

## **OPINION AND AWARD**

IN THE MATTER OF ARBITRATION

BETWEEN

THE STATE OF OHIO, DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF THE OHIO STATE HIGHWAY PATROL

AND

OHIO STATE TROOPERS ASSOCIATION

Grievance DPS-2015-01027-1 (Tammy Soto)

Date of Hearing: July 1, 2015  
Place of Hearing: Columbus, Ohio

Arbitrator: Sherrie Passmore

Date of Award: August 31, 2015

### **APPEARANCES**

Advocate for the State: Lieutenant Cassandra Brewster

Advocate for OSTA: Herschel M. Sigall

## **INTRODUCTION**

This arbitration arises pursuant to the collective bargaining agreement ("Agreement") between the parties, The State of Ohio, Department of Public Safety, Division of The Ohio State Highway Patrol ("Employer" or "Division") and the Ohio State Troopers Association ("Union"). Sherrie Passmore was appointed as the Arbitrator under the authority of the Agreement.

A hearing was held on July 1, 2015. Both Parties were represented by advocates who had a full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make arguments. Post-hearing briefs were timely filed on August 3, 2015.

## **ISSUE**

Was the Grievant terminated for just cause? If not, what shall the remedy be?

## **RELEVANT PROVISIONS OF THE AGREEMENT**

### **Article 19 – Disciplinary Procedure**

#### **19.01 Standard**

No bargaining unit member shall be reduced in pay or position, suspended, or removed except for just cause

#### **19.05 Progressive Discipline**

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

1. One or more Verbal Reprimand (with appropriate notation in employee's file);
2. One or more Written Reprimand;
3. One or more day(s) Suspension(s) or a fine not to exceed five (5) days pay, for any form of discipline, to be implemented only after approval from the Office of Collective Bargaining.
4. Demotion or Removal.

However, more severe discipline (or a combination of disciplinary actions) may be imposed at any point if the infraction or violation merits the more severe action.

The Employer, at its discretion, is also free to impose less severe discipline in situations which so warrant.

The deduction of fines from an employee's wages shall not require the employee's authorization for the withholding of fines from the employee's wages.

### **BACKGROUND**

The Grievant, Tammy Soto, was a trooper assigned to the Elyria Post of the Ohio State Highway Patrol. She had been a trooper for approximately eleven years when she was terminated from her employment on April 1, 2015.

Grievant's removal stems from a 911 call of a wrong way driver that she was dispatched to handle in the early morning hours of September 13, 2014. The driver had been alerted and stopped by Sergeant Croston of the Lorain County Sheriff's Department (LCSD) by the time Grievant arrived at the scene shortly thereafter.

Upon Grievant's arrival at 2:00:37 AM, the subject driver was out of his vehicle and standing in the median talking to Sergeant Croston. The driver's vehicle was parked partially in the median facing the wrong way to oncoming traffic.

Trooper Soto made contact with Sergeant Croston in the median and recognized the driver, William Lachner, as a long time Lorain Police Officer. Grievant's husband is also a Lorain Police Officer. She immediately directed Mr. Lachner to be seated in the back of her cruiser and to say nothing. Grievant then talked further with Sergeant Croston, asking if he had observed the odor of alcohol on the driver and was told he did not.

Within two minutes of arriving at the scene, Trooper Soto secured the automobile license of the driver's vehicle and radioed it to the dispatcher to check the registration. She then proceeded to move the vehicle so it would not be facing oncoming traffic. While moving the vehicle she did not notice an odor of alcohol in the vehicle or see evidence of drinking such as beer cans or open containers. By 2:02:58 AM, Grievant had the vehicle moved. Two Troopers, Pickering and Santiago, arrived around the same time Grievant was moving the vehicle. They asked if she needed any assistance. Grievant told them no and they left the scene.

A minute later, after Sergeant Croston left the scene, Trooper Soto returned to her cruiser and asked Mr. Lachner where she should take him. He responded and at that point she deactivated her in-car audio/video recording equipment. Shortly thereafter, at approximately 2:09 AM, she informed dispatch that she was going "29" and taking Lachner to a friend's house. She also stated, "Believe it's going to be a sleepy driver."

While transporting Lachner, Trooper Soto closed the windows and turned up the heat in her cruiser, a protocol used to produce an enhanced odor of alcohol. She also engaged Lachner in additional conversation. During this conversation, she noted some verbal indicators of alcohol consumption and the odor of alcohol from Lachner became evident to Trooper Soto.

Also while transporting Lachner to his friend's house, the Grievant received and exchanged the series of text messages below with Trooper Santiago, one of the troopers who had been briefly on the scene of the traffic stop.

- 2: 10:45 Trooper Santiago texts to the Grievant, "Ooooooh, I get it now!"

Who was it?"

- 2: 14:35 Grievant responds to Santiago, "Huh???"
- 2:16:49 Santiago texts to Grievant, "That's a badge in your car."

At 2:20:37, the Grievant called her supervisor, Sergeant, Midkiff, via cell phone and told him she had a wrong way driver who was intoxicated and a Lorain Police Officer. Sergeant Midkiff told Grievant she knew what she had to do.

After this phone call, the Grievant proceeded to take Lachner to the Amherst Police Department. Upon arrival at 2:32:42, the Grievant reactivated her in-car camera recording equipment and told Lachner she was recording again. As they were waiting to gain entrance to the police department, Grievant stated to Lachner, "You're not going to take any field sobriety tests, right?" Lachner then stated he would not be taking field sobriety tests. The breath test was initiated at 2:57, and Lachner refused the test at 3:01 hours according to the BMV2255 Form completed by the Grievant.

While processing Lachner at the police department, another series of text messages occurred between the Grievant and Trooper Santiago.

- 3: 13:24 the Grievant sends, "OMG. I'm going to cry."
- 3:13:31 the Grievant sends, "I should've dumped it on you."
- 3:13:38 the Grievant sends, "You didn't tell anyone did you??"
- 3:19:21 Trooper Santiago sends, "Why cry?! You ok?"
- 3:19:28 Grievant sends, "Nooooooooo."

- 3:19:52 Trooper Santiago sends, "What's wrong?"
- 3:20:14 the Grievant sends, "I said he was a sleepy driver over the radio. Then it got to me. I can't get anymore days off."

Trooper Soto charged Lachner with OMVI and driving the wrong way on a divided highway. She initially wrote the charge for Oberlin Municipal Court, which had jurisdiction in the location Sergeant Croston had stopped Lachner.

She subsequently contacted Sergeant Croston to secure his statement of the facts of his traffic stop and advised him that he would be needed as a witness if the case went to trial. They decided to meet at LCSD. When they met, Sergeant Croston suggested that Trooper Soto get a statement from one of the civilians who had reported observing Lachner driving the wrong way and go to the Vermillion rather than the Oberlin Court.

Following her meeting with Sergeant Croston, Trooper Soto contacted the initial 911 caller. The caller, Angela Felice, explained to Trooper Soto where she had observed the wrong way conduct. Grievant informed Ms. Felice that she might be needed to testify at a later date. Ms. Felice agreed to be available.

After speaking with Ms. Felice, Grievant drove to the location the witness had observed the wrong way driving to confirm that it was within the jurisdiction of the Vermillion Court. At that point, Trooper Soto had not completed the citation packet for filing in the Oberlin Court, and decided to file the charge in the Vermillion Court instead. She amended the citation by interlineations to reflect a change in location of the violation, the court, and the court date. After making these changes, Trooper Soto called and also sent a text

message to Bill Lachner informing him of the change in venue.

Sergeant Mitkiff gave the Post Commander, Lieutenant Hughes, a “heads up” concerning the arrest of Lachner as an OVI. Trooper Pickering, the other trooper who had been briefly at the scene of the Lachner stop, subsequently told Lieutenant Hughes there was something “afoot” with the Lachner arrest and he needed to look into it. In following up, the Lieutenant found Grievant’s paperwork indicating she had originally cited into the Oberlin Court but then made changes on the citation putting it in the Vermillion Court. The Lieutenant made arrangements for the charge to be refiled in the Oberlin Court and dismissed by Vermillion.

The Employer then initiated a criminal investigation against the Grievant alleging she falsified the Lachner traffic citation. The investigation was submitted to the Lorain County Prosecutor’s Office for review of possible criminal charges. The Prosecutor’s Office declined to take the case to the Grand Jury. Upon completion of the criminal case, the Employer conducted an administrative investigation of Grievant’s handling of the Lachner stop. That investigation resulted in the charges upon which Grievant was terminated.

## **POSITIONS OF THE PARTIES**

### **Position of the Employer**

The Employer argues that it had just cause to terminate Grievant because it proved the Grievant violated three work rules and those violations warranted her removal.

The Employer contends that Grievant was inefficient in her OVI investigation in violation of Rule 4501:2-6-02 (B) (5) Performance of Duty, arguing that she failed to conduct necessary questioning and testing at the scene of the traffic stop. No questions were asked to determine why Mr. Lachner was driving the wrong direction and no field sobriety tests were conducted. Grievant did so even though she had observed what she knew to be common indicators of alcohol consumption, a red face and glassy eyes, and the driver had been travelling the wrong direction on a four-lane divided highway at two o'clock in the morning. Grievant simply arrived on scene, and within 15 seconds of arriving made contact with Mr. Lachner whom she immediately recognized, told him to get in her car and told him not to say anything.

The Employer further argues that Grievant's actions suggest she was trying to cover up that Mr. Lachner was intoxicated. The Employer points to the text messages between Grievant and Trooper Santiago as evidence that Grievant knew the driver was intoxicated and lied when she radioed dispatch that she had a sleepy driver.

The Employer points out that it was not until the Grievant was confronted by Trooper Santiago via text messages that she decided to report to her sergeant that her wrong way driver was OVI and to affect an arrest. Even though Grievant ultimately arrested the driver for OVI that night, the Employer contends the Grievant cited the violator into a court without proper jurisdiction. The Employer suggests Grievant did this to try to get the charges thrown out.



The Employer argues the Grievant violated Rule 4501:2-6-02 (Y)(2) Compliance to Orders based on her failure to follow policy and procedure for conducting pat downs and using audio video recording equipment. The Grievant failed to conduct a pat down for weapons of Mr. Lachner before placing him in her cruiser. She was aware she was required to do so per OSP Policy 203.26. The Employer also contends Grievant violated this rule when she deactivated her recording equipment after placing Mr. Lachner in patrol vehicle and not reactivating it until parked in front of the sally port of the Amherst Police Department. According to the Employer, her deactivation and non-use of the audio/video recording equipment was a violation of OSP Policy 103.22.

The Employer also alleges that Grievant falsified the citation she gave William Lachner in violation of Rule 4501:2-6-02 (E)(I) False Statement, Truthfulness, when she changed the court jurisdiction from Oberlin to Vermillion. To do so, the Employer contends she had to falsify the location of the traffic stop. Neither Sergeant Croston nor the Grievant observed the defendant operating his vehicle at the location Grievant put on the amended citation, which the Employer argues was required to cite into the Vermillion Court.

The Employer argues that Grievant changed the citation with the intention of getting the defendant, William Lachner, a fellow police officer and co-worker of her husband, a better chance of having his OVI reduced to a reckless operation charge. It contends Grievant knew the Vermillion Court was more lenient to first time OVI offenders. Arguing there was no probable cause in the Vermillion Court jurisdiction, the Employer contends that the entire charge could have been dismissed. The

Employer believes that may have been the Grievant's intention as well. It also suggests that Grievant lied when she stated over the radio that she had a “sleepy driver” in order to hide the fact that Lachner was intoxicated.

The Employer stresses that falsifying official documents and lying to cover for a fellow officer is incompatible with being a sworn law enforcement officer. It notes law enforcement personnel are legitimately held to an extremely high standard of integrity and truthfulness is an essential requirement of the job. An officer whose credibility is damaged is useless in court. For those reasons, falsification is an extremely serious offense. The Employer routinely imposes termination for violating the work rule prohibiting falsification. The egregiousness of the offense justified terminating Grievant.

### **Position of the Union**

The Union's position is that Trooper Soto was wrongfully terminated. It argues the facts in this case do not justify discipline, let alone the ultimate penalty of termination.

The Union notes that this is not the first case where a trooper was disciplined for her actions surrounding contact with a potential OVI offender. In 2011, under the same collective bargaining agreement, Trooper Jacquelyn Layson had encountered a vehicle in a ditch. She made contact with the driver, engaged her in conversation, and had dispatch arrange for a tow. She was with the driver for about ten minutes, did not smell alcohol on the driver, and did not access the vehicle. After she left, two other police officers arrived, noticed enough smell of alcohol on the driver to do a cursory check of her eyes, but took no further action. Shortly after the

tow truck extracted the vehicle, the driver was involved in an accident and tested nearly double the .08 BAC that would establish her OVI.

The administrative investigation of the above incident concluded, “Trooper Layson spent too little time at the scene and failed to properly evaluate the driver. She failed to use all available steps to determine if (the driver) was impaired.” Since it was cold outside, which might interfere in detecting alcohol on the breath of a potential OVI, “Trooper Layson should have asked the driver to come into her car for further evaluation.” Based on this investigation, the Employer found Trooper Layson violated the work rules that set forth the protocols surrounding a potential OVI encounter. Specifically, the Employer found, “Trooper Layson failed to detect an impaired driver who later became involved in a traffic crash and was subsequently arrested for OVI”. For this conduct, the Union points out that only a one-day suspension was imposed, which was later reduced to a written reprimand after an arbitration.<sup>1</sup>

The Union contrasts the Grievant’s actions at the scene of a potential OVI with those of Trooper Layson. Trooper Soto immediately took the driver off the road eliminating the potential of a subsequent accident, checked his vehicle for signs of alcohol, put him in her vehicle, determined him to be a probable OVI and determined to arrest him, all within twenty minutes. Comparing the facts and level of discipline issued in the Layson case, the Union argues that the Grievant’s pre-arrest actions must have been an insignificant part of the justification for her termination.

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<sup>1</sup> Case No. 15-03-20110407-0060-04-01

With respect to the falsification charge, the Union's position is there was no falsification. The driving conduct that amounted to probable cause for the stop took place within the jurisdiction of the Vermilion Court as well as the Oberlin Court. There was a civilian witness ready, willing and able to testify to the Vermilion jurisdiction driving conduct that formed the basis of probable cause for a stop, and subsequent inquiry into a potential OVI. There is no prohibition at law or within the OSHP policies and procedures against amending an unfiled citation by scratching out portions and inserting the amended language. Trooper Soto properly informed the subject of the citation of the change in location and date reflected in the amended citation.

The Union argues that that the criminal and subsequent administrative investigation of Grievant for falsification was not the result of Vermillion believing it did not have valid jurisdiction. It disputes the claim that the Vermillion Prosecutor contacted Lieutenant Hughes about the citation filed by Soto. The Union suggests it was the Lieutenant who initiated a call to the Vermillion Prosecutor, told her the Patrol had issues with the jurisdiction of Vermillion and proposed to refile in Oberlin.

Here's what the Union believes drove Lieutenant Hughes to request a criminal investigation of what he believed to be Trooper Soto's "falsified citation, filed in Vermillion": The Lieutenant had seen the partially completed citation packet the Grievant was preparing to file in Oberlin and then saw the completed packet that was filed in Vermillion. Without talking to Grievant or to Sergeant Croston, he

jumped to the conclusion that Grievant had changed the court venue to make the OVI charge subject to a jurisdictional challenge by Officer Lachner.

The Union points out that Grievant had demonstrated herself to be an exceptional Trooper. In her two evaluations prior to the Lachner arrest incident, she received positive comments in all performance dimensions and was rated exceeds expectations in numerous areas. In recognition of the quality of her performance, the Employer chose her to be an instructor at the Highway Patrol Academy. In her eleven years of service, Grievant has received highly coveted awards for exemplary service from the Employer and from outside groups as well: The ACE Award Winner, given to a highly limited number of Troopers who recover stolen vehicles with on-the-spot suspect apprehension; the Top Enforcer Award presented by MADD; The Overall Enforcement Award; Traffic Officer of the Year; recognition by the OSHP in 2012 for having the second highest number of OVI arrests in the State of Ohio; and recognition by the Employer with a “star” for surpassing physical performance standards.

The Union notes that Grievant has not used any sick leave for years on end and has only a single day suspension in her department file. According to the Union, even that day was the result of Soto electing not to grieve the discipline claiming she did not fully report a response to a resistance situation.

### **OPINION**

This case involves the termination of the Grievant’s employment for misconduct. As such, the Division has the burden of proving just cause, consisting of

whether:

1. The Grievant did what she is accused of doing; and
2. Under all the circumstances, removal was appropriate.

### **The Grievant's Alleged Misconduct**

The Division charged the Grievant with violating OSHP Rule 4501:2-6-02(B)(5) Performance of Duty, 4501:2-6-02(E)(1) False Statement, Truthfulness, and 4501:2-6-02(Y)(2) Compliance to Orders. Specifically, the Statement of Charges provides: "It was found that Trooper Soto stopped with an impaired wrong-way driver, failed to conduct a pat-down, was inefficient in her OVI investigation, and falsified a traffic citation."

### **Performance of Duty**

Rule 4501:2-6-02(B)(5) Performance of Duty provides:

Members who fail to perform their duties because of an error in judgment, or otherwise fail to satisfactorily perform a duty of which such member is capable, may be charged with inefficiency. Unsatisfactory performance may be demonstrated by a lack of job-related knowledge, an unwillingness or inability to perform assigned tasks, or failure to take required action at any time.

The specification for this charge was that Grievant was inefficient in her OVI investigation. Regardless of why Grievant handled this stop the way she did, the initial issue for this arbitrator is did Grievant fail to satisfactorily investigate the OVI and was she capable of doing so?

The manner in which Grievant performed her duties in handling the Lachner OVI was clearly less than satisfactory. There's really no dispute as to what Grievant did or did not do at the scene where William Lachner was stopped. Grievant admits she did not do everything she should have done to investigate at the scene given the circumstances and based on her training. As attested to by multiple witnesses, Trooper Soto should have asked questions to determine why the driver was going the wrong way and conducted field sobriety tests rather than merely assuming he was "sleepy." Although one witness conceded that turning off her body mic for purposes of talking to Sergeant Croston may have been permissible, multiple witness agree she should have turned it back on when returning to her cruiser as required by OSP Policy 103.22.

There is also no dispute that Grievant is highly capable of recognizing and properly investigating a possible OVI. The many awards and recognition she has received for her skills in this area are evidence of that ability.

Given her abilities and her inefficiencies in handling the Lachner OVI, I find that Grievant violated Rule 4501:2-6-02(B)(5) Performance of Duty.

### **Compliance to Orders**

Rule 4501:2-6-02(Y)(2) Compliance to Orders provides:

A member shall conform with, and abide by, all rules, regulations, orders and directives established by the superintendent for the operation and administration of the division.

The charge specifies Grievant violated this rule because she failed to conduct

a pat-down. OSP Policy 203.26 - Custodial and Non-Custodial Care and Security states in part, "A consent pat-down of persons being transported or seated in a patrol vehicle shall be requested by sworn officers."

It was stipulated that Grievant had received and been trained on this policy. By Grievant's own admission, she did not request to conduct a pat-down of Lachner before placing him in her cruiser. Per the policy, she was required to do so under those circumstances. Although she thought Sergeant Croston had determined Lachner did not have a weapon, she could not say with certainty that Lachner had no weapon. Based on this evidence, I find Grievant violated Rule 4501:2-6-02(Y)(2) Compliance to Orders for her failure to conduct a pat-down.<sup>2</sup>

### **False Statement**

The Employer also charged the Grievant with violating Rule 4501:2-6-02(E)(1):

False Statement, Truthfulness

A member shall not make any false statement, verbal or written or false claims concerning his/her conduct or the conduct of others.

The Employer based this falsification charge on its finding that the charges

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<sup>2</sup> The Employer further argued that Grievant violated Rule 4501:2-6-02(Y)(2) because she deactivated her audio/video recording equipment in circumstances where she should have continued recording per written policy. This conduct was not included in the specifications for this charge and was, therefore, not considered under this violation. This conduct was identified as one of the inefficiencies in Grievant's OVI investigation and argued as evidence of Grievant's motives. It was considered for those purposes.



Grievant made to the citation she issued to William Lachner were false statements. The issue for the arbitrator is, therefore, whether those changes were a falsification.

The changes Trooper Soto made to the citation are not in dispute. She changed the location of the violation, the municipal court to which the offender was being cited, the court code, and the time and place the Defendant was summonsed to appear.

The Employer's basis for arguing the changes were a falsification is that Grievant rewrote the citation knowing Vermillion to be an improper jurisdiction. This was not proven.

Although listing the location of the violation as somewhere other than the location of the stop is not the norm, the violation location listed in this case was not proven to be a falsification or fatal to jurisdiction. Several employer witnesses conceded that moving violations can be continuing in nature and therefore, take place in more than one jurisdiction. In this case, the evidence showed that the conduct for which William Lachner was stopped was witnessed at both the location initially put on the citation and at the location the citation was amended to reflect.

Because Trooper Soto did not witness the wrong way driving herself, she needed to use one of those witnesses. Employer witnesses conceded that she was not limited to using a law enforcement officer or prohibited from using a civilian witness. Thus, either Sergeant Croston who made the stop or the 911 caller who reported the wrong way driving could have been used as a witness to establish probable cause for the stop.

The Employer did not prove that Grievant changed the citation because she thought Vermillion would not have jurisdiction. The evidence shows that what prompted her to change the citation was her meeting with Sergeant Croston to get a witness statement regarding the stop. Up until that point, she clearly intended to file in Oberlin. He suggested the change in venue because he did not like dealing with the Oberlin Court because of its unusual procedures and because trials took so long. He thought there were witnesses to the wrong way driving that had observed the violation within the jurisdiction of the Vermillion Court that she could use. Grievant verified that and secured a witness before changing the citation.

Grievant's proffered statement in the criminal case against her does not prove that her motive in changing the citation was to help Lachner. Although candidly acknowledging in that statement and at the hearing that she thought Lachner could get a more fair shake in the Oberlin Court, she did not say that was her motive for amending the citation. A fair reading of her statement as a whole is that she amended the citation because of Sergeant Croston's personal concerns about having to go into the Oberlin Court.

Although citing to the Oberlin Court may have been a better choice, the Employer did not establish that the Vermillion Court could not have exercised jurisdiction. What determines a court's jurisdiction, according to the Employer's witnesses, is where the violation of law takes place. Grievant, therefore, had a basis for citing into the Vermillion Court upon confirming the violation was also witnessed within that jurisdiction. That the charges were refiled in Oberlin and dismissed by Vermillion do not prove otherwise. It is unclear how or why that came

about. Also unclear is whether either Lieutenant Hughs or the Vermillion Court understood the violation had been witnessed in both Vermillion and Oberlin.

Presented with essentially the same evidence as put forth in this arbitration to support the falsification charge, the Lorain County Prosecutor declined to attempt to criminally prosecute the Grievant for falsification. Based on the record before me, I do not find a violation of Rule 4501:2-6-02(E)(1) False Statement, Truthfulness either. The Employer did not prove that the traffic citation issued by Grievant to William Lachner contained any false statements or that Grievant made any statements in the citation knowing them to be false.

### **The Appropriate Penalty**

Grievant's removal was based on a finding that she violated three work rules. The Employer failed to prove that she violated the most serious of those charges on its face, falsification, which without a doubt would have merited her termination. Finding there was no falsification, this arbitrator must consider whether the two charges that were proven were sufficiently serious to justify her removal.

In this case, the Grievant's motives for those two work rule violations are a legitimate consideration in evaluating the seriousness of her conduct. Because of the nature of their work, law enforcement officers are legitimately held to a high standard of conduct both on and off duty. Honesty and integrity are essential requirements of the job. Conduct motivated by reasons that bring the Employer's reputation of professionalism and integrity into question should be viewed as more serious.

The Employer believed Grievant's performance inefficiencies were an attempt to cover up the intoxication of a fellow police officer who worked with her husband. In support of its belief, the Employer points out that she did not conduct a thorough investigation and quickly moved him into her cruiser, telling him not to talk. It also points to the fact that she turned off her audio recording equipment after she placed him in her cruiser and did not turn it back on until she arrived at the police station where she took him for sobriety tests. The Division also argues that she only charged him as a result text messages she received from a co-worker asking if she had a police officer in the back of her cruiser.

While its understandable that Grievant's conduct at the scene of the stop raised suspicions, the Employer did not prove that she was trying to cover up for Lachner. The Union offered an explanation for her actions that is at least equally plausible. Handling an incident involving a fellow officer is stressful and in this case was even more so for the Grievant because the officer worked with her husband. Grievant hoped Lachner was just a sleepy driver, not OVI. Because neither Trooper Soto nor Sergeant Croston had detected an odor of alcohol and she saw no evidence of drinking in the driver's vehicle, she proceeded on the assumption that she had a sleepy driver. Her swiftness in placing Lachner in the back of her cruiser and then moving his vehicle was justified based public safety concerns. As for turning off her audio/video equipment in her cruiser, Grievant offered that was her practice when transporting someone home. That explanation was not disputed.

The text exchanges between Grievant and Santiago did not prove that Grievant was attempting to cover anything up. Although she received a text from

Santiago asking if she had a police officer in her cruiser shortly before she decided to charge Lachner with OVI, Grievant testified that the text was not the basis for her decision. Her explanation of the timing of her decision is credible. During the same time period Santiago was texting her, she became aware of indicators of intoxication. As she talked to Lachner more, she noted he was slurring his speech and with the windows closed and heat in her vehicle turned up she was able to smell alcohol coming from him. The total time that elapsed between when Trooper Soto arrived on the scene and decided to charge Lachner with OVI was only twenty minutes. Given the short time span in which multiple things happened, I cannot conclude that Santiago's text prompted Grievant to act.

Nor do I find that the text messages Grievant exchanged with Santiago later that night after she arrested Lachner proved she had lied to initially cover up Lachner's intoxication. In the text messages, she told Santiago she was upset because she had earlier reported over the radio that she had a sleepy driver and could not afford more days off. What she meant by that is unclear. The Employer assumes the texts were an admission of lying. Grievant could have also meant she was worried about getting in trouble for not having detected the OVI sooner. If that's what she meant, her worries were well founded. She did get in trouble for that. If anything, the later inference is more plausible than the one made by the Division. The Employer routinely imposes termination for lying. If Soto thought she had been caught in a lie she would have been worried about more than days off and its doubtful that someone who had allegedly been engaging in a cover up would put that sort of admission in writing to a fellow trooper.

The Employer did not prove that Grievant's inefficient OVI investigation and failure to conduct a pat-down were motivated by reasons that would justify removal as the penalty for those violations. At the time of her termination, Grievant had only a one-day suspension on her department record. A disciplinary grid showing the normal range of penalties for those types of violations is not in the record. The only information regarding the penalty imposed for similar violations is an arbitration decision of the parties in the Layson matter in which the grievant was given a one-day suspension. Based on this record, I find the appropriate penalty for the two charges proven is a three-day suspension.

#### **AWARD**

The Grievance is sustained. The Employer did not prove the falsification charge and did not have just cause to remove the Grievant, but did have just cause for discipline for the other two charges. The Grievant is to be reinstated to her former position with full back pay, seniority and benefits, less three days pay. Her discipline record is to reflect a three-day suspension for the Performance of Duty and Compliance to Orders offenses.

The Arbitrator retains jurisdiction until October 15, 2015 to resolve any dispute in the implementation of this Award.

A handwritten signature in black ink, appearing to read "Sherrie J. Passmore". The signature is fluid and cursive, with the first name "Sherrie" and last name "Passmore" clearly distinguishable.

Sherrie J. Passmore, Arbitrator