

**DECISION MODIFYING DISMISSAL TO A WRITTEN REPRIMAND**

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**PASQUALE TAMBURINO**, Appellant,

v.

**DEPARTMENT OF SAFETY, VEHICLE IMPOUND FACILITY**,  
and the City and County of Denver, a municipal corporation, Agency.

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**I. INTRODUCTION**

Appellant appeals his dismissal for alleged violations of specified Career Service Rules, and Agency rules, regulations and orders. The hearing concerning this appeal was conducted by Daniel C. Ferguson, Hearing Officer, on February 7 and March 7, 2018. The Agency was represented by Shelby Felton, Assistant City Attorney, while the Appellant was represented by Donald Sisson, Esq., and Zachary Wagner, Esq., of the law firm of Elkus & Sisson, PC. Agency exhibits 1- 13 were admitted. Appellant's exhibits A, C, E, H, J, K, R, U, V, W, and X, were admitted. Ex. 7 and Ex. P are identical. Patrick Firman, Sheriff, Denver Sheriff's Department, (DSD); Det. Gregory Vacca, Denver Police Department, (DPD); Fernando Ordonez-Olivas; Bryan Nguyen; Lauren Munoz; Crime Scene Analyst, (DPD); Jesse Lopez, Vehicle Impound Facility (VIF) Supervisor; Yvonne Chavez, Receptionist, VIF; and Appellant Pasquale Tamburino, supervisor, VIF, were called to testify by the Agency. Counsel for Appellant called Toyja Copeland; Judy Tafoya; and Melissa Palmer, VIF employees, to testify.

**II. ISSUES**

The following issues were presented for appeal:

- A. whether the Appellant violated either Career Service Rule (CSR) 16-29 A, D, R or T;
- B. if the Appellant violated any of the Career Service Rules, whether the Agency's decision to dismiss him from employment conformed to the purposes of discipline under CSR 16-41.

**III. FINDINGS**

Ex.1, the Notice of Disciplinary Action in this case, reveals that on 1/6/17, at approximately 3:45 a.m., the stolen Subaru Impreza of Fernando Olivas-Ordonez was found by the Denver Police Department (DPD) and was taken to the Denver Sheriff Department (DSD) Vehicle Impound Facility (VIF). At approximately 3:20 p.m. that afternoon, Mr. Olivas went to the VIF with his friend, Mr. Brian Nguyen. At issue is the contention that bullets and a shell casing found by Mr. Olivas and Mr. Nguyen were given to Appellant Pasquale Tamburino.

Detective Gregory Vacca was assigned to investigate the theft of Mr. Olivas's vehicle on 1/6/17. He reviewed the report of the recovery of the vehicle and requested that the DPD perform a forensics review of the vehicle. Thereafter, on 1/11/17, the vehicle was processed by DPD Agent Munoz. 37 photographs were taken of the vehicle. No bullets or casings were found or appear in the photographs. After reviewing the forensics report, Det. Vacca contacted Mr. Olivas, who informed him that he had found bullets in the vehicle on 1/6/17. On 1/12/17, DPD Detectives Vacca and Pierce inspected the vehicle, and found no bullets or casings. On 1/13/17, Det. Vacca informed Mr. Olivas that no bullets were found. Later that day, Appellant called Det. Vacca and informed him that he had observed bullets in the vehicle. On 1/17/17, Det.'s. Vacca and Kline went to the VIF and found two bullets and a casing in the vehicle.

Sheriff Patrick Firman identified Ex. 3 as the Contemplation of Discipline Letter which he signed, which is sent to employees scheduled for a contemplation of discipline meeting. He testified that he found nothing lacking in the investigation, that in the pre-disciplinary hearing Appellant brought up the evidence regarding photographs of the interior of the stolen car of Mr. Olivas, that they looked at the photographs after the contemplation of discipline meeting, and that Petitioner had no additional witnesses at the hearing and did not ask for others to be interviewed. He further testified that when Appellant was questioned as to whether he ever had the bullets in question, Appellant said he could have but that he didn't recall having them. He said that he found Ex's. 6-3 and 6-36 key to his conclusions, and that in comparing Ex. 10-1 and Ex. 6-1, he found no difference, that everything lined up.

Sheriff Firman testified regarding his determination of the appropriate penalty that he considered the fact that Appellant had an excellent past record, and that he tried hard to find a lesser violation, but that he found no mitigation. On cross-examination, Sheriff Firman admitted that he did not speak with VIF employees Toyja Copeland, Judy Tafoya, and Melissa Palmer.

The hearing herein established that there are separate theories regarding the question of whether Appellant possessed bullets found in the recovered stolen vehicle of Mr. Olivas. Mr. Olivas testified that his friend, Mr. Nguyen, found the bullets, and handed them to Appellant. Appellant testified that he did not recall seeing or having any bullets. Appellant called as witnesses three employees of the VIF regarding whether Mr. Olivas had bullets in his hand in the VIF building on 1/6/2017, and whether he left the facility with the bullets.

The Agency called Mr. Olivas, who testified that he had received a call from the police telling him that his vehicle had been found and impounded. He stated that he went to the impound lot on three occasions. The first time was on 1/6/17, in the afternoon, accompanied by his friend Mr. Brian Nguyen. Mr. Olivas did not recall any required paperwork, nor did he recall who took him to see his car in the impound lot. He identified Ex. 6-6, through Ex. 6-11 as his car. He testified that he took his belongings from the glove box, and that there were several bullets found in the car by Mr. Nguyen, as well as some tools that were not his. He said that Mr. Nguyen pointed out the bullets to him, and that Mr. Nguyen picked them up and showed them to him. He testified that the officer who had taken them to the car said he would take the bullets. Mr. Olivas could not describe the bullets, and said that he was not given the bullets, nor did he see Mr. Nguyen being given the bullets. They were at the lot for about 10 minutes and were then escorted from the lot. He later received a phone call from a detective and gave a statement to the detective. He went to the lot a second time to see what he was going to do with the car. He testified that a different person escorted him to the car, and that he did not inspect the vehicle on this occasion, did not ask about the bullets, and did not have the bullets. He further testified that he did not recall how many conversations he had with the detective about the vehicle but that there were several, and that he did tell the detective his knowledge of what happened to the bullets. He stated that he went to the impound lot a third time to pick

up the vehicle, but that he did not go out into the lot, that the impound lot personnel used a fork lift to put his car on a flatbed truck. He identified the Appellant as the person who escorted them to his car on the first occasion that he went to the lot. From the testimony of Ms. Tafoya, the identity of the attendant who escorted him to the lot on the second occasion on 1/13/2017 is Brian Roper.

On cross-examination Mr. Olivas agreed that he did not recall on what dates he went to the impound lot, or whether there was any paperwork, or who took him to his car each time, or his conversations with the DPD, and could not describe the bullets found, but that he did recall the officer who took them to the car on the first occasion taking the bullets, because that was something to remember because there were bullets in the vehicle. He stated that "Brian" gave the bullets to the officer, but he did not recall how the officer took the bullets, and he vaguely recalled that he put them in a pocket. He stated that he did speak with an officer from Internal Affairs, that he told that officer that he had a terrible memory, that he probably was shown a photo of Mr. Tamburino and could not identify the photo as the person who took him to see his car on the first occasion, that he did not remember the name of Detective Vacca as the person investigating the theft of his car, but that he did tell him about the bullets when the detective called. The second time he went to look at the car he knew that he might have to have a forklift to take the car, but that he went to see if there were any other way to get tires on the car so that he could get a tow truck to move the vehicle. Finally, he denied putting the bullets back in the vehicle.

Brian Nguyen was called by the Agency. He stated that he is a friend of Mr. Olivas from High School, was aware of his car being stolen, and went with Mr. Olivas to see the recovered vehicle at the VIF. His recall of these events was, by his own admission, less than perfect. He testified that he did not recall the name of the person who took them to see the car, and did not recognize the person in the hearing room. He did identify the pictures in Ex. 6 as being Mr. Olivas's car. He stated that he went with Mr. Olivas to see the car because Mr. Olivas wanted to get his papers from the car, and that he was looking inside the car when he saw some bullets. He said there were two bullets and a casing. He stated that there was one in the middle part between the driver and passenger, apparently referring to the center console compartment, one in a crevice between the center console and the driver's seat, and one in the box where there are coins in Ex. 6-36. He saw no bullets on the back-seat floor. He did not recall telling anyone he found a bullet on the driver's seat. He did recall one bullet appeared to be for a rifle, and one for a handgun, but could not recall which the third bullet was for. He testified that he gave the bullets and casing to the person who had directed them to the car, and that that person put the bullets and casing into his pocket. He stated that he was not given back the bullets, that he did not see Mr. Olivas being given the bullets, that he did not have the bullets when they returned to the VIF office, that he did not have the bullets when he went to the VIF on a second occasion, that he did not go out into the lot on the second occasion, nor did he go into the lot on a third occasion.

Det. Gregory Vacca, a 28-year member of the DPD, was called by the Agency. He was assigned the case regarding the recovery of the stolen vehicle of Mr. Olivas on 1/6/2017. He testified that he reviewed the report, shown at Ex. 11, of the officers recovering the vehicle and requested a lab report. No hold was initially placed on the recovered vehicle. He also stated that he did an IA report, Ex. 5, however, this report is not signed, and is dated 2/15/2017, indicating it was an after-the-fact report from other notes. Det. Vacca also completed a supplemental report, Ex. H, submitted on 1/31/2017, detailing the history of the investigation of the recovery of this stolen vehicle. After leaving a voice-mail message for Mr. Olivas on 1/6/2017, Det. Vacca stated he received a call on 1/11/2017 from Mr. Olivas at 12:55 p.m., who informed him that three bullets had been found in his vehicle, when he went out to see it. At

that time there was no lab report on the vehicle. He stated he did not put a hold on the vehicle at that time. He was referred to Ex. 5 to establish that he received the lab report at 1559 hours on 1/11/2017, which indicated that no bullets were found. On 1/12/2017 Det's. Vacca and Pierce went to the VIF at 1135 hours and inspected the vehicle of Mr. Olivas but found no bullets, leaving at 1140 (See Ex.8).

After leaving a message for Mr. Olivas on 1/12, Vacca spoke with him on 1/13, to inform him that no bullets had been found. Mr. Olivas did not say where he had found the bullets, but said that the officer who took them out to his car on 1/6/17 had taken the bullets. Det. Vacca testified, and Ex. 7 indicates, that he released the vehicle so that the owner could recover it on 1/13/17. He also stated that he contacted the VIF on 1/13/2017 to inform them that there was an issue regarding bullets being found in Mr. Olivas vehicle. Later that afternoon Appellant left a voice-mail for Det. Vacca that he had found bullets in the vehicle. On 1/17/2017 Det. Vacca again went to the VIF and inspected the vehicle of Mr. Olivas and found a bullet on the driver's side floor mat, Ex. 6-1, a bullet on the floor in the rear passenger side compartment, Ex. 6-2, and a bullet between the center console and the driver's seat, but which is not visible in Ex. 6-3. At this time, he did not have the photos from the lab report. He requested them on 1/17/17 and received them on 1/20/17. He identified Ex. 10-1 as a comparison of the photos he took in Ex's. 6-1 and 6-2 to the lab photos in Ex's. 6-13, 6-15, 6-26 and 6-28.

During cross-examination of Det. Vacca, Counsel questioned him closely regarding the integrity of his investigation, based on the times shown in Ex. 8 for his visit to the VIF on 1/12, which indicates a total time of five minutes to arrive at the VIF, sign in, find and inspect the vehicle in the lot, and return to the office and sign out. Counsel also questioned Det. Vacca regarding his failure to attest to Ex. 5, and the refusal of the District Attorney to prosecute a case involving the original theft of Mr. Olivas's vehicle, and the refusal of Mr. Olivas to cooperate in the investigation, noted by the heading in Ex. 8, GO#2017-9144 VIC REFUSES TO COOP – NOT PRESENTED/REFUSED BY DA.

CSI Investigator Lauren Munoz testified that on 1-11-17 she received the order to process the vehicle of Mr. Olivas at the request of Det. Vacca, as shown in Ex. 8, which also shows that she did process the vehicle on 1-12-17, at 11:55 a.m. She stated that no items of evidentiary value were found, and that she took 37 pictures of the vehicle and its interior. She stated that she knew which vehicle to process because she had the license plate number, which she verifies and photographs. She identified Ex. 6-13 as a picture she took, which does not reveal a bullet on the left side of the driver's side floor mat. During cross-examination, she stated that she could not speculate as to whether the enlarged view of Ex. 6-26 showed a bullet or casing on the floor board of the right rear passenger compartment.

Joseph Lopez, VIF Supervisor/Administrator 1 was called by the Agency. There were four such positions, including Appellant. Lopez testified regarding his implementation of Aries. He was not involved in the investigation herein. At the time herein Appellant was responsible for supervising the cashiers. Cashiers are primarily in the office, while attendants escort people to and from the lots. He testified to the procedure for operation of the Impound Facility. He identified Ex. 11 as the impound ticket for the vehicle in question herein. On *voir dire* he responded that he could not verify the accuracy of information on the document placed thereon by DPD officers. The document was admitted for the limited purpose of showing the VIF information regarding the identity and location of the vehicle at issue herein. He also identified Ex. 7 as the VIF Aries log maintained by the VIF, which is noted in Pacific time. He also identified Ex. A as a VIF Impounded Auto Investigation History, which notes at Ex. A-2 that the vehicle in issue was a "recovered Denver steal" on 1/6/2017, and that the same information appears in Ex. 7, again shown in Pacific time, while Ex. A is in Mountain time. He identified Ex. 9 as the VIF

policy manual, which at Sec. 514 notes the requirements for logging inquiries regarding impounded vehicles.

Yvonne Chavez, VIF Attendant was called by the Agency. At the time of this incident she was a Receptionist. She was responsible for logging persons into the VIF. Ex. 8 is such a log. She was also responsible for transferring data from the log to Aries. She testified that the time in Aries would not necessarily correspond with the time in the log, since she testified that she did entries in the Aries log when she had time, stating that on Ex. 7, at 1:31 pm, she made the entry that Detectives Vacca and Pierce processed the Olivas vehicle, but that the time given is the time she made the entry, not necessarily the time that they were processing the vehicle. She stated that she put dots on the log sheet to indicate she had transferred data to Aries. The intake log, Ex. 8, shows the time for Vacca and Pierce on 1/12/2017 as 11:35 to 11:40 a.m. to process Mr. Olivas car. As an Attendant now, she does sign access passes, but at the time of this incident when she was a receptionist she did not sign them. On cross-examination she testified that as a Receptionist part of her duties was to make entries in Aries, that Supervisor Jesse Lopez directed her to do this work, although there was no policy that required this, and that there were times when days would go by before she had time to make entries in Aries. She also testified that she believed Appellant was honest and ethical.

Pasquale Tamburino was called as a witness by the Agency. Agency Counsel questioned him regarding his Internal Affairs interview, a transcript of which is in evidence as Ex. 4, and about his Contemplation of Discipline hearing, a transcript of which is in evidence as Ex. 2. Appellant's recollection of the circumstances of his taking Mr. Olivas and Mr. Nguyen to see the vehicle of Mr. Olivas are uncertain, as evidenced by the transcript at Ex. 4-47. He also agreed with Counsel that he had mistaken which lot the vehicle was in, and had noted an incorrect control number, but that he had corrected these errors. A review of the hearing transcript exhibits reveals that Appellant has offered a number of alternative speculations regarding the finding of bullets in the Olivas vehicle, and whether he ever had possession of them. While he stated during the investigation that he could have had them, he also stated that he did not recall ever having them. In his Contemplation of Discipline hearing Appellant stated that he told Mr. Olivas and Mr. Nguyen to leave the bullets in the car and to notify the detective about them. At hearing Appellant admitted to being told by Olivas and Nguyen that they had found bullets and denied that he accepted the bullets from them.

Appellant called Toyja Copeland, Judy Tafoya and Melissa Palmer, VIF employees, to testify. Ms. Copeland, an Admin 4 employee at the VIF stated that they assist customers arriving to the VIF. The customer must have ID and ownership documents to obtain an Access Pass for entry to the lots. They hand over this paper work to attendants or supervisors, who escort the customer to their vehicle. The office employees are supposed to document all actions in the Aries System, but this is not always done immediately. She stated that she did recall a blue Subaru in the lot in January of 2017. She recalled the owner and his friend coming back into the office after being taken out to his vehicle. She testified that her co-worker had assisted this person initially, and stated that when he returned from the lot he caught her attention and stated that he had found bullets in his vehicle, which she saw in his hand, and asked what he should do with them. She said that the owner then left the VIF. She further stated that the Appellant was not present during this discussion, and that she did not speak to anyone about the bullets, referring to it as just another crazy incident at the VIF. When Counsel asked Ms. Copeland if she had seen the owner of the Subaru vehicle recently she stated that she had seen him on the first day of the hearing herein when she came out of the rest room and saw him face-to-face in the hall, and later in the waiting room for this hearing, and recalled who he was. She identified Ex. 7-1 as showing that on 1/6/2017 at 1:05:16 PM she received a call from the owner of the Subaru, Mr. Olivas, and gave him information regarding the vehicle and condition,

that this was the same day she saw him with the bullets, that she saw him leave with the bullets, and that she was not interviewed by anyone from the DPD or the DSD regarding this case. During cross-examination, Agency Counsel questioned whether she was at work at the time Mr. Olivas would have been at the VIF, and when shown a time log Ms. Copeland agreed it showed she logged out of work at 3:21 p.m. on 1/6/2017. The record reflects that the Aries System used by the VIF is located in California, and times reflect Pacific Standard Time. I note that while Ex. A, a History of the Investigation, shows the recovery as being on 1/6/2017 at 3:46 AM, and the viewing of the vehicle by Mr. Olivas as 3:18 PM. Ex. 7-1 shows recovery at 2:46:27 AM on 1/6/2017, and issuance of the access pass at 2:19 PM, while Ex. 12, the access pass for Mr. Olivas, shows a recovery time of 2:46 AM, and the issuance of the pass as having occurred at 2:19 PM. The parties did not clearly clarify the confusion of the exhibits regarding the times recorded.

Counsel for Appellant also called Judy Tafoya, an employee at the VIF, to testify that she assisted Mr. Olivas on 1/6/2017, and created the access pass for Mr. Olivas, Ex. 12. She further stated that she observed the conversation between Ms. Copeland and a man in a baseball cap, that he said he had taken bullets from his vehicle, and that Ms. Copeland said that he had bullets in his hand. She also testified that she assisted Mr. Olivas on 1/13/2017, when he came for a second visit, and that because they were having problems printing access passes, she used the previous pass she had given him on 1/6/2017 and placed a "2" on it to indicate a second usage. She gave this access pass to Brian Roper, who took Mr. Olivas to his vehicle. Mr. Olivas had come to the VIF to learn whether the VIF would use its forklift to assist him in retrieving his vehicle, since it had no wheels. She gave the access pass to Mr. Roper, who took Mr. Olivas to his vehicle. Mr. Roper returned with the IVR tow ticket and the access pass. Ms. Tafoya then took the IVR tow ticket to Office Manager Melissa Palmer for approval to release the vehicle. She testified that she has worked with Appellant for a year, she believes he is truthful and honest, that she has never been interviewed by the DSD or DPD regarding this matter. She identified Ex. 13 as the release authorization for Mr. Olivas vehicle on 1/17/2017. Ex. 13 states release authorized until 6:03 p.m. This does not resolve the confusion regarding the accuracy of Aries documents.

VIF Office Manager Melissa Palmer was called by Appellant Counsel. She testified that on 1/13/2017 she had the IVR for Mr. Olivas vehicle on her desk, and that Judy Tafoya asked if they could use their forklift to put his car on a flatbed truck. She explained the problems with the Aries System, and noted that Ex. 7 was in Pacific time, while Ex. A is in Mountain time. She testified that Appellant was absolutely honest and had integrity, and that she never heard him say that he had removed the bullets from Mr. Olivas vehicle.

While there were numerous questions at hearing regarding whether witnesses were viewing the correct vehicle, I find that the record evidence involving the pictures taken by Ms. Munoz and by Det. Vacca, showing no bullets in the Munoz photos, and bullets in the Vacca photos, were all photos taken of Mr. Olivas's vehicle.

## **IV. ANALYSIS**

### **A. Jurisdiction and Review**

Jurisdiction is proper under CSR §19-10 A.1.a, as the direct appeal of a dismissal. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

## **B. Burden and Standard of Proof**

The Agency retains the burden of persuasion, throughout the case, to prove Tamburino violated one or more cited sections of the Career Service Rules, and to prove its decision to dismiss Tamburino from employment complied with CSR 16-41. The standard by which the Agency must prove its claims is a preponderance of the evidence.

## **C. Career Service Rule Violations**

### **1. CSR 16-29 A. Neglect of duty or carelessness in performance of duties and responsibilities.**

To sustain a violation under CSR 16-29 A, the Agency must establish that Tamburino failed to perform a known duty. In re Gomez, CSA 02 56-08-12 (5/14/12), *citing in re Abbey*, CSA 99-09, at 6.

I find that there was a violation of this CSR, in that Appellant admitted knowledge of Mr. Nguyen having found bullets in the vehicle of Mr. Olivas, and he failed to secure the bullets, or ensure that they remained in the vehicle and were reported appropriately.

The Board held in In re Compos, Herrera, Sandler & Seng, CSB 56-08, 57-08, 58-08, & 59-08, p.2 (6/18/08), that neglect of duty is violated when an employee neglects to perform a job duty which the employee knows he or she is supposed to perform. The relative importance of the work duty and the degree to which the neglect may result in potential or actual harm are factors that may be relevant in assessing an appropriate level of discipline, if any, for a violation of the rule.

### **2. CSR 16-29 D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.**

I find that the Agency has failed to prove a violation of CSR 16-29 D. The record reveals that Mr. Olivas and Mr. Nguyen testified that Appellant was given the bullets by Mr. Nguyen and that he placed them in his pocket, which Appellant denies. However, the record also reveals that VIF employee Copeland testified credibly without rebuttal that she spoke to Mr. Olivas as he was leaving the VIF on 1/6/2017, who asked her what he should do with the bullets which she saw in his hand, prior to his leaving with the bullets. Ms. Copeland's testimony was supported by Ms. Tafoya, who also testified credibly without rebuttal that she overheard this conversation between Ms. Copeland and a man in a baseball cap, and was told by Ms. Copeland that he had bullets in his hand. The failure of the Agency to be aware of, and to consider this contradictory evidence, prevents a finding that Appellant was proven to be in possession of the bullets and subsequently committed an act of dishonesty by denying possession. Rather, given the fact that both Mr. Olivas and Mr. Nguyen stated that they did not recall particular facts of events which occurred during their inspection of Mr. Olivas vehicle on 1/6/2017, I do not credit their testimony regarding Appellant being given the bullets.

In In re Mounjim, CSB 87-07 (1/18/07), the Board stated that the Rule (CSR 16-60E, now 16-29D) "...is not limited to false statements made to superiors but would include any knowing misrepresentations made within the employment contest." Here, while Sheriff Firman believed that Appellant was lying when he said that he did not take or have the bullets in question, I have found that the Sheriff was unaware of the other witnesses who credibly testified that Mr. Olivas was in possession of the bullets when he was seen leaving the VIF facility.

The record reveals that Appellant has an excellent record with the VIF, that he has prior experience as an investigator, that he possesses a law license, and that other employees from the VIF who testified vouched for his honesty and integrity. The failure of the Agency to discover these witnesses who contradict Mr. Olivas and to consider their testimony in resolving these alleged violations, cannot form the basis for a termination. In his testimony, the Sheriff admitted he had not considered the contradictory evidence. He appeared to rely on statements of Appellant during the investigation of this discipline, and to fault Appellant for his attempts to explain what might have happened to the bullets and how they could have disappeared and reappeared. Based on the record before me, I do not find that Appellant has engaged in an act of dishonesty in violation of this Rule.

3. **CSR 16-29 R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority as it pertains to:**

Department Rules and Regulations

**RR 200.4.2 – Commission of a Deceptive Act**

**In connection with any investigation or any judicial or administrative proceeding, deputy sheriffs and employees shall not willfully, intentionally, or knowingly commit a materially deceptive act, including but not limited to departing from the truth verbally, making a false report, or intentionally omitting information.**

For the reasons stated in the analysis of CSR 16-29 D, above, the Agency also failed to establish Appellant committed a deceptive act, and accordingly there is no violation of this Agency regulation.

**RR 300.19.1 – Disobedience of Rule**

**Deputy Sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayors Executive Orders), or Operations Manual section.**

As it pertains to:

**Vehicle Impound Facility Procedure Manual:**

**Section 801.00 – Customer Property Removal Policy**

**Property removed from any vehicle shall be recorded on a Property Receipt Form (DSD 315) and attached to the IVR.**

I find that Appellant Tamburino did violate this Rule, in that bullets, of which he was admittedly aware, were removed from an impounded vehicle without being recorded on a Property Receipt Form as required by the VIF Procedure Manual, or otherwise properly accounted for. See In re Compos, Herrera, Sandler and Sena, CSB 56-08, 57-08, 58-08, and 59-08, p.2 (6/18/08).

**D. CSR 16-29 T. Conduct which is or could foreseeably be prejudicial to the good order and effectiveness of the Department or Agency; bring disrepute on or compromises the integrity of the City; or be unbecoming of a City employee.**

Having found that Appellant was not proven to have taken the bullets from the Olivas vehicle, and therefore did not lie about having the bullets, I find that he did not violate CSR 16-29 T. His violation of CSR 16-29 A, noted above does not rise to the level of being prejudicial to the good order and effectiveness of the department, or to bring disrepute on or compromise the integrity of the City, or to be unbecoming of a City employee.

## V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-41 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. In re Sienkiewicz, CSA 10-08 (7/14/08).

### A. Seriousness of the proven offenses

Having only found a violation of 16-29 A and of 16-29 R, I find these to be minor proven offenses regarding proper record keeping pursuant to the requirements of the VIF Operations Manual. The Board stated in In re Economakos, CSB 28-13, 3 (3/24/14) that "Discipline imposed by an Appointing Authority should be affirmed by a hearing officer unless that discipline has been imposed arbitrarily, that is, based substantially on considerations unsupported by record evidence, or that discipline is clearly excessive."

It is highly likely that Appellant will never make this mistake again.

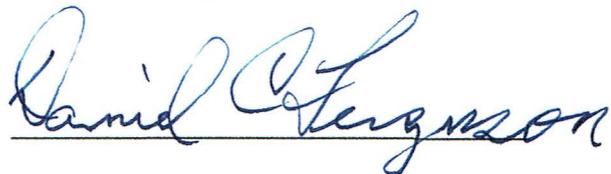
### B. Other Factors.

There are no other factors.

## VI. ORDER

The Agency's decision to dismiss Pasquale Tamburino from his employment on November 30, 2017, is MODIFIED to a written reprimand. Appellant Tamburino is ordered reinstated to his position, and shall be made whole by the Agency for all lost wages and benefits (including those associated with his time in service).

DONE April 23, 2018.



Daniel C. Ferguson  
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 21-23, within fourteen (14) calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. See Career Service Rules at [www.denvergov.org/csa](http://www.denvergov.org/csa). **All petitions for review must be filed with the following:**

**Career Service Board**

c/o OHR Executive Director's Office  
201 W. Colfax Avenue, Dept. 412, 4th Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [CareerServiceBoardAppeals@denvergov.org](mailto:CareerServiceBoardAppeals@denvergov.org)

**Career Service Hearing Office**

201 W. Colfax, Dept. 412, 1st Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND opposing parties or their representatives, if any.