

Supplemental Appeal Summary
2014-C-0347
Appeal Hearing – July 6, 2016

Involved persons

Appellant
Witness 1
Sergeant A
Commander B
Sergeant E
Captain F

Allegations

1. On November 29, 2014, Commander B inappropriately authorized the arrest of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Southwest Main. (CONDUCT) (Directive 830.00—Arrest without Warrant)
2. On November 29, 2014, Sergeant A inappropriately authorized the arrest of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and SW Main. (CONDUCT) (Directive 830.00—Arrest without Warrant)
3. On November 29, 2014, Commander B inappropriately authorized the detention of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Main. (CONDUCT) (Directive 315.00—Laws, Rules, and Orders)
4. On November 29, 2014, Sergeant A inappropriately authorized the detention of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Main. (CONDUCT) (Directive 315.00—Laws, Rules, and Orders)

Incident/Complaint Summary

On November 29th, 2014, a demonstration occurred in downtown Portland protesting the Ferguson, Missouri, grand jury decision not to indict Officer Darren Wilson for the death of Michael Brown. Following the Missouri grand jury decision on November 24, there had been nightly protests commemorating Mr. Brown's death and protesting a variety of issues relating to perceived excessive use of force by police officers against person of color. Protesters gathered and traveled through several Downtown Portland locations, including SW 3rd Avenue between Main and Madison, eventually to SW 6th and Morrison and SW 2nd and Main Street. At SW 2nd and Main Street, the PPB Sound Truck informed protestors that they were all under arrest. Some protestors were taken into custody and the remaining people were dispersed from the location.

Summary of Appellant, Officer and Witness Interviews

Appellant

During her second interview with IPR the appellant recalled being present at the intersection of SW 2nd Avenue and Main Street for a demonstration.

The Appellant remembered participating in the “die in” which was a commemoration of persons who have died in police custody nationwide.

The appellant stated that the police came from every direction, told everybody that they were under arrest, and backed them in a corner and refused to let anybody go until they felt like it pretty much.” The appellant further indicated: She had been in the intersection for about five minutes before police arrived on-scene. She heard a sound truck tell her that she was under arrest, Appellant stated that those detained were held in the box-in formation for “30-45 minutes, maybe” before the protestors were released, “one or two at a time told to walk different directions.”

Witness 1

Witness 1 is a professor who teaches criminal procedure at a local law school. Witness 1 provided an explanation of the difference between an arrest and a detention (also called a stop). Witness 1 indicated, In Oregon, probable cause can be articulated as the preponderance of the evidence, or the idea “more likely than not that a crime has occurred.” By contrast, the standard an officer must use to justify a detention or a stop is reasonable suspicion. Reasonable suspicion is a lower standard than probable cause.

Witness 1 stated, “There’s a line of cases both under federal law and Oregon law that says a seizure is accomplished obviously when you are forcibly stopped from leaving.” Witness 1 stated whether the sound truck said, “You are all under arrest” or, “Hold on, you’re not free to go,” if the protestors complied, “that would be deemed a seizure under Oregon and federal law.” Witness 1 “Again, seizure might not be an arrest. It might simply be a stop.” Witness 1 stated seizure is “anything where you would prefer to be doing something else, but you are now forced to interact with the police.”

Asked how these issues relate to the detention of a large group, Witness 1 stated, “I think we would analyze it the same way to ask, ‘Do you have reasonable suspicion to be stopping this group of people?’ And so that’s, of course, going to be very fact and context specific.”

Sergeant A

Sergeant A was the assigned Operations Sergeant for the Incident Command System (ICS), working under Commander B. Sgt. A described ICS, stating, “It gives everybody a job and kind of a path, so you weren’t doing somebody else’s job.” As part of his

duties on 11/29/14 he provided direction for the sergeants to move their squads. He differentiated his role from Commander B who took a broader perspective and took into consideration staffing levels, officer received breaks, and that the precinct had adequate staffing levels.

Sgt. A described the box-in technique as four skirmish lines being used to box-in individuals. Sgt. A stated that skirmish lines had been used to box people in, but had not been used to place individuals into custody.

Sgt. A stated that a sound truck equipped with a Long Range Acoustical Device (LRAD) was utilized on 11/29/14. The LRAD allowed sound be directed in a particular area and at a high volume. Sgt. A indicated that the sound truck provided a warning prior to box-in occurring.

Sgt. A indicated: He discussed the possibility of using the box-in maneuver with Commander B. After she authorized the use of the box-in maneuver, he directed officers to carry it out.

Sgt. A felt that the box-in allowed the Police Bureau to take control of the situation without using force.

Describing how police determined which protestors to arrest, Sgt. A stated:

The order was given to the sergeants to go with their officers and identify those individuals who they had probable cause for, to arrest those individuals for whatever probable cause they had for those individuals. It was very specific and put on the officers and the sergeants to arrest those individuals to be processed.

Describing how police determined they had probable cause to arrest specific protestors, Sgt. A stated:

Probable cause came from the officers or the sergeants that saw them doing something during that period of time that night and they arrested them for that more likely than not that they had violated probably dis con [Disorderly Conduct] or whatever it might have been.

Sgt. E

Sgt. E stated that he was a squad leader within RRT on 11/29/14. Sgt. E was not a part of the command module and did not take part in any decision making. Prior to the box – in Sgt. E’s squad was staged on the south side of Central Precinct. Sgt. E noted that while the squad waited he noted the LRAD equipped sound truck broadcasting repeated warnings. Sgt. E described the LRAD as being quite loud. Sgt. E estimated a “quarter to half of the protestors left the area after the warnings were broadcast.

Eventually his squad was moved to the west side of the Central Precinct. After receiving the order from Sgt. A, his squad and the RRT squads approached the intersection together.

Sgt. E stated:

We were basically told that if your officers can articulate someone who had been involved in the protest throughout the night and you could specifically articulate that they had been given directions to leave, and the officer was sure that to select those people out of the crowd for arrest. So we were looking for people that had been part of the – part of the illegal portions of the protest throughout the night, and were also identified as being in this crowd at the time that the LRAD commands had been given, you know we didn't want to get somebody who had just been caught up in the protest right this time.

Captain F

Capt. F has been a member of RRT since 2001. He stated that RRT has previously trained on the box-in technique. Previously, RRT used the box-in technique operationally to hold ground. During a previous protest, RRT also used the box-in technique to remove police safely from a larger group of protesters. RRT had not previously used the box-in technique to make arrests.

Commander B

Commander B stated that members of command module were on the street, moving with protestors. Commander B stated that many of the protestors were “disobeying the law. Commander B authorized the use of the box-in:

I authorized that everyone who was in the street needs to be boxed in and detained, and the announcement is being made that everyone is under arrest and please remain calm. Part of the purpose of a detention is to figure out who is who.

Regarding the issue of bystanders as well as suspects being detained, Commander B stated:

That's going to be the very next step that happens quickly thereafter to figure out who is who and if there is someone who shouldn't be there. If we can cull that out then, we would immediately take care of that, but if you just have an open sieve then you don't have any capacity to figure out who is who, and that's why law enforcement officers have the legal ability to detain people.

Commander B stated that the warning provided by the sound truck provided enough warning to give protestors adequate warning to clear the area.

Commander B indicated individual officers and sergeants determined which protestors to arrest following the box-in. Commander B stated, "I want to have people who saw the people in the street determining, 'You're going to be – you are arrested.'"

When Commander B was presented with the new allegations, Commander B stated, "I think I acted appropriately and certainly followed the law." Commander B stated, "I believe we had the legal authority to detain and arrest the people who we detained and arrested."

Findings and Definition of Findings

Finding: A determination of whether an allegation against a member is unfounded, exonerated, not sustained or sustained. These findings have the following meanings:

Unfounded: The allegation was false or devoid of fact or there was not a credible basis for a possible violation of policy or procedure.

Exonerated: The act occurred, but was lawful and within policy.

Not Sustained: The evidence was insufficient to prove a violation of policy or procedure.

Sustained: The evidence was sufficient to prove a violation of policy or procedure.

Any of these findings could be accompanied by a debriefing, which would involve the superiors of an involved officer talking about the incident and providing instruction as to how the situation might have been handled better.

| No. | Allegation summary | Category | Finding |
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| 1 | On November 29, 2014, Commander B inappropriately authorized the arrest of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Southwest Main | CONDUCT | Exonerate |
| 2 | On November 29, 2014, Sergeant A inappropriately authorized the arrest of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and SW Main. | CONDUCT | Exonerate |
| 3. | On November 29, 2014, Commander B inappropriately authorized the detention of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Main. | CONDUCT | Exonerate |
| 4. | On November 29, 2014, Sergeant A inappropriately authorized the detention of individuals, including Appellant, located at or near the intersection of Southwest 2nd Avenue and Main. | CONDUCT | Exonerate |

Options Available to the CRC

At the appeal, the CRC has the following options available to it:

1. The CRC can affirm the finding, meaning that it believes that a reasonable person can make the same decision based on the available information, whether or not the committee agrees with the decision; or
2. It can challenge the finding; meaning that the committee believes a reasonable person would have reached a different finding based on the available information. The CRC can recommend a debriefing as part of any challenged finding; or
3. It can refer the case to the Independent Police Review or Internal Affairs for further investigation.