



ISSUE:

(The City's claim of non-arbitrability was disposed of in favor of the Union in a prior proceeding.)

The issue, as determined by the panel is as follows:

Was Officer Robert Murtha terminated by the City of Hartford for just cause?

If not, what shall the remedy be?

INTRODUCTION:

The City of Hartford and the Hartford Police Union are parties to two collective bargaining agreements dated June 30, 1999, to July 1, 2004, and July 1, 2004 to June 30, 2010. Both contracts contain identical provisions providing for just cause for discipline and the various steps of the grievance procedure.

This case arises from a grievance brought to protest the termination of the grievant, Officer Robert Murtha, for alleged violation of two provisions of the Code of Conduct;

Article II, Section 2.10 (Knowingly or willfully making a false making a false entry in any Department or other official report or record)

Article VII 7.01 (Intentional, unnecessary and excessive use of force in effectuating an arrest or in the performance and execution of other official duties.)

Not having been resolved through the contractual grievance procedure, the matter was claimed for arbitration to the State Board of Mediation and Arbitration.

Eighteen hearings were held before the named panel of arbitrators at the Board offices in Wethersfield, CT. Both parties appeared, presented evidence, were heard, and have filed briefs, upon receipt of which, the hearings were declared closed

The panel met in executive session on May 14, 2010, and, after due deliberation, makes the following findings and award.

### BACKGROUND OF THE CASE:

(The observations made under this section are intended only as a guide as to the general factual circumstances which occurred. They are not intended to constitute findings of fact, which are noted under Discussion.. Contested positions taken by the parties will be noted where appropriate.)

The events which led to the grievant's termination and subsequent grievance, took place in the general vicinity of Donald Street slightly north of the center of down town Hartford, Connecticut. It is regarded by Hartford police as a high crime area with a high rate of illegal drug activity.

Shortly before midnight on January 26, 2003, the Hartford Police Dispatcher received a call from a citizen reporting the presence of seven men in the neighborhood of 51 Donald Street, all carrying guns.

Several police cars, including the grievant and officer Grissette responded. Upon the grievant's arrival at the scene, all scattered.

One of them, Elvin Gonzalez, stole a car belonging to a relative of one of the other men.

Gonzalez took off, at one point avoiding Grissette by driving up on the sidewalk, ending up going in a northerly direction on Windsor Street with lights and siren going. By this time the grievant had joined the chase. Gonzalez then spun out and began heading south on Windsor Street. During the entire chase, the weather was cold and snowy, the pavement slippery.

As a result, Gonzalez had difficulty handling his car and eventually spun out again, went off the street after having passed the grievant, and ending up straddling a telephone pole guy wire.

Seeing Gonzalez apparently disabled, the grievant stopped his cruiser in the middle of Windsor Street, parallel to and slightly ahead of Gonzalez. At this the grievant testified that he saw the driver's side door open slightly and, concerned that Gonzalez would "bail out" or attempt to flee on foot, the grievant then got out of his cruiser, drew his service weapon and approached the other car.

But instead of getting out of his car, Gonzalez spun his wheels and managed to get going out of the snow bank. According to the grievant's "first report" (about which more later) Gonzalez headed directly towards him, putting him in fear for his life and striking him on the left knee, knocking him to the ground.

To protect himself, the grievant fired three shots at the oncoming car, two of which hit Gonzalez in the left arm causing non-life threatening injuries. This entire episode took between 2 and 7 seconds.

Gonzalez was apprehended shortly thereafter and was taken to St. Francis Hospital for treatment. Subsequent investigation showed

Gonsalvez to have an extensive criminal record, including outstanding fugitive warrants.

The grievant then went to Hartford Hospital where he was treated for “contusions and abrasions” to his injured left leg, and then released.

He then returned down town to Union Headquarters where he met with Union President Sgt Michael Wood and Attorney Frank Szilagyi. He then was asked to make an “outline” detailing what had happened for their use in representing him. Further, he was informed that he would be expected to participate in a “walk through” to demonstrate physically what had occurred that evening. He did so, and in the process stated that not only had Gonzalez headed straight at him but also that he, the grievant had been struck by the left front fender of Gonzalez’ car, causing injury.

A few hours after he submitted this writing, discovery was made that the video in Officer Grissette’s cruiser had been activated and provided pictures of the action involving the grievant and Gonzalez.

The tempest over the distinction between the two reports is misplaced. No only was it taken under circumstances of severe stress, within literally minutes of a harrowing experience, but it was disavowed at the earliest possible time, well before aany damage could result,

Several still shots of the pictures taken from this video, which the City views as being quite accurate and clear and easy to interpret are included at the end of Captain Burak’s report of the disciplinary hearing he conducted. The City claims, and the Captain concluded, that the video contradicts the grievant’s version in several respects.

After reviewing the video and being advised by Sgt Wood and Attorney Szilagyi, the grievant decided to amend his earlier statement and, on January 31, 2005, made out a new, considerably longer one in which he did not state that he had been struck by Gonzalez.

Several Departmental investigations were conducted, by Internal Affairs and the Major Crimes Division, for submission to, the Chief of Police and review by, the Firearms Discharge Board of Inquiry.

The Firearms Board of Inquiry (or "Review") is a group of nine members, six sworn officers and three civilians, appointed by the Chief, which met several times, rendering a report in March, 09, finding the shooting "not justified".

All of these bodies found the grievant in violation of the Code of conduct and or the Criminal Code, as a result of which the grievant was arrested and charged with making a false statement, as set forth above, and excessive use of force. He was also suspended without pay and even eventually terminated.

The criminal charges were tried to a jury, which rendered a verdict of acquittal.

The termination is the subject of this arbitration.

The Union presented the testimony of William J. Lewinski, Ph., Director, Force Science Research Center, Mankato, MN, who testified concerning his theory of "confabulation" which posits that a person in a stress situation may construct a scene of what happened completely at variance with reality but congruent with what the person experienced. By example, the grievant here saw a

car coming directly at him; he later ended up out in the middle of the road with an injured leg. Dr.Lewinski theorized that it was perfectly logical for him to assume that the car had struck him.

## POSITIONS OF THE PARTIES

### City of Hartford

As set forth on page 2 of its brief, “the only real disputes are whether Murtha’s false statements that he was struck by the vehicle were intentionally or knowingly false; and whether a reasonable officer in Murtha’s situation would have considered the discharge of his firearm to be necessary to protect himself from death or serious bodily harm.

While conceding that, as to the first issue, “only Murtha will ever know with absolute certainty whether his statements that he was struck by the vehicle were false when he made them,” C.brf p.2) the City claims that subsequent evidence shows that such claims by Murtha are false.

Continuing, “Murtha made four tactical decisions on the evening of January 26, 2003, that resulting in him discharging his firearm three times.” Moreover, these “tactical decisions” were purportedly based on facts subsequently proven to be false.

These were: claiming to have seen the car door open; deciding to leave the protection of his cruiser, then falsely claiming to have tried to flee the scene; and, finally falsely claiming to have been in fear of serious injury or death, fired his weapon three times.

Once the video was discovered in Grissette’s cruiser, showing that the grievant had not been struck by Gonzalez, the grievant

“decided to file a second report dated January 31, 203...” (C.brf.p3) in which he “elected to lie again in an effort to support the prior falsehoods and maintain the ‘big lie’”. In this report Murtha asserts for the first time his belief that the vehicle contained more than one armed suspect, and that he based the continued firing of his weapon on the fear that he might be outgunned.

The position of the City on this aspect of the interaction may be illustrated by this excerpt from pages 8 and 9 of its brief, adding to the list referring to “four tactical decisions” noted immediately above.

“(1)he (the grievant) believed he was chasing a vehicle occupied by one suspect ; [true but rescinded by Murtha in his second report] (2) the suspect’s driver’s side door opened while stuck in a snowbank [admittedly false]; [3] the suspect driver’s side door closed [admittedly false; ] (4) the suspect vehicle accelerated “directly “ toward him [false] :] (5)He attempted to retreat but was unable to do so due to the slippery conditions (admittedly false] (6) he fired one round at the vehicle in self defense (7) simultaneously with the first round, the suspect vehicle “driver side front bumper struck “ him on the left knee [admittedly false]; (8) the impact with the vehicle spun his body in a “counterclockwise” direction [admittedly false]; (9)”fearing that the vehicle would run “ him over he discharged his weapon [twice more in the direction of the operator of the vehicle” (false, and later amended; he thereafter fell ) to the ground “ as a result of being struck by the vehicle; (10) he thereafter fell to the ground “as a result of being struck by the vehicle”;(admittedly false); and he watched the suspect vehicle continue to flee “as he lay on the roadway (admittedly false)”

With respect to the “confabulation” theories of Dr. Lewinski, the City maintains that they would, if true, “prove the maxim that anything is possible”, but insists that “they fall far short of rebutting the mountain of evidence” suggesting Murtha knowingly and intentionally filed false reports.” C.Br.p4)

Dr. Lewinski also presented what he described as a “preying dog” theory, which holds that a police officer engaged in a chase gets so immersed in that chase that he loses all perspective and becomes wholly focused on the chase. Dr. Lewinski suggests that may have been what happened here

The City, however, places this theory in the same category as the “confabulation”, approach, i.e. farfetched.



Testimony of Mr. Reggie Allard, instructor from the Police Academy, was rejected as irrelevant by the City on the grounds that Mr. Allard spoke in terms of criminal statutory criteria as opposed to the standard at issue here, departmental regulation.

Further, the City presents a theory of its own, which might be termed a “reverse silent blue wall”.

Noting that nine sworn officers testified against the grievant on the core question of the reasonableness of his firing his weapon, the City asserts that the forbearance of the grievant’s fellow officers is “downright startling”, and, “the very absence of a blue wall of silence... is in itself deafening ...”

On this same question of the reasonableness of discharging his weapon, the City distinguishes between objective and subjective criteria and maintains that the panel must find that the grievant acted as would a *reasonable* police officer in the grievant’s circumstances. The City further opines that, “In this regard, Murtha must establish both that he reasonably believed he was confronted with a threat, and that the discharge of his firearm was reasonably calculated to protect him from that threat,” (C.br p32)

### **Position of the Union**

The grievant, Robert Murtha, stands charged with two serious violations of the Code of Conduct as a result of which he has been terminated from his employment as a patrol officer with the Hartford Police Department.

These violations are: willfully filing a false report, and using excessive force in the process of attempting an arrest.

In effect, he attempted to rectify mistakes of fact he made on a report of his participation in the pursuit of a felon and he used his Department issued firearm to protect himself

The underlying facts are relatively straightforward.

On the late evening of January 23, 2005, the Hartford Police Dispatcher broadcast a citizen report of a gathering of suspicious persons in the vicinity of 51 Donald Street, a known center of illegal drug activity. The dispatch advised that one or more appeared to be armed.

The grievant, parked one block away, radioed dispatch that he was on the way and went to the scene. He went to the rear of 61 Donald Street and saw five individuals matching the description from dispatch.

The grievant parked his cruiser and walked towards the people who began to walk away. Officer Caccioli then arrived, took a suspect into custody, and then notified Officer Grissette that a maroon car was fleeing the scene and that he was in pursuit.

The grievant then called Caccioli and was told that he was "all set". He then went to Canton and Windsor Streets to assist Grissette in pursuing the maroon car.

He arrived on Windsor Street and headed north, looking for the maroon car, which, it was later determined, was operated by one Elvin Gonzalez, a convicted drug dealer and fugitive.

Fifty yards later he saw the car in his rear view mirror, being chased by a cruiser with full emergency lights and siren activated. The maroon car passed the grievant on the right and then swerved out of control on the slippery pavement and hung up on a utility pole guy wire.

The grievant then stopped his cruiser in the middle of Windsor Street. At this point, he knew that there were multiple suspects, some or all of whom might be armed. Also, he was aware from his experience that cornered suspects were very apt to flee on foot. Finally, he saw the driver's side door open slightly. Putting all these together, he decided to get out of his cruiser, draw his service weapon and advance towards the suspect.

Much to his surprise, Gonzalez, who had been spinning his wheels in an attempt to free himself, did so, and lurched out of the snow bank at the grievant. He, afraid for his life, fired three shots at Gonzalez, as he went by, hitting him in the arm. Gonzalez went careening up the street, coming to rest against a building at 651 Windsor Street. The grievant ended up lying in the middle of the street, with a bruised, contused left knee. His initial conclusion was that he had been struck by Gonzalez' car and he so reported to his superiors.

He was taken to Hartford Hospital where he was treated and released, and returned to headquarters and to Union HQ. There he was advised by Sgt Wood, his Union president and Union attorney Frank Szilagyi, that he would be expected to participate in a "walk through". This would consist in a rehash of what had happened to become part of a larger scale investigation of the entire evening's events.

The grievant then set down what he remembered of the incident in a memorandum which was thereafter referred to as a "draft report". It was strictly for his own purposes in recalling the evening's events and not to be considered an official report. Several persons who observed the grievant that night commented that he "visibly shaken". A Dr. Solomon expressed the opinion that no one witness to a firearm shooting should be required to describe what happened for at least 48 hours.

In the meantime, it was discovered that a video camera in Officer Grissette's cruiser had been activated during the chase and provided pictures of the complete transaction. The grievant reviewed the video and, as a result, wrote out another report, this one designated as "official" which was considerably longer, more detailed and, significantly contradicted at least one statement in his "draft report", that he had been struck by the suspect car.

The manner in which he was hurled to the ground hard enough to cause a significant injury to his left knee, remains a mystery.

After investigations by the Major Crimes Unit, Internal Affairs and the Firearm Discharge Review Board, all of whom determined either that the grievant was guilty of having willfully changed an official report and/or used his weapon in violation of the Code of Conduct, a Disciplinary Hearing was held by Captain Burak. The captain is the same person who took control of the investigation, starting at the scene of the incident on January 27, 2003.

After testimony from the Department Advocate, Lt. Andrew V. Nelson, representing the Department, and Attorneys Frank Szilagyi and Michael Georgetti and Union President, representing the Union, and the grievant, Officer Robert Murtha, Captain Buyak made several findings regarding the pending charges.

1. The claim by the grievant that he was struck by Gonzalez is not true.
2. To further support these findings, Officer Murtha "apparently deemed it appropriate to verbally advise Hartford Police Department Officer Matthew Eisele that he was struck in the left leg with the left front bumper of the suspect vehicle."
3. The video tape clearly shows that Murtha was not struck by the vehicle.
4. The suggestion that he was (struck by the vehicle) is blatantly untrue.

5. Officer Murtha was faced with a use of deadly force situation that he had very little time to prepare for.

Finally, the report states there is nothing to suggest the possibility that the car would run over him.

It is noteworthy that all these conclusions depend in marked degree on reference to the pictures taken from the video camera. A quick look at these pictures amply, if not conclusively, demonstrates that they are worthy of no such authority but are little more than black pieces of paper interspersed with sprinkles of light. To attribute to them any basis for conclusions of fact is in the same category as "The Emperor's Clothes", limited only by one's imagination.

Turning to the charge of use of excessive force, the Union's initial observation points to the elements necessary to fit under the section. These are: intent, unnecessary force and excessive force.

However, as a necessary precondition, the Supreme Court has held that any assessment of the reasonableness of use force must be judged from the perspective of a reasonable officer on the scene, rather than the 20-20 vision of hindsight, citing Graham vs. O'Connor, 490U.S.386 (1989)

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than the 20-20 vision of hindsight. (Citation Omitted.) the calculus of reasonableness must embody the allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving, about the amount of force that is necessary in a particular situation."

On the other hand Chief Harnett, who was appointed to that position while the charges against the grievant were pending, and

who appointed investigating officer Burak to conduct the hearing, cited an incident in which he was involved. Several officers under his command, after firing one shot that disabled a suspect, proceeded to fire 45 more rounds. Chief Harnett expressed the opinion that firing the extra shots was not necessarily excessive but depended on the situation from the perspective of the officers involved.

In this regard, Officer Murtha had been in two facedowns involving potential or actual use of a firearms one involving a car jacker and the other a fight with an armed suspect for which he received a Distinguished Service Medal and a Merit award, respectively. The grievant's credentials in the area of use of firearms are without question.

The Chief also defended the shooting of Amadou Diallo who, though unarmed, was shot 41 times. The Chief, in an article on the subject, defended the officers who, he said, "mis-read rapidly unfolding events."

The Union asserts emphatically that the City has not sustained its burden of proving either that Officer Murtha lied in changing an official report pursuant to Article II Section 2.10 or that he violated

The parties have agreed that, if the grievance is sustained and the grievant found to be entitled to last wages and benefits, such award shall be calculated starting November 17, 2004.

## DISCUSSION

Although there is but one issue stated as defining the metes and bounds of this case, there are in fact several "sub-issues" which await resolution.

To begin with, the grievant, Robert Murtha is charged with two violations of the Code of Conduct, willfully and intentionally filing a false report on an official document, and, second, again willfully and intentionally using excessive force in the execution of his duties.

On the first charge, the parties are at odds over at least what constitutes a "willful filing" and what makes document "official".

On the second charge the panel must determine what constitutes "excessive force" and what are the circumstances under which a police officer may, in this case, fire a weapon at another person without incurring severe discipline.

Despite the fact that the present case took 18 hearings, filling hundreds of pages of transcript to record, the underlying events which took place are relatively easy to describe.

A Hartford Police Officer, Robert Murtha, on duty in an area near the north end of town, was notified by the Department dispatcher of a collection of suspected drug dealers one of whom had taken flight in a stolen car. The grievant gave chase and upon catching up with him tried to apprehend him. The suspect, having become stuck in a snow bank, managed to free himself and again fled, this time, in a direction towards the grievant. He, the grievant, claiming to be fearful of being hit, fired his service weapon at the suspect three times, hitting him in the upper arm. The grievant ended up in the street with an injured knee.

He then filed two written documents. In the first, he claimed the suspect car hit him. In the second, after viewing a video tape from another cruiser, he retracted this statement.

The first statement was filed at the request/suggestion of Union President Wood and Attorney Frank Szilagyi and was for the

express purpose of providing information for a “walkthrough” or reenactment of Murtha’s participation in the involvement with the suspect, Gonzalvez.

The parties have engaged in considerable argument over the character of this first report. The Union takes the position that it was little more than a casual memorandum intended to act as a scratch pad to capture recollections before they escape.

The City, on the other hand, would invest it with all the solemnity required to fulfill the definition of an *official* Department document, on an official form, notarized, and more significantly, to fit the definition referenced in Article II, Section 2.10, that he willfully filed a false report.

The first question, then, is whether he filed a report; to which the answer is “yes”. Moreover, he did it willfully, at the suggestion of his Union President and attorney. But, was it false and, if so, was the grievant *aware* of its falsity? The panel is of a mind that he was not so aware.

The word “false” is, according to the following dictionary definition, capable of two distinct meanings.

[false 1. contrary to truth or fact; 2. deceptively, counterfeit or artificial; not real or genuine; incorrect, irregular; lying dishonest faithless; treacherous; 4. Supplementary; substitutive; Out of tune; see synonyms under bad, counterfeit, perfidious

New Comprehensive International Dictionary of the English Language Encyclopedic Edition Publishers Guild Press New York 1977



A false statement can be “contrary to truth or fact; or deceptive, counterfeit...” The second entry, obviously, involves an improper intent. We see no evidence of an intent by the grievant to deceive.

Sgt Wood suggested the variance may have resulted from the difference in perspective between the grievant’s view and Officer Grissettes’ tape.

But whatever the underlying cause, the fact remains that the tape itself is, in the view of the panel, severely deficient as a purported reproduction of what it is supposed to portray.

By way of example, there are three pictures appended to Capt. Buyak’s Report of Disciplinary Hearing Findings which illustrate this conclusion with notations as to what each is supposed to represent; “First (pistol) shot”, “Second shot”, etc.

Instead, the still shots, as noted earlier, are little more than three black pieces of paper with various splashes and speckles of, presumably, lights going off.

What these pictures do show, to some degree, is what is described earlier as the “more general” factor, i.e. the “totality of circumstances” or, in other words, what was going on around the grievant.

These included several cruisers rushing through the streets at midnight, lights flashing, sirens blaring, looking for a runaway stolen car driven by one or more armed drug dealers, one of which passed the grievant by mounting the sidewalk and, finally, Gonzalaz cracking the driver’s side door, then closing it and bolting from the snow bank in *at least* the general direction of the grievant.

It is not surprising that the grievant felt sufficiently concerned for his personal safety in a time variously estimated to take between two and 10 seconds to fire three shots at the passing car.

The City, in pages 2 and 3 of its brief, asserts that, during this sharply abbreviated time span, the grievant made four improper tactical decisions which he then attempted to cover up by lying about them.

These were his tactical decisions first get out of his cruiser and approach Gonzalvez, then retreat when he claimed to have seen the car door open, his decision not to return to the cover of his cruiser when the suspect entered the roadway, which the grievant covered by claiming that he was unable to retreat, and ultimately his decisions to fire three time.

Accordingly, the grievant did what he felt he had to do; he filed a second report, in considerably more detail, in which he freely admitted that the car didn't make contact with him.

Obviously, the two statements are inconsistent; one of them is "false" in the sense that it is "contrary to truth or fact". But Article II, Section 2.20, requires more. The untrue statement must have been made willfully. The speaker must have known at the time he made the untrue statement that it was, "contrary to truth or fact."

The grievant made two statements, only one of which was accurate. Because of the severe stress under which the first was made, it cannot be said that he knew it was untrue. Paradoxically, the same may be said of the second except that it depended on credence being given to the video images from Officer Grissette's camera. However dependable or not that may be, it was widely accepted by Department personnel and certainly justifies the grievant's reliance on it.

One question has never been answered, if the suspect car did not hit the grievant, what was the force that hit him hard enough to knock him into the street and inflict significant injury to his knee?

The video, however, is not sufficiently probative as a basis for contradicting the grievant's assertions describing either physical features extant at the time to the extent claimed by the City. The same may be said of the question of whether or not the door opened and closed. To deny, as the City does, that the video clearly shows that the door *did not close* or that it gave an accurate perspective of the direction of the suspect is to accord to the video an undeserved accuracy.

The question remains, when did the grievant lie? When he reported that a runaway car had tried to run him over, injuring his knee? Or when, after newly discovered evidence presented to him by his superiors and/or lawyer and Union president he made several material changes to his report.

We are unable to concur with the City's assessment of this charge and conclude that the grievant did not lie, that is, purposely make an untrue statement, on either report.

We further reject the City's assertion that the grievant bears the burden of proving the reasonableness of his reaction to the threat confronting him. The burden of proof is always on the moving party; the grievant can stand mute, if he so desires.

Article VII, Section 7.01 prohibits, "Intentional, unnecessary and excessive use of force in effectuating an arrest in the performance and execution of other official duties."

Certainly the grievant meant it when he fired his service weapon at a car driven by a person who he had every reason to believe was armed, who had previously passed him by mounting the sidewalk,

and who finally had driven his car if not *directly* at the grievant, then certainly close enough to relieve the grievant of extending him the benefit of the doubt.

Most if not all witnesses agreed with the proposition that the questions of necessity and excessiveness are to be judged from the perspective of a "reasonable police officer", not a reasonable lawyer, not a reasonable college professor. In other words, a policeman who has either been through a similar experience and is familiar with the emotional turmoil that goes with it. Such is Robert Murtha. Dealing with an obviously erratic person who he was justified in thinking was out to render him grievous harm, he acted sanely, deliberately and, above all, reasonably.

The City did not have just cause to terminate his employment.

**AWARD** The grievance is sustained. The grievant shall forthwith be restored to his former position with, to the extent feasible without undue complexity or interference with the Department's mission, all reasonable promotional opportunities.

The grievant shall further be made whole for all losses incurred, including back pay and other benefits, as received by the panel as Union exhibit 29.

**CONNECTICUT BOARD OF MEDIATION & ARBITRATION**

By: Albert G. Murphy  
Albert G. Murphy, Esq., Alternate Public Member, Chair

Betty Heller Rosania  
Betty Heller Rosania, Alternate Management Member  
*Strongly Dismissing, Please see attached. BHR*

Santo Franzo  
Santo Franzo, Alternate Labor Member

City of Hartford  
&  
Hartford Police Union  
Case No. 2005-A-0362  
**Dissenting Opinion**

I register a strong dissent to the majority decision. It lies in the face of every aspect of public policy, public relations and confidence in those who carry guns to maintain law and order.

Public office is a public trust. A police officer must command the public trust to even higher standards because he has power. He carries deadly weapons.

The grievant is persuasive, compelling, well educated, intelligent, polite and good looking, but his judgment is lacking. In this instance he either froze or showed terrible judgment, perhaps both. Neither flaw makes for a police officer. Witness how he spent his time after having worked two shifts. He "chose" to work back to back shifts for extra money and pension credit. Then he "chose" to watch Super Bowl programs after only four or five hours of sleep and before he went back on the streets for another shift. He has the lives of fellow officers, Hartford citizens, and his own life in his hands, yet he chose to go back to work, sleep deprived. With so little sleep, he may have "frozen" when he shot at a civilian. Certainly his judgment would have been impaired and his judgment was flawed in the hours before the shooting. Our constitution guarantees many rights but none of them guarantees the right to be a Hartford Police Officer if one lacks the temperament to work under incredibly difficult conditions while remembering his training. Yet Mr. Murtha left the cones of his car, gave no verbal warning, shot at a fleeing civilian who at the time, was not known to be a felon. He then filed a "questionable," at best, first report. Neither he nor anyone knew at that time that a video had taped the whole incident and Mr. Murtha's second report reflected those changes. Had he not intended a "cover up," he could just have written one or two sentences saying he had been tired or confused or had not remembered clearly until viewing the tape, and the tape must prevail.

Myriad adverse conditions existed that night yet six long term, trained police officers voted against his having used firearms. Many had been his friends. To impugn then to save Murtha can not happen. They, and an experienced chief found, a "reasonable police officer would not have fired." The "reasonable police officer test" is neither capricious nor arbitrary. The Firearms Board voted unanimously against his having used his firearm.

Every good person does not necessarily make a good police officer. Murtha has destroyed his street credibility. And who will want to serve with him on the streets? What happens if he freezes next time? Hartford cannot afford that risk. Public Policy must trump all other issues.

As for the financial award to Mr. Murtha who has not worked to earn the sick time, vacation time, earned time, holiday pay, pension credits from a cash strapped city, I can only cry out, "Foul Ball," and remind my colleagues that Mr. Murtha has already been awarded close to \$600,000 on another venue.