

Arbitration Between:

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

And

Ohio State Troopers Association

Grievance of Pablo Cruz, 2017-02137-15

State Highway Patrol Representative

Lt. Jacob D. Pyles

*Witnesses:* Lt. Terry Bush and Lt. Carlos Smith

OSTA Representatives

Larry Phillips

Elaine Silveira

*Witness for the Grievant:* Grievant, Pablo Cruz

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (ODPS), issued a one day suspension to Sergeant Pablo Cruz (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(B)(5), performance of duty, and Rule 4501:2-6-03(A), responsibility of command. ODPS issued this discipline because it believed that the Grievant should have more thoroughly investigated and documented the condition of a suspect, following a chase, when the suspect claimed that he had been “hit”. For the following reasons, I find just cause for the discipline and uphold the one-day suspension.

On January 15, 2017, the Grievant and Trooper Justin Lister were jointly involved in apprehending a suspect in a Wal-Mart parking lot. Following a brief car and then foot chase of the running suspect, Trooper Lister tackled the suspect to the ground and, in the process, suffered

injuries. The Grievant, who was in his own patrol car during the chase, was not in a position to see whether Trooper Lister hit the suspect with his car prior to exiting the car and giving chase on foot. When the Grievant asked Trooper Lister whether Lister hit the suspect with his car, Trooper Lister asserted that he had not. EMS was called to address Trooper Lister's injuries. The Grievant asked the suspect if he was injured and the suspect said that he was not. The Grievant, who has had EMT training, observed an abrasion on the suspect's face but concluded that the abrasion did not warrant medical treatment. Some time later, Trooper Hector Burgos arrived to take photographs of the suspect in the back seat of the Grievant's patrol car. Burgos asserts that the suspect told him that he had been struck by a car. Burgos also states that he conveyed this information to the Grievant, and the Grievant agrees he received information along these lines from Burgos, although there is some dispute about the exact language Burgos used. There is also a factual dispute about whether the EMS personnel were still present when Burgos conveyed this information to Grievant. During the administrative investigation, Burgos stated that the EMS personnel were still present; but, at the arbitration hearing, the Grievant stated that the EMS had already departed (Burgos did not testify). Even if the Grievant's version of the story is true, given the Grievant's extensive experience with RTR (response to resistance) situations, upon hearing the information from Burgos, he should have followed up with questions to the suspect about the suspect's reported assertion that he had been hit (whether by a car or a person).

The ODPS asserts that RTR investigations are critical to ensuring that injured persons are able to obtain medical treatment and that any injuries at the time of an arrest where there is resistance must be properly documented so that the Department may be prepared for a subsequent claim by the suspect that he or she has not been properly treated. The Grievant

testified that he understood this policy and had been involved in many, many RTR investigations (over 1,000). It is odd then that the Grievant failed in this case to properly document the suspect's claims and to follow up with the suspect to make sure that the suspect was not hit or, if he was, to ensure that medical treatment was unnecessary (or provide him medical treatment if it was necessary).

The Grievant testified that his "documentation" with photographs and video was sufficient to satisfy the requirements of his position as the on-scene supervisor. Unfortunately, injuries to a suspect hit by a car might not be revealed through video or photographs because the injuries might be internal or covered up by clothing. As a result, when Burgos told the Grievant that the suspect claimed he had been hit, the Grievant should have questioned the suspect, had EMS examine him and, importantly, make note of this allegation in his report and his response to the allegation. The Grievant offers no explanation for his failure to do so.

While subsequently obtained video from Wal-Mart revealed that Trooper Lister had, in fact, hit the suspect with his car, it is not clear what impact this information should have on the case. The Grievant's mistake was failure to report what the suspect said and to investigate the suspect's claim further. The Wal-Mart video would have supported the suspect's claim that he had in fact been hit, but that does not change or impact the decision that Grievant erred by not investigating the claim and not reporting it as required by Department Policy.

Although the Grievant is a long-standing employee with a solid work record with no current discipline, I find that the discipline in this case should be upheld because the Grievant's omission in his report could have had significant consequences for the Department and must not be repeated.

December 4, 2017

A handwritten signature in black ink, appearing to read "S. Cole", is positioned above a horizontal line.

Arbitrator Sarah R. Cole