

**OPINION AND AWARD**

IN THE MATTER OF ARBITRATION

BETWEEN

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

AND

THE OHIO STATE TROOPERS ASSOCIATION

Grievance #: DPS-2020-0475-01  
Grievant: Trooper Stanley R. Bittinger

Date of Hearing: July 27, 2022  
Place of Hearing: Gahanna, Ohio

Arbitrator: Sherrie Passmore

Date of Award: October 12, 2022

**APPEARANCES**

Employer Advocate: Michael D. Wood, Labor Relations Officer

Union Advocate: Elaine N. Silveira, Esq.

## **INTRODUCTION**

This arbitration arises pursuant to the collective bargaining agreement ("Agreement") between the parties, the Ohio Department of Public Safety, Division of State Highway Patrol ("Employer") 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 27, 2022. 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 electronically on or before September 7, 2022.

## **ISSUE**

Was the Grievant issued a ten-day suspension for just cause? If not, what shall the remedy be?

## **RELEVANT PROVISION 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 Written Reprimand(s).

2. 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.

3. One or more day(s) Working Suspension(s). If a working suspension is grieved, and the grievance is denied or partially granted by an arbitrator, and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine; the employee may choose a reduction in leave balances in lieu of a fine levied against him/her.

4. Demotion or Removal

## **BACKGROUND**

The Grievant, Stanley R. Bittinger, is an Ohio State Highway Patrol Trooper. Trooper Bittinger was suspended for 10 days for not conducting proper searches after he arrested a drug impaired driver on July 10, 2020.

On that date, Grievant was dispatched to a possible drug overdose of a driver parked along a Township Road near Barnesville, Ohio. The driver, Amber Truax, was reportedly nonresponsive. When Bittinger arrived, the Barnesville Police Department and an ambulance were at the scene.

Barnesville police officers advised Grievant that someone had administered Narcan to Truax and then left the scene. They further advised that Truax was a known drug abuser. Bittinger spoke to Truax and determined she was impaired. With her consent, he administered field sobriety tests. He subsequently arrested Truax for operating a vehicle under the influence of alcohol or drugs (OVI) then transported her to the Belmont County Jail where she was requested to and gave a urine sample.

Grievant checked the outside of Truax's clothing with the back of his hand prior to arresting her. He did not ask Truax to remove her shoes or check inside her pockets or the waistband of her shorts. Nor did Grievant search the vehicle Truax had been driving after he had placed her inside his patrol car.

There was a 19-month-old child inside the vehicle. Bittinger contacted Truax's mother to come get the child. The mother came to the scene. Grievant released the vehicle and the child to her and she drove the vehicle away.

Three days later, the owner of the vehicle Truax had been driving, Thomas Zitzman, brought a suspected bag of heroin he found inside his vehicle glove box to the Barnesville Police Department for destruction. He reported that he believed the drugs belonged to Truax. Barnesville Police Chief Rocky Sirianni notified OSHP Lieutenant Maurice Waddell of Zitzman's visit. The drugs were then sent to the OSHP crime lab for analysis. The lab results were not received until after an administrative investigation was completed.

Through the administrative investigation, it was found that Trooper Bittinger did not conduct proper searches incident to the July 10, 2020, arrest. Pursuant to that finding, a ten-day suspension was recommended. A pre-disciplinary meeting was held on the recommendation on November 9, 2020. On December 12, 2020, Bittinger was issued a 10-day suspension without pay, effective November 29, 30, and December 1, 4, 5, 8, 9, 10, 11, and 12, 2020.

The Union filed a grievance challenging Bittinger's suspension. The grievance was denied at Step Two and then referred to arbitration.

## **POSITIONS OF THE PARTIES**

### **Position of the Employer**

The Employer's position is that it had just cause to suspend Grievant for 10 days for failing to conduct proper searches incident to the arrest of a drug impaired driver. In not doing so, Grievant violated Rule 4501:2-6-02 (Y) (2), Compliance to Orders, and Rule 4501: 2- 6-02 (B) (5), Performance of Duty.

OSHP policy is clear that after a lawful custodial arrest, troopers must search the person. What Grievant did was a pat down of the arrestee's person, not a search. Even if clothing is skintight, a proper search involves turning pockets inside out to ensure no contraband is inside and requiring the arrestee to take their shoes off. Grievant did neither.

Not searching the arrestee's car was a violation of Rule 4501: 2- 6-02 (B) (5), Performance of Duty. With a drug impaired driver, there is reasonable cause to search the car for the fruits of the crime, additional drugs, paraphernalia, and other evidence. Bittinger had ample reason to believe Truax was drug impaired. The need to search the vehicle was increased due to a child being in the vehicle, and Grievant releasing control of them to Truax's mother. Grievant had the authority and the obligation to search the vehicle. He did not.

A 10-day suspension was warranted. Grievant had three previous violations within the performance track of discipline these consisted of progressive one and three-day suspensions and a five-day working suspension. The five-day suspension involved failing to perform a search.

### **Position of the Union**

The Union's position is that the Employer did not meet its burden of proving it had just cause to suspend Grievant for ten days. The Employer did not satisfy the seven tests of just cause.

The investigation was not fair and objective. The Employer failed to conclusively determine whether the bag discovered in the car by Mr. Zitzman after Truax was arrested was heroin. It also failed to gather a crucial piece of information: No one asked Mr. Zitzman if anyone else had access to the vehicle after the July 10, 2020, incident.

The degree of discipline was not reasonable. Bittenger was consistent in his belief that he was not required to search the vehicle pursuant to OSHP 203.25. He believed that the person who administered the Narcan and then left the scene before the ambulance or police arrived, would have removed any contraband from the vehicle to protect their friend. Bittenger, therefore, did not believe he could have lawfully conducted a search incident to arrest. Grievant's belief is supported by a training IOC written by Sergeant Archie Spradlin. Sergeant Spradlin stated, "Based on the circumstances in his traffic stop, there did not appear to be enough evidence to support a mandatory search of the vehicle."

OSHP policy does not mandate a search of a vehicle incident to arrest because the facts and circumstances of each traffic stop are different. The stop must be evaluated through the arresting officer's eyes and the totality of the circumstances. Troopers have the discretion to determine whether they would be able to articulate specific facts supporting their reasonable belief. Without that basis, a trooper cannot comply with the search standard set forth in *Arizona v. Grant*.

## DISCUSSION

This case involves a ten-day suspension of Grievant for not conducting proper searches incident to arresting a drug impaired driver on July 10, 2020. The Employer has the burden of proving just cause for this discipline, consisting of proof that:

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

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

The Employer suspended the Grievant, in part for violating, Rule 4501:2-6-02 (Y) (2), Compliance to Orders. The Rule states:

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

The Employer proved that Grievant violated this rule by not searching Amber Truax's vehicle after arresting her. The evidence establishes that not searching the vehicle was an error in judgment and a failure to take appropriate action.

Grievant defended his failure to search the vehicle on the basis that he did not believe that he could lawfully conduct such a search. Further, the Union argued that a search was not mandatory pursuant to OSP 203.25 which states:

E. Search Incident to a Lawful Custodial Arrest

\*\*\*

2. An officer may search a vehicle incident to a custodial arrest, only under the following circumstances: (Emphasis added)

The officer reasonably believes that the arrestee may access the vehicle at the time of the search, OR

The officer **reasonably believes, based on specific and articulable facts**, that the vehicle contains evidence of the offense for which the suspect was arrested. (Emphasis added).

While OSHP 203.25 does not mandate the search of a vehicle incident to arrest, it does not relieve a trooper of the responsibility to conduct a vehicle search where appropriate under the circumstances. Rather, it authorizes an officer to conduct a search incident to a custodial arrest in specified circumstances.

Those circumstances include when “The officer **reasonably believes, based on specific and articulable facts**, that the vehicle contains evidence of the offense for which the suspect was arrested.” At the time of the incident, Grievant had 16 years of service as a Trooper and had been extensively trained in search and seizure. He should have known that with a drug impaired driver, he had reasonable cause to search the car for fruits of the crime, additional drugs, paraphernalia, and other evidence.

Numerous witnesses testified that under the circumstances of the July 10, 2020, arrest, Grievant could have and should have conducted a search of the arrestee’s vehicle. Reasonable and articulable facts were present to conduct a search. The call for service was related to drug use. Trooper Bittinger had been advised that Truax was a known for being a drug user who overdosed, and it had

been reported that Narcan was administered to her. He arrested her for OVI. Grievant was aware that drug users hide drugs in vehicles and agreed that finding drugs in the glove box would be normal. Therefore, it was reasonable to believe fruits of the crime such as drugs or paraphernalia could be present in the vehicle, particularly if no drugs are found on the arrestee. Grievant was the only witness to testify that he did not have a lawful basis to search for vehicle.<sup>1</sup>

Grievant testified he did not have a lawful basis to search because he believed “one to two people were there who could have taken stuff” before first responders arrived. His testimony shows that he suspected there were drugs in the vehicle. Yet, he did nothing to prove or disprove that suspicion or his assumption that those drugs were removed. The presence of a child in the vehicle and releasing control of the child and vehicle to Truax’s mother, increased the need to search the vehicle. His decision not to search showed a serious error in judgment and failure to take appropriate action.

Grievant’s suspension was also based on a violation of Rule 4501:2-6-02 (Y) (2), Compliance to Orders. The Rule states:

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 Employer proved that Grievant violated this rule by failing to conduct a proper search of Amber Truax. After a lawful custodial arrest, troopers are required to search the person. The video of the arrest shows Trooper Bittinger only checking

---

<sup>1</sup> Sergeant Spradlin, who stated in a training IOC that Grievant did not have enough evidence to support a mandatory search of the vehicle, did not testify. Since there was no opportunity to examine Spradlin on this statement, it has limited evidentiary value. It is unclear what his understanding of the circumstances of the traffic stop included, beyond what he would have been aware of from a review of the video of the stop.

the outside of Truax's garments with the back of his hand.

Sergeant David Bailey, Lieutenant Maurice Waddell, Staff Lieutenant Andre Swinerton, and Captain Jacob Pyles all testified that Grievant did not conduct a proper search incident to arrest of Truax and what he did was a "pat down". A pat down is different from a search of a person. A pat down is a search for weapons, which is done by only feeling the outside of the clothing with the back of the hand. In contrast, a search is a check from head to toe going into pockets and having an arrestee take their shoes off.

Grievant admitted he did not go into Truax's pockets but stated that he did not do so because the suspect's shorts were "skintight" and when he passed over them with his hand, he "could tell there was nothing in them." When Trooper Bittinger was given individualized training in response to the July 10 incident, the instructor reminded him that troopers cannot make assumptions, and the only way to know if there was anything in pockets is to physically check, and/or look. Bittinger told the instructor he agreed.

The Union's argument that the investigation was fatally flawed because Zitzman was not interviewed is not persuasive. The Union reasons that Zitzman should have been interviewed to determine if anyone else had access to the vehicle between the time Truax was arrested and Zitzman found a bag in the glovebox that he suspected to contain drugs. The Union also argues that the Employer should have waited for results from the crime lab to determine whether the bag contained heroin. Those determinations were not necessary. The issue was not whether or what drugs would have been found, but whether Grievant could and should have searched the

vehicle.

### **The Appropriate Penalty**

A 10-day suspension was reasonable under the circumstances of this case. The suspension is consistent with principles of progressive under the Agreement and the Employer's disciplinary grid. Grievant had three previous violations within the discipline performance track on his department record. For those violations, he received progressive one- and three-day suspensions and a five-day working suspension. The latter involved Grievant failing to perform a search. The seriousness of the offense and the Grievant's continuing performance issues outweigh any mitigating factors.

### **AWARD**

For the reasons stated above, the grievance is denied. The Employer had just cause to issue the Grievant a 10-day suspension.



Sherrie J. Passmore  
Arbitrator

October 12, 2022