

## **IN THE MATTER OF ARBITRATION BETWEEN**

Ohio State Troopers Association,  
Union

And

Case no. 2017-02604-01  
William Scot Davis, Grievant  
Three day suspension

State of Ohio, Department of Public Safety,  
Employer

### **Umpire's Decision and Award**

#### **Introduction**

This matter was heard in Columbus, Ohio on December 11, 2017 at OCB Conference Center. Larry Phillips represented the Union. Other Union persons present were Elaine Silvera, Jeremy Mendenhall, Kari Root and Brian Perry.

Lt. Jacob Pyles represented the Patrol. The Employer also had Lt. Darrell Harris, Lt. Cassandra Brewster and Abigail Barr from the Office of Collective Bargaining present.

Each side called two witnesses in support of their position.

All witnesses were sworn.

There were several joint exhibits presented: Jt. 1- the collective bargaining agreement; Jt. 2- the grievance trail; Jt. 3- the discipline package. The issue was stipulated. Additional exhibits were introduced by the Patrol and Union and all were admitted during the hearing.

#### **Issue**

Was the Grievant issued a three (3) day suspension for just cause? If not, what shall the remedy be?

#### **Applicable CBA Provisions**

Article 19

## **Background**

Grievant is assigned as a Trooper at the Delaware Post. He is a fifteen year employee.

Grievant has no disciplinary history.

He was charged with violation of Rules 4501:2-6-02(B)(5) and 4501:2-6-02 (Y)(2).

The three-day suspension was issued in July 2017. Grievant took a loss of vacation leave instead of the suspension by agreement of the parties.

It was timely grieved.

## **Summary of FACTS**

Grievant was disciplined for events arising from a traffic stop on northbound US 23 north of SR750 on March 2, 2017.

Grievant testified as did Staff Representative Bruce Elling.

The Patrol's witnesses were Grievant's Post Sgt. Freeman and Lt. Fletcher who conducted the AI.

Grievant's version of events in summary form are as follows. He noticed a yellow Ford Ranger truck driving northbound on US 23 north of the SR 750. He noticed a thirty-day tag on the vehicle and a large ATV in the truck bed. He stated the ATV was out of season, oversized and may not have been secured as required for highway transport. He could not determine from his vantage point if in fact his concerns about the ATV were accurate. Had that been the case, there would have been cause for a traffic stop on the highway. He also expressed his suspicions that either/both the truck/ATV were stolen.

Further, the driver was using his right turn signal but not driving appropriately. Once the driver pulled into the Burger King parking lot, Davis drove his patrol car into the near lot between the Burger King and Wal Mart and parked. It was then that Davis verified through LEADS the owner of the vehicle was Chad Williams, and that Williams had multiple license suspensions. He made the visual identification of the driver from the LEADS information and his visual observation, noting in particular a neck tattoo.

He stated the driver took three minutes or less to enter the Burger King then exit without food or drink items. The truck was parked about 100 -150 yards away from Grievant's parked cruiser. Davis found that conduct suspicious.

Williams began walking towards Grievant. Due to this, Grievant moved his vehicle with lights on toward Williams. Williams was ordered by Grievant twice to put his hands on the hood of the cruiser. Grievant patted him down (a so called "Terry" frisk), found a small bag of marihuana in his hands and pills in his jacket pocket.<sup>1</sup> Williams was cuffed and placed in the back of his cruiser. Grievant then drove towards Williams' truck and called in to both the Sheriff's Department and to Post.<sup>2</sup>

Davis called the Delaware Sheriff and a deputy (Keller) arrived and took over the arrest with some initial push back.

Grievant provided a written statement to the Delaware County Sheriff as part of the charging and arrest process.

Grievant was questioned about the series of events and became the subject of an AI..

The instant discipline ensued.

### **Employer Position**

Grievant committed a series of errors. He had no probable cause to pull over the driver while on Route 23, as he lacked the time to verify the driver was in fact under multiple suspensions before the driver pulled off onto private property. Once he lacked that probable cause for a state highway stop, his involvement in the incident was over, if the proper procedures had been followed.

Grievant had been trained over the years as to the fact there should not be any Patrol arrests/stops occurring on private property.

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<sup>1</sup> The pat down would not have included going into Williams' pockets. There was sufficient concern about the means of recovery of the oxycodone that no felony charges were ultimately made by the Delaware County Sheriff against Williams.

<sup>2</sup> There is a partially complete visual recording of the encounter between the two principals- Grievant and Chad Williams. There is a partial, mostly inaudible audio recording of the encounter between Grievant and Williams once Grievant was in the shopping center parking lot.

Grievant lacked jurisdiction to arrest or to conduct a "Terry" frisk. The search and seizure were violated of the 4<sup>th</sup> amendment and Patrol's processes.

There was no reason that the entire interaction was not recorded, as Grievant failed to turn on his belt microphone. The failure to have the belt microphone operational was yet another problem with Grievant's conduct. He failed to log the claimed malfunction on the CAD log as required.

Grievant exercised poor judgment in not calling in the incident to Post until over four minutes after the events occurred. He put himself at huge risk.

He had been trained on the matter of private property arrests, "Terry" frisks, OSHP jurisdiction and use of recording devices.

Grievant's conduct violated OAC 4501:2-6-02 (B)(5) [Performance of Duty] and 4501:2-6-02 (Y)(2) [Compliance to Orders].

The discipline is within the grid; is commensurate and no abuse of discretion exists such as to mitigate the discipline.

The discipline is for just cause and the grievance must be denied.

### **Union Position**

Grievant acted at all times appropriately. Due to Williams' suspicious conduct while driving with a turn signal on then a sudden pull off, he acted reasonably. His concerns that the driver was suspicious were more than borne out by the fact of the driving under multiple suspensions; the pills and marihuana found on the suspect.

It is a known fact that belt microphones only maintain a four-hour charge and problems with them are known to the Patrol.

Grievant has an exemplary record and is a high performer for stolen car arrests. His most recent evaluation was sterling. His intuition about the temporary tags and the erratic signaling proved accurate as the driver was engaged in illegal acts.

There is disparate treatment in light of the facts involved in the matter of Trooper Foltz and Sgt. Purpura. Union Ex. 2. That arrest also occurred on private property yet no discipline issued.

Grievant was acting with the flow of events and there was no time to call in the situation. He acted appropriately under all the circumstances.

Due to the excellent record of Grievant, his long tenure, his good evaluations and the reasonableness of his actions under all the circumstances, the grievance should be granted and Grievant made whole.

In the alternative, the discipline should be modified to a less harsh level due to his department record. A written reprimand would be commensurate.

### **Opinion**

The Employer bears the burden of proof.

The Umpire is convinced by the necessary quantum of proof that Grievant violated known and long-standing Patrol work rules and procedures. His explanations/justifications have been found wanting and not entirely credit worthy.

The Union made a claim that there was some sort of relationship between Captain Vance of the Sheriff's department and Lt. Pirrone of the Patrol. There was no evidence to support this. Even as sheer speculation, the connection between that relationship and the ensuing events didn't have any mitigating effect.

The Union also cited a Fifth District Court of Appeals case State v. Peek (2017) 16-CA-64. The Umpire finds the holding inapposite, as the issue in this case is not whether or not the fact Grievant knew the driver was under suspension and had a reasonable basis for a stop.

There is an insufficient record to determine the disparate treatment defense contrasting Foltz/Purpura and Grievant. There is no analysis in the document submitted as to why the Patrol declined to initiate discipline. One factor glaringly different from the current case is Foltz was dealing with a high speed chase that ended in private property. The Umpire does not view the situations as comparable based on the information available.

The consistent refrain from Grievant and the Union was that once the driver Chad Williams began walking towards Grievant in his vehicle, Grievant acted responsibly and in accord with training and procedures.

The Umpire finds the evidence is not supportive of this claim. The video, observed multiple times by the Umpire, shows clearly that Williams was not walking towards Grievant at all until the patrol cruiser began moving towards him with his flashers on. There was simply no confrontation/approach at all until Grievant, by approaching in his cruiser with his flashers on moved towards the driver. It was simply disingenuous to state and/or imply the driver was approaching him in a suspicious/threatening manner, when the video shows the driver minding his own business and going off in another direction until his attention was caught by the moving cruiser and flashing lights.

The Umpire also noted various other concerns. There was more than enough time to radio/contact the Post to ask for back up and/or report his location. Four minutes is a long time under these circumstances, especially since the incident was occurring on private property and Grievant was sitting in his car for at least 2-3 minutes before the driver exited Burger King. Grievant chose to not notify either his Post-most problematic- or the local LEA as circumstances, protocol and training would have demanded. His excuses were unconvincing.

Grievant also failed to sufficiently explain his conduct regarding the belt microphone. It may have needed a charge, but it was not at all clear that there was not enough charge on it to pick up the short interaction between him and the driver. Nor did he report the problem as procedures required. The belt microphone activated at 12:23 pm; this is long after Grievant's encounter with Williams and Delaware Deputy Sheriff Keller. No notations exist in the unit history to support Davis' claim that the microphone was charging.

The Umpire made a complete review of all documents and recordings presented in this matter by both parties. Grievant made multiple errors in derogation of known policies and procedures that date. See M-2; M-7; M-9; M-11. His training and level of experience should have aborted the pursuit of Williams before the incident evolved as stated. The inconsistencies in his multiple statements as witnessed via the recordings; the AI; at the arbitration hearing and in his written report to the Sheriff do not support any reduction in discipline.

**AWARD**

**The grievance is denied.**

IT IS SO HEREBY ORDERED.

Issued December 18, 2017 in Columbus, Oh

*S/ Sandra Mendel Furman*

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Sandra Mendel Furman, ESQ. Arbitrator