

Arbitration Between:

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

And

Ohio State Troopers Association

Grievance of Chad Schell; DPS-2019-02991-01

State Highway Patrol Representatives

Michael Wood

Lt. Aaron Williams

Cullen Jackson, OCB

OSTA Representatives

Larry Phillips

Elaine Silveira

*Witnesses for the Grievant:* Lt. Neil Laughlin

*Witnesses for the OHSP:* Sgt. Chad Bass and Lt. William Stidham

ARBITRATOR OPINION AND AWARD

The Ohio Department of Public Safety, Division of the State Highway Patrol (OHSP), issued a one-day suspension without pay to Trooper Chad Schell (Grievant) for a violation of Ohio State Highway Patrol Rules and Regulations, DPS 4501:2-6-02(B)(5), Performance of Duty, for failure to maintain control of his canine, who self-deployed from a police vehicle and ultimately attacked a motorist without first being instructed to do so.

On March 5, 2018, the Grievant conducted a traffic stop in the Cleveland area, with his K-9 Jimmy. The Grievant was concerned that the suspect might flee because, prior to the stop, the driver made an abrupt turn onto a side street and into a driveway. The Grievant left his front driver's side window open. During the stop, the Grievant was yelling at the stopped driver, who

was making “furtive movements.” (UE 1). K-9 Jimmy jumped out of driver’s side window. The Grievant attempted to hold onto his harness, but K-9 Jimmy, an 85 pound Belgian Malinois, overpowered his grip, causing injury to the Grievant’s hand, and attacked the suspect. Following the incident, which resulted in scratches to the suspect, the Grievant reported the events to his supervisor, Lt. Neil Laughlin. Lt. Laughlin discussed the matter with his supervisor, Captain Kemmer and they decided that the Grievant would receive a training IOC to ensure that he understood “the need to maintain securement of the K-9 until he actively deploys him.” (UE 1). Lt. Laughlin sent a memo memorializing the events to Captain Kemmer and Staff Lt. William Stidham. The supervisors (Laughlin and Kemmer) decided to classify the event as “miscellaneous” rather than a Response to Resistance (RTR). As a result, other OSHP administrative personnel did not review the incident at that time.

One year later, the suspect in the incident filed a lawsuit against the OSHP, claiming injury from the incident. The lawsuit was ultimately dismissed. The lawsuit filing prompted the OSHP to launch an investigation into the incident. The investigation concluded that the Grievant failed to properly control K-9 Jimmy during the incident. The OSHP issued the Grievant a one-day suspension as a result.

The OSHP contends that it is a violation of OSHP policy to allow a K-9 to self-deploy out of a vehicle and that the Grievant, as a result of using that technique, did not have control of the K-9. The Grievant contends that the OSHP, specifically Brian McGill, OSHP’s K-9 Trainer since 2015, taught him to leave his driver’s side window open so that his K-9 could self-deploy when the dog perceives that he is in danger.

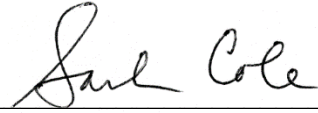
In support of its argument, the OSHP presented the testimony of Staff Lt. William Stidham and Sgt. Chad Bass, the administrative investigator for this incident. Lt. Stidham testified that he oversees lieutenants in various districts in the canine training facilities. He testified that teaching a dog to self-deploy through a front window is not authorized and that K-9 Jimmy could only be deployed through a front window on command during obedience training. Stidham testified that if McGill taught K-9 handlers the self-deploying method that occurred during the incident, “he shouldn’t have.” He also contended that he had not heard about this incident before the suspect filed a lawsuit.

Lt. Laughlin testified on behalf of the Grievant. Laughlin, Grievant’s direct supervisor, testified both that the self-deploying technique that K-9 Jimmy followed in this situation was one that McGill taught and that Laughlin had observed that training, with the Grievant and K-9 Jimmy, on multiple occasions. He also testified that he watched the video of the incident (now unavailable) and that the Grievant followed his training, as did K-9 Jimmy. He stated that, at the time the incident occurred, he did not believe the incident should have been labeled as a RTR and that his supervisor, Kemmer, agreed. Instead, Kemmer and Laughlin agreed that the incident would be classified as a miscellaneous case and that the Grievant should be given a training IOC. Staff Lt. Stidham was copied on the e-mail memorializing these conclusions.

Here, there is conflicting testimony regarding the appropriateness of training K-9 Jimmy to deploy through the front driver’s side window. Staff Lt. Stidham asserted that OSHP training does not allow for a K-9 to self-deploy although he conceded that McGill may have trained K-9s and their handlers differently than the policy required. Lt. Laughlin testified that the Grievant and K-9 Jimmy followed their training appropriately in this incident and that he observed them being trained to respond in this manner. The conflicting testimony, when considered in light of

two supervisors' conclusions at the time that this was not a problematic incident and that Staff Lt. Stidham was copied on the e-mail memorializing that decision, I conclude that there was not just cause for the one-day suspension. As a result, the Grievant should be made whole, including one day of pay and any shift differential or other benefits that should accompany the restoration of one day of pay.

Date: September 16, 2020

A handwritten signature in black ink, reading "Sarah Cole", written over a horizontal line.

Arbitrator Sarah R. Cole