

In the matter of Arbitration between:

**State of Ohio, Department of Public Safety-Ohio State Highway Patrol
Employer**

And

**Ohio State Troopers Association
Union**

**Case # DPS-2018-02711-15
Sergeant Richard A. Dixon**

In attendance for the Ohio State Highway Patrol: Lt. Darrell Harris-Advocate, Lt. James Thompson 2nd Chair, Lt. Brian Aller(witness), Lt. Rick Alonso, Sgt. Jacob Fletcher(witness), Mr. Cullen Jackson-OCB.

In attendance for Ohio State Troopers Association: Mr. Larry Phillips-Advocate, Ms. Elaine Silveira-2nd Chair, Mr. Bob Cooper-Staff Rep., Sgt. Richard Dixon(witness), Mr. Bruce Elling-Staff Rep., Mr. Jeremy Mendenhall-OSTA Pres., Ms. Kari Root-OSTA VP.

INTRODUCTION:

This matter was heard at the Ohio State Troopers Association, Gahanna, Ohio. The Hearing was held on March 19, 2019 at 9:00am. All witnesses were sworn. There were no procedural issues raised, and the parties agreed that the issue was properly before the arbitrator. The following were submitted as Joint Exhibits: Jt.-1-Collective Bargaining Agreement, Units 1 & 15(CBA); Jt.-2 Electronic Grievance 2018-02711-15, Step 2 Response, Intent to Arbitrate; Jt.-3 Discipline Trail, Statement of Charges, Pre-disciplinary Notice with waiver, Highway Patrol Rules & Regulations-4501:2-6-05(D)(1) Motor vehicle and aircraft operation, Discipline Letter, Department Record.

The following were introduced as Management Exhibits: ME-1 Administrative Investigation(AI)(with video) (Sgt. Dixon); The following were introduced as Union Exhibits: UE- 1 Ohio State Highway Patrol(OSHP) Policy-RESPONSE TO RESISTANCE; UE-2 OSP-200.06 PATROL CAR/MOTOR VEHICLE OPERATION BY SWORN OFFICERS; UE-3 Performance Document – ANNUAL REVIEW; UE-4 DPS Training Record(Richard Dixon); UE-5 OSHP Initial Incident Report(Cuyahoga County) with video.

ISSUE:

In conformance with Article 20, Section 20.08, the parties submitted a jointly signed issue statement, which reads as follows:

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

BACKGROUND:

On February 13, 2018 at approximately 6:27pm(18:27), Sergeant Dixon was on an overpass on SR-54(Clark County) above Interstate I-70. He observed a white Mercedes traveling well over 100mph on I-70 westbound. It was dusk and the speeding vehicle was traveling without lights. The Mercedes was passing other vehicles on the berm. Sergeant Dixon entered I70 westbound and attempted to catchup with the speeding reckless driver. All this incident was captured on the patrol car's video(ME-1).

This activity involved patrol car speeds of 150mph. In trying to catchup Sgt. Dixon traveled at high rates of speed and sometimes using the berm to pass motorists. The suspect's car continued to drive at high rates of speed and operate dangerously without lights. After catching-up to the Mercedes Sgt. Dixon activated his emergency lights and siren. The suspect fled, ultimately causing an injury crash and left the scene and fled on foot(ME-1).

As a result of this Response to Resistance incident an Administrative Investigation(AI) was conducted. Sergeant Dixon was charged with violating OSHP Work Rule 4501: 2-6-05(D)(1)-Motor vehicle and aircraft operation: A member shall operate a division vehicle and aircraft in accordance with all applicable laws and directives. A member shall operate motor vehicles and aircraft in a careful prudent manner. The charge states that “through Administrative Investigation # 2018-0309, it was found Sergeant Dixon operated his patrol car in an unsafe manner without using lights and siren during a motor vehicle pursuit.”

On August 21, 2018, Sgt. Dixon was notified that he would be suspended for three (3) days. The suspension was to be effective August 25 through August 27(Jt.-3). Sergeant Dixon filed a Grievance on 8/20/2018. The Grievant claimed that the OSHP violated Article 19, Just Cause Standard, of the CBA. Sergeant Dixon requested to be made whole for all lost wages and benefits, and that the suspension be reduced to a written reprimand(Jt-2). On August 29, 2018, a Step 2 Hearing was conducted. The Step 2 Hearing Officer denied the Grievance on 9/5/2018. Hearing Officer Woods determined that the Grievant did not activate his lights and siren while driving at speeds exceeding 140mph in his attempt to catch another vehicle. This action put the Grievant’s life and other motorists at risk. The Grievance was appealed to Arbitration. By mutual agreement between the parties the Arbitration Hearing was scheduled for March 19, 2019.

DISCUSSION AND OPINION:

The viewing of the in-car video of this activity was troubling. However, having viewed numerous videos myself of actions required to apprehend violators and criminals, they always show at risk situations. Unfortunately, it is the suspects’ actions that create the at risk situations that law enforcement officers must address.

There was no evidence or testimony introduced that claimed that Sgt. Dixon should not have initiated this apprehension activity. It was very evident on the video that

The suspects actions were dangerous and reckless. In fact, many calls were made to area Patrol Posts regarding the suspect's reckless driving(ME-1). The elapsed time for this activity from inception to crash scene, caused by the suspect, was approximately two minutes.

Did the Grievant's response to this violator's actions violate OSHP policy and/or procedures?

Management claims that Sgt. Dixon should have had his lights and siren on early in this high-speed activity. Furthermore, his driving to catchup to the suspect was not careful and/or prudent(ME-1). The Grievant's actions catching up even included driving on the berm at high speed. Management, in their closing argument stated that the ordinary definition of pursuit is the act of following. Therefore, when in pursuit, it requires emergency lights and siren. However, OSHP policy and procedures refine the definition of pursuit for their law enforcement officers. Motor Vehicle Pursuits are defined and reported, as such, if sufficient elements are present to support a charge of fleeing and eluding a law enforcement officer(UE=1,OSHP Response to Resistance).

The Union argues through evidence and testimony, that this event is a two part activity: (1) the act of catching-up to the suspect, and (2) the act of pursuing the suspect. The catching up activity per the video occurred from 18:27:22 to 18:28:49. This, according to the Union does not require the use of lights and siren(UE-2(D)(1)(h). Response Using Emergency Warning Equipment (h) reads as follows: The use of emergency warning equipment is not required while checking a suspected violator's speed, while observing a traffic violation(reckless operation, following too close, etc.), or while overtaking or intercepting a violator unless existing traffic, road, or weather conditions render it reasonable and prudent to use such equipment. The Grievant, a twenty year Trooper and Sergeant, testified without rebuttal, that his training did not include the use or require the use of lights and sirens for catching up or overtaking a violator. The road conditions and

weather were not a factor, in the arbitrator's opinion. Traffic conditions are always a consideration. Traffic was spotty and Sgt. Dixon appeared to adjust his speed accordingly, albeit being at high speeds.

The pursuit portion of the activity occurred when Sgt. Dixon caught up to the suspect. The video shows Sgt. Dixon having caught up at 18:28:49, and his lights were on by 18:28:52. The siren was heard when the suspect appears to flee at 18:29:26. In the arbitrator's opinion, the emergency warning equipment was employed in accordance with OSHP Policy Patrol Car/Motor Vehicle Operation (D)(1)(c)-Use emergency warning equipment during a pursuit. It appeared in this video that the suspect's speeds were upwards of 150mph. He had no lights on at dusk and used the berm extensively, ultimately causing an injury crash. Sergeant Dixon terminated the pursuit to check on the crash victims.

I do not find that there is a preponderance of evidence that the Grievant violated Policy. This was a two-minute activity which required fast decision-making and action on the Grievant's part. Could he have been more careful in his actions, maybe, but would they have caught a dangerous violator on the highway? Unfortunately, this situation resulted in a crash caused by a reckless and dangerous driver. However, it appeared to the arbitrator that Sgt. Dixon used his vehicle driver training and experience well.

AWARD:

The Grievance is granted in its entirety. Sergeant Dixon is to be made whole for lost wages and benefits.

This concludes the Arbitration decision.

Respectfully submitted, this 28th day of March 2019.

E. William Lewis
Arbitrator