

JAMES R. COX
ARBITRATOR

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL

FMCS 140715-01547-A

and

THE SHAUN O'GRADY TERMINATION

MCLEAN COUNTY SHERIFF
COUNTY OF MCLEAN

DECISION AND AWARD

The Hearing in this matter was conducted by the Arbitrator January 27, 2015 at the McLean County Sheriff's Office in Bloomington, Illinois. Grievant Shaun O'Grady was represented by FOP Attorney James Daniels. Richard Stewart of the Hesse Martone Firm presented the McLean County case. After receipt of the Transcript, each Representative filed Post-Hearing Briefs in April 2015.

THE ISSUE

The issue before the Arbitrator is whether the County of McLean had cause to terminate Grievant O'Grady effective January 16, 2014 and, if not, what should be the remedy? There are no questions of arbitrability and this matter has been properly placed before me for final and binding determination.

THE FACTS

The Accident

Grievant Shaun O'Grady had been employed by the McLean County Sheriff's Department as a Deputy Sheriff almost ten years before his January 16, 2014 termination. His tenure as a Deputy had been marked by three incidents of serious misconduct for which he had been disciplined - a 2009 seven day Suspension for failure to properly collect evidence in connection with investigation of a crime¹; a 2010 Written Reprimand for making an appearance in Uniform on his Facebook Page and, in Summer 2011, a Ten Day Suspension for failure to properly search a suspect upon his arrest and collect evidence; failures which included firearms, ammunition and drug paraphernalia. Mindful of the provisions of Section 13.4, I have given prior consideration to these offenses only to the 2011 incident in my determination of the remedy for O'Grady's November 2013 misconduct which triggered his 2014 discharge. That termination had been primarily based upon duty related misconduct in connection with a November 26, 2013 traffic accident.

That fall afternoon, Officer O'Grady had been on patrol in his squad car, McLean County Unit M12, driving east on County Road 1900N, an asphalt paved two lane east/west County Road about 17 feet wide with which he was familiar. He had been about two hours into his shift about 3 p.m. when it occurred to him that he might have forgotten to sign out his Camera and Breathalyzer Unit² and take them with him that workday. According to his Sergeant, Officer May, Shaun told him that he could not remember having taken the equipment³. While it was never established whether or not he had indeed lacked that equipment when he went on duty, It was for that asserted reason

¹ Later reduced to 5 days and three weeks evaluation.

² Aka a PBT

³ He could have easily called to verify that he had the necessary equipment or, as he had in previous circumstances, returned to the Station if he had forgotten them.

that he claims to have stopped, parked and left the squad in order to make an effort to look around the Squad interior, initially in the passenger side of the front seat and floor, saying he normally kept such equipment in that location. He asserts that, because of his size and lack of flexibility, he had been unable to obtain to obtain a clear view of that area from his driver's position to confirm that he had brought the gear with him as required. Whatever his motive, in order to make a thorough check of his vehicle, he made some very unusual moves. Surprisingly he did not make any effort to use his radio or phone to contact any other Officer or advise the Department of his predicament or ask for instructions. Instead, he stopped his squad car on a rural road without notice, advice or warning in a manner which contributed to a property damage accident and significant property damage liability exposure to the County. He never provided evidence whether in fact he eventually found the missing equipment on this patrol or turned it in at the end of the day⁴. Aggravating his misconduct were several Statements he had made to Representatives of the Department during their Investigation of the accident which were false and contradictory. While the Union asserts an innocent mistake, the evidence indicates his actions had been considered and were intentional, constituting clear negligence which led to the accident. Here is how it happened.

O'Grady, whatever his motive, intentionally drove irrationally that day contrary to commonly accepted traffic rules and Department procedures. He then misrepresented his actions during a Post-Accident Investigation. Shaun O'Grady admitted that he had deviated from his patrol assignment when he pulled his squad toward the south side of the roadway to an area where there was no open or reasonable place to stop away from traffic. Without notice to the Department, he stopped and then inexplicably turned off all interior and exterior lights in his vehicle without warning any following vehicle despite the fact

⁴ He said he usually kept it on the passenger side floor.

that it was already dusk and getting darker. He made no claim that he had looked for an open spot to stop and, if he had, his search would be made difficult by looking in darkness without squad lights. When he stopped and turned off his lights, it was without warning other motorists or even marking the location with a cone or other indication of where he had shut down his vehicle in the roadway. Without explanation, he turned out the lights, left the squad and walked to the front of his vehicle, then pausing and standing about half way across. A dash camera video shows him holding his crotch area as he stood four seconds in front of his vehicle indicating, according to the conclusion of an Investigator, that he was preparing to urinate. His interior and exterior vehicle lights remained off.

Most critically, Shaun did not offer any reason for having turned off the squad lights or having stopped on the road at the location he chose but he left them turned off although he had parked his squad on a dark highway right of way. He does not assert there had been any emergency or duty related reason to stop – as the evidence showed - at that location on an active highway.

Shaun admitted stopping on the highway although he disputes how much of the squad remained on the highway right of way. He admits having pulled the car over about 16:57 that afternoon and explains, as he walked in front of his vehicle with the lights out, he had paused to adjust his belt as he walked to the passenger side of the car to get a view of the interior he had been unable to see clearly from the driver's seat. However, headlights from a pickup truck approaching from behind his dark, parked squad are seen reflecting off signage several yards in front of his stopped car. He had left his squad in a position partly blocking the east bound lane in which he had been driving. He had stopped although there was an access road to a farm yard ahead and, based upon his familiarity with the road, he would have known the reason for the two light reflective signs in position a few hundred feet ahead designed to give him warning of possible

roadway danger. The right front of the pickup struck the left rear tire of Shaun's darkened and now abandoned vehicle as it sat on the roadway in the dark. Just seconds later Grievant is shown walking back toward the driver of the pickup truck, a local resident, Richard Wills. Then, the first thing he does is to turn his lights back on⁵. It had taken more than four minutes after he had first left his squad, hand on crotch, before Shaun went back and turned on those lights. I recognize that there is no evidence as to whether he would have seen Wills headlights reflect off those signs, but based upon his familiarity with the road, he would know to check them as drove toward them. Most critically, never, at any time, did he provide any reason for having stopped and parked in an active traffic lane knowing there were warning lights ahead and then leaving his squad in the dark on the road.

Wills would have no notice that the dark squad was stopped ahead of him in his driving lane. As mentioned, it was only after his

⁵ At 4:56 P.M. (1656 military time on the video), the squad is seen to have been pulled over with headlights off. A minute later (1657 military time) the video shows Grievant walking southward in front of his squad - down the slight depression towards the ditch. As the on-coming vehicle approaches from the rear, Grievant can be seen looking back towards the west, in the direction of that vehicle. Contrary to his claim, he was not in the squad when the Pickup struck it. Contrary to the Grievant's assertion that he had been adjusting his duty belt, Wick concluded from the video that Grievant was zipping himself up after using the ditch to relieve himself.

The video records the collision at 4:57 and 29 ¼ seconds -- twenty-four seconds after the Grievant is seen walking in front of the vehicle and looking towards the oncoming lights behind his parked squad. Grievant says that, during those twenty-four seconds, he had been at the rear passenger side of the car, near the trunk, waiting for the vehicle to pass. None of the squad's lights were on before the impact, not even parking lights.

Grievant disputes that it was as dark at the time of the accident as the video seems to depict. He contends that there was enough ambient light that it had not been necessary to turn on any of the squad's lights earlier when he pulled over and had left the squad. The Farmer's Almanac (Union Exhibit 1) indicates that the sun did not set that day at about 4:31 P.M., twenty-five to twenty-six minutes before the impact. In response to a question from the Arbitrator, O'Grady admitted that his failure to have turned on lights when he stopped was an error. During the twenty-four seconds which elapsed between seeing the oncoming headlights and the impact, Grievant had not made any attempt to turn on the squad's lights or do anything else to make the squad more visible or alert the oncoming driver. As confirmed by on-board computer messaging software, the impact which did not push the squad very far -- Wick estimated that the police car had only moved a foot or two upon impact. While it certainly does not appear to have been forceful, it did break the right front tire of the pickup truck.

At 5:01 and 5 seconds (1701 on the video), the emergency light bar on the top of the squad was manually activated. This is indicated by the legend "LTS" on the screen and brighter lighting in the video. Had the crash sensor feature of the video system not activated automatically, there would have been no video record of the accident or its immediate aftermath because the squad's video system was not activated by the Grievant until about four minutes after the crash.

squad had been crashed causing significant reported damage to the pickup, that Shaun returned to the squad and turned the lights back on. Only then was his first call for assistance made directing Sergeant May to the scene at 5:26. May obtained pictures of both vehicles when, after a delay, Grievant was able to describe where on the road he had parked and left his vehicle.

Before reaching the point where he would park on the active two lane road, as Shaun was driving along that road easterly toward the bottom of a small rise, although he did not report any (westbound) traffic behind, Shaun would have been alert to trailing traffic since headlights behind him would be reflecting off not one but two signs east and in front of him indicating that drivers should approach with caution. Yet he did not take any precautions but created a dangerous situation by electing to stop in the dark roadway. He did not disclose any credible reason for stopping in the roadway and turning out the lights. Testimony indicates that he had started to pull over toward the south edge of the county road a few hundred feet west of the reflective signs and, while his squad was then still partially on the road, stopped in the south portion of the eastbound lane. There appears to be brush and bushes along the farm fields to the south of the road bordered by a grassy but shallow depression.

It was gross negligence for Shaun not to have illuminated the squad lights to signal Wills or any vehicle behind him that he was going to slow and/or stop. Instead, he just pulled over toward the south portion of the road leaving, as far as the evidence shows, no clue as to whether he intended to stop his squad or where the stop would be made. He stopped abruptly. There was no place along the road where such a stop would be expected. The reflective lights were positioned to show any approaching vehicles.

Despite it being dusk, not only did he stop in the east bound roadway but Shaun turned off his lights without first pulling completely

off the east bound lane in which he was driving. The video shows cropland, trees and brush on the right side of the road to the south. Between the paved road and farmland, a clear white line demarcated a shallow depression described as more of a slope than a drop-off from the roadway. There was certainly no ditch shown. The white line would clearly indicate to Shaun the edge of the road on which he was driving and that the area in which he stopped was to the south of the white line - that his squad was not completely off the road. If he had heeded that clear line, he would know he was not completely off the road. It turned out, by the best evidence, Shaun had driven and then stopped with only one quarter of the squad off and south of the road. The squad was substantially all on the road and a traffic hazard in the dark.

O'Grady latter confirmed that photos marked as Union Exhibit 1 did accurately depict the area where he had pulled over toward the edge of the road but not completely off the roadway upon which he proceeded to stop his squad - in fact, he had stopped the squad just partially off the roadway, with most of that vehicle still on the roadway. Shaun had made his stop concerned that, if he were to pull the squad too far south off the road pavement, he'd drive into a very shallow depression - that would certainly not measure up to a ditch as far as the pictures show - but which might make it hard for him to get back on the road. He admitted that he had been uncertain whether he'd might get stuck and be unable to get his squad back on the road if he went too far off the pavement. - a good reason for driving with headlights. The evidence, however, does not show that such fears were well founded. The evidence is that it was an improper place to park.

If any event if Shaun had any such concerns, as mentioned, remarkably, he still did not activate the squad's exterior or interior lights -deciding it was not necessary since he did not expect to be there very long. Still, when he stopped his car on the highway north of

the white line he was aware that he would be parking his car in the dark and that, at least part of that vehicle would still be on the roadway and constitute a serious hazard to traffic following. Nevertheless, he not only elected to park on the highway and turn out the squad lights which, because of the dark color of that vehicle and the large percentage of the squad that he left actually on the road, made Wills collision with it inevitable.

As mentioned, after he stopped in the road and turned out the lights, Shaun got out of the squad and walked in the dark from the driver's side front door around the front of his vehicle toward the passenger side of the car, stopping for four seconds halfway before a trailing car - his neighbor's a pickup truck - approaching from the West with front lights illuminated, struck his left rear.⁶ Shaun claimed that had been only after he had left the dark car in the roadway and when he started to proceed to the passenger side he had been adjusting his duty belt, that he had first looked back and saw an east bound vehicle's headlights (those of the Wills' Pick up behind him) approaching from the West. Shaun estimated that he had first noticed that vehicle when it had been about three-tenths of a mile west of where he had already parked and left his dark squad - not quite a half mile - and that the pickup truck he later identified as being driven by Mr. Wills, hit its brakes before striking the left rear of his squad as he was by then over standing along the passenger side of the squad. The Video does not show an Officer adjusting his belt, but holding his crotch.

O'Grady was uninjured but says that he still didn't think to go back and turn on the squad's roof lights until four minutes after the impact. Fortunately no other cars came along. In the meantime, he did radio his Sergeant and then called his dad and fiancé. He could not recall if he had made those calls before or after having turned his Squad car lights back on.

⁶ It was at that point that the Video shows him reaching toward his belt or crouch for about four seconds.

There is no question of Shaun's reckless misconduct on that dark road - that he had without good reason slowed and parked his Squad without warning while still on the east Bound Lane and that, his squad where he had stopped it in the dark, did block roadway access to Wills as he was driving along the east bound lane.

How far off the east bound lane had Grievant stopped and darkened his vehicle? He admitted to Officers who responded to the accident call that he had been parked in the dark partly on the road and partly off. However - despite the clear white road edge line, he first claimed that he had parked the squad only about one fourth on the road and three quarters off. He repeated that estimate thereafter to the Sherriff's Insurance Coordinator. However, further investigation established that the squad was three quarters on and only a quarter off the road. Shaun O'Grady's own first reports of where he had stopped were shown to be false despite the time and opportunity he had to assess the position. When Sergeant May had come on the scene, he recorded that O'Grady had told him that he had been parked three-quarters of the way off the road when his darken patrol car had been struck. For parking on the road with his lights off, he was given a letter of Caution.⁷ What he had told May was knowingly false. He had twenty minutes to study the position of the car on the road before May had arrived and further investigation discussed below established that the Squad had been left in the dark without lights with three quarters still on the roadway. He was afraid of getting too far off for fear of getting stuck. The problem was he had selected the wrong place to get off the road and consequently did not safely get off the road. Why he selected that spot to leave the east bound lane is a puzzle for which Shaun has no explanation. There was no urgency to stop there and leave the car on the east bound lane in the dark. He could have driven further or pulled into a side road or farmer's barnyard.

⁷ I note that O'Grady portrays his squad as having been hit by a truck before it was struck by the Pickup without identifying any damage from that first impact.

May took pictures of both vehicles. O'Grady had persisted in his misrepresentation having made an initial incorrect report of how far off the east bound lane he had stopped; the Diagram he drew in a written memo to Lieutenant Landers and filed later that shift⁸ depicted his vehicle as having parked three-quarters off the road.⁹ He had intentionally distorted the report in his favor.

While Grievant recites that he had an unexplained habit of turning off his lights whenever he stopped his squad, that night he told Sergeant May that he had not yet turned on his lights since it was not yet dark. He also testified that he turned off the lights when he parked and left the squad. When May asked him if he had moved the Squad once stopped, Shaun told him that he had not. He and Shaun discussed the fact that the photo's showed the squad was in a different position than he had first asserted- significantly more of it was on the road. The car, according to May, was not nearly as far off the road as Shaun claimed. The video discredited Shaun's first misrepresentation.

Video from the in car camera shows that Shaun had in fact parked and left the squad about three quarters on the road - dramatically and distinctly different from his earlier testimony and statements. He had been steadfast in his story of how far off the road he had been for a couple of weeks. Only when asked to compare the discrepancy between the film once it were shown him and his earlier statements, Shaun finally admitted having inaccurately reported the position of the squad and that his first representation of how far off the road he had had been when he stopped and parked with the lights out was wrong and a misrepresentation of a very significant fact.

It was thereafter that the Sheriff discharged Shaun on a number of Charges including this most serious falsification. There was the

⁸ Employer Exhibit 1, page 28

⁹ Employer Exhibit 1, pp. 24-25

grossly negligent driving and stopping almost completely within the roadway in the darkened squad without notice, leaving the squad darkened and relationship of this misconduct to a serious property damage accident for which the county would be responsible and then the intentional misrepresentation of the circumstances.

ANALYSIS

The discipline was properly grieved and brought to Arbitration. One of the core issues is whether O'Grady had repeatedly intentionally misrepresented the facts of how far off the road he had parked in the dark. He asserts that he had only been innocently mistaken in his judgment in how far off the road he had driven and parked. He finally admitted that he stopped and left three quarters of his darkened squad on the dark road.

There is no question that such misconduct was grievous. In assessing Grievant' s credibility, there were several critical factors, some more critical than others. The roadway had been marked with a clear white line and Grievant had considerable time at the scene to assess the position of where he had stopped his squad. A review of the circumstances reveals his intentional misrepresentation in his first and repeated report. There were other misrepresentations.

Sergeant Jody May, Grievant' s Supervisor the day of the accident, said that O'Grady had called and told him that his squad was pulled over to the side of the road as it had been struck by a truck - no mention of his role in having parked in the roadway in the dark. The crash did not move the squad unto the east bound lane where it was struck by the Pickup. May had reached the scene of the accident in about fifteen or twenty minutes, approaching from the same direction O'Grady and the Pickup had come, observing that it had been "*fairly dark*" and he initially had not seen the squad where he thought it

would be. To reiterate, his arrival would have been only about 20 minutes after the pickup had reportedly struck the parked squad. To locate it, May had to call O'Grady for further details and, only then, was able to identify the location of the accident on a straight section of road only about one-quarter of a mile after a slight cresting of the road. By the time May had arrived, O'Grady had turned on his lights. Based upon the entire investigation, I find his first report to have been intentionally inaccurately composed.

While as noted, O'Grady had initially told Sergeant May he had stopped, parked and darkened his squad three-quarters off the road without giving any reason for such unusual misconduct, May had his doubts and testified that he didn't think there was room enough to pull the squad off anywhere off that road safely at such a spot, since there was no shoulder, just "a little bit of gravel" at the south edge of the pavement. While in his Written Report to Lt. Landers, Shaun stuck to his story that the car had been 3/4 off the road when struck by the pickup, he went further and had told Trooper Rossiter that his car had been parked completely off the road. May concluded, considering how narrow/thin the "shoulder" was, the squad would have ended up well in the depression if it had actually been three-quarters off the road or completely off the road as O'Grady also claimed. May related the same scenario to the Lieutenant and as well as telling O'Grady, who remained at the scene, that because he'd left his squad partly in the roadway, he had been some degree at fault - that he could have chosen a better spot to pull over. At that time the determination of how far he had left the squad in the east bound lane had not been clearly determined as it would later be.

May took the photographs for the McLean County Sheriff and, when the Illinois State Troopers later arrived, they did the accident investigation. While at the scene, Mr. Wills - driver of the pickup - spoke with Sergeant May who told him he would take photographs of both vehicles but that Shaun claimed he had been 3/4 quarters off the

south side of the road, and had not turned on his lights on yet for the evening. He did not then mention having turned them off as he testified. Shaun's claim of having been ¾ south of the white line - ¾ off the roadway was yet to be discredited by the pictures and measurements by others.

May's photo's revealed the Squad to be parked upon a much high percentage of the road - ¾ on the road - than Grievant had represented and noted that he also conceded not having moved the squad after having stopped. Based upon his investigation and the pictures, Mays concluded that squad was not nearly as far off the road as Grievant had first and continually represented.

The Two State Troopers had arrived about an hour after the accident. It was not clear when Grievant had first admitted having turned off the lights and left the squad in the dark when he went around to the passenger side. However, when Trooper Rossiter closely examined the position of the squad, he observed that it was *"sitting 1.5 to 3 tire lengths into the lane of traffic with both of Shaun's tires in the east bound traffic lane"*. In summary, that examination threw cold water on Grievant's intentional misrepresentation that he had parked his Squad ¾ off to the side of the road or completely off the road. Shaun does not dispute Rossiter's observation that he had had walked to the squad and saw it was 1.5 to 2 tires lengths into the line of traffic with both of the squad's front tires within the east bound lane of traffic.

Still other questions of Shaun's credibility arose - Rossiter said Grievant told him that he had been getting something out of the back seat and *"this truck came by and hit me"*. Grievant had made no mention of taking anything out of the back seat during his testimony. Shaun also provided false information to Sergeant May that *"I was getting something out of the back seat, a piece of equipment and his truck came by and hit me:"*. Such a claim was clearly inaccurate since

Shaun never entered the back seat according to his own testimony. He had misrepresented the facts to State Trooper Rossiter that he had taken equipment from the back seat. He did not claim to have been in the squad was struck.

Trooper Rossiter observed that Grievant' s responses to his questions had been "*a little strange*", - saying that he had pulled to the side of the road to see if he could, from the back seat, "grab a piece of equipment", a reason different than he had given for being unable to reach the equipment from the front passenger seat. He had contradictorily related that he had been looking in the front seat and "*getting something out of the back of his car*. Although he said he was removing a piece of equipment from the back seat, It did not make sense that he would pull over on a dark road and turn off the squad lights in an effort to look for his PPT and camera if they were on the passenger floorboard where he had first testified having looked for them because that was where he kept them.

There were still other falsifications. When Rossiter asked how far off the road he had pulled over, he said O'Grady told him he had been completely off the road and that was why he first wrote Wills, not Shaun, a citation for failure to reduce speed and avoid an accident. Other apparent falsifications during the investigation included telling Rossiter where he had been at the time of the crash. Then, as we have seen, Grievant drew a picture of his car after the accident showing it to be 75% to 80% off the highway inconsistent with his own claim that he had turned his lights off because he "*was going to be on the side of the road anyhow*". Then during his accident interview of December 13th, this Grievant persisted with that story although equivocating and telling investigators including Sergeant May that he had been "*3/4 off the roadway*" but that, since "*the tires were still on the roadway, "some of my car was still on the roadway"*. Given an express opportunity to correct his story, Grievant did not do so. The

Video from his McLean County squad shows that he had stopped his squad with most of it still in the east bound lane.

May's photos conflict with Grievant's story. While Grievant did have an opportunity to correct the story he gave May, the Squad was never portrayed to have been as far off the road as Grievant claimed. In fact, to reiterate, Photos did not show that police car anywhere near three quarters off the road where Grievant represented he had parked. Grievant's drawings and description of the Accident were clearly inconsistent with statements taken from witnesses as well as his own drawings and story of the November 26th incident.

In support of the discharge, McLean County points to the discipline reviewed above as well as misstatements of Grievant following the accident, the evidence which clearly established that he had intentionally falsified the location of his squad at the time of the accident as well as where he had been looking for his equipment in the squad that afternoon¹⁰ and the extent of the distance he had pulled over off the Country Road. In December 2013, during another interview during which Wills, Trooper Rossier, Trainee Eebar and Sargent May questioned him, Shaun told investigators once more that his car was ¾ off the roadway. Such repetition over a relatively long time makes this misrepresentation clearly intentional and more grievous. As mentioned, Rossiter observed there were at least 1.5 tire lengths in the lane of traffic with both driver tires in that lane. To reiterate, while he informed Lieutenant Landers and Sergeant May that his car had been parked ¾ off the road, he had gone further and told the State Police that his car had been *completely off the road.*¹¹

¹⁰ Then there was the conflict between telling the State Trooper that he had been inside getting something out of his car, although he had, before the accident, told May that he had pulled over to see if had his P.B.T and camera with him. As the County points out, at one point, Shaun says he had been looking on the front passenger floor board and then that he had been looking in the back seat. Based upon his 4 second stop after walking to the front of his car and holding his belt consistent with the urinating position, it is reasonable that Grievant had been in fact stopping to urinate.

¹¹ Lieutenant Brent Wick of the McLean County Sherriff's Office had been Department Division Commander for Support Services for the previous nine years, a role in which he was responsible for equipment and technology

Internal Investigation

December 9th, five days after providing the accident video to Lieutenant Landers, Wick was notified that McLean County Sheriff Mike Emery had ordered an internal investigation of the incident. He had reviewed the video and was concerned that it was inconsistent with Grievant's account of the incident. Grievant was placed on Paid Administrative Leave by the Sheriff.¹² After Wick and Kline reviewed the video; they interviewed the driver of the pickup, Mr. Wills, as well as the Grievant, Sergeant May, and five others. Wick and Kline also reviewed various other documents before providing their findings to the Sheriff.¹³

The Sheriff's Decision to Terminate

used by the Department, such as the in-car camera systems. About a week after the accident, December 4, 2013, Lieutenant Landers, whose duties as Operations Commander included responsibility for the fleet of squad cars, asked Wick whether a video of the November 26th accident existed. Wick found one and burned a DVD copy of the video for Landers which made it possible to view the accident as it unfolded. As the video was being shown at Hearing, Wick testified that the camera is mounted on the windshield just to the right of the squad's rearview mirror and provides a 45 degree angle view from the lens. Wick recounted the video begins showing the squad facing east on the right side of the road shortly before the accident. As mentioned above, reflection of lights from an on-coming west bound vehicle are captured in road signs which face the squad further down the road. Grievant admitted that these signs would have warned him that caution should be taken on this stretch of road but had difficulty estimating how far these signs were beyond where he'd pulled over and stopped and turned out the lights.

The right or south edge of the road where the squad pulled over is shown and, even with limited illumination in the area, reveals a bright white line painted at the south edge of the road paralleling the roadway to the south. The depression is not a ditch or deep but more of a slope, said Wick.

¹² Wick and Lieutenant Kline were directed to lead an Internal Affairs investigation. As Wick explained, it is customary that one or two Division Commanders be assigned to such investigations as the Sheriff sees fit. Wick himself had been involved in about half a dozen internal affairs investigations prior to this one.

¹³ There is no contention that any of the evidence gathered during the investigation by Wick and Kline and relied upon by the Sheriff's Department had been gathered improperly. Their Report of Findings concluded that the Grievant had violated six different sections of the Department's Rules of Conduct:

- 2801.4-1 (R) - willfully departing from the truth;
- 2801.4-1 (Y) - conduct unbecoming a member of the department;
- 2801.4-1 (A) - failure to cooperate with all agencies;
- 2801.4-1 (G) - failure to maintain a high level of moral conduct;
- 2801.4-1 (D) - obstruction of free movement of traffic;
- 2801.4-1 (H) - observation of all traffic regulations concerning parking.

Sherriff Emery concluded that video evidence of the November 26, 2013 accident conflicted with accounts O'Grady had provided. Based on O'Grady's version, the Illinois State Police had issued Mr. Wills, the Driver of the Pickup Truck, a citation for failure to reduce speed or avoid an accident, making him responsible for the accident and the damage. After reviewing the video, the Sheriff s concluded the pickup driver was being unjustly treated based on the information Grievant had provided and determined that Grievant had been willfully untruthful in his accounts of how the accident happened. The Sheriff concluded that a driver coming over the rise on County Road 1900N would not necessarily have seen a squad car pulled over to the side of the road at that hour since Department's squad cars are brown and, with its lights off¹⁴, in darkness it would be difficult for a motorist to distinguish a squad car on the road way ahead as where Shaun had parked. In any event, and most critically, the evidence established that a substantial part of the darken Squad had been parked, without justification, well within the east bound lane along which the pickup had been proceeding.

The Arbitrator concludes that, in the course of his Patrol Duties November 26, 2013, Officer O'Grady had engaged in reckless and negligent operation of his patrol car which contributed to a serious property damage accident by a combination of factors, including (1) Intentionally turning off all lights and illumination on his patrol car in a rural area without cause or making any attempt to notify any other Member of the Department or Person although it was dusk and becoming darker; (2) Parking a high percentage of that Vehicle in that darkened condition on an active County Highway, (3) Leaving the

¹⁴ Grievant, even after seeing the Video, claimed he had not had his lights on while he stopped, that it had been his habit to turn off his light when he pulled his car over - that he could still see. He said that he did not have his lights on when he pulled his car over to park that afternoon because every time he would pull his car over, he would turn his lights off since he did not need his lights to see. Yet, he also said that he had been using headlights while driving before parking although he did not need headlights to see when driving his car that day. He admitted that, without lights, he could not explain how he could be sure he was still on the road although he had told Trooper Rossiter that he had been completely off the Road.

vehicle without either permission or notice to any Authorized Person or Member of the Department without making any attempt to warn other motorists or pedestrians of the hazard despite the presence of reflecting Warning Signs on the roadway ahead; and thereafter (4) intentionally making false and inaccurate reports of the circumstances to investigating Officers.

The Grievance is denied. There was good cause for the termination of Patrol Officer Shaun O'Grady.


James R. Cox
Arbitrator

Issued this 27th day of April 2015