

Arbitration Between:

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

And

Ohio State Troopers Association

Grievance of Kristopher Boysel; DPS-2019-01450-01

State Highway Patrol Representatives

Michael D. Wood

James Thompson

OSTA Representatives

Larry Phillips

Elaine Silveira

Witnesses for the Grievant: Grievant, Sgt. Kristopher Boysel

Witnesses for the OSHP: Sgt. Jacob Fletcher, Lt. Will Rogers

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OSHP), issued a five-day suspension to Trooper Kristopher Boysel (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, Rule 4501:2-6-02(I)(1) – Conduct Unbecoming an Officer. This Rule states that “[a] member may be charged with conduct unbecoming an officer in the following situations: (1) For conduct, on or off duty, that may bring discredit to the division and/or any of its members or employees. A member shall not engage in any conduct which could reasonably be expected to adversely affect the public’s respect, confidence, or trust for Ohio state highway patrol troopers and/or the division.” OSHP issued this discipline because

the Grievant, while off-duty, investigated the theft of his hunting bow, questioning two suspects, without mirandizing them first.

Grievant has been an OSHP Trooper for three years. On October 28, 2018, the Grievant's hunting bow, including an expensive sight, was stolen from his truck. The Grievant reported the theft to the Wauseon Police Department and also engaged in efforts to obtain the return of the bow, including posting pictures of the bow with his contact information on social media, and telling others. Ultimately, his uncle, who worked for the Fulton County Sheriff's office, saw a picture of a group of boys using Grievant's bow following the phone dump of a suspect's cell phone. He sent the pictures to the Grievant. From the pictures, the Grievant determined where those who might have stolen his bow lived. The pictures were of boys about his brother's age so he confirmed their identify with his brother. Then, he went to the house of one boy, who eventually gave him the name of the boy who had the bow. The Grievant knew these boys, as his parents have a house that is open to boys in the neighborhood to swim and play basketball, so that they stay out of trouble. The Grievant went to the suspect's house and asked his mother, Karen Davis, if he could speak with the suspected thief. It is unclear whether he identified himself as an Ohio State Trooper when he arrived at the Davis residence. The suspect's mother stated in her interview that the Grievant acted respectfully and appropriately at all times. The Grievant testified that he went to the boy's house because he just wanted his bow returned and he wanted to have a talk with the boy to encourage him not to engage in similar behavior in the future. He questioned the suspect without mirandizing him first and ultimately found that the boy(s) had damaged the bow, throwing away a brand new sight because they thought it was a camera and that they engaged in other car thefts. When he learned this

information, the Grievant realized that he had to report the thefts because other people were harmed and his own bow was damaged. The boy ultimately pleaded guilty to a felony.

The Grievant told Sergeant James Edwards (who knew the bow had been stolen) that he recovered his own bow. Edwards believed that the Grievant saw the pictures of the boys on Facebook, rather than from the phone dump. Edwards told the administrative investigator, Sergeant Jacob Fletcher, that he did not believe that the Grievant's actions were problematic. But he conveyed the story to Lieutenant Ashenfelter, who didn't report the incident to anyone else for some time.

Several factual issues are in dispute – there is a dispute as to where the pictures came from – whether from Facebook or from the phone dump conducted by the Fulton County Sheriff's office. More importantly, the parties dispute whether the Grievant identified himself as a Trooper when he came to the suspect's door. He claims that he did not and believes that the mother of the suspect, as well as the suspect, know he is a Trooper because he is well known in the community and because only two Troopers live in Wauseon. On the other hand, in her interview with Sgt. Fletcher, the suspect's mother, Karen Davis, stated that the Grievant identified himself as a Trooper. Both sides agree that the Grievant did not mirandize the suspect before he questioned him, which could have created an issue in the case, but ultimately did not.

The question of where the pictures came from is irrelevant, other than to suggest the Grievant is untruthful. But, frankly, the Grievant's account makes sense and was consistent throughout the investigation. With respect to the issue of identifying himself as a Trooper, the Employer did not meet its burden of proof on this issue, with only the suspect's mother claiming in her interview that he identified himself as an Ohio State Highway Officer, a term he testified

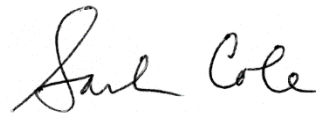
he would never use. In light of this conflict, I find that the Grievant did not identify himself as an Ohio State Trooper when he came to the suspect's door.

Ultimately, I conclude that the Grievant did not engage in conduct unbecoming an officer because the Employer did not show that he brought any discredit to the division, nor was the public's respect, confidence, or trust in Troopers or the division impacted negatively. The Grievant was attempting to avoid trouble for the suspect – trying to help a young teenage boy learn his lesson without permanent consequences. He acted in a respectful and professional manner at all times and there was no evidence that his actions harmed the investigation of the case. While a different approach, reporting his findings to the Wauseon Police Department and allowing them to continue their investigation, perhaps would have been preferable, his behavior in this situation was professional and did not cause any problems for the Wauseon Police Department. Because his conduct was not unbecoming of an officer of the OSHP, I reverse his discipline and order restoration of all benefits, wages, and seniority lost due to the previously instituted five-day suspension, with shift differential, if applicable.

Conclusion

The discipline shall be reversed. All benefits, seniority, wages, and shift differential, if applicable, shall be restored to the Grievant in a manner consistent with this Opinion.

December 10, 2019



Arbitrator Sarah R. Cole