

Arbitration Between:

Ohio Department of Public Safety, Division of the State Highway Patrol

and

Ohio State Troopers Association

Grievance of JovanDe Coleman, DPS-2021-01274-01

State Highway Patrol Representatives

Kaitlin Fuller, Ohio State Highway Patrol

Aaron Williams, Ohio State Highway Patrol

Eric Eilerman, Office of Collective Bargaining

Sgt Chad Smith U-456 AIU

OSTA Representatives

Elaine Silveira, Attorney

Larry Phillips, OSTA Staff Representative

Kari Root, OSTA President

Sgt David Richendollar, OSTA Staff Representative

*Witnesses for the Grievant:* Anthony Percy, JovanDe Coleman

*Witnesses for the OSHP:* Lt. Andre Swinerton, Lt. Chad Miller

## ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a five-day suspension to Trooper JovanDe Coleman (Grievant) for violation of OSHP Work Rule 4501:2-6-02(B)(5) Performance of Duty, 4501:2-6-02(I)(4) Conduct Unbecoming an Officer and 4501:2-6-02(V)(2) Response to Resistance and Firearms for operational deficiencies during the course of two different traffic stops, the first on September 19, 2020 and the second on January 30, 2021. According to the OSHP, during the first stop, the Grievant “displayed operational deficiencies”. In particular, OSHP contends that the Grievant failed to keep the proper reactionary distance from the suspect, Miguel Angulo, and failed to use appropriate deescalating techniques during the course of the interaction, resulting in Angulo’s resistance to the arrest. During the second stop, the Grievant used unprofessional language while conducting the arrest and inadvertently discharged his firearm. According to OSHP, during these two incidents, the Grievant violated the performance of duty rule, the conduct unbecoming an officer rule and the rule governing response to resistance and firearms.

The first incident took place on September 19, 2020. At the time, the Grievant had been employed as a trooper for three years. On that date, the Grievant stopped to investigate a disabled vehicle parked on the side of a busy road. The Grievant approached Angulo, who was outside the car on the passenger side, and asked him what he was doing. Angulo responded, “Yeah, I’m on the side of the road, do you have a problem with that?” The Grievant responded aggressively, telling Angulo that he was on “my highway” and suggesting to Angulo that if Angulo was going to have an “attitude” that the Grievant would have his vehicle towed. The Grievant made no effort to de-escalate the situation, quickly reduced the reactionary gap, and ultimately told Angulo to put his hands behind his back. The Grievant cuffed him, took him to the patrol vehicle and tased him to get him in the back of the car. All of this took place within a very brief period of time. Lt. Swinerton, an experienced OSHP training officer, testified that all troopers are trained in de-escalation techniques and that the need for de-escalation is “constantly reiterated”. Although the Grievant testified that he had been taught other techniques as well, Lt. Swinerton’s testimony that considerable time is spent teaching troopers de-escalation techniques is credible. The Grievant acted in an unnecessarily aggressive manner toward Angulo, failing to use any de-escalation techniques. Thus, I find that there was just cause for disciplining the Grievant for his behavior during this incident.

The second incident, which took place on January 30, 2021, involved the Grievant pulling over a vehicle after the vehicle’s operator violated multiple traffic laws. After pulling the vehicle over, the Grievant discovered that it contained five people. Despite the number of vehicle occupants, which created the potential to endanger the Grievant, the Grievant did not call for backup right away. Instead, over the course of twenty minutes or so, he moved two of the vehicle’s occupants, the driver and front seat passenger, into his patrol car. He then returned to the vehicle to escort the third passenger, McKinney, to his patrol car. McKinney was visibly impaired and was holding his arm in strange manner, leading the Grievant to suspect McKinney

had a firearm. The Grievant discovered the firearm during a pat down of McKinney. McKinney broke away from the Grievant and attempted to flee. The Grievant pointed his weapon at McKinney and began giving him verbal commands to get on the ground. After several attempts using professional language that were unsuccessful, the Grievant yelled, "Get down on the fucking ground. I'll shoot you in the fucking head." At that point, McKinney laid on the ground but with his hands under him, rather than out to the sides of his body. Concerned that McKinney might still have a firearm, the Grievant switched his gun to his non-dominant hand and cuffed McKinney with his dominant hand. During the course of this cuffing, the Grievant's firearm discharged. Because it was pointed at the ground, no one was injured. OSHP contends that the Grievant should not have used unprofessional language and should have holstered his weapon before cuffing the suspect.

In at least one past case, this Arbitrator addressed the question of using unprofessional language in an extremely stressful situation. In that case, involving Trooper Bailey, the Arbitrator upheld the one-day suspension of a trooper who had used foul language during a stressful arrest situation that was similar to the one the Grievant faced here. In that case, the justification for upholding the one-day suspension was that the unprofessional language was caught on a video that was later posted on youtube. On youtube, the video received 1.6 million views and included a number of comments by viewers, some of which criticized that trooper's use of profanity during the arrest process. Here, the public did not view the video of the interaction with McKinney and the parties agreed that, as in Trooper Bailey's case, the circumstances were extremely stressful because the Grievant's safety appeared to be in jeopardy. Consistent with the Bailey case, I find that OSHP did not have just cause to impose discipline for the use of unprofessional language in an extremely stressful situation.

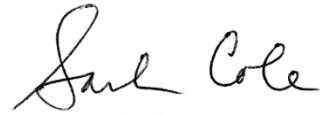
Of course, the discipline was also based in part on the Grievant's discharge of his firearm while cuffing the suspect. OSHP contended that the Grievant should have holstered his weapon before cuffing the suspect. Lt. Andre Swinerton, the experienced training officer, testified that proper operational procedure required the Grievant to holster his firearm before cuffing at least in part because of the risk that the firearm would discharge. Although the circumstances were unquestionably stressful and it was reasonable for the Grievant to be concerned about his own safety, as well as the safety of the other four people in two different vehicles, the Grievant should have holstered his weapon before cuffing the suspect as he had been trained.

Unfortunately, OSHP issued a five-day suspension for the violation of the three rules without indicating how much of the suspension was associated with each rule violation. In the absence of that information, I am compelled to reduce the suspension to the next lower rung on the discipline grid – a three-day suspension. In conclusion, I find that the Grievant violated OSHP Work Rule 4501:2-6-02(B)(5) Performance of Duty and 4501:2-6-02(V)(2) Response to Resistance and Firearms, but not 4501:2-6-02(I)(4) Conduct Unbecoming an Officer. Thus, the the five-day suspension is reduced to a three-day suspension.

**Award**

The five-day suspension is reduced to a three-day suspension.

Date: May 23, 2022

A handwritten signature in cursive script, reading "Sarah Cole".

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Arbitrator Sarah R. Cole