;
9. Insubordination, including but not limited to:

- a. Failing to send a letter of apology to the March 2008 complainant as directed by the Chief Deputy; and
 - b. Engaging in further acts of sexual harassment, offensive and obscene language after being warned to stop and stating that you would refrain from such behavior in the future;
10. Untruthfulness in the investigations of the complaints of sexual harassment against you, including who initiated the conversations, the content of conversations, the surrounding circumstances and your attempt to place blame for your conduct on the complainants and others and denying receiving a prior warning regarding sexual harassment. This constitutes insubordination in violation of the Sheriff's Department policy.

You must make arrangements with the Chief Deputy to turn in all County property in your possession and collect your personal belongings no later than 5:00 p.m., December 12, 2008.

Information regarding the continuation of your health and life insurance benefits will be sent to you under separate cover.

Sincerely,

Jule Hanson

Roseau County Sheriff

cc: Trish Harren-Klein

Chad Maurstad Personnel File"

On December 17, 2008 the Union grieved Maurstad's discharge at the third step of the contractual grievance procedure:

"December 17, 2008

Sheriff Jule D. Hanson

Roseau County Sheriff's Office

604 5th Ave. SW

Roseau, MN 56751

RE: Chad Maurstad Step 3 Grievance

Dear Sheriff Hanson

Law Enforcement Labor Services on behalf of Chad Maurstad, hereby submits a Step 3 grievance in accordance with Article 7 of the labor agreement.

Nature of Grievance:

Mr. Maurstad was discharged on 12/11/2008.

Contract Violation:

The Employer's action violates the labor agreement to include, but not limited to Article 12.1, which states, "The employee will be disciplined for just cause only".

Remedy Sought:

Mr. Maurstad will be immediately reinstated with back pay, and any other remedy necessary to make Mr. Maurstad whole.

Please contact me if you wish to meet and discuss this in an effort to resolve the issue.

Sincerely,

Douglas H. Biehn

651-793-2314

Business Agent"

The County denied the grievance and it proceeded to arbitration before the undersigned.

As can be seen from the Sheriff's termination letter, Sergeant Maurstad's discharge arose out of four incidents that occurred while he was on duty. The first incident involved the July 5/6, 2008, seizure by Sergeant Maurstad of a vehicle resulting from a DWI arrest of citizen Ode made by Sergeant Maurstad's wife, a Minnesota State Trooper. The three other incidents involved Sergeant Maurstad's on duty conduct with three young women, Hackett, Haugen and Boroos. Hackett and Haugen were law enforcement students at Northland Community and Technical College assigned to ride along with Sergeant Maurstad on December 8, 2007 and March 10, 2008, respectively. The other incident occurred on May 28, 2008, while Boroos was working as a waitress at Jakes Pizza restaurant where Sergeant Maurstad and Roseau Police Officer Bergren went to eat dinner that evening.

Vehicle Seizure Incident

The vehicle seizure incident occurred late in the evening of July 5, 2008, and early morning of July 6, 2008.

Captain Eidsmoe testified that he had been a captain with the Roseau County Sheriff's Department since 2006, and had also been an investigator for three years. He stated regarding the incident involving Suronen at the Berger residence that the grievant had given him an e-mail and a verbal report about the incident. He stated that his first involvement with the incident was a contact with Suronen, and the only information he had was an e-mail from Maurstad. He stated that he had called Suronen after she had contacted the department and he was asked to call her. He said she told him about an altercation with Sergeant Maurstad when he had been rude and arrogant with her. Eidsmoe testified he told her that criminal charges could be filed in the matter. He testified that Suronen hung up on him after he had said there could possibly be criminal charges filed. He stated that he later talked with her fiancée, Berger and said he also told Berger that Suronen could file a complaint, and that he did not say criminal charges would be filed if Suronen filed a complaint. He testified that his comments to Suronen and Berger about criminal charges being filed were based upon what Maurstad had told him orally and had stated in his e-mail. Subsequently, he advised the county attorney that Shelly Suronen had filed a complaint with the department.

On cross-examination, Eidsmoe said that when he spoke with Suronen the first time, there was no mention of excessive force or injury or a diamond missing from her ring. He stated that on the same day he received a call from Berger and that he did not mention those items either. Eidsmoe testified that July 11th was the first time that excessive force was mentioned, and that he had no knowledge of an injury to Suronen until then. He stated that the County did not investigate the incident at that time, indicating that was not his call to make. He testified that he let the Chief Deputy, Bandemer, know about the incident, and because of the alleged assault, let County Attorney, Hanson know as well. Eidsmoe stated that the County waited until a complaint was filed to investigate, and stated that on the 11th he was told that they would file a complaint on the 14th, but that it was not filed until August 4th, and no medical records

accompanied the complaint. He stated that he told Bryon Berger to get the medical records or have Suronen get them, but he does not know when those records were produced.

Suronen submitted the following hand written complaint dated August 1, 2008.

“I was at Bryon Berger residence visiting and having a barbecue and bonfire. Deputy Maurstad came into the yard and wanted to seize my sister’s car that had been pulled over by a State Trooper earlier in the evening. We asked for an explanation and all he said was because he can (“because I can”). We also asked for paperwork that he could legally go on private property and take someone’s property without an explanation or a warrant. He stated “do you really want to go there”, we said “yes”. After every question we asked Deputy Maurstad he became increasingly (sic) argumentive (sic) and arrogant (sic). We asked Deputy Maurstad if we could remove my sister’s belongings which included a medical kit, etc... from the car. He said that would be okay. I was retrieving these items and that’s when Deputy Maurstad said the car no longer belongs to my sister but now belongs to the state. Bryon asked why a county deputy was retrieving a car that was suppose (sic) to be seized by the state and he answered “because I can”. I was still removing personal items from the car when Deputy Maurstad said “you have to move” and I told him I could not until I found the medical kit. He told me that if I didn’t move I would be arrested. That is when he grabbed my hand and spun me around squeezing my hand extremely tight and pushed me up against the car with excessive force. Causing my free hand to slam against the car. Which left bruising and swelling and damage to my wrist and hand. Also, my engagement ring diamond fell out.

I have made three visits to doctors for treatment of my hands and wrist. I’ve had x-rays, MRI, and now I am having hand therapy done. The doctors have told me it will be some time before I have full mobility and strength in my hand. Thank you – Shelly Suronen.”

Kevin Becker, Sergeant with the Roseau County Sheriff’s Department, testified that he recalled a conversation on July 7, 2008 with Suronen. He stated that he had received a call from the dispatcher, and was told to make a call to Suronen, as he was the supervisor on duty that day. At the time he received the call from the dispatcher, he stated that he was at Maurstad’s house while on duty. He testified that Maurstad had a barbecue that day and had asked him if he would like to come for dinner. It was while he was at Maurstad’s house that he received the call from the dispatcher. He testified that he called Suronen and that she advised him that she had a complaint about Maurstad, and he inquired of her as to what the nature of the complaint was. He said

she responded that Maurstad was rude and arrogant. He testified that he did not recall her saying anything about excessive force and injury or her diamond falling out of her ring. He testified that he advised her that she should call Captain Eidsmoe the next morning if she wanted to file a complaint against the officer. Becker testified that after concluding his call to Suronen, he told Maurstad whom he had been speaking with on the telephone. He testified that Maurstad responded that he had had a call over the weekend involving her. Becker testified that he told Officer Maurstad that he should file a report on the incident if he hadn't already.

Sergeant Becker testified on cross-examination that he didn't make a report regarding the call that he had made to Suronen because such calls were a daily occurrence. He stated that the next day he did tell Eidsmoe that he probably would get a call concerning the matter. Becker also testified that when he talked to Suronen, he did not know that there was an allegation of an assault. He stated that he did call back to the dispatcher, and told the dispatcher not to make out an ICR (Initial Complaint Report), which is normally filled out by the dispatcher.¹

Suronen testified that on July 5, 2008, she attended stock car races in Greenbush with her fiancé, who was a stock car racer. She stated that the race ended at about 10 p.m., and that the car was loaded up and they went to Berger's house for a bonfire and grilling out. She testified while there she had a couple beers, and that her sister, Millard, and Ode, her sister's boyfriend, were there for approximately one hour and had been drinking and left at about 12:30 a.m. on July 6th. She stated that after her sister and Ode had left Berger's residence, Ode was arrested for DUI and her sister called and wanted to be picked up at Ode's house. Suronen testified that she told her sister not to drive because she was very intoxicated. She stated that Berger and his son R Berger went to get her and her car at Ode's house and that R Berger drove the car back to Berger's residence. Suronen testified that after her sister had been driven back to Berger's residence, Maurstad arrived in his squad car and parked at the end of the driveway. She stated that R Berger went down the driveway to talk to Maurstad.

¹ There is no record evidence of an ICR being completed/initiated.

Suronen testified that she became aware that Sergeant Maurstad was going to have the vehicle towed because it was involved in Ode's DWI. She asked Maurstad if she could remove her sister's diabetes kit and cell phone from the car before it was towed. She stated that she also asked Maurstad why he was having the vehicle towed, and she stated that he stated, "because I can and it belongs to the State". Suronen testified that she went into the car to retrieve her sister's belongings and while doing so Berger and Maurstad were talking about why the car was being towed. She said that she climbed out of the car on the passenger side front door, and stood in the doorway and asked Maurstad why it was the State's car, and testified that he kept saying, "because, I can". Suronen testified that Berger also wanted proof of why Maurstad could have the car towed, inasmuch as the other officer was a State officer. She testified that the conversation got heated and Maurstad said to Berger "do you really want to go there". Suronen testified that then Maurstad told her to move out of the doorway, and she said she responded, "I don't have to. I'm on private property." She said at that point Maurstad grabbed her arm, spun her around, and put her right arm up behind her back. She stated that while she was being spun around, her left hand hit the car and the diamond fell out of her engagement ring. She testified that she never touched Officer Maurstad.

Suronen testified that at that point Berger jumped in between Maurstad and herself, and stated, "You're not taking her anywhere". She said Berger then said this has gone far enough, and at that point Maurstad let her go and she returned to the fire pit. Suronen testified that she went to the doctor within a couple of days on either July 8th or 9th because her left hand was swollen and bruised. She stated that the doctor performed x-rays and an MRI, and concluded that she had ligament damage. Suronen testified that while she called the Sheriff's Department shortly after the incident, she didn't immediately file a written complaint because of fear of retaliation in that Maurstad's wife was a State Patrol officer who arrested Gary Ode.

On cross-examination, Suronen stated that she only remembered the grievant telling her once to move away from the car, and that she didn't move away when he directed her to do so. She also testified that she told the investigating officer that she

didn't touch the grievant before he took her arm and spun her around. She stated that the incident happened early in the morning on Sunday morning, and she called the Sheriff's Department on Sunday evening. She testified that Sergeant Becker called her back, and that she told him that Maurstad was rude and arrogant as well as what happened at the vehicle, and that she believed he had used excessive force. She stated that she also called Captain Eidsmoe and told him what had happened, including that she had been injured. She also testified that Captain Eidsmoe told her that she would be charged criminally if she filed a complaint concerning the incident. She stated that she responded to Eidsmoe that she would hire someone who didn't live in the area and who wouldn't be intimidated by the Sheriff's Department. She stated that subsequently Berger picked up complaint forms from the County and that the Complaint was filed on or about August 6th. She stated that she subsequently talked to Chief Murphy, the investigating officer, on or around August 15.

Berger testified that he lived in Badger, Minnesota, and that on the 5^h of July, 2008 had raced cars. He stated that his son, B Berger, was home for the first time in a couple years, and he, Berger, had invited friends and relatives over to have a barbecue after the race. He stated that when he returned to his residence after the race for the barbecue, Suronen's sister, Millard, and her boyfriend, Ode, were there, but left shortly thereafter. He stated that Millard was intoxicated when she left, and approximately 1/2 half hour to 45 minutes later, she called her sister's, Suronen's, cell phone stating that she needed someone to come and pick her up and drive her back to his residence because Ode had been arrested for DUI. Berger testified that he and his son R Berger went to Ode's to get her. He stated that when they arrived Millard was standing at her vehicle, very upset and very intoxicated. He also stated that when they got to Ode's residence, there was no law enforcement present, the tow truck was not there, and Millard was there by herself. They asked if she had keys to the vehicle and she stated yes, and that his son R Berger drove Millard's car back to his residence. He testified that Millard had told them she wanted to take the car back to his residence because she wanted to leave early the next morning.

Berger testified that when they arrived back at his residence, they went to the campfire, and Millard told those present what had happened. He stated that he thought they were back at his residence for approximately 1/2 hour when Sergeant Maurstad pulled up in his squad car. He stated that his son R Berger went to see what the officer wanted, and the officer inquired if the car in the driveway was Millard's. After his son had indicated to Maurstad that it was Millard's, Maurstad asked if he could look at the car, and then drove up the driveway in his squad car and parked behind Millard's vehicle.

Berger testified that when Maurstad drove up the driveway in his squad car, he went over and asked Maurstad what was going on. He stated that Maurstad responded he had come to get "this car". Berger stated that he then asked why he had come to get the car, and Maurstad responded that it had been involved in a DWI and it was forfeited to the State. Berger said he responded to Maurstad that he didn't understand how that could be because the car had not been tagged or anything. He stated that Officer Maurstad responded that the person who drove the vehicle over to Berger's house would be in big trouble for driving the car over there. Berger testified that he didn't know what prompted Maurstad to say that. Berger said that upon further questioning of Maurstad, Maurstad responded that he didn't know what had happened with respect to the DWI because he wasn't there. Berger said he then asked why he, Maurstad, was at his residence. He stated that Maurstad responded that "we help each other out". Berger stated at that point he said, "okay" to Officer Maurstad, but the vehicle was now on his property and if the officer had a legal right to take the car, he wanted to see something that showed it could be taken. He testified that Officer Maurstad responded "do you want to go there?" and he said he responded to Maurstad, "yes".

Berger testified that at that point Suronen came over to the car and stated that it was her sister's car, and how could he be taking it. Berger stated that Maurstad responded "because I can", and that he, Berger then stated, "no you can't unless I see something that says you can". Berger said that he also explained to Maurstad that Millard was not driving the vehicle, that the vehicle was in her son's name, and that

she had taken over the payments. He stated that Suronen kept asking Officer Maurstad why he was taking the vehicle, and he kept saying that it had been forfeited.

Berger testified that Suronen had indicated to Officer Maurstad that her sister was diabetic and that she needed to get her diabetic kit and maybe a phone out of the car. He said Maurstad told her she could do so, and that she opened the passenger's door and started taking things out. Berger testified that while Suronen was removing her sister's things from the car, he kept asking Maurstad for documentation and what had happened that resulted in the police wanting to seize the car. Berger testified that Maurstad responded that he had gotten a call from a state officer while the officer was on her way to Roseau and he was in Greenbush, and the officer said Maurstad should go seize the car because it was involved in a DUI. Berger testified that Maurstad told him that the state officer had asked him to go to the Ode residence because the officer was concerned that Millard would take off with the car with an extra set of keys. Berger testified that he thought that was a strange response because he knew there was no extra set of keys.

Berger testified that Shelly Suronen was having trouble finding the items in the car because it was dark and that while she was attempting to do so, she would periodically turn around and ask Maurstad why he had the right to take the vehicle. Berger testified that Maurstad eventually said to Suronen that she would have to move away from the car. Berger said that Suronen kept saying that the vehicle was on private property, that she didn't have to move, that she hadn't gotten everything out of the vehicle, and that the officer couldn't take the car. Berger testified at that point Maurstad said to Suronen she would have to move or that he was going to arrest her. He said that Maurstad then grabbed Suronen's right arm and swung her around and pushed her right arm up behind her back and shoved her against the car. He said at that point he heard her left arm strike the top of the car and she screamed. He stated that he forced himself between Suronen and Maurstad and said to Maurstad "this has gone too far". He said that Maurstad still had her arm up behind her back and that he had his back against Suronen's back and was facing the grievant. He said that Suronen was crying and that Maurstad let her go and she walked away.

Berger testified that after Maurstad released Suronen he went with Maurstad to his squad car. He said he told Maurstad that the matter was out of hand, and that he, Maurstad, couldn't do this to Shelly. Berger said that Maurstad responded that Suronen had poked him and he said he told Maurstad that she had not poked him. He said that he and Maurstad kept talking and he kept asking what was the story as to why the car was being impounded. He stated that Maurstad responded that it was a State matter, and that he would call the State Trooper and get the story. Berger said that Maurstad then called State Trooper Maurstad, and told Berger that Trooper Maurstad explained to him that the Trooper had followed the vehicle and called in the plate, and found it was registered to A. Borstad and that Borstad had a suspended license, and she followed the vehicle into the yard and arrested the driver. Berger testified that after getting that explanation he and sergeant Maurstad talked some more, but that he didn't recall about what, and at some point Maurstad had the tow truck driver load the vehicle onto the tow truck and take it away.

Berger testified that later in the day, Suronen called the Sheriff's Office and spoke with Eidsmoe who told her she would have to come in and get papers to file a complaint. He said that he filled out the papers right away, but was concerned if they were filed, would they be stirring up a big can of worms and would there be retaliation by the grievant, his wife or other law enforcement. He stated that Suronen was petrified. He stated that he talked to his son, R Berger, and asked if he could lose his job over the incident, and his son responded that he had talked with his supervisor and that he was not going to lose his job over the incident. Berger stated that at that point he also contacted others at the party and asked if they would write statements about what had occurred and that it took some time to get a hold of everyone. He stated that after he got all of their statements and was satisfied that a complaint was legitimate, and seeing how Suronen's hand was damaged and she was still in pain, they went ahead and filed the complaint which was approximately 3 or 4 weeks after the incident.

On cross-examination, Berger testified that he had known sergeant Maurstad grievant for approximately three years, since when he installed cameras at his

business. He said he didn't have any issues with Maurstad and thought he was a good guy, and told the Sheriff he didn't believe he should lose his job, but some steps should be taken to correct his behavior. He denied telling the grievant that he didn't like cops, and that some of his friends were officers. He also testified that he was certain that Maurstad had directed Suronen at least twice to move away from the vehicle, and she responded that she didn't have to move. He said at that point the grievant told her that he was going to arrest her and grabbed her by her right hand and turned her around as she was starting to go back into the car to retrieve more of her sister's things. He stated that he tried to prevent her arrest and wedged his body between hers and Maurstad, stating that the officer was not taking her anywhere, the situation had got out of hand, and telling the officer to let go of her arm. He stated that after that occurred, he and Maurstad began to talk civilly and he asked Maurstad to call the Trooper, and that is when he learned the truth of the Ode DWI arrest. He testified that on the following Monday or Tuesday, Eidsmoe came to his shop and showed him the statute that indicated the car could be seized. He said he told Eidsmoe that the grievant had been rude and unprofessional and indicated exactly what had happened, and stated that Suronen was going to be seeing the doctor and that she was missing a diamond from her ring. He testified that he called Captain Eidsmoe a few days later and that Suronen had gone to the doctor or the clinic and that they were doing x-rays because her hand might have been fractured. He stated he filed the complaint on August 6th and that he dropped it off at the Sheriff's Office. He stated that he waited to file the complaint because he wanted to see if the injury would get better, and he didn't want to stir up a can of worms unless there was a long time injury, and that his son's job was not in jeopardy over the incident.

Berger also testified on cross-examination that County Attorney Hanson had come to his shop, and that he had given a statement about her visit to Fallon of the Fraternal Order of Police. He stated that the statement that he gave was accurate, and that Attorney Hanson had said she was just driving by and thought she would stop in to say there was not going to be any retaliation. He stated that he has subsequently consulted with several attorneys about suing the County, and believed that Hanson was

threatening he and Suronen on behalf of the County on the day she showed up at his shop.

R Berger testified that on July 5th he was in Roseau and visited with his family. He stated that his dad races cars, and that on the Saturday night of July 5th, his father raced until approximately 11:00 p.m. He stated that as they were pulling into his father's residence after the race, Millard had also come over to the house. He stated that she was so intoxicated that she couldn't stand and could hardly talk and was with Ode. He knew Ode as a family friend. Later in the evening Suronen told him and his father to go to Ode's house and get Millard's car. He said Ode's house was approximately three minutes from his father's residence. He stated that when they got to Ode's house, Millard was still intoxicated and gave them the keys for her car. He stated she insisted they take her car so she could leave in the morning. R Berger testified that Millard told them she couldn't believe that Ode had been arrested because he was honest and didn't argue, but that the officer took him in. Berger testified that when he and his father arrived at the Ode residence, there was no Trooper or tow truck there, and that when they left, Millard rode with his father, and he drove her car back to his father's residence and parked it behind Suronen's car.

Berger testified that approximately 1/2 hour after they got back to his father's residence with Millard's car, someone stated that there was a cop at the end of the driveway. He stated that he went down the driveway to Maurstad's squad car and Maurstad asked him if the vehicle in the driveway was Millard's. He stated that he told the Maurstad that it was, and the Maurstad asked him how it had gotten there. He stated that he told Maurstad that he had driven the car there. R Berger said that Maurstad drove up into the driveway and said that the vehicle was State property and seized because Ode had been arrested for DWI. Berger testified that the conversation between the officer, his dad and Suronen turned into an argument, and that he avoided saying much. He said that he stood about three feet behind Officer Maurstad and did not see Suronen touch Maurstad. He testified that he was standing behind and to the left of Maurstad, and that Shelly Suronen was standing 2 to 3 feet away from Maurstad. He said that as the argument escalated, there was a lot of hollering, and that

Suronen had asked Maurstad for paperwork or a warrant for seizing the car. He stated that Suronen was standing with her arm on the open car door and the other arm on the roof, and was not talking in a calm voice and stated that she wanted an explanation. He said Maurstad asked her to move away, and then swung her around and threw her against the car. He testified that Suronen was screaming in pain, and that his father said for her to calm down.

R Berger stated that Maurstad said at one point during the incident that as a customs agent, R Berger could be arrested or something like that, for taking the car. Berger testified that he didn't know it was State property when Maurstad came to his father's residence. He also stated that sometime later his father told him that he had been hearing that his son could lose his job. R Berger testified that at that point he went to his superiors, explained what had happened, and they told him to write up a statement and he did and turned it in.

R Berger also testified that during the last 5 to 10 minutes of the incident, the tow truck arrived, and that the driver pulled up behind Millard's vehicle and was standing alongside of his truck. He stated that the whole incident from the time Maurstad arrived at the end of the driveway until the tow truck removed the vehicle took approximately 45 minutes. R Berger testified that he did not see Suronen touch Maurstad and that she was only talking with him and asking for an explanation.

On cross-examination, R Berger testified that Shelly Suronen went to Millard's car to retrieve medical items, and that he had left the keys in the car and had told Maurstad that. He said that when he and his father went to pick up the car, they didn't think about someone coming to seize it. He stated that Suronen was standing on the passenger side of the vehicle with the front door open and one arm on the door and one arm on the roof facing Maurstad. He testified that he didn't recall which way Maurstad grabbed Suronen, but he did remember them being face-to-face, and her being turned into the car. He also testified that everyone knows everyone around the Roseau area, and that was probably how the Maurstad knew that he was a Customs Agent. He also testified that Suronen was told several times by Maurstad to move away from the car and that she did not do so. He also stated that his father said to

Maurstad that he was not taking her anyway. He testified that Maurstad let Suronen go within a minute or less, and after that Maurstad and his father talked civilly with one another as Maurstad was trying to de-escalate the situation. He also testified that his father had begun to de-escalate the situation by saying this doesn't need to be like this, and Maurstad asked him to go over to his squad car.

Dahl is a self-employed tow truck driver working out of Badger, Minnesota. He testified that he receives calls from the State of Minnesota regarding impounding cars for various reasons until the owner picks up the vehicle or until someone from the State seizes the vehicle. He testified that on July 6th, 2008, he received a call from the dispatching center telling him that there was a car that needed to be seized, and he was given the address and told to wait at the scene until a Deputy arrived. He went to the address in Badger, and as he was pulling out of his driveway on his way to the address, the Sheriff's Deputy's car pulled in behind him. He said that when they got to the residence address that he was given, there was no car there, and the Deputy was talking to someone on his radio or phone. He said that Maurstad, who was the Deputy in the vehicle, told him that he was driving over to the Berger's to look and see if the vehicle was there. Dahl said he didn't follow Maurstad to the Berger's, but rather went up town to the gas station to see if the vehicle was there. He stated that when he got to the road near the Berger's, he could see Maurstad's patrol car pulling into Berger's driveway, and then he took his tow truck there. He said that when he got there he pulled into the driveway, and was standing outside his truck as he always did, waiting for the Deputy or the Trooper to give him the go ahead to hook up the car.

Dahl testified that he overheard Berger asking Maurstad for a warrant, and Berger repeated that request quite often. He stated that Maurstad was telling Berger that the vehicle was a State impound and he was taking the car because it was involved in a DWI. He said Maurstad told those present that the tow truck driver was going to hook up the vehicle. He said that the area where the vehicle and the tow truck were parked was dark except for an overhead light. He also said that there were 2 to 5 people who would come out from the dark and then walk away. He stated he did not

know Suronen at that time. He stated that he heard her ask if she could get things out of the car, and that she went and did that.

Dahl said that he was standing a car length away from Maurstad and Suronen behind the car. He stated that they were at the driver's door, and Suronen was removing things from the vehicle. He said at some point she stopped getting things out of the vehicle, and stood in the doorway with one arm on top of the door and the other on top of the roof of the vehicle blocking the passenger entrance. He stated she was telling Maurstad no, don't take the car, why do you need to take the car, you don't need to take the car, it's my sister's car and she needs it. Dahl stated that he heard Maurstad say at least three times that Suronen needed to move, and if she didn't move that he would arrest her. He testified that he saw Maurstad take Suronen's wrist and hand from on top of the car door as she was facing him, and said to her now you are under arrest and turned her so that she was facing the car. He said he was not sure if she put her right hand up as Deputy Maurstad continued to hold her left hand. Dahl testified that Maurstad's grabbing and turning her was a fluid movement to get her to face the car. He said he did not recall Berger getting close to Suronen and Maurstad until Maurstad had Suronen facing the vehicle and had her arm behind her back. He stated that after Suronen's voice got louder because Maurstad had her in a control hold, Berger put his arms around Suronen and stated to Maurstad that he didn't have to arrest her and to just let her go. Dahl testified that he thought Berger was trying to be a peacemaker when he was saying to Maurstad that he didn't need to arrest her. He stated that Suronen was squirming and hollering, and Maurstad said that he would give her a minute to calm down and let her go. Dahl testified that once Maurstad released his hold on Suronen, she came towards him, Dahl, holding her wrist and was looking back as she walked away from the vehicle.

Dahl stated that at that point, Maurstad and Berger were talking and they actually walked away. He said then the next thing was that Maurstad told him he could hook up the car and take it.

Dahl testified that in the interview that he gave to Investigator Murphy that Maurstad had come to his yard after he had towed Suronen's vehicle there, just a few

minutes after the altercation because his yard was only three minutes away. It was at that time that he said Maurstad told him that Suronen had poked him in the stomach. Dahl testified that he was not sure when that would have happened because he did not have a clear vision of everything that went on. He testified that he was not saying that it happened or didn't happen. He also testified that he told Maurstad that he didn't believe that he had used excessive force, and that he could understand that Maurstad would feel he was vulnerable because he was there alone in the dark. He said that he believed Maurstad could have perceived there was a threat because it was impossible to tell how many people were around, and it was 2:00 a.m. in the morning. He also testified that once Shelly Suronen started screaming "poof more people were there", and he said, "it's impossible to know if people will get macho". He said he didn't feel threatened, but he didn't want to get too far away from his truck because of people in the area with beer bottles, although no one intentionally threatened him or anyone else.

Dahl testified that he repossesses cars and he goes by the State and County guidelines, but that he didn't know if the seizure of Kelly Suronen's car was a legal seizure. Dahl testified that Berger and Suronen were impeding removal of the car, and he was persuaded that even if Maurstad was able to "put the law on the car", no one was going to walk away.

On cross-examination, Dahl testified that Suronen wasn't fighting when Maurstad turned her to the car, but when he put her arm up behind her back, she spun around faster than he was moving her. He stated that he could hear Suronen hollering and stating that Officer Maurstad was twisting her wrist and saying that he was hurting her. He said it was at that point when Bryon Berger stepped in. He stated that after Maurstad said to Suronen that she was under arrest, he was unable to see them any longer. Dahl testified that he told Murphy that everything seemed to be going fine until Suronen turned so fast as Maurstad had a hold of her, and it was after that that she started yelling.

Trooper Sylvia Maurstad, Deputy Maurstad's spouse, is a Sergeant with the Minnesota State Patrol. Trooper Maurstad testified that she had looked at the video of

her arrest of Ode and remembered taking him into jail, and that Millard was at the scene of the arrest. Trooper Maurstad testified that she didn't know at the time of her arrest of Ode's if Millard had keys to the vehicle or that the vehicle was subject to forfeiture. She said there was no reason to move the car because it was in the yard. Trooper Maurstad testified that if the vehicle had been at the side of the highway, she would have inventoried the car because it was incident to an arrest and so it wouldn't get hit by being left at the side of the road. She testified that her expectation as to what would happen with Millard after ode's arrest was that Millard would go into Ode's house as Ode had told her to do. She testified that it was obvious that Millard was intoxicated. She stated that when she left Ode's residence with Ode in custody, she did not think that the vehicle would be moved because Millard was too intoxicated to drive, and that she would go into the house.

Trooper Maurstad testified that she called dispatch code 1015-1056 which meant that she had a drunk driver in custody. She also testified that she called the County Dispatcher so that the County could do the paperwork before she got to the County Jail with Ode.

Trooper Maurstad testified that she had been married to Deputy Maurstad for 15 years, and both had been in law enforcement during that period. She testified that in July of 2008, both she and her husband were working five days on nights together. She said that night her husband, Deputy Maurstad, asked her whom she had in custody, and she responded that she had Ode. Her husband asked her if Ode was driving a car, and she responded yes, and he said that should be a forfeiture. She testified that she had a computer in her car, and was able to pull up Ode's record and saw that the vehicle was eligible for forfeiture. She also testified that she responded to her husband "Oh, shoot. Should have done that." She then asked Deputy Maurstad if he would do her a favor and wait for the tow. She testified she called the tow truck because it was too hard for the dispatch to figure out where the car was. She stated that she told the tow truck driver that the car was at the house by the school, and told him to meet Deputy Maurstad by the school.

When Trooper Maurstad was asked if she had ever enlisted help from the police or the Sheriff previously, she testified that yes, later that evening she had another DWI, and Deputy Rustad waited with the vehicle for the tow. She testified that if there are two officers involved, one waits for the tow while the arresting officer takes the offender to jail. She testified that in the case of Ode, she could have gone back to the residence to wait for the tow, but that she had a two-hour window within which to get a blood test and Breathalyzer from Ode. She also testified that if the individual being arrested calls an attorney that cuts further into her two-hour window. She testified that she was 2 miles out of town when she made the call regarding the forfeiture, and it would take about the same amount of time for Deputy Maurstad to get to Ode's house.

She testified that sometime later, while she was at the jail, the Badger tow truck driver called her and said the car was not at the Ode residence, and she confirmed for him that he was at the right location. She testified that at that point she asked Ode where Millard might go, and he said he didn't know. She said she then asked him where they were coming from when she had stopped him, and he said they had come from Berger's.

Trooper Maurstad also testified that Deputy Maurstad also called her two times from the Berger residence. She testified that the first time he called he asked for the plate number of the vehicle and described the vehicle that was in the driveway. She said he called again later and asked for the circumstances of the Ode arrest, and she asked him if he had found the car, and he responded that he had.

Trooper Maurstad said that later in the evening Deputy Maurstad called her about the Suronen incident and told her that Suronen had struck or stuck a finger into his chest. She also testified that Ode asked her if there was trouble, and she responded to Ode, yes, Millard had poked Deputy Maurstad in the chest or stomach.

On cross-examination, Trooper Maurstad testified that she did not take any keys to the Millard vehicle, and didn't know where they were. She also testified that did not put a notice or a tag on the vehicle indicating that it was seized, nor did she give anything to Millard at Ode's residence telling her the vehicle had been seized. Trooper

Maurstad testified that she didn't tell anyone at the scene that the car was going to be seized because she didn't know the vehicle was subject to seizure, and she didn't radio or raise the issue with anyone. When asked if she had ever left the car with an intoxicated person and not seized the vehicle before, she testified no. She stated she didn't intend to seize it when she left the residence, and Deputy Maurstad told her it was subject to forfeiture. She testified that she would have figured that out when she got to the County Law Enforcement Center with Ode.

Maurstad testified that on July 5th and 6th of 2008, he was working the 3:00 p.m. to 3:00 a.m. as his regular shift. On that day he worked 15 hours taking calls and making arrests and crashed an under-age drinking party. He was assigned to work in the west portion of Roseau County that included the Village of Badger. His wife, a Minnesota State Trooper, was also working that night, which apparently occurs a handful of times over the 6-week scheduling period. Maurstad testified that when it does happen that they are working together, they talk regularly on their cell phones. Maurstad testified that on the evening of July 5th, they were working too far apart to hear the back and forth between the squads, but occasionally they could hear their dispatches. On that night he heard his wife call the Roseau County Dispatch. He said that he tried to call her on her cell phone, and when they are 8 to 10 miles apart, they can't hear well if at all. He testified that he called her several times that evening. Maurstad testified that he remembered calling his wife to find out whom she had stopped and what was going on. He stated that she responded that she was with Ode, and he said that he volunteered that with Ode's record it would probably involve seizure of the vehicle. He also testified that he wanted to alert his wife that Ode usually drove an ATV, and he had arrested him several times and knew he didn't have a drivers' license and that he drove an ATV wherever he went. He said he assumed that his wife had paged through the computer, and heard her say "oh yeah" and asked me to help. He said he thought she was at Ode's house when he called her, and said that when he had called her she said "10-56" so he knew she was going to be at Ode's. He testified that he had no reason to think she had cleared the scene.

Although the videotape of her arrest of Ode indicated she answered, “10-15”, Maurstad testified that he heard only “10-56” and didn’t hear his wife saying hello several times. He testified that in the Badger area you can lose the signal, and therefore you lose pieces of what is being said. He testified that 10-15 means the person is going to be in custody, and even if he had heard it, it still would not let him know she had left the scene. He said that he didn’t hear his wife indicating that she was leaving Badger because the call was breaking up. He said he assumed she would be sitting there when he got there. He testified that she asked him to help when she learned that there a vehicle forfeiture could be involved with the Ode arrest. He testified that the wrecker would pick up the car and take possession so that nothing would happen to it, and the reason an officer needed to be there was because Millard was intoxicated and the wrecker driver prefers the officer to be there to avoid any altercation. When asked why he needed to be there if he thought his wife was already at the scene, he stated that she didn’t have a lot of time because of the time window necessary for her to get Ode to the station. Maurstad also testified that he believed Ode and Millard had been told the car was going to be towed, and he said that he reached that conclusion because they would have heard her call for the tow truck.

Maurstad testified that when he got to the Ode residence, the car was not there and he thought Millard had jumped in the car and left with it. When he got to the Ode residence and found the car was not there, he called Trooper Maurstad and they came up with the possibility that the car could be at Berger’s house. He said, consequently, he went to Berger’s place, and the tow truck got there close to when he did. He testified it was 2 to 3 minutes from Ode’s residence to Berger’s house. Maurstad testified that when he got to Berger’s, he saw the vehicle and called Trooper Maurstad from the highway shoulder to confirm it was the car. He said that R Berger came down the driveway, and at the time he did not know who R Berger was, but confirmed with him that it was Millard’s car and asked him how it got there. Maurstad testified that R Berger told him that he had driven the vehicle there. Maurstad then asked R Berger where the keys were and he was told they were in the car. Maurstad testified that he then asked R Berger if he could drive up to where the car was parked in the driveway and he was told that was okay. He said when he got to the car he removed the keys and put them in his pocket.

Millard came to the car and Maurstad told her that the car would be towed and subject to forfeiture because Ode had too many DWI's. He told her she could go to court and get the car back, and he indicated that she had no problem with what he was telling her. He stated that Berger then told him that he couldn't take a car without a warrant, and that he wanted to see some paperwork before the car was towed. Maurstad testified that Berger said the car was not going anywhere without a warrant. Maurstad also testified that he could smell alcohol on Berger's breath. He said he asked Berger how the car got there, and he recalled that Berger said his son, R Berger, drove it.

Maurstad testified that he believed Millard knew the car was going to be seized before Trooper Maurstad had left the Ode residence, and he thought that she drove the car to Berger's or called to get the car driven over to Berger's so it wouldn't be towed. He said he concluded the car had deliberately been moved so that it could not be impounded. Maurstad also testified that he told Berger that he could be arrested for obstructing legal process and also that R Berger, because he had taken the car from Ode's could be arrested. Maurstad denied that he had said anything about R Berger losing his job.

Maurstad testified that he told Suronen many times that he was seizing the vehicle and that Suronen was intoxicated and wasn't happy with him being there. She asked if she could remove some of Millard's things from the vehicle, although he testified that there was nothing left in the vehicle to remove, but thought if it would make her happy it was fine with him. Maurstad testified that while Suronen was in the car, he was talking to Berger. He said he finally told Suronen to move away from the vehicle so he could close the door and the tow truck driver could load the vehicle. Maurstad testified that Suronen was in the opening between the door and the car, and said to him that the car wasn't going anywhere. He testified that he was standing two feet away at the end of the car door, and that there were people in front of the car, that the tow truck driver and Berger were nearby, and he knew that there were other people behind him because he could hear them talking.

He testified that he told Suronen more than two times to move away from the vehicle, and she stated that she wasn't going to do so. Maurstad said that he then told her he was going to arrest her, and she responded that he was not taking her anywhere. He

said at that point she poked him in the chest and he responded that she was going to jail. He said that once she touched him, it was clear that he was losing control of the situation and once he has lost control an individual can take things off of his belt, and with the number of people present, he could be in danger. Maurstad testified that Suronen had said to him to come and take her out of there, and she reached out her left hand and poked him, and at that point he grabbed her left wrist and spun her around and had her wrist at waist level behind her back. He said this was the standard technique employed when handcuffing an individual. He said that he didn't cuff her because when he told her she was under arrest, Berger came up from his left and he knew there were several people on his right. He said Berger had put his arms around Suronen and was saying don't take her. He said he told Berger to get her out of there.

Maurstad testified that he didn't call for back up even though she was hindering his ability to take the car and hindering the legal process. Maurstad testified that at that point he and Berger went to Maurstad's car and Maurstad said to Berger "this is ridiculous and we can work this out". Maurstad testified that he called Trooper Maurstad while he was talking with Berger and she explained the arrest and he relayed the information to Berger. Maurstad stated that Berger was surprised, like Millard had been lying to him. Maurstad said at that point he had the car towed and followed the wrecker to the impound area because he stated that he wasn't going to lose the car again.

Maurstad testified that he didn't write up the incident that work shift because he had worked 16 hours and didn't get off work until 6:00 a.m. and the person arrested was going to be in jail and he was going to be returning to work at 3:00 p.m. the next day. He said that after having the vehicle towed, he spent the rest of the work shift involved with an underage consumption incident. However, when shown that the underage consumption incident was completed on July 6th at 4:30 p.m., he explained that he didn't write the report of the Suronen incident because he also had worked on a criminal sexual misconduct case for the rest of the night and was at the hospital. He testified that he wasn't trying to hide the Suronen incident, and that he had called County Attorney Hanson from the Department office to explain to her what had happened and that there might be other charges coming. He testified that she has told "us that we could call her when legal issues come up". Maurstad testified that Hanson told him after he had

explained what had happened in the Suronen incident and had reports to do involving other incidents and was going to be off work for the next couple of days, “don’t worry, fill out the report when you get back to work”. Maurstad testified that he had another conversation with Attorney Hanson during the following week when Sergeant Becker was at his residence and Becker received a call from dispatch indicating that the Badger lady was complaining and said I was rude to her. The County Attorney said to me that I should fill out a report. He also testified that he called Eidsmoe after he talked to the County Attorney and gave him a heads up that a complaint might be filed. Maurstad testified that Sergeant Becker told him to file a report if he hadn’t done so already.

Maurstad testified that he sent an e-mail to Eidsmoe with information that would allow him to file a report later because he didn’t know the dates, the times, the license plate number, etc. Maurstad said that later Eidsmoe told him that he had spoken with the County Attorney and she had said don’t change anything in the report that he had filed because it would look bad for him. He stated that he sent his e-mail report to Eidsmoe during the evening when Eidsmoe wasn’t working. On Monday July 7th at 11:45 p.m. he sent the following e-mail to Eidsmoe and Attorney Hanson.

“Subject: complaint

Todd and Lisa,

Here is a draft of the report I spoke to you about tonight.

Kevin did talk to the female but stated that she was very intoxicated.

He stated that she basically said I was rude and arrogant.

I enclosed a report so you basically know what happened.

Chad”

The attached report stated:

On 07/??/08 at approximately 0?? HRS Sgt. Maurstad received a call from Trooper Maurstad. She stated that she had made a traffic stop on an individual in the City of Badger and requested that Sgt. Maurstad respond to the scene to assist the tow truck driver to find a vehicle that she had planned to have towed.

Sgt. Maurstad went to the location and met with the tow truck driver, John Dahl. Sgt. Maurstad was unable to locate the vehicle at the location that Trooper Maurstad stated that it would be.

Sgt. Maurstad called Trooper Maurstad and asked her where the vehicle had been located. She gave Sgt. Maurstad directions and again stated that it should be there.

Sgt. Maurstad stated that the vehicle was gone. She spoke to Jerry Ode, who was in custody, and asked him if his passenger may have taken the vehicle somewhere. Ode stated that if she did take the vehicle, it would be the Bryon Berger residence.

Sgt. Maurstad drove to the Berger residence and observed the vehicle license number in the driveway of the Berger residence.

Sgt. Maurstad waited at the end of the driveway as he again called Trooper Maurstad. Sgt. Maurstad made sure the vehicle in question was the right vehicle and made sure who the registered owner of the vehicle was. The owner was Kelly Millard???

While Sgt. Maurstad was talking on the phone when a male individual walked down the driveway to where he was. Sgt. Maurstad asked him if Kelly Millard was at the residence which he stated that she was. Sgt. Maurstad asked him where her car was. He stated that he had gone over to her residence and picked her up then drove it to the Badger residence for her. Sgt. Maurstad asked him if the keys were around for the vehicle. He stated that they were in the car. Sgt. Maurstad asked if Kelly was closed (sic) by and he stated that she was in the yard and he would take him to her.

Sgt. Maurstad then drove into the driveway and stopped next to the vehicle license number ??????. Sgt. Maurstad observed the keys in the center console. Sgt. Maurstad spoke to Kelly Millard. Ms. Millard was intoxicated but wanted to know what Sgt. Maurstad planned to do because she was not driving. Sgt. Maurstad explained to her that the vehicle was supposed to be towed and that she would have to go to court to get the vehicle back because it may be going through forfeiture proceeding.

Sgt. Maurstad then asked her if she wanted any property out of the car and she stated that (sic) would like to remove her purse. Sgt. Maurstad opened the door for her and she took her property out.

At this point another female walked up and identified herself as Kelly's sister. She stated that Sgt. Maurstad could not remove the car from the property without a warrant. Sgt. Maurstad explained to her that he did not need a warrant to remove the car.

At this point Bryon Berger came up to Sgt. Maurstad and told him that the car was not leaving his property. He stated that he owned the property and that nothing was leaving his property without a warrant. Mr. Berger stated that Sgt. Maurstad needed a search warrant to remove the car and that he had a law officer there that knew that.

Sgt. Maurstad again told the female that she needed to move so he could close the door of the car. She then turned around and wedged herself in the car with the passenger door open. She rested one arm on the open door and the other on the roof of the car.

Sgt. Maurstad asked her for her name but she would not tell him. Sgt. Maurstad asked her if the vehicle was registered to her and she stated that it belonged to her sister.

Sgt. Maurstad asked her to move and made a motion to close the door. She then stuck her finger in Sgt. Maurstad's chest and told him that he was not going to take anything.

Sgt. Maurstad then grabbed her hand to put it behind her back. He told her that she was under arrest. Sgt. Maurstad tried to place handcuffs on her but Bryon Berger and several other people stepped in and would not allow her to be handcuffed.

Sgt. Maurstad then told Bryon that he needed to take care of her or she would be going to jail. He then wrapped his hands around her and pulled her away.

Sgt. Maurstad then locked the car doors and told John Dahl to haul the car off the property.

Sgt. Maurstad then asked Bryon Berger to step to the side so he could speak with him. Mr. Berger stated the only reason he was mad was because Gary Ode had been picked up for a DWI and that he was in a lawn chair at his residence when he was picked up.

Sgt. Maurstad told him that he was only doing his job and that he was not looking for trouble or to lock anyone up. Sgt. Maurstad told Mr. Berger that once the female touched him that he was done arguing and (sic) her and that she was going to jail.

Mr. Berger stated that if he knew the reason Jerry was stopped he could fix things and explain it to them.

Sgt. Maurstad made and (sic) phone call to Trooper Maurstad and found that Jerry had been driving on a public road in his car, that he was stopped by Trooper Maurstad, and that Jerry was in the driver's seat of the vehicle during the traffic stop.

Mr. Berger seemed to be very surprised that he was in the car but stated that he now understood why Sgt. Maurstad was there and he would explain it (sic) the other people.

Sgt. Maurstad explained to Mr. Berger that everyone had been drinking and that people sometimes say things they normally would not say while they drink.

Sgt. Maurstad stated that normally anyone that touches an officer goes to jail without question but in this case he did not plan to take the female to jail due to her intoxication level.

Sgt. Maurstad told Mr. Berger that he was the most sober person there to deal with and that is the reason he pulled him aside to talk with him. Sgt. Maurstad told him that he wanted to remove him from the intoxicated people to have a normal conversation.

Mr. Berger stated that he understood the reason of the traffic stop and why Sgt. Maurstad was there. He stated that there would be no other issues and that everyone would calm down.

Sgt. Maurstad thanked Bryon and left his driveway along with the tow truck.

The next day Trooper Maurstad called Kelly Millard and asked her to come in to give a statement regarding the DWI stop. She stated she would but her sister Shelly was coming with.

Sgt. Maurstad asked Trooper Maurstad to add the vehicle incident to her statement if Kelly's sister was there. She stated that she would.

Trooper Maurstad stated that a short time later she received a call from Kelly and that she wanted to speak with an attorney and would not come into her office.”

On cross-examination, Maurstad denied that he ever threatened R Berger with arrest for moving the car or that he could be arrested, although he admitted he could have told Berger he could have been charged.

County Attorney Hanson testified that Deputy Maurstad called her at her residence on July 6, 2008, and told her about an incident for which a complaint might be filed with the Sheriff's Department. She stated that Maurstad told her that his wife, who was a Minnesota State Trooper, had asked him to seize a vehicle where an arrest had been made. She stated he told her the vehicle was located at the Berger residence, and Suronen had interfered with his seizure and repeatedly refused to move out of the vehicle, wedged herself into the vehicle, he told her several times to move and she didn't, and he tried to cuff her. Hanson said that Maurstad told him that Berger rushed in and eventually he was able talk Berger into allowing the vehicle to be removed from the property. Hanson testified that Maurstad also told her that Suronen had poked him in the chest and that was when he threatened to arrest her. She stated that based upon what

Maurstad had told her, she told him that he did the right thing, and that the County might file obstruction charges. Attorney Hanson also testified that Maurstad told her that R Berger, who was a federal officer, or the intoxicated woman drove the vehicle to the Berger residence from where the arrest was made. She stated that she told Maurstad that if R Berger had driven the vehicle, knowing it was State property, he could be in trouble. She testified that she told Maurstad to write up the report of the incident.

Attorney Hanson also testified she later learned that Suronen and Berger had contact with department officers on July 8th, and she told Captain Eidsmoe that Berger interfered with the arrest and Suronen could have obstructed. She stated that she told Eidsmoe to tell the Berger's to file a complaint if they wanted, and to instruct them that there still could be criminal charges filed in the matter. She said that she went on vacation on July 8th for two weeks, and when she got back, R Berger had called her and was upset about rumors that if his father filed charges, he, R Berger, would lose his job. She stated that during the telephone conversation, he confirmed for her that he drove the vehicle from the Ode residence to his father's residence, and that Millard, Suronen's sister, was at the Ode residence with keys and there was no notice of forfeiture and he had no way to know that the vehicle had been seized. Attorney Hanson testified that she had several conversations with Captain Eidsmoe while she was on vacation about the procedures for the Berger's to file a complaint and the need for medical records if they did. She stated that after she spoke with R Berger, the next thing that happened regarding the matter was that she viewed was the DWI arrest video of the Trooper Maurstad/Ode arrest as she was prosecuting that matter. She stated that the video showed that Trooper Maurstad arrested Ode in the yard and that Millard was very intoxicated and had told Trooper Maurstad that the vehicle belonged to her and was in her son's name. She said the video also showed that Millard inquired about the vehicle, and Trooper Maurstad said it could stay at the Ode residence.

Attorney Hanson said the video continued and showed Trooper Maurstad putting Ode in the vehicle and driving him to the jail, and while they were driving, she received a phone call from her husband, Deputy Maurstad, and he asked her whom she had in the car. She told her husband that she had Ode, and he told her that Ode had multiple DWIs,

and that the vehicle was subject to forfeiture. Hanson said the video then recorded Trooper Maurstad asking her husband to go to the Ode residence and wait for the tow truck. As a consequence of viewing the video of Trooper Maurstad's arrest of Ode, Attorney Hanson testified that she concluded Deputy Maurstad had been untruthful with her during his conversations about the events of that evening. She stated that Maurstad knew his wife had no intention to seize the vehicle, and knew that R Berger did not know that the vehicle was seized when he drove it from the Ode residence to his father's residence, and that R Berger raised the question of whether the vehicle could be legally seized.

Attorney Hanson testified that based upon the information that she had, she concluded that Deputy Maurstad's report and what he had told her over the phone were incorrect. She stated that as a prosecutor with the responsibility to protect the County she cannot do her job if she cannot trust the officers to be truthful. She said she needed to be able to trust officers in order to be able to prosecute cases. Attorney Hanson stated that she believed that Maurstad definitely misled her to believe the vehicle had been seized when he told her either R Berger driven the vehicle or Millard had driven the vehicle drunk, when he knew both to be untrue.

She stated that after Suronen and Berger had filed the complaint over the incident, she also personally talked to Berger at his station. She said she did so after Suronen had called her upset, complained that the investigation was not going fast enough, and that she was fearful to move to the County and fearful of both Deputy Maurstad, Trooper Maurstad and law enforcement in general in the County. She said that, therefore, when she went to Berger's station, she reassured him that he and Suronen should have no fear of retaliation. She stated that this occurred when she was at Bryon Berger's station getting gas when she saw him and wanted to reassure him that there was no reason to fear retaliation, and that someone outside the County would investigate the matter.

When Attorney Hanson was recalled on rebuttal, she testified that she did not tell Maurstad that he was not to alter the draft report that he had written on July 7th. She stated that she had no conversation about that, and that she was on vacation until the end of July. She stated that on July 6th she told him to do a report immediately and send it to

her office in case a complaint was filed so that no one would contend that his report was filed in response to the complaint. She also testified that she did not tell him his report could be in a non-standard form. She stated that when he called her on the 6th, he was on duty and he did not tell her that he couldn't complete the report that evening. She said she saw the report when she got back from vacation and it was attached to an email he sent her on July 7th.

Attorney Hanson again reiterated that she did not tell Eidsmoe to convey to Maurstad that he couldn't change the report. She stated that it was routine for officers to update or supplement their reports, and that she had not told Eidsmoe to tell Deputy Maurstad not to modify his report. She also testified that there is a normal report form that is to be used, and that is the form that Maurstad should have used to report the Suronen incident, but didn't. She stated that Maurstad's report, which was attached to his e-mail was the only time she has ever received a report in that form, and Deputy Maurstad never provided her with an explanation as to why he submitted it that way.

On cross-examination, Attorney Hanson stated that she never told Deputy Maurstad not to change his original draft, and never discussed his report with him or through Eidsmoe. She said she also never told Maurstad to make any changes to the report to clarify it.

Boroos Incident

Investigator Murphy testified that while he was actively investigating the forfeiture incident Captain Eidsmoe had contacted him on approximately August 18, 2008 about a complaint that had been filed by Boroos and asked him to investigate that as well.

Eidsmoe testified that he learned of the Boroos incident when riding along with Roseau Policeman DeMars. He stated that DeMars had inquired of him if Mr. Boroos had filed a complaint about an incident involving Maurstad and his daughter. Eidsmoe testified that he asked DeMars what the matter was about, and said DeMars told him it concerned sexual remarks made by Maurstad to Ms. Boroos at Jake's Pizza. Eidsmoe

said he then asked DeMars if he knew where Boroos lived, and because DeMars knew where they lived, they then went to the Boroos residence. Eidsmoe stated that he went into the residence and talked with Mr. Boroos who D explained to him that Maurstad had made sexual comments to his daughter when she was working at Jake's Pizza. Eidsmoe also testified that D Boroos told him that Maurstad had come by his residence and spoke with him about what had happened at the restaurant.

Eidsmoe testified that Boroos was also at home at the time and stated to him that Maurstad and an officer in blue came in to eat at the restaurant and then told him about the incident with a vacuum cleaner and it becoming unplugged. He said she told him about the comments that had been made to her by Maurstad and how the officers were laughing about it. He said she also told him that Maurstad was looking at her breast area and that Maurstad had commented about the vacuum having too much power for her, made a gesture and also a comment about plugging in the vacuum. Eidsmoe testified that Boroos told him that all of that made her very uncomfortable. Eidsmoe testified that he explained that she could file a complaint and could come to the office and pick up the form. Eidsmoe said that she responded that she was scared of Maurstad and didn't want to come into the office so he told her and her father that he would bring the complaint form out to them. He stated that he did not tell them that the complaint needed to be filed, and was not sure if he said it was in their best interest to do so. He stated that they asked him to bring the complaint form out to the house, he did, they completed it, and it was given to the Sheriff.

On cross-examination Eidsmoe testified that when he learned of the Boroos incident from Roseau Police Officer DeMars, DeMars did not tell him that he had reported the matter to Investigator Adams, and that he is still not aware that it was reported to Adams. He stated that Adams reports to him, and that at the time of the hearing in this matter, Adams had never informed him or filed a report concerning the Boroos matter. Eidsmoe testified that the County did not investigate before Mr. Boroos spoke with Officer DeMars. He stated that he and DeMars went to the Boroos residence shortly after he was informed about the incident. He stated that he went to the Boroos residence on three different occasions, and that he had never gone to a citizen's home to

discuss a complaint before this incident. He testified that he gave a complaint form to both Boroos and her father D Boroos, and he picked up both complaint forms from them at the same time.

Brian DeMars testimony –

DeMars testified that he was a Roseau Police Department employee for three years. He stated that he knew the grievant from the Sheriff's Department in the early to mid-90s. He also testified that he knew Dale Boroos when he was working at Polaris, moonlighting as a security guard. He testified that he ran into Boroos during the summer of 2008 while he was at the Cenex buying coffee. He stated that Boroos had waited for him to speak with him privately. He said they went outside and Boroos asked if he knew Maurstad, and he responded that he did. He testified that Boroos said that Maurstad had said things to his daughter that alarmed her, but that he did not recall the specifics of what Boroos indicated Maurstad had said. DeMars told him that because Maurstad worked with the Sheriff's Department and not the Police Department that he needed to go to the sheriff. DeMars stated that he ran into Boroos again a few days later, and they again talked about the incident. He stated that Boroos was still angry, and he told him that he needed to go to the Sheriff's Department. DeMars stated that he did not contact anyone in the Sheriff's Department. He stated that a few days later he was driving around with Adams, a Sheriff's Department investigator, and told him that something had gone on with Dale Boroos' daughter, Brook, at Jake's Pizza. He testified he didn't recall if Boroos had gone into detail about what Maurstad had said to his daughter, and consequently he didn't pass anything on to Adams.

DeMars testified that a few days after talking with Adams, Captain Eidsmoe from the Sheriff's Department called him and asked what he was doing that day, and he told him he was going out on patrol. Eidsmoe stated that he wanted to ride with him, and when they were riding, Eidsmoe asked him about the grievant and what he had been told by Boroos' father. He stated that Eidsmoe said they didn't know anything about the incident, and told DeMars that DeMars was a mandated reporter. DeMars testified that he didn't know if Boroos was an adult and he assumed she was a

minor. He said at that point he was panicked and stressed because he wished he would have asked more questions of Boroos' father. He said that he and Eidsmoe then drove to the Boroos residence and were invited in. He stated that Eidsmoe did most of the talking and he remembered looking at Brook Boroos and trying to figure out how old she was. He said he didn't remember much of what was said while they were at the Boroos residence, and stated that he didn't hear anything that caught his attention about Eidsmoe threatening or coercing Boroos into filing a complaint. He stated that Mr. Boroos talked a little about his riding around with Maurstad, but he did not recall a lot of what was said. He stated that during the visit to the Boroos residence, he was upset with himself because of what her age was and the fact that he hadn't asked more questions of Boroos father.

On cross-examination, DeMars indicated that it was a joint decision of his and Eidsmoe to go to the Boroos residence. He stated that he was surprised that Eidsmoe did not know about the incident because he thought Boroos would have complained to the Sheriff's Department. He testified that after the one visit to the Boroos residence, he never went back there again.

Boroos testified that on May 28, 2008, she was working at Jake's Pizza on the night shift. She was working with Hites because she didn't cook and was not trained. She stated that Maurstad came into the restaurant between 8:30 and 8:35, and the restaurant closes at 9:00 p.m. She said he was with a police officer and they were talking with Hites. She testified that Hites called her over and said that I should tell Maurstad about the tattoo on my beaver. Boroos testified that she stated she didn't have one and laughed. She said later she went to vacuum and asked the police officer to plug in the vacuum because he was in front of the outlet. She stated that a few minutes later, the vacuum was unplugged and she asked him to plug it in and he laughed. When she was a few booths down from where the police officer and Maurstad were sitting, she said the cord from the vacuum cleaner made a noise and Maurstad asked if there was too much power for her and made a masturbation gesture. She testified that she kept on working and didn't say anything. She also testified that Maurstad and the police officer were talking and looking at her, and she asked them to please look at the pop machine, and she said she did not look at them. She said as they were leaving the restaurant, Maurstad put

his foot on the cord and unplugged the vacuum. She stated that she did not recall any conversation or statement about a penis-shaped pizza.

Boroos testified that when she went home after work, she was crying and got on the phone. She stated that her dad saw that she was upset and said he wanted to talk to her. She said he talked with her about the incident and told her that she needed to call the restaurant manager, Brateng, who was Hites's sister. Boroos testified that she was upset and told Brateng about the incident with Maurstad and Hites. She also testified that after her conversation with Brateng, Hites sent her a text message stating that she didn't know that what she had told her sister had actually happened. Boroos testified that she told Hites that Hites didn't know that it had happened because she was in the back cooking. She stated Hites then asked her if she was going to press charges because Maurstad was sorry about what happened.

Boroos testified that a couple of weeks later, Hites called her house and asked her if her father was home because Maurstad wanted to talk with her father. She stated that her father told her to have Hites tell Maurstad to come over. She said a few minutes later, Maurstad came over in his squad car, and her father went with him for 15 or 20 minutes. She testified that when her father came home, he was very upset.

Boroos testified that later Hites said to her that the grievant wanted to apologize, and that she responded to Hites that she didn't want an apology. She testified that she was scared and didn't feel Maurstad deserved the opportunity to apologize to her.

Boroos also testified that prior to the incident, she felt safe walking home in the dark, but didn't any longer. She said that when the incident happened she didn't file a complaint because she was scared. She said she told her father she couldn't get over this, and her father went to talk with Ward Anderson of the Roseau Police Department, who was a friend, but he was never there when her father went to speak with him. So she testified that her father talked to Police Officer DeMars, and asked him what they could do. She said, subsequently, Eidsmoe and DeMars came to her house and she that she asked Eidsmoe what she could do about the incident. She testified that Eidsmoe stated to her that she could file a complaint and asked if she wanted to come to the department to pick it up. She stated that she said she was not going to come into the department, and therefore he brought the complaint over to her house. She said that after she received the

complaint, she filled it out and it was filed with the department. She testified that she is still scared of officers and can't shake the feeling.

On cross-examination, Boroos stated that she was not certain if Maurstad used any foul language and did not allege that he had. She stated that the remark concerning the tattoo was made by Hites. She testified that he did say that she should stay single and enjoy it. She said that remark came after the remark that Hites had made about the tattoo. She stated that she was certain that she made no remark about a pizza in the shape of a penis. When asked about her interpretation of the hand gesture, Boroos agreed that actions can be interpreted in different ways, but when Maurstad made the hand gesture, it was at the same time that he made the comment regarding the vacuum being too powerful for her hands. When asked about her not wanting to have Maurstad apologize to her, she stated that she never said that she wanted the matter dropped, she just didn't want to face him. Boroos denied that she would not have filed her complaint if Eidsmoe and DeMars had not come to her house, stating that the incident bothered her the whole time and that she and her dad talked about it all the time before filing the complaint.

When asked about her response to questions concerning interpreting remarks or actions differently, she was asked about the way in which Maurstad looked at her on the evening of the incident. She stated that Maurstad's wasn't just a stare, but he looked her up and down a couple times, and she felt violated and disgusted. Also on cross-examination when asked about Maurstad's remark after the vacuum had come unplugged and she told him to plug it in, she stated that he responded "you shouldn't talk to me like that" and laughed. Boroos said that even though the comment wasn't a sexually explicit comment, the way in which Maurstad said it, she took it as such. She testified that she took it that way based upon the way he was acting that night when he was in the restaurant. When asked more specifically about what was actually said when the vacuum cleaner was unplugged, she testified that she stated that she said, "would you plug it back in", and Maurstad laughed. Then, she stated that she said "just stick it in there", and he responded, "you shouldn't talk to me that way".

D Boroos, Brook's father, testified that in May of 2008, he was at home one evening when Brook came home upset about issues that happened at work and told him what had happened. He testified that she told him that Maurstad and another officer had

come in to eat pizza, and that their actions and words were upsetting to her. She was crying and he asked her exactly what had happened three or four times. He stated that she told him it was getting late at the restaurant, and she asked if the officers minded if she vacuumed, that the vacuum had apparently gotten stuck or something, and that Maurstad had said something about the way in which she gripped the vacuum. He stated that she told him that the vacuum also got unplugged, and that the officers were joking around, but she didn't take it that way. He said that she told him that she asked Maurstad to plug the vacuum in and he said something like "sure, you want me to plug it in", and she took it in a sexual way.

D Boroos stated that he wanted to do something, but was afraid and reluctant to do anything because it would be accusing a police officer of something, and if they don't believe you, you will be targeted thereafter. He stated that a week or so later, Brook said to him that Maurstad wanted to talk with him. He said he met with Maurstad when Maurstad picked him up in his squad car and they went for a drive. He stated they had a conversation, which started with Maurstad talking and trying to explain he was sorry and he didn't mean it for her to take it the way she did. Boroos testified that he thought Maurstad was lying, and thought, "bullshit you're telling me that I'm making something out of nothing and you're a liar". Boroos testified that Maurstad did admit that he had screwed up, and said "I can't believe I'm that dumb". Boroos testified that the conversation lasted for approximately 20 minutes. When asked if he thought Maurstad felt sorry about the incident, Boroos testified that he felt that Maurstad was sorry that it was going to turn into an issue. He said that Maurstad wanted to apologize to his daughter, but that she didn't want to see him. He testified that the issue was not resolved by the conversation he had with Maurstad, and that he was "madder than hell when he got in the car", and when the conversation ended and he got out of the car, he didn't feel anything had been accomplished. He stated that Maurstad stuck out his hand as he was getting out of the car, and he grabbed Maurstad's hand in order to get out of the car.

D Boroos testified that they did not file a complaint at that time. He said he called Roseau Police Chief Ward Anderson three times, but did not talk to him. He stated that he did speak to Officer DeMars from the Roseau Police Department. He said that he ran into DeMars on the street and asked if he knew Maurstad and what kind of a guy he was,

and told DeMars that he didn't know what he should do about the incident. He stated that he spoke with DeMars several times, and wasn't sure how much he spoke with him about the incident. He testified that the complaint was filed three months later because he felt it was the right thing to do. He stated that DeMars and Eidsmoe came to his home, but Eidsmoe did not say that they had to file a complaint. He testified that he talked with Eidsmoe and indicated that he wanted to file a complaint because he felt it needed to be done and was the right thing to do, and was what his daughter wanted to do.

On cross-examination, Boroos testified that no one helped them in drafting the complaint. He also testified that he did not recall thanking Maurstad for apologizing while they were talking. He said that he grabbed Maurstad's hand when Maurstad stuck it out, but he didn't know if it was a handshake. He stated that at the end of the ride in his mind the matter was far from over. D Boroos also acknowledged that he had talked to DeMars a couple of times before he filed the complaint, and that he knew DeMars from them both working at Polaris when DeMars was a security guard. When asked if DeMars encouraged him to talk with Eidsmoe, he said that DeMars told him to do what was right.

D Boroos also testified that he believed that 50% of the fault for the incident lay with Hites, and thought that she instigated it and got the ball rolling. Boroos also testified that he believed that Maurstad should not have said what he said to his daughter, no matter what Hites had said or done. He testified that Maurstad was in uniform and had a badge on and shouldn't be saying those things. He stated that Eidsmoe did not put any pressure on him to file a complaint and stated that if his daughter didn't want to, they didn't have to file.

Brateng testified that she had worked at Jake's Pizza for 17 years, and that Hites was her sister. She testified that she worked with Boroos, and that her daughter and Boroos were friends. She said that on May 8th, shortly after 9:00 p.m., Boroos called her up and was upset and crying, and said that Maurstad and someone else were in the restaurant, and that Maurstad had made comments to her. She stated that she was mad after hearing from Boroos that her sister didn't take responsibility. She stated that she got Boroos calmed down in 5 or 10 minutes and told her to call the restaurant boss, but Boroos did not want to do that. She said that after she hung up with Boroos, she called

Hites and swore at her and was really mad. She also testified that she had been present when Maurstad and Hites when they would be together at lunch, and that she told Investigator Murphy that they talk stupid all the time.

On cross-examination Brateng testified that she told Investigator Murphy that she couldn't stand Maurstad before this incident, and had not had much direct contact with him. She testified that when Boroos called her and was crying, Boroos didn't provide her with specifics about why she was crying, but merely that she was upset about what Maurstad had said, and that her father didn't want the matter to be dropped.

Hites, who also goes by the name of Trigger, testified that she worked at Jake's Pizza, and has known Maurstad and his wife for approximately 6 years. She testified that she does daycare for the Maurstads and Mrs. Maurstad is like a sister.

Hites testified that Boroos called her sister, Brateng, in May of 2008 and said she was upset about some things relating to when Maurstad was in the restaurant with Police Officer Berggren. She testified that the two officers were in the restaurant long enough to eat a pizza, approximately 20 minutes, and she and Boroos were cleaning up. She testified that when the officers came in, she and Boroos were talking and they went and sat down with Officers Berggren and Maurstad. While they were talking with the officers, Hites said she asked Boroos if she had checked on the pizza in the oven, and Boroos responded "the penis and balls pizza?" and Boroos said she had not. Hites also testified that she didn't recall if any of the rest of the conversation while Boroos and Maurstad were together was sexual in nature. She stated that "she may have asked her (Boroos) about a beaver tattoo", but she didn't remember. Hites testified that Boroos was talking about her boyfriend, which she was always doing because she wants to get married really, really bad. Hites testified that she was astounded when she got the call about Boroos being upset. She testified that when Boroos was vacuuming, she was working out in the kitchen and did not see or hear all that went on. She said that she didn't hear Maurstad say anything sexual in nature, and he only asked how old she was after she had made the statement about the penis and balls pizza. Hites testified that Boroos stood back in the sandwich prep area most of the time watching the pizza.

Hites testified that she was home from work for maybe an hour when her sister called her and told her that Boroos was upset about what had taken place. Hites testified

that she called Boroos and said that she was sorry, and Boroos responded that Hites hadn't heard anything. Hites testified that she also called Maurstad at home and told him that Boroos was upset, and he was as shocked as Hites was by Boroos being upset. She testified that the next day she worked with Boroos at Jake's Pizza and told her that Maurstad was upset that she was offended by what was said. Hites stated that Boroos responded that she was upset at first, but said she just wanted to drop it. Hites also stated that Maurstad told her that he felt bad about Boroos being upset because he didn't know what he had said to upset her.

Hites testified that she wouldn't call the conversation "R" rated, and that Boroos was a part of a lot of conversations and was not as innocent as her father thinks. Hites stated that Boroos would walk by and slap people on the ass, but that she wouldn't do it to Hites because she stated that she would backhand Boroos if she did. Hites stated that she did not talk with Officer Berggren about Boroos being upset because she didn't know him that well.

On cross-examination Hites stated she did not recall a conversation concerning the vacuum cleaner being stuck, but that Boroos had told her about it right away. She also stated that after Boroos made the comment about the penis and balls pizza she, Hites, did say that another girl did make a pizza in the shape of a penis and balls, but that Boroos never made a pizza like that. She testified that Boroos had merely commented about it when asked to take it out of the oven.

Berggren testified that he was a police officer in the Roseau Police Department and had known Maurstad for approximately three years since he started working at the Police Department. He stated that they've also hunted and camped together. Berggren testified that in May of 2008 he and Maurstad went into Jake's Pizza while they were both working. He testified that Hites, who he knows by the name of Trigger, and not Hites, was working that night. He stated that he did not know who Boroos was, but was told that she was the waitress who was working that night with Trigger. He testified that he may have said hi, or 5 or 10 words to Boroos, and that Maurstad was talking with her, and Trigger was talking to her as well. He testified that he might have participated in sexual talk, but he didn't recall exactly what was said. He did recall hearing Boroos say something about a penis-shaped pizza. He testified that he recalled telling Investigator

Murphy that Maurstad had made sexual comments and that he might have participated. He also testified that he didn't think discussion of a penis-shaped pizza was something that some kid should hear. He also stated that he didn't think that that was the only sexual thing that was said, but he really didn't know. He did admit that the conversation that took place was borderline for police officers on duty.

Berggren testified that within a week or two of that night, Maurstad called him to give him a heads up that a complaint might be filed and that an investigator might be talking to him. He stated that Investigator Murphy and Chief Anderson spoke with him about the incident. He also testified that Chief Anderson told him that the County Attorney had contacted him and told him that she wanted Berggren to start remembering things because if I was lying, I could lose my job. He said that remark by Anderson upset him, and Anderson told him that if he was concerned about it then he should go and talk with the County Attorney. He said he met with Attorney Hanson and told her what he had told Murphy. He stated that at the end of his conversation with Attorney Hanson, she said to him that he had come to her office, looked her in the eye and stated that she believed him.

On cross-examination Berggren testified that he told Murphy about the penis-shaped pizza comment made by Boroos. He also testified that he didn't remember seeing Maurstad make a hand gesture, and that he didn't see Boroos looking upset. He testified that he didn't recall any sexual innuendo about unplugging the cord. He stated that he unplugged the cord, but it wasn't sexual in nature. He also testified that the rest of the conversation wasn't sexual in nature. Berggren also testified that when he spoke with the grievant after the incident on two occasions, Maurstad didn't encourage him to lie. He did state that the Maurstad said to him that officers need to be careful about what they say, but he didn't interpret that comment as encouraging him to lie or as a threat. He testified that he and Maurstad did not have a conversation about getting their stories straight.

On redirect-examination, he stated that he couldn't say either way if Maurstad made hand gestures that night in Jake's Pizza

Maurstad testified that Officer Berggren, himself, Boroos, and Hites were in Jakes Pizza restaurant together in May 2008. He stated that Hites did daycare for he and

his wife, and that they were friends with her. Maurstad testified that he didn't know Boroos. He said he did recall the conversation in the restaurant about the shape of a pizza, and indicated that he stated that if the pizza was made in that shape not to bring it out. He testified that the pizza that was brought out was round. He said during the rest of the 45 minutes that he and Berggren were in the restaurant Hites did most of the talking by far and sat with them while they ate. He testified that Hites also commented about Boroos' tattoo. He stated that when he had heard the statement about the tattoo, he asked how old Boroos was because he wanted to make sure she was an adult if Hites was going to talk about her tattoo. He also testified that when Hites and Boroos were talking about marriage and Boroos getting a ring, he stated that Boroos should stay single, but that he did not mean anything sexual by that comment.

Regarding the incident with the vacuum cleaner, Maurstad testified the Berggren removed the vacuum cleaner cord from the wall, and Boroos told him to plug it back in. Maurstad testified that he stated that he would plug it back in, but that his statement was not intended in any sexual way, and denied that he said she shouldn't talk to him like that or anything about her hand not being able to stand that amount of power. He also denied staring at her, and stated that he only looked at her when he was talking to her, and denied making any comment regarding masturbation. He stated that Boroos never appeared to be upset, and when they left she smiled and appeared to be happy go lucky.

Maurstad testified that he learned from Hites that Boroos and D Boroos, her father, were upset about the evening in the restaurant. He stated that Hites told him D Boroos was upset with the conversation that took place with his daughter, and that Hites suggested to him that he talk to D Boroos about it. Maurstad testified that he asked Hites if D Boroos would go for a ride with him, and Hites then called Boroos and told Maurstad to pick D Boroos up in 5 minutes. Maurstad testified that he wanted to talk with D Boroos to find out why he was mad because he didn't think that he had said anything to offend his daughter, and he did not want D Boroos mad at him for something that didn't happen.

Maurstad said he drove to the Boroos house and explained to D Boroos what had happened in the restaurant. He stated that D Boroos said to him that he, Maurstad, was in uniform and yet he sat there and didn't stop when Hites was talking. Maurstad denied

that he apologized to D Boroos, and stated that what he did say was that he was sorry that things were said in his daughter's presence, but did not tell D Boroos that he had said anything inappropriate. He testified that the conversation with D Boroos lasted 10 to 15 minutes, and at the end of their conversation they shook hands and that D Boroos thanked him for being a stand up guy. Maurstad stated that D Boroos also asked him to call his daughter, and so he called Hites and asked her if it was okay to come by the restaurant and apologize to Boroos. He testified that Hites told him not to come to the restaurant because Boroos wanted the matter to be over with. Maurstad denied that when he said he would come by and apologize to Boroos, that he was apologizing for doing anything wrong.

Regarding the e-mail that he sent to the Sheriff, Maurstad testified that he had talked with Bandemer and asked what he should do to help himself out. He stated that Bandemer told him to tell the Sheriff what he had done and that he had to put something religious in his letter because the Sheriff was a religious man. He said he did not intend to admit by sending this letter to the Sheriff that he had stated anything inappropriate to Boroos.

On cross-examination, Police Chief Anderson testified that County Attorney Hanson had contacted him to talk about Maurstad's conduct, but he didn't recall when that conversation occurred. He said that she had phoned him and said that Officer Berggren might not be being truthful on this matter because he couldn't remember the specifics about the Jake's Pizza incident involving Boroos. Anderson testified that she said he hadn't been honest or truthful, and that Berggren should be truthful and think about what occurred. Anderson said that after he received a call from Attorney Hanson, he talked with Berggren and had him meet with Hanson. When asked if Hanson ever talked to him about Officer DeMars, he responded that it was nothing like when she called him about Berggren. He testified that she may have said DeMars did what he had to do. On re-direct examination, when Anderson was asked if Attorney Hanson had ever stated what Berggren was not being truthful about, he responded that she had stated that Berggren was right there and he should have remembered what had been said at Jake's Pizza. Anderson testified that he took Berggren to the courthouse to meet with Hanson, but he was not present during their meeting. He said that he had suggested that the two

of them meet because he didn't want there to be stress between her office and his department.

Hackett and Haugen Incidents

There were two incidents involving Maurstad and two female students at the Northland Community and Technical College, Hackett and Haugen. These incidents occurred in December 2007 and March 2008 respectively, and came to the attention of Investigator Murphy when he spoke with Ward Anderson, Roseau Police Chief as part of his investigation of the Boroos complaint.

Jesme testified is the Criminal Justice Coordinator for Northland Community and Technical College. He testified that Chelsea Haugen came to his office during the 2007-2008 school year and was upset after doing a ride along with Deputy Maurstad. The purpose of the ride along was to observe what law enforcement was like, and was typical for law enforcement students. Jesme testified that Haugen told him that during the ride along, Maurstad engaged in conversation on sexually explicit matters and made her uncomfortable to the point that she wanted to get out of the vehicle. Jesme testified that she wanted to know from him if she should report the matter. Jesme stated that because Haugen was not assigned the ride along as an intern in the law enforcement program, he couldn't advise her as to what to do, and the decision would be hers. He testified that she was over 18 years of age at the time, and said that there had been no physical contact between Maurstad and her. He stated that if she had been an intern in the program, he would have reported it.

Jesme also testified that Angela Hackett was another student who had a ride along with Maurstad, but was not able to articulate to him exactly what was said during her ride along. He stated she was concerned about retaliation, and he told her that if she thought it was wrong, she should report it.

Jesme testified that the Roseau Chief of Police, Ward Anderson, was also an adjunct professor at the college, and that he had talked to Anderson about the incidents. He stated that he didn't go into detail about what had happened, but wanted advice from

Anderson as to what he should do. He testified that this conversation occurred within a week of the conversation with the student(s).

On August 9th, Jesme said he was contacted by Investigator Murphy who wanted to talk to him about the Chelsea Haugen incident and wanted him to relay a message to Chelsea Haugen that he wanted to speak to her as well.

On cross-examination, Jesme testified that Hackett and Haugen came to him immediately after spring break. He said that within a week of them coming to talk with him, he spoke with Chief Anderson. He testified that he didn't report it to the County, and that Haugen wanted to talk with her parents about it.

Anderson testified that he's been the Chief of Police in Roseau since October 2002, and that he's known Deputy Maurstad since the mid-1990s. He stated that Jesme contacted him 14 to 15 months ago, prior to the hearing in this matter, and he knew Jesme as the Coordinator at Northland College from working and teaching together. He stated that Jesme had told him that a student had come to see him and she wanted to quit the law enforcement program. He said that Jesme told him that the student had done a ride along with Maurstad and that the whole conversation during the ride along was about sex and sexual in nature. He stated that Jesme didn't share the details with him about the conversation. He said that Jesme asked him if the student wanted to complain to whom she should talk to. He testified that he told Jesme that the student should talk to Chief Deputy Bandemer. He also stated that he told Jesme that he could give Bandemer a heads up so the student would get more care. Anderson testified that Jesme identified the student as being Haugen.

Anderson said he called Bandemer, and that Bandemer met him and it was then he told Bandemer of his conversation with Jesme. He stated that he told Bandemer that Jesme had said Haugen was unsure if she was going to file a complaint because she was concerned it would hurt her career and no one would hire her. He stated that he didn't know the details of the conversation between Haugen and Maurstad when he spoke to Bandemer, other than a comment about threesomes. He stated that he gave Bandemer Haugen's name and did nothing else about the matter.

Bandemer testified that he had been the Roseau County Chief Deputy for approximately two years. He stated that he was responsible for the overall office, including recommending discipline to the Sheriff. He testified he did not have authority to impose discipline on his own. He also stated that he was off work from June 8th or 9th of 2008 through September 14, 2008 because of bypass surgery. He stated that in his absence the Sheriff and/or Captain Eidsmoe performed his duties.

Bandemer testified that in March or April of 2008, he received information about Maurstad's behavior involving two students from Roseau Police Chief Ward Anderson. He stated that Anderson pulled up to him in his squad car and wanted to talk. He stated that he got into Anderson's car, and Anderson told him that he had received information from an instructor at Northland College that Maurstad had engaged in inappropriate behavior with students doing a ride along. Anderson told him that he received the information from an instructor at Northland College who had gotten it from Northland College students. He stated that Anderson told him the student's name was Chelsea Haugen, and he testified that he remembered setting up a ride along for her with Deputy Maurstad. Bandemer testified that he told Anderson that he would take care of it.

Bandemer testified that he thought to himself that if something had happened, there's a procedure in the office where a citizen can come in and file a complaint, and so he said he waited a couple of weeks before meeting with Maurstad. Bandemer stated that a couple of weeks after talking with Anderson, when Maurstad was in the office, he asked him to come in and speak with him. He stated that he told Maurstad that he had received third-party information regarding some inappropriate behavior that he had engaged in on a ride along with Haugen. He stated that Maurstad told him the only thing that he remembered that would be considered inappropriate was a conversation about Deputy Phillippe and his relationship with girls. Bandemer stated that he told Deputy Maurstad that he wanted the ridealongs to be conducted professionally and the department to be professional. He stated that he then told Maurstad that he wanted him to write a letter to Haugen stating that the department would help her with her career, and that she could have additional ridealongs, and also to tell her that he was sorry for

anything that happened in the earlier ride along. Bandemer stated that when such letters are written, they are customarily written on the Sheriff's Department letterhead.

Bandemer testified that he received an email dated April 26th from Maurstad telling him that he had completed the letter and apologized for the behavior and stated that it wouldn't happen again. He said that attached to the e-mail was a copy of a letter Maurstad had written to Haugen. Bandemer testified that he didn't believe he was to sign and send the letter because he had told Maurstad to send the letter and expected he would send it. He also stated that when someone sends a letter, he would expect it to be on letterhead.

Bandemer testified that while he was away from work having his bypass surgery, Investigator Murphy spoke with him and asked him about the letter to Haugen. He stated that he told Investigator Murphy that he thought that Maurstad had sent the letter, but he learned from Murphy that the letter had never been sent. Bandemer testified that when he learned this, he considered that not sending the letter was a violation of his directive to Maurstad. He testified that he had not spoken with Haugen, and the only information he had about Maurstad's conduct was what Maurstad had told him he had said about Deputy Phillippe dating women, and thought the letter of apology would be an appropriate response. Bandemer testified that he didn't think based upon the information that he had that he had an obligation to investigate the third-hand information. He stated that in subsequent training he has learned that he did have an obligation to investigate.

Bandemer testified that Maurstad e-mailed him on a Saturday night and attached the letter, and that he responded to Maurstad's e-mail on the following Monday.

On cross-examination Bandemer testified that either he or Captain Eidsmoe made arrangements for the ridealongs in 2008, and that he had assigned Maurstad to take Haugen. Bandemer also testified that when he was advised by Anderson of the allegations in March 2008, Angela Hackett's name did not come up, and he did not initiate an investigation into the Haugen allegations. He stated that he went on leave on either June 8th or 9th of 2008, and didn't suggest to anyone that an investigation should be conducted into the Haugen matter. He stated that he only knew what Maurstad had told

him about his behavior during the ride along, and told him to send an apology. He stated that in his e-mail that he sent to Maurstad after he had received Maurstad's e-mail, he thanked him and he approved of Maurstad's letter based upon what Maurstad had told him about the ridealong. He also testified that Maurstad talked to him and asked him if this matter was over with, and he believed that he responded to Maurstad at that time that he hoped so. He also testified that based upon that response, Deputy Maurstad could have assumed the City wasn't going to take any further action in the matter. Bandemer further testified that he believed it was insubordination for Maurstad to fail to send the letter to Haugen. He stated that once he learned that Murphy had determined that the letter was never sent he concluded that Maurstad had been untruthful and insubordinate by failing to send the letter, and that his behavior was grounds for termination.

On re-direct examination, Bandemer testified that if he had known what he knew Haugen was alleging, he would have responded differently, but he approved of Maurstad's letter based upon what he knew at the time and he also assumed that Maurstad had sent out the letter.

On re-cross examination, Bandemer testified that he could have been sent a copy of the letter, but he didn't think it was unusual that he didn't receive a copy and he just assumed that Deputy Maurstad had sent the letter out.

1. Haugen Incident

Haugen testified that while she was in the Northland Community and Technical College Criminal Justice Program, she did two ridealongs. She road along with Hart from the City of Roseau Police Department, and Maurstad from the Roseau County Sheriff's Department. She stated that the ride along with Maurstad occurred during spring break in March of 2008. She said that she knew Maurstad from working at the Roseau Diner, and he knew that she was a criminal justice student, and said that if she ever wanted to do a ride along, she could ride with him.

On the day that she was to ride along with Deputy Maurstad, she got to the Law Enforcement Center and Maurstad was busy, and had to sign paperwork. She said he also told her that he had a meeting that he had to go to later in the evening. She said that

during the ride along, they went to the car wash, and while they were sitting in the car wash, he asked her questions about her boyfriend, whether she was exclusive with her boyfriend, and lots of other questions like did she use toys, had she tried a three-some, and if she masturbated. Haugen testified that she answered a number of the questions, but not necessarily truthfully, and tried to redirect the questions. She stated that Maurstad also said to her that he and his wife were looking for a third for a threesome. She also testified that Maurstad said to her that women had to get used to that type of talk in this field.

Haugen testified that later during the ride along they returned to the Sheriff's Department and he went in and completed paperwork while she sent text messages to her boyfriend, Sampson. She stated that she told Sampson that she was uncomfortable with the ridealong. She said she also texted Hackett who responded to her that Maurstad was a creep or something to that effect. She said those were the only two individuals that she texted. She stated that she talked to her mother and father and boyfriend and Hackett after she had finished the ride along.

She stated that she reported to Jesme what had happened after she returned from spring break and he advised her to file a report, but that he couldn't do it because he had not set up the ride along. She testified that she did not report the incident to the County then because her dad advised her not to as he was afraid of retaliation. She also testified that when she talked to Jesme, he told her that he would speak with Police Chief Anderson. Jesme later told her that Anderson said that she should report it, but she didn't.

Haugen also testified she never received an apology from Maurstad, and that ultimately Jesme gave her a message that Investigator Murphy wanted to talk with her. When she talked with Murphy, he said her name came up in another investigation. She testified that Murphy did not tell her to report the incident, but said go home and talk with her parents. She stated that she decided if it was happening to others, she was going to file a complaint. She also testified that at no time during the ridealong did she and Maurstad discuss the topic of what constituted criminal sexual conduct, and that she wasn't taking a criminal law course at that time.

On cross-examination, Haugen testified that she knew the Maurstad grievant from him coming into the restaurant once every week or every two weeks. She also testified that before she went on the ride along with Maurstad, Hackett had gone on an alcohol compliance ride along with Maurstad in 2007, and had told her about it. She stated that what Hackett told her was “weird”, but she didn’t think it was a regular occurrence and assumed that she would be safe.

Haugen also testified on cross-examination that when the grievant came into the Roseau Diner, Deputy Phillippe would also come with him because they worked together. She stated that she never dated Phillippe, but was attracted to him through text messaging. She testified that during the ride along, she sent a text message to her boyfriend. She stated that she also did text messaging when she went into the Dispatch Center while Maurstad was in his meeting. She stated that she didn’t file a complaint because of her father’s advice. She also testified that Maurstad asked her if she liked to be fingered, and she did not include that in her testimony because it had slipped her mind and it had been a long time since she had been interviewed.

On re-direct examination, Haugen testified that they had gone to the Dairy Queen and gotten a cold coffee drink with a straw, and when they were on the way to Maurstad’s house to get something he needed, Maurstad mentioned how hard she was sucking on the straw. She testified that in her September 3rd interview, which was her first interview by Murphy, she hadn’t decided to file the complaint by then and didn’t go into great detail in her statement about what had transpired during the ride along. She said that in her first interview with Murphy, she wasn’t holding back, but wasn’t thinking hard to recall everything. She stated that Murphy questioned her thoroughly, and said if she thought of anything, she could come back and provide another statement.

On or about September 8, 2008 Haugen filed the following complaint dated September 8, 2008, with the Roseau County Sheriff’s Department:

“On March 10th, 2008 at approximately 6:00 p.m., I, Chelsea Haugen went on a ride along with Chad Maurstad, who works for Roseau County. I had to fill out some paperwork and then we left the police station and headed to the car wash. There was a line of about four cars in front of us so we had to sit and wait. While we were waiting, Chad asked if I had a boyfriend. The questions then got more personal asking such things as, if we were faithful to each other, if we ever used sex toys, if we would ever have a three-some, and if I masturbated.

These questions were answered with quick no's and that I was a private person and a one-man woman. Then I tried to change the subject and asked about his wife and family. He then continued to tell me sexual stories about him and his wife having an open relationship, and that they were looking for someone to join them in the bedroom, but it was hard to trust anyone. He went on to say that they had almost had a three-some, but the guy they had planned to it with backed out at the last minute.

By this time we were through the car wash and back at the police station, where he had to run into his office. During this time I sent a text message to my boyfriend Kelly Sampson and my friend Angie Hackett stating that I was uncomfortable and wanted to end this particular ride along. We then went to the drive through at Dairy Queen where he bought me a caramel coffee drink and he got ice cream. Chad then drove out to his home to pick up something for his meeting that night, and while we were driving there he kept commenting on how I was drinking my coffee, how hard I was sucking out of the straw.

We made our way back into town and he had to go to his meeting so he brought me to the jail to get a better idea of their duties performed on that end. Chad said I should call him later that night and I could continue my ride along. I never did call him. After being at the jail for an hour or so, I went home to pack for an out-of-town trip.

Throughout the entire ride along with Chad I felt helpless. I knew that what was happening was wrong, but I had no idea how to get out of the situation. I went on a ride along to gain knowledge about the field I was going into. I was suppose (sic) to feel safe, instead that was taken away from me, along with the trust I had for people that might one day become my co-workers.

The reason I am filing this report is because of that at age of 21, I couldn't think of a way to get myself out of the situation. I couldn't imagine how a 16-year-old girl would handle it. I just never want Chad to have any more opportunities to abuse his power and make women or young girls afraid of the very people sworn to protect them."

Again at the end of the typed document, in her own handwriting, she added: "Another reason for filing this complaint now is for the simple fact that when it happened I was too afraid of reprisal, for myself and for my family."

Also, at bottom of her typed statement, Haugen handwrote the following:

"To add to the first paragraph, another question that Chad asked me is if I like to be fingered, either doing it by myself or having my boyfriend do it."

Initials: C.H.

Sampson testified that he was the fiancé of Haugen and that in 2008 they were dating. He stated that he recalled receiving text messages from her while he was working in Tomah and she was on the ridealong with Deputy Maurstad. He said that she texted him that the Deputy was making her uncomfortable, and that She and he had texted back and forth for three or four hours while he was at work. He stated that he didn't remember the specifics of her text messages, and that he didn't recall the questions that she was being asked by the Deputy, but stated that in order for him to have responded like that, it had to have been bad. He stated that later in the evening he had a telephone conversation with Haugen, and that she was uncomfortable about giving him specifics about the conversation. He also testified that she didn't want to go any further due to the possible retaliation against her and her family. He testified that she said to him that Maurstad had told her that she would have to get used to that kind of language if she was going to be in law enforcement.

On cross-examination, Sampson testified that he wanted Haugen to report the matter and she wanted to forget about it. He said he did become aware that Investigator Murphy contacted her and a few days later she filed a complaint with the County. He said that he did not recall anything that she said to Murphy and she has said repeatedly that she wanted to forget about it and didn't want to talk to him about it and he respects her wishes. He stated that he didn't know if she was embarrassed about the incident.

Maurstad testified that he knew Haugen before the ridealong as being a waitress who worked in a diner in Roseau that he had frequented one or two times per week. He stated that he had not discussed her law enforcement interest and possible ride along prior to her being assigned to him. He said that the ridealongs are done as a service to the public to let them know what the department does. He said that in the past he had one or two ride along per month involving both males and females.

Maurstad testified that Deputy Phillippe worked with him and he and Phillippe had gone to eat in the Roseau Diner where Haugen worked. He testified that Haugen had feelings for Phillippe and stated that Phillippe had told him that Haugen and Phillippe had texted a lot and also interacted in the restaurant.

Maurstad testified that Bandemer assigned Haugen to him for the ridealong, and he had not requested that she ride along with him. On the date of the ride along,

Maurstad testified that he also was working the 3:00 p.m. to 3:00 a.m. shift, and that he had met her at the office when he got to work. He stated that she was in the car 45 minutes to an hour, and that he had a search and rescue posse meeting to attend at 7:00 p.m. and an officers' meeting at 6:00 p.m. He testified that during the ridealong he first went to his house and got some materials, went to the Dairy Queen, and then to the car wash. He said while at the car wash the subject of Deputy Phillippe came up because Haugen brought it up in a general conversation about whether Phillippe was working that evening. When Maurstad was asked if Haugen ever talked about her boyfriend, Maurstad testified that he knew that she had a boyfriend and thinks that he became aware of that either during the ridealong or at the restaurant. When questioned about his alleged threesome and an open relationship comments, Maurstad said that he knew of her boyfriend and when she talked about Deputy Phillippe was when he made the comment about a threesome. Maurstad testified that Haugen smiled and asked if he and his wife did threesomes. He stated that he responded that it would be neat, but his wife wouldn't agree. Maurstad testified that he made those comments just to ease the conversations. Maurstad also testified that he talked with Haugen about her tests and criminal sexual conduct classes, but he wasn't sure who brought the subject up. He stated that he told her she would only need to know the elements of criminal sexual assault, and did not need to know the statute.

When Maurstad was asked why he didn't end the ridealong when they returned to the Dispatch Center, he responded that the conversation they were having shouldn't have been continued and so he thought he would leave her there and go to his meeting. He stated that she seemed happy and then somber when they got to the office. He stated that he introduced her to Dispatcher Swanson, stayed in the area 7 or 8 minutes, and remembered her being near the computers and told her that she should stay out of the way when things were going on. He said he explained to her that she couldn't have pop or chips, etc. in the area, and that she was standing near him and didn't try to avoid contact with him. Maurstad testified that she didn't continue the ridealong after coming to the Dispatch Center, and that subsequent to that night, he had gone back to the Roseau Diner occasionally, that she had served him once for sure and didn't seem angry with him.

Maurstad testified that some time after the ride along incident, Bandemer spoke with him, although he wasn't sure how long after the incident the conversation took place. He stated that Bandemer asked him about any inappropriate things that were said during the ride along, and Maurstad testified that he asked if a complaint had been filed. Bandemer said that a complaint had not been filed, but that he wanted Maurstad to write a letter of apology and put it on his desk. Maurstad testified that after he wrote the letter, he went to Bandemer's office, and because the door was locked, he put the letter in a file outside of his door. He stated that he also e-mailed a copy of the letter of apology to Bandemer. Maurstad sent the following e-mail to Bandemer on April 26 at 10:15 p.m.:

“Subject: Letter you wanted me to write

Terry, I wrote a letter to Chelsea like you wanted me to. I really wasn't sure what to say or how to word this so I hope it works for you. I also want you to know that I am sorry if anything I said made our department look bad. I know you said this was over with, but I also want to assure you that it will never happen again. I will make sure that I speak approximately (sic) and when I am around other officers, I will take it upon myself to make sure that the subjects that are brought up in conversation are appropriate to be talking about. Thank you.

Chad”

Maurstad attached the following letter he wrote to Haugen at Bandemer's direction:

“Chelsea Haugen,

I want to apologize to you for anything that was said during your ride along with us at the Roseau County Sheriff's Office. It was not our intention to make you feel uncomfortable. I certainly do not want you to feel uncomfortable or unwanted; I wanted you to feel like one of the troops here.

I want you to know that you are a very kind-hearted person and if I or anyone else here, offended you in any way during your time with us I am truly sorry. At times we all say things that we normally would not say and make comments that we normally wouldn't say and I don't want you to judge law enforcement in a negative way by things that you hear. I want you to feel welcome when you come to our office and I want you to feel wanted in the law enforcement field that you seek.

I also want you to know that you are welcome to ride along at any time. We want to make your experience here with us as enjoyable as we can but we also want to provide you with every opportunity to learn and seek experiences from our

officers. Again, on behalf of our department and myself I want to say I am sorry and I can promise you that any future dealings with anyone from our department and from myself will be an enjoyable and professional experience for you. If you have any questions please feel free to contact me at any time.”

Bandemer e-mailed Maurstad on April 28 at 9:18:

“RE: The Letter you wanted me to write

Thanks Chad for taking care of this. You are a true professional.”

Maurstad testified that Bandemer told him that there would not be a complaint filed if he wrote the letter of apology. Maurstad testified that he expected that Bandemer would put his letter of apology on the department letterhead and send it. He stated that Bandemer never asked him if he had sent the letter of apology.

On cross-examination Maurstad testified he did not file a report about his conversation with Haugen, even though he knew it was inappropriate, because he didn’t believe it was “a big deal”. Also, when questioned about his response during his interview with Murphy that he did not recall having a conversation with Haugen about sex toys, etc., yet during his direct testimony he did remember having such a conversation, Maurstad responded when an officer talks and says “don’t recall”, they are basically saying “no”. Maurstad agreed that it would be inappropriate to have a conversation in his squad car with a 20-year-old female about threesomes. He also testified that going to his house, car wash, and the Dairy Queen was not unusual to do when having a ride along and being on duty.

2. Hackett Incident

Hackett testified that in March of 2008 Haugen texted her concerning her ride along with Deputy Maurstad. She said the texting occurred during Haugen’s ridealong, and that Haugen told her she was uncomfortable. She said she tried to give her a way out of the ride along. Hackett testified that she had told Haugen about her compliance

check that she did in December of 2007 with Maurstad. She stated that during that compliance check, he asked her questions that she thought were inappropriate. She stated that during the ride along she told Maurstad about an old guy hitting on her on one of their checks, and he questioned her about it and he finally dropped it. She said that she was uncomfortable by his questioning. She also stated that she reported to Haugen that she was embarrassed by the incident. She said that during the compliance check, she was shown sexual text messages, pictures and jokes by Maurstad.

Hackett stated that in March of 2008 after spring break, she and Haugen talked about Haugen's ride along, and that he had asked her all kinds of questions about masturbation, liking to be fingered, things that even your closest friend wouldn't ask you. She stated that Haugen told her that she felt embarrassed for answering the questions, and was asking what do you do and who do you talk about it to. Hackett testified that they were both concerned about being able to get a job if they complained because Maurstad knew a lot of people. She said they both talked with Jesme and he said he would talk to a friend and get back to them.

Hackett testified that Investigator Murphy talked to her in August of 2008 after he had interviewed Haugen. She said that she ultimately filed a complaint because she wanted to do the right thing, had plenty of time to think about it, and that he could do it to others. She stated that she ultimately talked herself into filing the complaint and knew that she did the right thing.

On cross-examination, Hackett testified that she filed her complaint a few days after she had been interviewed by Murphy. She testified that Murphy told her he contacted her because of the Haugen incident. She stated that had Murphy not contacted her, she possibly wouldn't have filed the complaint. She stated that if Jesme had given them options as to what they could do, she would have filed the complaint, but she said that they felt they didn't have options. On re-direct examination, Hackett testified that she felt that her filing a complaint had an effect on her job options because everyone in Roseau knows about it and she would never be able to work up there. She said she was trying for jobs in other places.

Hackett filed the following complaint on September 9th, 2008:

“On the evening of December 8th, 2007, I, Angela Kim Hackett, helped the Roseau County Sheriff’s Office do alcohol compliance checks inside the County with fellow classmates Josh Gunther and Dustin Nelson. The deputy I rode with that night was Chad Maurstad. We started our night from the Sheriff’s Office between 5-6 p.m. and returned between 9-10 p.m. that night.

We drove out into the country and I asked Deputy Maurstad about different things in law enforcement because I was in skills at the time and had a lot of questions about the job. Chad told me that his wife Sylvia had a hard time in law enforcement because she was a women (sic) and that her first boss told her there was no place in law enforcement for women. Towards the middle of the ride Chad also asked me if I had a boyfriend and I told him yes. After I did a check with the Sportsmen’s Lodge on Lake of the Woods, I got in the car and told him about an elderly man inside the bar that had tried to hit on me. He then asked me how old the oldest guy I would date could be. I felt really uncomfortable and told him I don’t know. At that point I tried to change the subject but Chad seemed to press the issue and kept asking me “well, how old is too old?” I told him that the oldest guy I had ever dated was 10 years older then (sic) me. He also showed me dirty text messages on his phone. They included pictures and jokes which I thought were very inappropriate. I told him I had already seen the ones he had shown me and he told me that he received them from other officers. I continued to ask him non-stop questions about law enforcement to keep him from asking me any more inappropriate questions, but he always seemed to go back to these sorts of questions. I would almost panic if I couldn’t think of anything to ask him. During the rest of the ride he asked me other questions. I don’t remember exactly what they were but they all had a sexual tone. They made me feel very uncomfortable and that it was very unprofessional and inappropriate of him to ask these questions. Each time I got out of the car to do another compliance check I didn’t want to get back into the car. I knew that I would feel more and more uncomfortable. I was very distracted that night but I did my best to identify the person that sold the alcohol to me. Before we got back to the sheriff’s office he told me to call him sometime to go ice fishing and to bring some friends. He had giving (sic) his number earlier in the night in case I ran into any problems doing the checks. I felt really angry that I didn’t say anything to him at the time but I didn’t know how to. I felt intimidated and tried to tell myself I was overreacting. I was also very embarrassed that I had answered the questions he asked me but I didn’t know what else to do.

When I got done I didn’t tell anyone about what had happened. I told him that I had fun doing the checks but I remembered I talked to Chelsea Haugen when I got back to town because I had to tell someone and she was my best friend. She knew who he was because he always came into the Roseau Diner where she worked. I didn’t tell her on the phone on the way back because I didn’t want the other guys to hear about what had happened. I told her the conversation that went on when I

got back home and I told her that he was creepy. Chelsea told me that when he comes into the diner he always asks her to do a ride along with her.

* * *

A few months later, I believe the date was the 3rd of March 2008, I tried calling Chelsea for a while. She didn't answer but she did text me saying that she was doing a ride along with Chad Maurstad. I texted her and told her that he was creepy and she said she thought so too. We were trying to figure out a way for her to get out of doing the ride along so I told her to tell him that she had to help me with my car. Finally after her ride along was over she called me and told me about all the things Chad had said to her. She told me that he had asked her things like if she liked to be fingered and if she masturbated. He told her that being a woman in law enforcement was tough and she would have to get used to things like that. He bought her a Dairy Queen and told her that she owed him a back massage later. He asked her a bunch of questions that were really inappropriate and unprofessional, even worse then (sic) with me. I don't remember a lot of them off the top of my head but they were jaw dropping."

Maurstad testified that he had previously done a couple of such compliance checks involving both male and female students. He stated that Becka, who was in charge that night, assigned Hackett to him. He stated that Hackett was with him for a couple of hours. He wasn't sure exactly how long. He testified that he received a message on his cell phone from Deputy Phillippe containing a photo, which he opened and Hackett observed. He testified that he told her he was sorry that she had seen it and that she responded don't worry because she had seen it before. Maurstad denied that he had intentionally shown it to her, and that he wasn't sure exactly what it was, but it was probably a picture. Maurstad testified that Bandemer never said anything to him about the Hackett ridealong, and that he had heard nothing about it until he received the notice he received on September 11, 2008 that Hackett had filed a complaint.

On cross-examination, Maurstad, when questioned about the allegation that he asked Hackett to go ice fishing with him, responded that he did not recall if he had asked her that.

PARTIES ARGUMENTS:

Employer Arguments

The Hackett incident involved a 20-year-old law enforcement student from Northland Community and Technical College. On December 8, 2007, Hackett rode with the grievant as a volunteer assisting with the alcohol compliance checks done by the County. On that date she and the grievant went to eight businesses, four of which were closed or didn't sell liquor. During the ride along, the grievant asked Hackett if she had a boyfriend, and while in one of the establishments a 35-year-old male hit on her. After that incident the grievant asked Hackett "how old is too old", and Hackett told the grievant that the oldest man she had dated was 10 years older than her. The grievant also showed her a sexually explicit text message he had received while they were in his squad car. Grievant also invited her to go ice fishing with him. At the time of these incidents, Hackett did not complain to the grievant, but she did tell her friend Haugen about the ridealong and reported the incident to Jesmen, the Criminal Justice Coordinator at Northland Community and Technical College. Chief Murphy interviewed her after he had been told she might also be a victim of sexual harassment by the grievant. Hackett did not report the incident because she feared retaliation from County law enforcement. The grievant admitted the text message and asking questions regarding dating older men, and how old is too old. The grievant's defense was that he was inquiring because he was trying to determine if a crime had been committed, and if she was less than 16-years-old at the time of dating the older gentleman because he would have to report it. However, the grievant didn't mention in any of his reports about his questions concerning whether or not a crime had been committed, and in any event, had it occurred, it would have occurred four years earlier as well as being outside of the grievant's jurisdiction. And finally, he didn't even ask her if she was 16-years-old at the time.

Regarding the Haugen incident, she was a 21-year-old student also at Northland Community and Technical College studying law enforcement. Haugen knew the grievant and his wife from working in a restaurant, which they frequented. On March 10, 2008, she went on a ride along with the grievant, which started at 5:30 p.m. The grievant asked her if she had a boyfriend, and then moved to more sexually explicit comments regarding whether she was faithful to her boyfriend, used sex toys, masturbated, and if she liked to be fingered by herself or her boyfriend. The grievant also suggested that Haugen could

take Deputy Phillippe home for a three-some. She said she felt uncomfortable with the grievant's comments and tried to change the subject several times, but he continued to tell her sexual stories and that he and his wife were looking for someone to join them in a threesome. During the ride along, the grievant and Haugen went back to the Department so that the grievant could attend a meeting. While at the Department in the dispatch area, she sent text messages to her boyfriend and Hackett explaining what had happened on the ride along. She said she didn't tell the grievant that she was uncomfortable during the ride along, but left the Department when he went to his meeting. Later Haugen talked with Hackett and reported the incident to Jesme at the technical college. Both Jesme and her boyfriend urged her to file a complaint with the Department, but her father recommended against it out of fear of retaliation and harassment from County law enforcement. Jesme however informed Roseau Police Chief Anderson, who told Chief Deputy Bandemer about the incident. Bandemer spoke to the grievant about the incident, counseled him, and directed him to write a letter of apology to Haugen. However the grievant gave a draft of what he claimed was the letter he had sent to Haugen to Bandemer in an e-mail. However the grievant never sent the letter to Haugen. On September 3rd, Murphy interviewed the grievant who claimed Haugen had started the sexual conversation even though he admitted saying Haugen could bring another deputy home for a three-some. The grievant told Murphy that he terminated the ride along because he was uncomfortable with the conversation Haugen had initiated. However, the text that Haugen had sent to her boyfriend, reporting the incident to Jesme, and the testimony of her boyfriend, Hackett and Jesme corroborate her allegations. Furthermore there is no evidence as to why Haugen would fabricate such a story. And finally, the grievant admitted that he had started the conversation of a sexual nature.

The grievant was involved in a third incident in May of 2008 involving Boroos, an 18-year-old waitress at the local Jake's Pizza. On that date, the grievant and City of Roseau Police Officer Berggren were in the pizza restaurant in uniform on duty and ordered a pizza. Hites, a server at Jake's and close friend of the grievant, sat and talked with Maurstad and Berggren, and while she was conversing with them asked Boroos to come over to the table and tell Maurstad and Berggren about the "tattoo on her beaver".

The grievant laughed about the comment and questioned Boroos about her age. The grievant advised Boroos she should stay single and enjoy it for as long as she could.

Later Boroos started vacuuming the restaurant in preparation for closing and Berggren unplugged the vacuum. Boroos asked them to plug it back in, and the grievant and Berggren both laughed. Boroos told them “just stick it in there”. The grievant responded by telling Boroos “you shouldn’t talk to me like that”. As Boroos continued vacuuming, the vacuum became stuck on a corner, and upon seeing the vacuum stuck the grievant said “is that too much power for your hand? Your hand can’t handle all that power?”

After Jake’s Pizza closed, Boroos went home and tearfully called her boyfriend to tell him what had happened. Mr. Boroos walked in while she was talking on the phone to her boyfriend crying, and after being asked by her father what the problem was, she told him everything that had happened in the restaurant. Her father told her to tell what had happened to Barteng who was her manager. Boroos called Barteng that night and told her what had happened. Approximately a week later, Hites called Boroos and told her that the grievant wanted to talk to her dad. The grievant, while in uniform and on duty, picked up Boroos’ father in his squad car, and admitted that he had made a mistake in what he had said to Boroos’ daughter, and he was sorry for what had happened.

Boroos did not initially file a report concerning the incident, but her father talked to DeMars, a Roseau police officer, about the situation and asked him for guidance. On August 18, while on patrol with Sheriff’s Department Captain Eidsmoe, DeMars asked whether Boroos had contacted him regarding the incident. Eidsmoe and DeMars then drove to the Boroos’ residence. Eidsmoe advised Boroos and her father regarding the procedures for filing a complaint and stated they could pick up a complaint form at the Sheriff’s Office, or he could drop them off at the house. Boroos asked Eidsmoe to drop off the complaint forms, which he did on the next day. Then on August 20, 2008 Ms. Boroos contacted Eidsmoe and told him she had filled out the complaint form and requested that he pick it up.

Following the filing of the written complaint, the matter was turned over to Investigator Murphy. While investigating the Boroos matter, Boroos advised him that she had heard that the grievant had made inappropriate comments to a girl who worked at

the Roseau Diner and who was going to school for law enforcement. That was how Investigator Murphy came to learn about the Haugen incident.

Boroos testimony at the hearing was corroborated by the fact that she immediately reported the incident to her father and to her manager at Jake's Pizza on the night of the incident. Both her father and Barteng testified that Boroos was very upset by the incident. Also, Boroos knew that the grievant was a friend of her co-worker Hites, and had no reason to bring false allegations against the grievant who she did not know personally.

And, once again, the grievant's testimony and explanations lack credibility. The grievant admits asking Boroos her age and telling her she should stay single as long as possible. His protestations that he made no other inappropriate comments are belied by his conduct. Although claiming that he did not participate in any other appropriate conversation, the grievant later took Boroos' father for a ride in his squad car while on duty to discuss the matter. During the ride, the grievant apologized to Mr. Boroos for taking part in the conversation and stated that he wanted to apologize to his daughter for what he said. It is improbable that the grievant would have sought out Mr. Boroos to resolve the matter by apologizing unless the grievant believed that his behavior was inappropriate. Similarly, it is unlikely that the grievant would have sent an e-mail to Sheriff Hanson, asking for forgiveness, just hours after he was interviewed by Investigator Murphy in regard to the matter.

During his questioning by Chief Murphy after receiving a Garrity warning, the grievant denied that he had ever before been talked to by a department administrator concerning making inappropriate comments to females. Not only had the grievant been counseled by Chief Deputy Bandemer regarding that very subject in April, but the grievant told Bandemer "I will make sure that I speak appropriately, and when I am around other officers, I will take it upon myself to make sure that the subjects that are brought up in conversation are appropriate to be talking about." Clearly the grievant's lack of truthfulness during the investigation undermines the credibility of his testimony during the hearing. While Hites testified that she did not hear the grievant say anything inappropriate, she also stated that she was not in the presence of the grievant and Officer Berggren for a substantial period of time while she was in the kitchen area. Officer

Berggren also testified, although he could not recall specifics, that the conversation was sexual and adult in nature. It is clear from Boroos' testimony that the grievant's harassment caused her a significant amount of distress, caused her to mistrust law enforcement officers, caused her to be fearful of retaliation from the grievant and/or other law enforcement officers, and led her to receive counseling while at college. Thus the grievant's comments created an intimidating and/or offensive public services environment for Boroos.

The final incident that led to the grievant's discharge involved an OWI arrest made by the grievant's wife and his subsequent seizure of the vehicle involved in the OWI arrest. On the evening of July 6, 2008, the grievant's wife, who is a Minnesota State Trooper, conducted a traffic stop involving Ode and his passenger Millard. Ode was the driver of the vehicle and was intoxicated, and Millard was a passenger in the vehicle and also intoxicated, and identified herself as the owner of the vehicle, which she had purchased from her son. After a Field Sobriety Test, Trooper Maurstad arrested Ode and placed him in the squad car. During the arrest, Millard asked Trooper Maurstad if "my car, is that a problem", and the Trooper responded "it can stay here". At no point did Trooper Maurstad tell Millard or Ode that she intended to seize the vehicle, nor did she take the keys to the vehicle. Shortly after her arrest of Ode, Trooper Maurstad received a cell phone call from the grievant in which she stated she is "just leaving Badger" and that she had just arrested Ode for DWI. During the conversation, the trooper advised the grievant "I should have grabbed the plates", and the grievant responded that the vehicle was subject to forfeiture. Trooper Maurstad responded "Oohh". Trooper Maurstad also states "shoot, it is" referring to the vehicle being subject to forfeiture, and then states "do me a favor, wait for the tow". She proceeded to give the grievant directions to Ode's house and called the tow truck. After doing so, she told the grievant "I will be inside the jail". A few minutes later the grievant calls Trooper Maurstad and tells her that the car is not at the Ode residence, to which Trooper Maurstad responds "I was afraid of that". The grievant also asked Trooper Maurstad "you got the keys for it?" to which Trooper Maurstad responded "no, I don't".

The grievant then proceeded to the Berger residence where he was met at the end of the driveway by Richie Berger. The grievant asked Berger if Millard's car was there,

and he responded that it was. The grievant asked how the car got there, and Berger told him that he had driven the car there from Ode's house. At that point Berger gave the grievant permission to come up the driveway and look at the car. Upon arriving at the car, the grievant was also met by Brian Berger, Richie Berger's father and Suronen who was Millard's sister. The grievant advised them that the car had been involved in a DWI and was forfeited to the State. Berger questioned how the car could have been forfeited in that it had not been flagged and no seizure notice had been given to anyone, the keys had not been taken, and in fact had been left with the intoxicated Millard. Berger also asked the grievant for paperwork showing him that the car could be taken, to which the grievant asked him, "do you really want to go there?" Berger responded, "yes, I would like to go there". The grievant advised Berger that he didn't need to show him anything and that he could take the car "because I can". The grievant also told Berger that whoever took the car from the Ode property could be charged with theft of State property, even though he had already been told that Berger's son had moved the vehicle. And, Berger's son, Richie Berger, testified that the grievant threatened to arrest him.

Following the Suronen incident, the grievant spoke with County Attorney Hanson. Hanson testified that the grievant told her that Richie Berger had driven the car from the Ode residence to the Berger residence, and that Richie Berger could be charged with theft of State property. This was also included in Hanson's written statement. The grievant also told Hanson that Millard must have had "another" set of keys, implying that Trooper Maurstad had taken the keys she found with the vehicle at the time she arrested Ode. However Berger testified that he knew that there was only one set of car keys for the vehicle as a week before the vehicle had been in for service and Millard had only one set of car keys.

The grievant testified at the hearing that he did not know that his wife had left the scene of the arrest when he spoke to her on the cell phone the first time, and that he expected her to be there when he arrived to wait for the tow truck. He testified that, based on this belief, he thought she would have informed Millard and Ode that the vehicle was being seized. He claimed that this was the basis for his telling Richie Berger that he might be charged with theft of State property for moving the car after notice of

seizure and making this claim to the County Attorney. The grievant's version of events is simply false.

The County argues that during this incident, the grievant used excessive force and was rude. After arriving at the vehicle and advising Berger and Suronen that the car was being forfeited, he gave Suronen permission to remove her sister's diabetic supplies from the vehicle. Suronen also asked the grievant some of the same questions as Brian Berger concerning what authority he had to remove the vehicle. Ultimately, the grievant asked Suronen to move away from the car to which she refused. The grievant then told Suronen that if she didn't move away from the car, he would arrest her. At that point he grabbed her arm and spun her around, and put her arm up behind her back. Then Brian Berger attempted to get between the grievant and Suronen telling the grievant things were getting out of hand. The grievant agreed to call Trooper Maurstad and have her explain to Berger that she had seized the vehicle because it was subject to forfeiture. The grievant got Trooper Maurstad on his radio, and she gave the details of her arrest and forfeiture to Berger. At that point the grievant directed the tow truck driver who had arrived on the scene to load the vehicle and take it away.

The Employer contends that during this incident, the grievant violated County Policy 3-3000 prohibiting the use of excessive force. The County contends that the grievant used an unreasonable degree of force because it was not an emergency, and grievant had other options of waiting for the Trooper to arrive or to call for back up before seizing the vehicle. Furthermore, Suronen was not an eminent threat to the grievant and it was not established that she was actively resisting or attempting to flee the scene. The County also contends that the grievant violated Policy 2-900 concerning rudeness with the public, and violated Policy 2-900 (II)(a)(38) concerning filing of a report of the incident. The County also contends that the grievant failed to promptly draft a report of the incident involving use of force as he was required to do. And, what he did file was a self-serving, incomplete, false and misleading statement concerning the incident in the early morning hours of July 6th. The grievant called the City Attorney on the evening of the 6th at home, and told her that charges might be filed against him regarding the incident. The County Attorney told the grievant to immediately write a report, which he did not do. Then on the evening of July 7th, Suronen called the County

Dispatch Center and alleged that she had been assaulted by the grievant. The dispatcher called Sergeant Becker and told him to contact Suronen. However, Sergeant Becker at the time he received that call was at the grievant's house. Becker called Suronen from the grievant's house and told her to call Captain Eidsmoe. The grievant wrote a draft report, which he e-mailed to Captain Eidsmoe and City Attorney Hanson, but he did not complete the formalized complaint form on the computer that is normally used, even though he had filed another report on the Crime Star Computer program for another incident that occurred on the same evening as the Suronen incident.

The County also contends that the grievant engaged in a pattern of lies and deceit in violation of County Procedure 2-900 (II)(13) mandating his termination. He made repeated false statements during questioning after receiving Garrity warnings. His untruthfulness constituted insubordination and provided just cause for his termination. During his interview by Investigator Murphy regarding the Boroos' incident, he denied ever being talked to by administration about inappropriate comments to females. However, previously he had been counseled by Chief Deputy Bandemer and told to apologize to Haugen for comments he had made to her during a ride along. This counseling had occurred only a few months before the Boroos' incident. Further, the grievant claimed at hearing that he had only agreed with Chief Deputy Bandemer not to talk about threesomes. Further, in his report concerning the Suronen incident, he lied when he said that Captain Eismoe and County Attorney Hanson told him he should not file a formal report on the incident. The facts are that he was told by the County Attorney to immediately write a report, and yet it took him two days to do that. The grievant also falsely claimed to Richie Berger, Brian Berger, and City Attorney Hanson that Richie Berger could be charged with a crime for driving Millard's vehicle from Ode's to Berger's when he was aware that the vehicle had not been seized by Trooper Maurstad at the time the car was moved. Also the grievant e-mailed Sheriff Hanson and testified that he was told by Bandemer to send the e-mail, which was a lie. Bandemer denied being at home when the grievant said he had called and talked to him, and the phone records show that no call was made by the grievant to Bandemer. The County concludes that these untruths warrant the grievant's termination inasmuch as deputies hold a position of trust and routinely are required to testify in court proceedings. In this case, the grievant has

lost his ability to testify because he has lost his credibility and can no longer function effectively as a law enforcement officer.

Union Arguments

The Labor Agreement provides that discipline of the County's licensed police officers shall be for just cause only. The Agreement does not further define just cause. Arbitrators have frequently adopted the seven element test for just cause articulated by Arbitrator Dougherty. The Employer generally has the burden of establishing just cause by preponderance of the evidence. The County failed to meet its burden with respect to the first, third, fourth, fifth, sixth and seventh elements of just cause in its decision to terminate Sergeant Maurstad.

The County did not give Sergeant Maurstad full warning of the possible consequences of his conduct. The record shows that Chief Deputy Bandemer knew by the end of March 2008 that Ms. Haugen alleged that Sergeant Maurstad had made inappropriate comments to her during the March 10th ride along. Chief Deputy Bandemer did not initiate an investigation into this matter, nor did he advise any other County officials about Ms. Haugen's allegations. Instead, after waiting for several weeks, he instructed Sergeant Maurstad to draw up a letter of apology to Ms. Haugen, which Sergeant Maurstad did. In his e-mail to Chief Deputy Bandemer, Sergeant Maurstad stated his understanding that the matter was "over with", that the County would not take any further action, and Chief Deputy Bandemer did not refute this. Clearly Sergeant Maurstad was misinformed regarding the possible consequences of the misconduct alleged by Ms. Haugen – in fact, he was assured that there would be no further consequences. Yet, on September 8th, nearly 6 months after the ridealong, the County accepted a complaint from Ms. Haugen and eventually cited this complaint as one of the grounds for Sergeant Maurstad's termination. Moreover, Sergeant Maurstad's alleged failure to comply with Chief Deputy Bandemer's directive was never set forth in a written complaint, and Sergeant Maurstad was never advised that this was one of the items of misconduct being investigated. Yet, this too was one of the reasons given by the County for Sergeant Maurstad's termination.

Similarly, Sergeant Maurstad was not advised of the possible consequences of some of the charges arising from the Suronen incident. Ms. Suronen's complaint and the statement taken from Sergeant Maurstad, as well as the Garrity/Tennessee Warning and Data Practices Advisory given to him at the time of his statement, were limited to the issue of excessive force. It is not until well after that statement that County Attorney Hanson decided, based on her review of Trooper Maurstad's squad car video, that Sergeant Maurstad had been untruthful about Mr. Ode's traffic stop and the seizure of the Plymouth Neon. The new allegations added to the investigation at that time – that Sergeant Maurstad had not filed a timely report, that both his written and verbal reports about the incident were untruthful, and that he had made unfounded accusations against Richie Berger – were County Attorney Hanson's allegations not Ms. Suronen's. These allegations were never included in a written report and Sergeant Maurstad was never questioned regarding those charges. Accordingly it cannot be said that Sergeant Maurstad was properly put on notice of the possible consequences of these allegations.

The Union also contends that the County did not make a reasonable effort to determine whether Sergeant Maurstad had violated its policies. The investigations conducted by Chief Murphy leading up to Sergeant Maurstad's termination were woefully incomplete. There were many deficiencies in his investigation. Haugen testified that after Sergeant Maurstad left her at the dispatch center following the ride along, she had conversations with Dispatcher Greg Sorenson and Corrections Officer Priscilla Von Ende. Both of these employees appear in the video of the dispatch center from the period when Ms. Haugen was there. These conversations took place very shortly after Ms. Haugen alleges she had been subjected to sexual harassment by Sergeant Maurstad. However, Chief Murphy did not interview Mr. Sorenson nor Ms. Von Ende when he could have asked them if she had said anything about what took place during the ride along, or if she seemed upset or uncomfortable. Haugen also testified that shortly after the ride along she told her parents about her experience with Sergeant Maurstad, but Chief Murphy did not seek to interview either of Ms. Haugen's parents to ask them what if anything Ms. Haugen had actually told them. Chief Murphy did not contact Ms. Haugen until September of 2008, and by that time the surveillance video taken at Sven and Olie's Ultimate Carwash on March 10th, the day of the ride along, was

no longer available. Chief Murphy admitted at the arbitration hearing that had the investigation begun in the Spring, when the County first heard of Ms. Haugen's allegations, the surveillance video may have been available and may have exonerated Sergeant Maurstad. Chief Murphy also admitted that had the investigation been begun in the Spring, the text messages that Ms. Haugen had sent to her boyfriend, Kelly Sampson, and her friend, Ms. Hackett, might have been retrievable and certainly would have been relevant to the investigation.

With respect to the Boroos' incident, there was testimony at the hearing that other customers had entered and left Jake's Pizza during the time that Sergeant Maurstad allegedly made his inappropriate comments and gestures toward Ms. Boroos. Chief Murphy did not attempt to identify or interview those customers, for example, by reviewing their credit card receipts. Officer DeMars testified that before he told Captain Eidsmoe about Ms. Boroos' allegations, he told County Investigator Nathan Adams, who apparently took no action. Chief Murphy did not interview Investigator Adams to confirm what if anything Officer DeMars had told him. Finally, there was testimony that Mr. Boroos' wife was present during part of the conversation with Captain Eidsmoe and Officer DeMars when they came to the Boroos' residence on August 18, 2008. Although it is disputed whether Captain Eidsmoe pressured or persuaded Ms. Boroos and Mr. Boroos to file their complaints, Chief Murphy never interviewed Mr. Boroos' wife to ask about the nature of that conversation.

Concerning the Suronen incident, the allegations regarding the timeliness and truthfulness of Sergeant Maurstad's reports of the Suronen incident did not become part of the investigation until long after Sergeant Maurstad had been interviewed concerning the Suronen complaint. Chief Murphy never took a statement from Sergeant Maurstad about those allegations. Furthermore Chief Murphy never interviewed Trooper Maurstad, relying instead on her squad car video. It is clear from their testimony at the arbitration hearing that if Sergeant Maurstad and Trooper Maurstad had been questioned about these issues, they would have provided alternative explanation for the events leading up to the seizure of the car driven by Mr. Ode, which would have effectively refuted these new allegations. Also regarding Ms. Suronen's allegation of excessive

force, Chief Murphy knew that there were numerous bystanders from the party at Bryon Berger's residence, including Bryon Berger's sister Jenny, Richie Berger's wife, and Kyle Cole, who were watching the altercation between Sergeant Maurstad and Ms. Suronen. It is likely that some or all of these people would have eyewitness accounts of Ms. Suronen's behavior and how Sergeant Maurstad responded. Also, Chief Murphy did not interview the dispatcher who took the call from Ms. Suronen complaining of Sergeant Maurstad's conduct to determine what Ms. Suronen actually said when she made the call. The Union contends that in light of the indicated shortcomings in the investigation, the Arbitrator should conclude that the County's investigation was insufficient to meet its burden regarding this element of the just cause test.

The Union also contends that the County's investigation was not conducted fairly or objectively. The shortcomings in Chief Murphy's investigation noted above did not amount to a good faith effort to gather and assess relative evidence, and thus, cannot be considered fair. Additionally, the circumstances surrounding the filing of the Boroos' complaints were highly unorthodox and called the fairness and objectivity of that investigation into question. Although Ms. Boroos and Mr. Boroos both contend that they were not pressured into filing their complaints, there is evidence to the contrary: Ms. Boroos told Chief Murphy that she recalls Captain Eidsmoe telling her that it would be "in her interest" to provide a statement to the County. Further, the circumstances and timing of the Haugen and Hackett complaints also demonstrate that the County's investigations were neither fair nor objective. Chief Murphy fortuitously learned about Ms. Haugen's allegation from Chief Anderson who had heard these allegations not from Ms. Haugen herself, but from Mr. Jesme, Director of the NCTC Law Enforcement Program. He decided to contact Ms. Haugen and offer her assistance in filing her complaint. Later, when Chief Murphy learned about Ms. Hackett's allegations from Ms. Haugen, he took the similarly unusual step of contacting Ms. Hackett. Neither of these women had information relevant to the Suronen or Boroos investigations – Chief Murphy was, in effect, soliciting additional and entirely unrelated complaints against Sergeant Maurstad beyond those that he had been retained to investigate. Even more bizarre is the fact that Chief Murphy took statements from both women before they had filed their complaints, and before Sergeant Maurstad had been notified of their complaints. Also,

County Attorney Hanson's direct intervention in the Haugen investigation is further evidence that the investigation was not objective.

County Attorney Hanson's direct intervention in the Haugen investigation is further evidence that the investigation was not objective. County Attorney Hanson – a prosecutor by profession – attended Sergeant Maurstad's interview ostensibly because his Fraternal Order of Police representative, Rob Fowler, had filed a notice of claim against the County. But she then took over the interview for approximately 20 minutes, questioning Sergeant Maurstad aggressively about his ride along with Ms. Haugen and asking the same questions multiple times. From listening to County Attorney Hanson's interrogation of Sergeant Maurstad, it is plain that she had already decided that the allegations against him were true, and was intent on getting him to admit those allegations. This kind of questioning cannot be part of a fair, objective investigation.

The record also shows that between on or about September 22, 2008, when Chief Murphy submitted his draft report of the Boroos' Investigation to the County, and the issuance of the final report on November 14, substantial changes were made. These changes are evidence that the investigation was not objective, but rather was manipulated by the County. Finally, County Attorney Hanson acknowledged that on or about October 31, 2008 – two weeks before the final investigative reports were completed – she told Attorney Chris Wachtler that “it wasn't looking good” for Sergeant Maurstad. This was a clear admission that the County had already decided Sergeant Maurstad's fate.

The Union also asserts that the County did not obtain substantial evidence or proof that Sergeant Maurstad had committed the alleged policy violations. The County alleged that in his dealing with Ms. Hackett and Ms. Haugen, Sergeant Maurstad violated Roseau County Sheriff's Policy 3-1900 and the Roseau County Respectful Workplace Policy, which prohibit sexual harassment and disrespectful behavior. The County further alleges that Sergeant Maurstad used inappropriate language toward Ms. Haugen, in violation of Sheriff's Policy 2-900. Sergeant Maurstad admits that he asked Ms. Hackett “how old is too old” for a man that she would consider dating. Sergeant Maurstad further admits that he had a conversation with Ms. Haugen regarding “threesomes”. Both Ms. Hackett and Ms. Haugen willingly engaged in these conversations, and neither woman

stated or gave any indication that they were offended or uncomfortable. In this context, these comments by Sergeant Maurstad cannot fall under any of the examples of sexual harassment set forth in the Respectful Workplace Policy, and they do not rise to the level of sexual harassment or disrespectful behavior as defined in policy and statute.

Also Sergeant Maurstad explicitly denies making the other offensive comments alleged by Ms. Hackett and Ms. Haugen. He also denies showing an inappropriate picture of video to Ms. Hackett on his cell phone. These allegations are plainly a matter of “he said/she said”. As such, despite Chief Murphy’s findings, the County has not proven by preponderance of the evidence that these comments and actions took place. Weighing against the credibility of these allegations is the fact that Ms. Haugen and Ms. Hackett waited 6 and 9 months respectively to file their complaints against Sergeant Maurstad, and even then only after Chief Murphy took it upon himself to contact them. Both Ms. Hackett and Ms. Haugen testified that they waited to file their complaints because they feared retaliation, but they could not specify any retaliatory action that Sergeant Maurstad had taken or might have taken against them. Ms. Hackett also told Ms. Haugen about her experience during the Alcohol Compliance Check Assignment. Nothing that she said dissuaded Ms. Haugen from going on a ride along with Sergeant Maurstad. Ms. Hackett also told some of her other friends that her assignment with Sergeant Maurstad had been “fun”. There is simply not enough evidence in the record to sustain the County’s conclusion that Sergeant Maurstad committed these policy violations.

Sergeant Maurstad is also accused of violating Sheriff’s Policies 2-900 and 3-1900 by failing to follow Chief Deputy Bandemer’s order to send a letter of apology to Ms. Haugen. As discussed previously, this allegation was never set forth in a written complaint, nor was it mentioned in the order for Sergeant Maurstad to appear for an internal affairs interview or in the Garrity/Tennessee Warning and Data Practices Advisory given to him at the interview. Furthermore, Chief Deputy Bandemer’s order was never put in writing, and Sergeant Maurstad and Chief Deputy Bandemer gave directly conflicting testimony regarding the nature of the directive. Sergeant Maurstad stated that he was told to draft a letter and submit it to Chief Deputy Bandemer only,

while Chief Deputy Bandemer testified that he told Sergeant Maurstad to send the letter to Ms. Haugen directly. The County has not shown by a preponderance of the evidence that Chief Deputy Bandemer's version of this story is more credible.

Regarding the Boroos' incident, the County relied on Chief Murphy's findings that Sergeant Maurstad had violated Sheriff's Policy 3-1900 and the County Respectful Workplace Policy by virtue of his comments and actions at Jake's Pizza on May 28, 2008. Sergeant Maurstad admits to suggesting to Ms. Boroos that she should "stay single" and offering to plug the electrical cord from the vacuum cleaner back into the wall socket after Officer Bergren had removed it. Clearly, these innocuous comments did not constitute sexual harassment or disrespectful behavior in violation of County policies. As to Ms. Boroos' other allegations, Chief Murphy found them credible despite the fact that neither of the direct witnesses present at the pizza place that night, Ms. Hites and Officer Bergren, would corroborate Ms. Boroos' version of events. Sergeant Maurstad, Ms. Hites and Officer Bergren all testified that Ms. Boroos was a willing and active participant in a sexually oriented conversation, including offering to make a pizza in the shape of a penis. Also, all three testified that Ms. Boroos appeared to be in a good mood throughout the encounter, including when she left the restaurant, and never seemed offended or upset. Ms. Boroos and her father waited more than two and one-half months to file their complaints regarding this incident, and then only after Captain Eidsmoe had taken the unprecedented action of appearing at their doorstep on August 18, 2008.

With respect to the Suronen incident, the County relied on Chief Murphy's determination that Sergeant Maurstad had violated Sheriff's Office Policies 2-900 and 3-3000 by using excessive force and being "overbearing" toward Ms. Suronen during their altercation on July 6, 2008. The record shows that the Plymouth Neon driven by Mr. Ode that night was subject to forfeiture and did, in fact, subsequently become property of the state. It follows that Sergeant Maurstad had a legitimate reason to direct Ms. Suronen to move away from the vehicle, so that he could complete the seizure. Testimony from multiple witnesses establishes that Sergeant Maurstad gave Ms. Suronen this directive several times, and that she refused to comply. Sergeant Maurstad also testified, and Richie Berger confirmed, that Ms. Suronen called Sergeant Maurstad an "asshole". Chief

Murphy acknowledged both in his report, and that Sergeant Maurstad arguably had probable cause to arrest Ms. Suronen for obstruction of legal process. The question, then, is whether the preponderance of the evidence shows that Sergeant Maurstad used unreasonable force in effecting the arrest. At the time that Sergeant Maurstad laid hands on Ms. Suronen, it was his intent to arrest her and that he had probable cause to do so. Sergeant Maurstad contends that he grabbed Ms. Suronen's wrist when she poked him in the chest. It is undisputed that he told Bryon Berger that Ms. Suronen had poked him in the chest within a matter of minutes after the altercation had ended, and that he repeated this allegation in a telephone call to Trooper Maurstad a few minutes after that. The proximity in time between these statements and the action described in the statements lends credibility to Sergeant Maurstad's assertion that Ms. Suronen poked him.

Even if Ms. Suronen did not poke Sergeant Maurstad, however, the evidence of excessive force is insufficient to sustain this allegation. Mr. Dahl, whom Chief Murphy openly stated was the only impartial witness interviewed in regard to the Suronen investigation, testified that it was understandable for Sergeant Maurstad to feel vulnerable and to perceive the situation at Bryon Berger's residence as threatening – late at night with an indeterminate number of possibly intoxicated people coming out of the darkness toward the vehicle, including some coming from behind Sergeant Maurstad. Mr. Dahl testified that Sergeant Maurstad may have been “short and to the point” but he was not disrespectful. According, to Mr. Dahl, Sergeant Maurstad was not out of line and did not use excessive force.

Also the evidence that Sergeant Maurstad caused an injury to Ms. Suronen is also highly questionable. Mr. Dahl – again the only impartial witness on the scene – testified that Ms. Suronen may have caused her own injury by trying to spin around to face Sergeant Maurstad after he had pulled her arm behind her back. Thus, the record shows that the level of force that Sergeant Maurstad used in dealing with Ms. Suronen was reasonable under the circumstances, and that he was not “overbearing, oppressive or tyrannical” in addressing Ms. Suronen and others at Bryon Berger's residence on the night in question.

The County further contends that Sergeant Maurstad violated Sheriff's Policies 2-900 and 3-1900 by failing to file a timely report of the Suronen incident, by making misrepresentations about that incident to County Attorney Hanson and Captain Eidsmoe, both verbally and in writing, and by falsely accusing Richie Berger of stealing state property. As has already been discussed in detail, no real investigation of these allegations ever took place. The only evidence obtained by the County that Sergeant Maurstad had committed these policy violations was Trooper Maurstad's squad car video recording as interpreted by County Attorney Hanson. The policy requires that members of the department report all violations of the department's regulations, policies, orders or procedures and do so promptly. Sergeant Maurstad complied with this portion of the policy by calling County Attorney Hanson at home on the afternoon of July 6, 2008 to report what had taken place at the Bryon Berger residence. Regarding written reports, the policy does not require that such reports be submitted on the same day or during the same shift as the reported incident. Sergeant Maurstad e-mailed his report to County Attorney Hanson and Captain Eidsmoe, as instructed, on the night of July 7th. Prior to that he had spent the rest of his 12-hour overnight shift on July 5-6, plus 3 hours of overtime, searching for, apprehending, and transporting a minor who had been reported for consumption of alcohol, and who also had an outstanding warrant for a probation violation. When Sergeant Maurstad returned to work for his next shift just a few hours later, on the afternoon of July 6, he began drafting his report of the minor consumption incident. He was then called away to respond to a criminal sexual assault complaint, which included taking a statement from the complainant, accompanying her to the hospital for completion of a sexual assault kit, driving her back to her residence, placing the sexual assault kit and the complainant's clothing into an evidence storage facility, and writing a narrative report of the investigation. Sergeant Maurstad reasonably concluded that completing the written reports involving the minor consumption and criminal sexual assault were higher priority than completing the report on the Suronen incident, which after all had not resulted in her arrest. When all these circumstances are considered, Sergeant Maurstad's delay in submitting his report on the Suronen matter was not egregious and was not a violation of policy.

Regarding the truthfulness of Sergeant Maurstad's verbal and written reports, there is no evidence that he made any deliberate misrepresentations. The statement in the written report that "Sergeant Maurstad received a call from Trooper Maurstad" was an understandable mistake, because the two were in the habit of calling back and forth frequently when they were both out on patrol. From the testimony at the hearing, it is apparent that County Attorney Hanson was under the misapprehension that, at the time that Sergeant Maurstad advised Trooper Maurstad that the Plymouth Neon was subject to forfeiture, the "10-15" dispatch code used by Trooper Maurstad had alerted him that she had cleared the scene of the traffic stop. Had Chief Murphy bothered to question Sergeant Maurstad and Trooper Maurstad about these events however he would have learned that this is not what the "10-15" code means, and that in fact Sergeant Maurstad did not know, and had no reason to know, that Trooper Maurstad had cleared the scene at the traffic stop. Chief Murphy also would have learned from Sergeant Maurstad that Trooper Maurstad was still at the scene and that she had advised Mr. Ode and Ms. Millard that the vehicle would be seized. In short, Sergeant Maurstad did not violate County policies by making misrepresentations in his report regarding the Suronen incident.

Also the evidence shows that Sergeant Maurstad did not violate policy by falsely accusing Richie Berger of stealing state property. At the time he arrived at Mr. Ode's residence and found that the forfeited vehicle was not there, Sergeant Maurstad reasonably believed that Trooper Maurstad had notified Mr. Ode and Ms. Millard of her intent to seize the vehicle. Accordingly, when Richie Berger later told Sergeant Maurstad that he was the one who had removed the vehicle from Mr. Ode's residence, Sergeant Maurstad naturally assumed that Richie Berger had done so knowing that the vehicle was subject to forfeiture and had moved the vehicle to avoid having it towed. Sergeant Maurstad admits that he may have accused Richie Berger of committing a crime, but he made that accusation based on his reasonable understanding of the facts at the time. Therefore, it cannot be said that Sergeant Maurstad "knowingly" made a false accusation of a crime in violation of the County policy.

The Union also asserts that the County has not applied its rules, orders, and penalties evenhandedly. Mr. Beito testified that he received terroristic threats from Jeremy Gust over the telephone, and that he made a complaint to Captain Eidsmoe regarding those threats. Mr. Beito further testified that Captain Eidsmoe did not write a report or take any other action concerning this complaint. Because Captain Eidsmoe refused to answer any questions about Mr. Beito's complaint at the arbitration hearing, Mr. Beito's testimony on this subject is unrebutted. Furthermore, Captain Eidsmoe plainly violated this policy by failing to write a report regarding Mr. Beito's complaint, yet the County has taken no action to investigate or discipline Captain Eidsmoe. It is clear the County cannot show by a preponderance of the evidence that it has applied its rules, orders and penalties in an evenhanded manner.

Last, the Union contends that Sergeant Maurstad's termination is not reasonably related to the seriousness of his proven offenses and his record of service with the County. At the arbitration hearing, Sheriff Hanson testified emphatically that it was the "honesty issue" that convinced him that termination was called for. This was based on the misrepresentations that Sergeant Maurstad allegedly made to County Attorney Hanson and Captain Eidsmoe concerning the decision to seize the vehicle driven by Mr. Ode and the events leading up to the seizure of that vehicle. This was echoed by Sergeant Maurstad's testimony regarding his December 11, 2008 Louder Mill Hearing, when Attorney Goering told Wachtler that if Sergeant Maurstad had not been untruthful about the events surrounding the seizure of the vehicle, the County would not be seeking to terminate him. Sheriff Hanson reached his decision to terminate without even knowing that the allegations regarding the truthfulness of Sergeant Maurstad's reports were never set forth in a written complaint. Furthermore, the reports were not untruthful. The record clearly shows that Sergeant Maurstad's verbal and written reports of what took place that night were accurate to the best of his recollection, and based on the facts as he understood them at that time. In other words, the violation that the County believes is the most serious one alleged against Sergeant Maurstad – the violation that tipped the balance in favor of termination – never happened. Even assuming that the other violations alleged by the County are proven by a preponderance of the evidence, which

the Union does not concede, the County has openly admitted that the seriousness of those other violations do not justify termination.

Moreover the decision to terminate is not reasonably related to Sergeant Maurstad's record of employment. Prior to 2008 Sergeant Maurstad had an unblemished record of 15 years as a Roseau County law enforcement officer. He had never been investigated or disciplined in any manner whatsoever. On his one and only performance evaluation, Sheriff Hanson rated him as meeting or exceeding expectations in nearly all categories, including ability to follow orders, following rules governing the department, communication with the public, and communication with his supervisor. Sergeant Maurstad also received three Letters of Commendation from Captain Eidsmoe. The County has not demonstrated that the decision to terminate Sergeant Maurstad was related to his strong record of service or that it was justified in foregoing progressive discipline by terminating Sergeant Maurstad instead of imposing a less severe form of discipline. Thus, the Union contends that Sergeant Maurstad was terminated without just cause and should be reinstated to his prior position and made whole.

DISCUSSION:

The facts giving rise to the grievant Maurstad's discharge were uncovered in an internal investigation conducted by Thief River Falls Chief of Police, Murphy. Murphy's services were utilized to conduct the investigation as he was not a member of the Roseau Sheriff's Department and Sheriff Hanson testified that it was customary to use an outsider to conduct such an investigation. Murphy was to investigate a complaint filed by Suronen. Her complaint was precipitated by an incident that occurred on the evening of July 5 and early morning hours of July 6, 2008, and involved the seizure by the grievant of a vehicle parked on Suronen's fiancé's property. During his investigation of the Suronen matter Murphy was advised by Captain Eidsmoe that Boroos, a waitress at Jakes Pizza restaurant had filed a complaint about the conduct of the grievant when he was eating dinner at the restaurant with Roseau Police Officer Berggren. Murphy was directed by the County to expand his investigation to include the Boroos complaint. Because Berggren was a Roseau Police Department employee and Murphy wanted to

interview him in regard to the Boroos incident he contacted Roseau Police Chief, Anderson, to arrange to interview Berggren. When Murphy spoke with Anderson he was advised by Anderson that he had been informed by Jesme from the Northland Community and Technical College that two students had complained to Jesme about the grievant's conduct during ridealongs that they had participated in with him. Murphy interviewed those students, Haugen and Hackett, and they subsequently filed complaints with the Sheriff's Department regarding how the Grievant conducted himself during their ridealongs with him. It was these four incidents that Murphy investigated and about which he made findings and recommendations leading to the grievant's termination.

In its defense of the grievant the Union has argued that Murphy's initiation of interviews with Hackett and Haugen and soliciting their complaints was improper and evidenced a lack of fairness and objectivity in the investigation. It asserts that the Hackett and Haugen matters were unrelated to the Suronen and Boroos complaints. The undersigned agrees that the ridealong incidents involving Hackett and Haugen were unrelated to Maurstad's conduct in the Suronen matter. However, that is not the case with regard to the Boroos investigation. The Boroos investigation centered on allegations Boroos had made regarding Maurstad's interaction with her, a young female working at Jake's Pizza, and alleged inappropriate conversations of a sexual nature held in her presence, as well as alleged inappropriate remarks involving sexual innuendos made to her. The Hackett and Haugen allegations against Maurstad also involved alleged inappropriate conversation of a sexual nature with two female college students during ridealongs (observations) with him. The alleged misconduct involved in all three incidents was the same – inappropriately discussing non-work related matters of a sexual nature with young females while on duty.

In the undersigned's opinion, the employer had a duty and responsibility to pursue investigation of these matters once it came to Investigator Murphy's attention. Fulfilling that responsibility certainly can't reasonably be characterized as evidence of a lack of fairness and objectivity by Murphy in seeking to substantiate or unfound the allegations contained in the Suronen and Boroos complaints. Not looking into the Hackett - Haugen allegations merely because no formal complaint had yet been filed would give the appearance of cover up and undermine public confidence in the Department. Also, a

troublesome aspect of this case is the fact that some Department representatives were apparently not interested in researching allegations of employee misconduct coming to their attention unless or until a formal complaint had been filed with the Department. The witness testimony in this case clearly established the fears/concerns, whether founded or unfounded, that members of a small community confronted in deciding whether to come forward and formally complain about the perceived misconduct of law enforcement. That approach of not investigating potential employee misconduct of which the Department becomes aware until a formal complaint has been filed certainly doesn't create the appearance of sound/good public policy for all the reasons that are apparent in this case.

The Union has also argued that because the initial draft report of Murphy's findings and recommendations, which was mistakenly faxed to the Union, was modified pursuant to conversation with the County Attorney before submission of the final report is evidence of inappropriate interference with the investigation by the County, thereby calling into question the fairness and objectivity of the investigation and investigator. Murphy testified that while he was asked to change the format of the draft report he did not and was not directed to alter or change any of his substantive findings or conclusions. And, certainly his modifications to the format of his initial draft report, after speaking with County Attorney Hanson, is not evidence supporting a conclusion that his investigation was other than objective and fair.

The Union has also asserted that the investigation was not fair and objective because Murphy did not make a reasonable effort to determine if Maurstad violated County policies because he did not interview all possible witnesses to the Suronen, Boroos and Haugen incidents, there was evidence that County representatives pressured the Boroos into filing a complaint, and County Attorney Hanson inappropriately involved herself/interfered in both the Suronen and Boroos investigations. The Union contends that there were other people at the Berger residence as well as customers at Jake's Pizza who were not interviewed by Murphy. But, it is also the case that if there were other witnesses with information that could have aided in Maurstad's defense of the allegations they could have been called as witnesses in this proceeding. However, none were called and, consequently, and appropriate inference to be drawn from that fact is that there was

no one else present at either incident who could shed additional light on what transpired or aid in Maurstad's defense. There is no evidence establishing that Murphy was aware that there were other individuals, who if questioned, would support Maurstad's contentions, thereby, casting doubt on the objectivity and fairness of Murphy's investigation. That no one else, other than the individuals Murphy interviewed, was called to testify undermines any claim that Murphy not interviewing others proves his investigation was not objective or fair.

The Union also points to Murphy's failure to interview the dispatchers who were working in the Sheriff's Department on the evening of Haugen's ridealong with Maurstad, who appeared in the video, and who were present when she came into their area when Maurstad went to his meetings. The Union's assertion implies that if Maurstad had engaged in conduct that upset Haugen that would have been obvious to the dispatchers who interacted with her and, consequently, not interviewing them calls into question the fairness and objectivity of Murphy's investigation. I disagree. First, Haugen's allegations of Maurstad's misconduct dealt with events that occurred when he and she were riding in his squad car and not while they were in the dispatching area. Second, even if the dispatchers had been able to testify that Haugen did not exhibit any outward signs of being uncomfortable or upset, that would not, in the undersigned's opinion, undermine her credibility regarding what she alleges took place in the car. She contends it was his questions and comments while they were together in the car that made her uncomfortable and upset her. She was no longer in that situation when she was in the dispatch area in the presence of others, in addition to Maurstad and, thus, even if her demeanor in that circumstance did not reflect the emotions she claims to have experienced during the ridealong it would not, in the undersigned's opinion, undermine the credibility of her allegation.

The Union also asserts that Murphy's failure to interview Trooper Maurstad and instead rely upon the video of her arrest of Ode contributed to both Attorney Hanson and Murphy reaching an incorrect conclusion about the reasonableness of what the grievant understood to be the case about Trooper Maurstad notifying Ode and/or Millard that the vehicle was going to be seized and that it was moved after they had been told it was being seized. This argument is premised upon Maurstad's claim that the radio/cell phone

signals were breaking up and that he didn't know Trooper Maurstad had left the Ode residence when he was speaking with her about seizing the vehicle and, therefore, he couldn't have known that neither Ode or Millard knew the vehicle was being seized. Maurstad contends that he, therefore, assumed that either Trooper Maurstad told Ode and Millard that the vehicle was being seized or that they overheard his conversation with her about seizing the vehicle and, thus, Millard knew it was being seized. The mere fact that even if Trooper Maurstad had still been at the Ode residence when he informed Trooper Maurstad that the vehicle could be seized it was unreasonable for him to assume anything about Ode and Millard's knowledge of a possible seizure. What would have been reasonable for Maurstad to have done when he saw that the vehicle was not at the Ode residence when he arrived there was to contact Trooper Maurstad and ask her if she had told Millard the vehicle was being seized instead of assuming anything. Furthermore, he arrived at the Ode residence within five minutes or so of his conversation with Trooper Maurstad. It is highly improbable Trooper Maurstad could have, thereafter, discussed seizure with Ode and Millard, left the scene, and R Berger gotten there and drove Millard and the vehicle away before Maurstad arrived. Finally, even if that had been what occurred, Maurstad's contention further assumes that Millard told Berger the vehicle had been seized and, thus, R Berger moved it with that knowledge. So when R Berger told Maurstad that he had driven to Ode's, got Millard and her vehicle and drove it to his father's residence, undermines Maurstad's assertion that it was reasonable for him to have concluded the vehicle was moved by R Berger, knowing it had been seized. Thus, I am not persuaded Murphy not interviewing Trooper Maurstad in any way prejudiced the grievant or evidences a lack of objectivity on the part of Murphy.

The Union also claims that Murphy did not interview Sheriff Department Investigator Adams, who DeMars claims he told about an incident Maurstad had with D Boroos daughter. However, DeMars testified that Boroos did not share the details of what happened at Jake's Pizza with Adams because he didn't have that information to share. Furthermore, DeMars told Eidsmoe about the incident within 3 or 4 days of talking with Adams. And, he gave the same limited information to Captain Eidsmoe when they were riding together, and Eidsmoe and DeMars went immediately over to the Boroos residence and spoke with Boroos and D Boroos about the incident. It's not clear

how or why Maurstad was prejudiced by Murphy's not interviewing Adams in light of what DeMars told Murphy had occurred 3 or 4 days later when he gave the same information to Captain Eidsmoe.

The Union also argues that the Boroos were pressured by Captain Eidsmoe to file a complaint. However, D Boroos credibly testified that he told Eidsmoe he wanted to file a complaint because it was the right thing to do and not because Eidsmoe told him he had to. Also, it is clear from DeMars testimony that it was D Boroos who approached him wanting to know what he could do. It was only after he had spoken to DeMars about the situation at least twice that DeMars and Eidsmoe went to his residence. And, D Boroos testified he was very upset over the incident. Therefore, the record evidence does not persuade me that DeMars or Captain Eidsmoe pressured the Boroos to file a complaint with the Department. Furthermore, as I noted earlier, whether a complaint was filed or not I am persuaded public policy, if nothing else, obligated the Department to investigate once Captain Eidsmoe was made aware of the specifics of Boroos allegations. And, the delay in filing their complaint does not in any way diminish the seriousness of her allegations or impact Boroos and D Boroos credibility in light of the testimony and evidence as to why a complaint was not filed sooner.

The Union also argues that County Attorney Hanson's conduct during the course of Murphy's ongoing investigation was inappropriate and supports its contention that the investigation was not conducted fairly or objectively. Attorney Hanson claims it was not inappropriate for her to involve herself in the investigation by telling Chief Anderson that his officer, Berggren who was with Maurstad at Jake's Pizza when the Boroos incident occurred, should start telling the truth. While I am not persuaded that it was necessary for her to be commenting to Chief Anderson about Officer Berggren's interview with Murphy, nonetheless, Berggren did not alter what he had told Murphy regarding what he remembered about the incident at Jake's Pizza when he spoke with Attorney Hanson. Her questioning of Maurstad is troublesome from the perspective that Murphy was the investigator, not Hanson, and if there were questions that she felt needed to be asked or avenues that needed to be pursued she could easily have had Murphy pursue them. In the undersigned's opinion, merely because attorney Fowler was present in the interview was not sufficient reason for her to involve herself. Fowler was present to provide legal

advice to Maurstad and her role didn't need to be any different with respect to Murphy. But, again, as with some of the other objections raised by the Union concerning the conduct of the investigation there is no record evidence of any prejudice to Maurstad as a consequence of her questioning him. While it might very well be that Attorney Hanson was predisposed to believing that Maurstad was lying about events, as discussed earlier herein, there is no evidence that she inappropriately influenced the substance of investigator Murphy's findings, conclusions and recommendations.

Both Berggren and Berger gave statements to Attorney Fowler of the FOP concerning County Attorney Hanson's contact with them during the time of Murphy's investigation. However, in the undersigned's opinion, those statements, while calling into question Attorney Hanson's motives, do not undermine the credibility of Suronen's and R Berger's accounts of the forfeiture incident, nor the Boroos accounts of what happened at Jake's Pizza, or the meeting between D Boroos and Maurstad.

The first incident that Murphy investigated was the vehicle forfeiture at the Berger residence and threatened arrest of Suronen. Most facts relating to what occurred at the Berger residence are not in dispute, with the exception of whether Suronen poked Maurstad prior to him taking her wrist/arm and turning her around to put her in hand cuffs. All those who witnessed Maurstad's actions immediately prior to his grabbing her wrist/arm either testified that it didn't happen or did not see it happen because they did not have a view that permitted them to observe from one side or the other the two of them facing each other. Investigator Murphy concluded that Maurstad was not credible. I am persuaded that it does not matter whether or not he was poked by Suronen. The testimony persuades me that Maurstad was going to arrest Suronen because she ignored several directives from him for her to move away from the vehicle and refused to move, insisting the vehicle was not going anywhere. And, at the time of the alleged poke he was moving toward her and was reaching for her arm to put her in handcuffs. Her allegedly poking him was not the motivating factor in his grabbing her arm/wrist to place her in handcuffs. Rather, he was doing so in order to remove her from obstructing the tow truck driver's ability to load the vehicle.

Investigator Murphy concluded that Maurstad violated the County's policy 3-3000 pertaining to the use of non-deadly force and the County gave that as one of the

reasons for Maurstad's termination. Murphy did not conclude that Maurstad was without probable cause to arrest Suronen for obstruction of legal process or that he used unreasonable force in attempting to effectuate the arrest. Murphy also commented upon a number of factors that indicated to him that there was no need for Maurstad to be in the situation he found himself necessitating an attempted arrest of Suronen – it was not an emergency situation and Maurstad had other options, Suronen did not pose an immediate threat to his or others safety, and Suronen was not actively resisting arrest or attempting to evade arrest by flight. However, under the circumstances present at that time, I am not persuaded that he utilized excessive force in attempting to effectuate Suronen's arrest in order to accomplish seizure of the vehicle.

Maurstad was there, rightly or wrongly to seize the vehicle and Murphy concluded Maurstad did not violate the County policy 3-1000 by doing so even though he commented that the policy was inadequate for several reasons. And, Suronen was belligerently impeding his effort to do so and she had no reasonable basis for refusing to move away from the vehicle. She clearly wasn't satisfied with what Maurstad was telling her regarding his authority to seize the vehicle, but that, in the undersigned's opinion, didn't justify her refusal to obey a facially appropriate directive from law enforcement. Maurstad had already let her retrieve her sister's belongings, and I am persuaded from the testimony she had completed doing so by the time Maurstad was insisting she move away from the vehicle. She did not state she would move away when she finished getting her sister's things out of the vehicle, rather she was insisting the vehicle wasn't going anywhere. And, Murphy did not make a finding that Maurstad lacked probable cause to arrest her for obstructing legal process. So whether Maurstad should have allowed the situation to escalate to the stage it had by then because of Suronen and Berger's insistence upon being given sufficient information to establish that seizure of the vehicle was appropriate, he nonetheless was acting under the cover of law in seizing the vehicle, and gave Suronen a directive she was obliged to comply with.

Also, the physical actions that Maurstad engaged in do not persuade the undersigned that the force was excessive. Rather, although I am persuaded that Suronen was injured in the process, I am not persuaded that the level of force employed by Maurstad was excessive. Suronen claimed that Maurstad spun her around causing her

free hand to slam into the vehicle resulting in the injury to her wrist/arm. However, tow truck driver Dahl testified that as Maurstad was turning Suronen to put the handcuffs on her she spun faster than he was turning her as he raised her arm behind her back. Thus, Dahl was of the opinion that Suronen contributed to her free arm being thrown into the vehicle. Thus, the record evidence is insufficient to establish that the degree of force Maurstad used in attempting to effectuate the arrest of Suronen was excessive.

The County's decision to terminate Maurstad was also premised upon its belief that Maurstad refused to explain the authority he possessed for seizing the vehicle. The record evidence is that it wasn't until he attempted to arrest Suronen and Berger intervened that Maurstad offered to call Trooper Maurstad in order to provide him with an explanation of his legal authority for the seizure. The charge against Maurstad is footed on his alleged response "because I can", and "do you really want to go there" when he was asked by Suronen and Berger regarding what authority he had to seize the vehicle and questioned about paperwork for the seizure. That response was clearly inappropriate and insufficient to explain his authority to effectuate the seizure. And, at least initially, providing the aforesaid response did effectively constitute a refusal to explain his authority. .

Maurstad was also charged with accusing a citizen of committing the crime of taking State property when no one, including that citizen, had been told the vehicle was being seized, and therefore, was State property. Maurstad testified that he told the Bergers that R Berger could be charged with taking State property because he drove Millard's vehicle from Ode's residence to the Berger residence. As discussed earlier, I have not found credible Maurstad's contention that he reasonably believed Millard and R Berger knew the vehicle had been seized. During his conversation with Trooper Maurstad her when he called to tell her the vehicle was not at Ode's and he was asking her to determine from Ode where Millard might have driven the vehicle, he never asked her if she had informed Ode and/or Millard the vehicle was being seized. Clearly, he had no reasonable basis for stating to the Bergers that R Berger could be charged.

Furthermore, by the time he had his conversation with Attorney Hanson the next day he could have verified by then with Trooper Maurstad that she was or wasn't at the Ode residence when he let her know the vehicle was subject to seizure, and she had or

had not told Ode and Millard the vehicle was being seized before she left Ode's. Yet, he told Hanson the next day that he thought Berger could be charged with moving the vehicle or that he hadn't driven the vehicle and Millard had and could be charged. And, he also made statements to Attorney Hanson and in his report implying that Trooper Maurstad had decided to seize the vehicle before she left the Ode residence when he had no reasonable basis for so stating, notwithstanding his claims about the codes being misunderstood and the radio/phone transmission breaking up. Thus, the facts are that was there was no reason for Maurstad to tell Attorney Hanson that charges were possible other than to take the focus away from his conduct and/or to induce Hanson to conclude his conduct was reasonable when he confronted theft of State property and individuals who had been drinking and were obstructing legal process. For these reasons the undersigned is persuaded that the preponderance of the evidence substantiates the charge that Maurstad was being dishonest about criminal charges possibly being filed and that he also violated Sheriff Department Policy 2-900 when he advised the Bergers that R Berger could be charged for driving the Millard vehicle from Ode's to the Berger residence, and the next day both orally and in his report implying that Trooper Maurstad has seized the vehicle before she left Ode's residence. Policy 2-900 provides

“Peace officers shall not knowingly make false accusations of any criminal, ordinance, traffic or other law violation. This provision shall not prohibit the use of deception during criminal investigations or interrogations as permitted under law.”

Another of the charges against Maurstad is that he failed to timely write a report concerning the seizure incident until after he became aware Suronen had called the Department to complain about his conduct, and when he did finally write a report included in it misleading and false information and omitted other information. This charge stems from Maurstad's actions discussed in the preceding paragraph and requires little further discussion other than to state not only was what he wrote in his written report misleading and missing crucial information about the incident, but he also never finalized his report on the standard computerized Crime Star Reporting system.. His defense for not doing the latter was because he claims he was told not to alter his initial report. However, entering the information in the computerized system without modification would not be changing what he wrote. More importantly, both Eidsmoe and

Attorney Hanson testified that they never gave Maurstad such an instruction. Thus, that the record evidence persuades the undersigned that the County has proven this charge by a preponderance of the evidence,

The County has also charged Maurstad with being rude and overbearing to members of the public during the Suronen vehicle seizure incident. There can be no dispute that Suronen was terribly upset that her sister's car was being seized and was very confrontational with Maurstad and insistent that she was not going to cooperate until he was able to provide her and Berger with evidence and/or an explanation regarding his authority for the seizure. Berger also was demanding that Maurstad provide them with a warrant or papers establishing his authority before he would cooperate with removal of the vehicle from his property. The conversations that have been set forth in the witness testimony confirm that Maurstad did not provide any explanation for his authority until after his aborted decision to arrest Suronen. Rather, he was insistent that he could take the vehicle and apparently didn't believe he needed to provide them with any explanation regarding his authority other than "because I can". Suronen's complaint states that she thought he was arrogant and increasingly argumentative as they continued to insist upon some proof he had the authority to seize Millard's vehicle. Being argumentative and overbearing were the words the County chose to describe what it believed was Maurstad's unacceptable behavior during the incident. I certainly don't believe it is worth quibbling over the words used to describe Maurstad's behavior. What is required is an evaluation of his conduct and whether, under the circumstances he confronted at Berger's, his behavior could be reasonably be described as rude and arrogant or firm and authoritative because that was what the situation demanded. The answer lies in what occurred after he aborted his arrest of Suronen and Berger tried to deescalate the situation. It was then that Maurstad took Berger over to his squad car and called Trooper Maurstad, which resulted in Berger being provided with an explanation for the seizure. That immediately resulted in Berger's cooperation, an end to the confrontation and Berger no longer opposing the seizure. Thus, I am persuaded that characterizing Maurstad's interaction with Suronen and Berger, members of the community/public, as rude and overbearing is a reasonable description of his behavior that night in violation of Sheriff Department Policy 2-900.

“Members of the department shall not be overbearing, oppressive, or tyrannical in their relations with members of the community.”

The remaining charges against Maurstad arose out his on duty conduct in the Boroos, Hackett and Haugen incidents. The County contends that Maurstad’s conduct in those incidents constituted sexual harassment and conduct unbecoming an officer. It also charges that his conduct involved the use of offensive and obscene language, which also violated County Policy. Additionally, Maurstad is charged with insubordination for failing to mail a letter of apology to Haugen as he was directed to do by his superior, Chief Deputy Bandemer, and by engaging in a subsequent incident of sexual harassment with Boroos after Bandemer learned of the Haugen incident and counseled him regarding him not repeating that behavior in the future. The last charge against Maurstad is that he was untruthful during the County’s investigation into those incidents.

Maurstad testified that some of what Haugen and Hackett allege was discussed by him with them during their ridealongs occurred, denies that he engaged in other aspects of the alleged conversations with Hackett and Haugen as they allege, and believes that his conversations with them did not constitute sexual harassment.

Sheriff Department Policy 3-1900 provides

- E. Principle Four. 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.
 - 1. Rationale: A peace officer’s ability to perform his or her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general. Peace officers must conduct themselves in a manner consistent with the integrity and trustworthiness expected of them by the public.
 - 2. Rules ***
- d. Peace officers, while on duty/off duty, shall not engage in any conduct which the officer knows, or should reasonably know, constitutes sexual harassment as defined under Minnesota law, including but not limited to; making unwelcome sexual advances, requesting sexual favors, engaging in sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature. ***

Also, the County's Respectful Workplace Policy provides

- I. It shall be a violation of this policy to engage in the following behaviors:

- B. Offensive behavior includes but is not limited to such work related actions as: rudeness, exclusionary behavior, angry outbursts, inappropriate joking, vulgar obscenities, name-calling, and disrespectful language. Whether the behavior is offensive will be determined from a reasonable person's standard. * * *

The specifics of what Haugen and Hackett allege Maurstad spoke to them about during the ridealongs are set forth in their written complaints and summaries of their testimony. Some of the conversations were clearly sexually explicit and others involved sexual innuendos, and all were obviously inappropriate and should not have occurred. Further, there is no record evidence to suggest any reason why Hackett and Haugen would conspire to make unfounded accusations against Maurstad. Prior to the incident, there had been only limited contact between Haugen and Maurstad in the Roseau Diner where Haugen worked and Maurstad occasionally went for dinner when he was working. And, there is no evidence that Hackett and Maurstad had ever had any prior contact before her involvement with the compliance check.

Maurstad admitted in his testimony that he had spoken about threesomes, and stated that he apologized to Hackett for her seeing the text message and photo on his cell phone. Also, he wrote a letter of apology to Haugen for his conduct during her ridealong. His attempt at hearing to defend his conversation with Haugen as being part of a discussion about criminal sexual conduct relating to her law enforcement class was not credible. Haugen testified that she was not taking any law classes at the time of her ridealong with Maurstad. Also, Maurstad did not refute Hackett's allegations when he testified and claimed that he did not recall if he had ever invited her to go ice fishing with him. Additionally, Haugen was texting both Hackett and her boyfriend Sampson during her ridealong about how uncomfortable she was, and immediately after the ridealong spoke with Hackett about the conversations with Maurstad. Thus, the record evidence persuades the undersigned that the accusations of Haugen and Hackett are credible.

The record evidence establishes that Maurstad's conduct in the Boroos incident did not involve him making sexually explicit comments to Boroos as he had done with

Hackett and Haugen. Rather, he and Berggren were present for and did nothing to stop Hites from making sexually explicit comments regarding Boroos or remove themselves from the situation. Rather, they laughed along with Hites. I am also persuaded that Hites' testimony that Boroos initiated the sexually explicit conversation was not credible, and was an attempt by her to shift responsibility for the conversation from her and Maurstad, and put it on Boroos. Furthermore, Maurstad's remarks to Boroos while she was vacuuming involved sexual innuendo coupled with a masturbation gesture. And, there is nothing in the record to explain how that could have been initiated by Boroos. Rather, it clearly was initiated by Maurstad and was inappropriate on his part.

Thus, the preponderance of the record evidence is that Maurstad engaged in inappropriate behavior while on duty with females Hackett, Haugen, and Boroos, and his conduct violated Sheriff Department Policies 2-900 and 3-1900. It is very clear that Maurstad's conversations with Hackett and Haugen amounted to sexual harassment as that is defined in the aforementioned policies. Maurstad clearly was "engaging in * * * communication of a sexual nature" with Hackett, Haugen and Boroos, which the three women, not unreasonably, found to be offensive.

When Bandemer learned there had been an incident involving Haugen, his only investigation into the matter was his conversation with Maurstad, who didn't tell him the full extent of what had occurred. Even so, Bandemer, based upon what he had been told by Maurstad, directed Maurstad to apologize to Haugen. Maurstad prepared a letter of apology but didn't send it. However, in his e-mail to Bandemer, to which he attached a copy of the letter attached, he implied that he had.. Maurstad claims he prepared the draft and left it outside Bandemer's office, apparently expecting him to review it before it was sent out. But, if he expected something else to occur before the letter was sent out, why didn't he follow-up with Bandemer after receiving Bandemer's e-mail thanking him for the letter when he knew he had not sent the letter out. It wouldn't have been reasonable for Maurstad to have concluded that Bandemer sent the letter out on Department letterhead over his own signature, or without Maurstad's signature. Maurstad never provided a satisfactory explanation for doing nothing after receiving Bandemer's "thank you" e-mail. It appears that he calculated that after Bandemer sent him his "thank you" e-mail that there would be no further follow-up by Bandemer and there wasn't. In fact,

Bandemer testified he wouldn't have expected to have received a copy of the final product, apparently mistakenly trusting that Maurstad would carry out or had carried out his directive. In light of what actually occurred, Maurstad's testimony and Maurstad's subsequent conduct in the Boroos incident, I don't find credible his explanation for why he never sent the letter. And, I am also persuaded that he clearly intended to create the impression with Bandemer with the e-mail he had sent him that he had complied with the directive. By not sending out the letter to Haugen, Maurstad was clearly insubordinate.

Additionally, Maurstad in his interview with Murphy concerning the Boroos incident denied he had ever been disciplined regarding inappropriate conversations with females in the past. Clearly, he had been counseled by Bandemer about the Haugen incident and had stated to Bandemer it would not happen again. This occurred just a few months prior to the Boroos incident. Obviously, Maurstad was being less than truthful on this subject during his interview with Murphy.

The last remaining issue is whether in light of all of Maurstad's misconduct the County had just cause to discharge him. In support of a claim of disparate treatment, the Union put in evidence of prior discipline dispensed by the Sheriff's Department in other cases of employee misconduct where employees received significantly less severe discipline. A review of those other cases shows that they involved singular events, unlike this case where Maurstad was involved in multiple incidents of inappropriate behavior, coupled with insubordination, and being and untruthful in statements to the public, in his oral and written reports, as well as when he was confronted during the investigation with his alleged misconduct. Consequently, I am persuaded that those instances of prior discipline are distinguishable from this case and do not provide a basis for concluding the County is guilty of disparate treatment because of its decision to terminate Maurstad.

Sheriff Hanson testified that he decided, based upon Murphy's conclusions and recommendations to terminate Maurstad's for the reasons set forth in Maurstad's termination letter. He testified that Maurstad's lack of honesty and truthfulness with his superiors and Murphy in light of the gravity of the allegations being made against him was a major factor in his decision to terminate Maurstad, rather than impose some lesser discipline.

The undersigned is persuaded that the County did have just cause to terminate Maurstad. As an officer of the law Maurstad was in a position of trust and he abused that trust. As a law enforcement officer he is held to a high standard of conduct and is expected to carry out his duties and responsibilities without undermining the public's confidence in him and/or the law enforcement agency he represents. The Roseau County Sheriff's Department has policies in place setting forth its expectations for its officers. And, citizen cooperation enhances law enforcement effectiveness, but when the public's trust and confidence in law enforcement is undermined citizens become unwilling/afraid to cooperate. Consequently, holding law enforcement officers to high standards of conduct is warranted.

The charges against Maurstad that have been proven amount to egregious offenses for a law enforcement officer. The incidents with the three females amounted to serious misconduct, but even more serious was Maurstad's lack of truthfulness on several occasions in order to cover up what he obviously recognized as misconduct on his part. Thus, I am persuaded that the level of discipline the Sheriff settled on was reasonably related to the seriousness of Maurstad's proven offenses. And, in the undersigned's opinion, Maurstad's 15 years of service with the County and no disciplinary history do not mitigate the seriousness of his misconduct.

Based upon the testimony, exhibits and argument the undersigned enters the following

AWARD

The County had just cause to terminate the grievant. Therefore, the grievance is denied.

Entered this 6th day of October 2009.

Thomas L. Yaeger
Arbitrator