

STATE OF CONNECTICUT BOARD OF MEDIATION AND ARBITRATION

TOWN OF EAST HARTFORD

CASE NO: 2022-A-0003

And

Date of Award: March 22, 2022

EAST HARTFORD POLICE

Hearings Via Zoom September 9, 2021,
October 29, 2021, and November 4, 2021

ADVOCATES

Floyd Dugas, Esq. for the Town

Stephen McElhaney, Esq. for the Union

ISSUE

Did the Town of East Hartford terminate Officer Ryan Proulx for Just Cause? If not, what shall the remedy be?

been stolen. From Main Street the Audi turned onto Burnside with the Grievant's cruiser following some distance behind.

22:03:17.... the Grievant admits he began accelerating without lights or siren from 37 MPH to 86 MPH at 22:03:39 to stay with, but at some distance, the stolen Audi on Burnside. Two items must be noted here: 1) the speed limit on Burnside Avenue is 35 MPH and 2) General Order 90.00 of the East Hartford Police Department requires the use of light and sirens when exceeding the speed limit.

22:03:51...still without lights or siren, the Grievant continues down Burnside traveling between 58 and 80 MPH.

The Grievant broadcasts over the police radio that he has activated his lights and siren as they approach the Police Department Headquarters on Burnside.

22:04:17 – 22:04:25 the Grievant is traveling between 82 and 85 mph following the Audi, still on Burnside.

22:04:26 the shift supervisor Sergeant Spragg asks the Grievant "Just a File1?" (File one is the code for a stolen vehicle). The Grievant did not respond for at least 10 seconds. State law requires a chase can only be initiated if there is a crime of violence or one is about to happen. While none was committed in this case, the Grievant continued to travel at speeds from 78 to 88 MPH.

he saw a bright light and heard an explosion and knew from experience this was "...consistent with something striking a utility pole."

When questioned during the Garrity Interview the Grievant did not confirm that he came to a complete stop at this intersection. The probationary officer could not recall a complete stop but did recall that the flash in the sky was pointed out by the Grievant shortly after turning onto Roberts Street.

Once on Roberts the Grievant accelerated up to 85 MPH as he passed the Rogo Distributors security cameras.

At 22:05:32 the GPS shows the Grievant on Roberts Street about 3/10 of a mile from the junction of Forbes/Roberts, approximately 9/10 of a mile from Hillside/Roberts, the accident scene.

At 22:05:40 Officer Nate Stebbins witnessed the crash involving the Audi and a second civilian vehicle close to the junction of Hillside and Roberts.

Also at 22:05:40 the GPS report places the Grievant's cruiser just past the junction of Roberts and Old Roberts more than 2000 feet from the crash.

At 22:05:54 Officer Stebbins makes his first radio transmission to headquarters that an accident has happened.

Following the accident, the Grievant completed the required sworn report of his involvement and in which he wrote,

"...while at the intersection of Forbes Street, Roberts Street, the night sky west of my location was illuminated by a bright light followed by a loud explosion."

22.00.00 Rank Structures PROCEDURES.

When ending a pursuit General Order 165.00.00 requires the officer to "...*inform Communications Personnel that the pursuit has been terminated, turn off their emergency lights and sirens, stop or alter their direction of travel by turning onto another roadway, and normal driving is resumed.*" The Grievant failed to stop or alter his direction by turning onto another roadway or resume normal driving, choosing instead to continue on Scotland. By deliberately refusing to follow the direct, lawful order of his superior, the Grievant was insubordinate.

EAST HARTFORD POLICE DEPARTMENT/ RULES & REGULATIONS CHAPTER VII, Civil, Criminal, Judicial and Investigative Actions §8.3, §8.5, §8.6 require the police officer to be truthful at all times, not "...*willfully misrepresent any matter, sign a false statement or report, commit perjury, or give false testimony before any court, grand jury or board, commission, official hearing or departmental hearing.*" The Grievant's statements in his report and application for search warrants state that he was stopped at the intersection of Forbes and Roberts. These were proven false during the IA.

The Union employed the 7 points of Just Cause for their analysis of the case reaching the following conclusions.

1. The Union states the Grievant was never warned of the consequences of his actions due in part to "...the minimal amount of effort into training the officers on the new Pursuit Policy." (Union Brief, pg. 21).
2. The Union agrees the rules are reasonable.
3. The Union challenges the scope of the investigation. "There was certainly an effort to prove the (Grievant) guilty, but not enough to consider innocence." (Union Brief, pg 22)
4. The Union contends the investigation was not conducted in a fair and objective manner. They contend that including the statements from the female occupants of the Audi without verification was not probative. No outside support was given to the assertion within the IA report that as a member of SWAT he had an enhanced ability to recall events. The tapes from Freightliner were also questioned based on them not having a time stamp.
5. The union postulates that no substantial evidence of the Grievant's guilt was obtained because the identical starting spot of the pursuit was not identified by IA or transmitted by the Chief in the termination letter.
6. The Union challenges that the rules were not applied fairly and without discrimination by asking the question, why were others not included in the discipline?
7. Was the degree of discipline reasonably related to the seriousness of the Grievant's offense and past record? The Union authoritatively answers no to this question citing his past performance as a police officer and suggesting that the "lies" he has been accused of "...are merely faulty recollections over matters of degree." (Union Brief, pg 35)

officers must read, understand, and follow as members of the Department with the unambiguous goal for the safe operation of the department for the public and the officers.

3. Was there sufficient investigation of the charges to determine if the Grievant was in violation of multiple General Orders? Here the Department took pains to thoroughly investigate each of the charges and establish, employing multiple sources, that their conclusions were correct. For example, in determining the location and speed of the Grievant's cruiser the Internal Affairs investigation employed each of the following;

- 1) interviews of the Grievant, the probational officer and Officer Rivera,
- 2) data generated by the GPS unit found in each EHPD cruiser, 3) security videotape from several businesses.

This is not to say improvements could be made, for the Panel found errors in interpretation concerning the location of the Grievant's cruiser at the time of the accident. It was clearly more than 2000 feet away at the time of the collision if we take the GPS location of the Grievant and then compare it to the time of impact, the Panel find the Grievant in the vicinity of Roberts/Old Roberts.

4. Was the investigation fair and objective? The Panel closely reviewed the references where they discussed what they saw as unfair and less than an objective investigation by the EHPD. For example, the Union contends the IA Report contained numerous unverified statements attributed to the female occupants of the fleeing Audi which may have influenced a reader, specifically the Chief. The Panel took that information and gave it the weight it deserved. Further, the Panel did not ascribe any real value to the opinion of Det. Coe when he stated that the Grievant as a member of SWAT should have the ability "to completely and accurately recount the events of the incident..." That may be a goal of SWAT Team members, but it is not authentically realistic. The Panel's

Consider the following, if the Grievant was correct that he was not chasing the Audi but simply engaging in a traffic stop, why was he consistently above the posted speed limit after the order to "break it off" was given, received, and acknowledged by the Grievant while on Scotland Road? If he was not continuing the pursuit when he lost sight of the Audi, why was he following the exact path of that vehicle and why was he far closer to the accident scene than he reported in his official police report and two search warrant applications? We know now from the GPS data that the Grievant did not see the flash until near the junction of Roberts and Old Roberts, where he was traveling at 80 MPH. The evidence supports the argument that he had not broken off the pursuit when directed, but simply turned off the lights and siren.

5. Equal Treatment: were the rules applied fairly and without discrimination?

The Grievant had a special responsibility as the police officer who was behind the suspect vehicle with lights and sirens. He was ordered to "break it off," implementing General Order 165.00.00 which requires the officer to "*...inform Communications Personnel that the pursuit has been terminated, turn off their emergency lights and sirens, stop or alter their direction of travel by turning onto another roadway, and normal driving is resumed.*" He chose not to comply. The officers referred to in the Union's Brief had not been involved in the same manner as the Grievant nor had any of them been ordered to "break it off." Yes, they were converging on an area they suspected the Audi would be found, as we believe the Grievant was, but they were not involved even tangentially with the initiation of the incident, nor did they offer less than truthful testimony when identifying their location and involvement. The Grievant's actions match with those attempting to "cover their tracks" to avoid responsibility for disobeying an order and violating several General Orders.

C). There were also egregious violations involving the EAST HARTFORD POLICE DEPARTMENT/RULES & REGULATIONS CHAPTER VII Civil, Criminal, Judicial and Investigative Actions §8.3 §8.5 §8.6

§8.3

“Officers shall be truthful at all times, whether under oath or not, when conducting any official police business.”

§8.5

“No officer shall willingly misrepresent any matter, sign any false statement or report, commit perjury, or give false testimony before any court, grand jury board, commission, official hearing or departmental hearing.”

§8.6

“No officer shall knowingly falsely report, document, or record or cause to be entered any inaccurate, false, or improper information on records, documents, or reports of the Department or any court or alter any record, document, or report except by supplemental record, document, or report. No officer shall remove or destroy or cause the removal or destruction of any report, document, or record without authorization.”

From when he was questioned at the scene of the accident by his superior, to his official Police Report on the accident, carrying over to the applications for two search warrants and during his Garrity interview, the Grievant was not consistent but evasive with the answer to the question about his location at the time of the accident. When examining his initial response and its subsequent evolution, then

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Mark E. Sullivan

Mark E. Sullivan, Public Member

Michael C. Culhane, Jr.

Michael C. Culhane, Permanent Management Member

Betty M. Kuehnel - dissenting

Betty M. Kuehnel, Permanent Labor Member