

Case Summary for Appeal Hearing – October 5, 2016

2015-C-0157/2016-X-0002

INVESTIGATION OVERVIEW

Involved persons

Appellant
Officer A
Officer B
Witness Officer C
Witness Officer D
Witness Officer E
Citizen F

Allegations

1. Officer A used inappropriate control techniques on Appellant. (CONTROL) (Directive 315.30 – Satisfactory Performance)
2. Officer B used inappropriate control techniques on Appellant. (CONTROL) (Directive 315.30 – Satisfactory Performance)
3. Officer B cursed at Appellant. (COURTESY) (Directive 310.40 – Courtesy)

Incident/Complaint Summary:

On June 6, 2015, Officer A and Officer B were on a routine patrol when they observed a vehicle traveling eastbound on N. Fessenden Street and N. Geneva Avenue at approximately 1:26 a.m. Officer A ran a computer check on the license plate of the vehicle. Officer A learned that a subject was recently arrested for DUII operating that vehicle and the subject currently had a suspended driver's license. Officers then observed the vehicle to make a right turn without signaling before pulling to the curb. Officers initiated a stop on the vehicle as the occupants were exiting the vehicle.

Officer A contacted the driver of the vehicle, later identified to be Appellant, and asked for identification. Appellant informed Officer A that he was parked, did not have to show identification and did not consent to the stop. Officers told Appellant he was being stopped for failing to signal a turn prior to pulling to the curb. Appellant informed the officers that he did signal the turn.

After continued discussion, Officers decided to take Appellant into custody for failure to present a license. Officer A and Officer B took control of Appellant's arms and walked him to their patrol vehicle, while he resisted efforts to be handcuffed. After a call for additional back up, the officers were able to handcuff Appellant with the assistance of Witness Officer C. When Appellant refused to get into the patrol vehicle and tried to pull away from his grip, Officer B placed a wrist lock on Appellant.

Witness F, Appellant's father, arrived on scene and provided Appellant's identification information. Officers then ran a record check based on the information provided by Witness F which revealed Appellant had a valid driver's license and no warrants on file. Officers decided to release Appellant without any citation or charge.

Appellant complained that Officer B twisted his arm far beyond its boundaries and warned Officer B that his arm was not in full health. Appellant also complained that Officer B told him that *“he didn’t give fuck”* and later said *“fuck your arm”*.

Summary of Appellant, Officer and Witness Interviews conducted by Internal Affairs (IA)

Summary of Appellant Interview

In the early morning hours of June 6, 2015, Appellant stated that he had left his parents’ house and was driving his cousin to the area of N. Woolsey and N. Trenton Street. Prior to the interaction with the officers, Appellant states that he approached a four-way stop and saw a car behind him coming fast, but it disappeared as Appellant made a right turn. He then saw a police vehicle going past him in the opposite direction. Appellant stated that while at another stop sign, he saw the same car. As Appellant reached his final destination, he pulled over and the car came up. Appellant believed he was about to get killed. Appellant stated that when he stood up out of his car another car’s lights were so bright that he could not see the police officers until they got in front of the lights.

Appellant stated that one of the officer’s asked him if he was Mario. Appellant said no and that his name was Warren. When asked for his identification, Appellant replied *“why”* and then the other officer grabbed his arm. Appellant described that he was then pulled to the car and was told he was under arrest. Appellant stated that he was told that he did not use a turn signal.

Appellant stated in his interview that he did have identification at the time but did not show it to them because he was *“freaked out”* and did not know who the men were that approached him. When it was confirmed that the men who approached him were in uniform, Appellant stated that he understood the men were in uniform but that their uniform was not blue. He stated the uniforms he saw were dark black, bullet proof vests and that the officers appeared to be SWAT. Appellant stated that if he knew for sure at the time that the men were officers he would have shown them his identification when asked. He stated that he did not believe the men were police officers due to the way they had followed him and approached him.

When asked to describe how the officers grabbed him, Appellant stated that the bald officer grabbed his left arm and the brown-haired officer grabbed his right arm. Appellant stated that he informed the officers that they were hurting his arm and that the bald officer stated, *“I don’t give a fuck about your arm”*. Appellant stated that he kept telling the officers how they were hurting his arm as they handcuffed him.

Appellant stated he began arguing with the officers and was told by them that he was going to jail now for another reason. Appellant further stated that he did not get in the police car because he was not sure if they were real cops. Appellant stated that he decided to make a scene and wanted to get loud to wake up the neighborhood.

When asked if the car that the officers were driving looked like police cars, Appellant confirmed that it did but could not remember if it said Portland Police on the side of the car. Appellant further described that he believed the car had overhead lights but they were not activated.

Appellant stated that he told the officers that if they were real cops, then more officers would be showing up since he knew how the police work. Appellant became scared when no other officers showed up for a while, which led him to make a scene by yelling for help and that the officers were hurting him.

Appellant described that an officer opened the car door from the other side of the police car, then began to pull Appellant's handcuffs and arms into the vehicle. Appellant continuously informed the officer "*you are hurting my arm*". During the Internal Affairs interview, Appellant stated that he had previously had surgery on his left arm. Appellant stated that the bald officer twisted his arm up and that he told the officer that his arm had been "*messed up*" before he was even in handcuffs. Appellant stated that he still refused to get into the car because he was too scared.

Appellant stated that his father arrived at the scene and talked with the officers. Appellant was then told that the officers were going to let him go since his father was a "*good guy*". Appellant stated that he did not understand why he would be released because of his father's conversation with the officers, and felt that if he did something wrong he should have been taken to jail.

Officer A Interview

Officer A stated that at the time of the incident he worked in uniform and that he was a passenger of a marked patrol car driven by partner, Officer B. He confirmed that as they drove during routine patrol they observed Appellant's vehicle make a right turn without signaling 100 feet prior to making a turn in the area of N. Fessenden and N. Fortune Avenue. Officer A stated that prior to stopping the vehicle he ran a record check and found that a subject associated with the car was recently arrested for DUI and had a suspended driver's license.

When asked to explain the stop, Officer A stated that they activated their overhead lights as the vehicle immediately pulled to the curb, but that he could not remember if the vehicle pulled over just prior to or after the lights were activated. He further described that the driver immediately got out of the car as well as the other three passengers, who proceeded to walk away. Officer A described Appellant as hostile when Officer A contacted him. Officer A stated that he explained to Appellant why he was stopped and asked for identification. Officer A stated that Appellant told him that Officer A was not allowed to talk to him and that Appellant did not have to show identification. Officer A stated that he explained to Appellant that he had to show him identification because he was a police officer and that he was requesting it at a traffic stop. Officer A further explained that Appellant told him that he could not pull him over because he had already pulled over before the police lights turned on. Officer A stated Appellant began yelling at him that he was breaking the law and that he was not protecting and serving.

When asked, Officer A confirmed that Appellant would not produce identification or give him his name. Officer A stated that the officers spoke with Appellant for about five minutes trying to convince him to identify himself before the decision was made to arrest Appellant. Officer A explained that when he and Officer B went to handcuff Appellant, he tensed or tightened his arms. He further explained that they used a two-on-one handcuffing technique that is taught in the Advanced Academy. Officer A stated that the technique is to rely on the least amount of force possible to make an arrest. Officer A stated that he had Appellant's left arm and Officer B had Appellant's right arm.

When asked to describe how they were able to handcuff Appellant, Officer A described that they were able to push Appellant up against the trunk of the car and put his hands behind his back and then cuff him. He confirmed that no other force or technique was used in the arrest process. Officer A stated that after Appellant was handcuffed, he brought up Oregon Revised Statutes (ORS) 807.570 on his phone regarding failure to carry or present license and showed it

to Appellant. Officer A stated that Appellant replied, *"fuck all that, you know how it is out here"*. Officer A further stated that Appellant stated he did not know what was going on and that he thought the officers were coming to kill him. Officer A also stated that Appellant stated that *"it would not have mattered if he was unarmed, because that's just how it is out here"* and then accused him of being a racist. Officer A stated that after Appellant was handcuffed, he refused to get into the car. When asked if force was used to try and get him in the car, Officer A stated that he put his hands on Appellant's shoulder and tried to push him a little bit into the car but gave up when he realized Appellant was not going to go in voluntarily. Officer A stated that they tried to talk to Appellant for a very long time about complying and getting in the car but he refused.

When asked, Officer A confirmed that neither he nor Officer B or the other officers at the scene used profanity. He stated that he did hear the bystanders use profanity. Next, Officer A stated that Appellant's parents showed up at the scene as they were trying to get Appellant into the patrol car. Officer A stated that Appellant's father provided Appellant's name and date of birth and tried to explain to his son why the officers needed to know his name and was able to calm his son down. After the Appellant was identified, a records check was done which revealed him to have a valid driver's license with no warrants for his arrest. Officer A stated that Appellant's parents informed them that Appellant does not trust the police as he had a prior incident in which TriMet police dislocated both of his shoulders during an arrest.

When asked, Officer A stated that he did not remember Appellant making complaints about pain, injury or soreness during the arrest. Next, Officer A explained that because they were able to identify Appellant and felt that if they put him in the car a force event would be initiated. He further explained that it would be best to avoid a force incident in this case because it had a low governmental interest.

Finally, when asked if Appellant ever questioned whether they were really police officers, Officer A stated he did not recall. Officer A stated that Appellant said that he thought we were coming to kill him even though they were clearly police officers in a blue and white marked City police car, with a PIT bumper and overhead lights.

Officer B Interview

Officer B stated that he was partnered with Officer A on the night of the incident. Officer B stated that he drove on routine patrol when they stopped a vehicle for making a right turn without signaling. Officer B also noted that when prior to making that illegal turn, he observed the vehicle stop at a flashing red light for an extended period of time which was part of the reason the vehicle caught their attention. Officer B stated that Officer A ran a records check on the vehicle and learned that a subject had been arrested out of that car a month ago for DUII and currently had a suspended driver's license.

Officer B explained that the car pulled over to the curb almost simultaneous to their patrol overhead lights being activated. When the Appellant and a passenger got out of the car, Officer B stated that Officer A asked for Appellants' identification but Appellant refused to provide it. Officer B stated that he heard Appellant say that he was parked and that he did not have to give his ID. He further described Appellant as agitated. Officer B stated that Appellant said *"it's not a traffic stop, I'm fucking parked, I didn't consent to this stop"*. Officer B stated that he explained to Appellant that this was a traffic stop because he failed to use his turn signal and that he needed to provide his ID. Appellant told the officers that he knew he signaled. Officer B

confirmed that Appellant would not provide his name. He also stated that Appellant did not recognize their laws and how the stop was illegal. Officer B determined at that time to put Appellant in handcuffs for failure to carry or present a license.

Officer B then explained that he and Officer A used the two person technique. Officer A took control of Appellant's left arm and Officer B took control of his right arm. Officer A stated that Appellant tensed up and resisted efforts to be handcuffed. Officer B stated that during this time they called for cover because a crowd of ten to twenty people started to gather in the area.

Officer B further explained that Appellant continued to tense his arm up as they pinned him against the back of their police car. He further indicated that Witness Officer C assisted by having his hand on Appellant's elbow which allowed them to get Appellant's wrists together enough to be cuffed. When asked, Officer B stated that he did not recall Appellant complain of pain or injury during the arrest process. When asked, Officer B stated that they did not use any other force or control technique to get Appellant handcuffed other than the two person handcuffing technique.

When asked if he or Officer A swore back at Appellant, Officer B stated "not that I recall, no." When asked if it is possible if he swore but did not remember and if swearing was something he might do occasionally, Officer B stated that in the course of his job sometimes swearing is used to gain control of a subject but did not believe he swore on this occasion.

When asked if force was used to get Appellant into the car, Officer B stated that as he tried to put Appellant into the car, then Appellant shook away while yelling that he was being illegally detained. Officer B stated that he used a wrist lock to try to gain more compliance and more control. Appellant yelled that Officer B was trying to break his arm. Officer B stated that "*I wasn't applying – it was a minimal amount of force...it wasn't even enough force that it was – it was getting compliance, so, as for as how much I was using the wristlock*".

Officer B stated that Appellant's father and mother arrived on scene, provided Appellant's identification, and explained Appellant's previous interaction with Federal Bureau of Investigation (FBI) on a TriMet bus as the reason why he did not like police. Officer B explained to the Appellant's parents why their son was stopped. Officer B stated that Appellant's father was extremely calm and helpful in the situation. When asked if Appellant ever understood that all he needed to do was identify himself, Officer B stated "*I don't think so*". Officer B stated that Appellant's father told him he was coming home and Officer B made the decision to release Appellant based on how the father helped with the situation. Officer B also stated that Appellant's father told Appellant to apologize to the officers but Officer B told him that it was not necessary. Officer B further explained that he told Appellant's father that Appellant needed to understand that when he is involved in a traffic stop he needs to provide his identification and if he had done so in this case, it would have probably resulted in a warning.

Witness Officer C Interview

Witness Officer C stated that at the time of the incident he was a probationary officer working with Witness Officer E. When he arrived at the scene, Witness Officer C described seeing Officer A and Officer B with Appellant up against the back door of their patrol car as a small crowd gathered on the sidewalk. He stated that he went over to assist Officer A and Officer B. Witness Officer C stated that he observed eight to ten people in the crowd standing on the

sidewalk yelling and with some of them having their phones out taking photos or filming the incident.

When Witness Officer C approached to assist Officer A and Officer B, the officers each had an arm of Appellant and had Appellant leaned up against a car. Witness Officer C stated that he put his weight on Appellant to keep him against the car to give the officers leverage to get Appellant's arms behind his back to put him into handcuffs. Witness Officer C described that Appellant tensed up which made it difficult to get him handcuffed. He also stated that Appellant was obviously upset and said "fuck you" and how he was not under arrest.

Witness Officer C stated that during the arrest process, he heard the involved officers tell Appellant why he was being arrested and Appellant told the officers that he was not under arrest and how this was not right. He further explained that when Appellant was finally handcuffed he observed Officer A pull up the ORS on his phone to show Appellant for what he was being arrested.

When asked to describe the control or handcuffing technique that Officer A and Officer B used to get Appellant into custody, Witness Officer C stated that Appellant faced him and Officer A and Officer B each had a hold of Appellant's upper elbow and then had his arm behind his back, which is what is taught in Advanced Academy. Witness Officer C confirmed that the officers did not use anything other than a control hold to get Appellant handcuffed. Witness Officer C also confirmed that the officers did not use any other type of force to get Appellant into custody. He further explained that once Appellant was handcuffed, Appellant continued to insist that it was not a lawful arrest while the officers continued to explain why the arrest was legal. Witness Officer C stated that while officers told Appellant several times to get in the back of the patrol car, he went to the other side of the car, opened the door and crawled into the backseat to be ready to pull Appellant in if necessary. However, that did not occur.

Witness Officer C explained that Appellant's parents arrived at the scene and that Appellant's father was able to calm him down to the point that Appellant sat down in the back of the patrol car. He further explained that once Appellant was in the patrol car, Officer B spoke with Appellant's father who identified Appellant and then Appellant was released.

When asked, Witness Officer C confirmed that he did not hear Officer A or Officer B swear at all. When asked if he heard Appellant complain of pain or injury during the handcuffing process, Witness Officer C stated no, but that when he was in the back of the car, he heard Appellant say something about his shoulder. From what he could see, there was nothing that would have caused Appellant to have shoulder pain. Witness Officer C stated that he did not hear Appellant make any complaints about his shoulder during the actual handcuffing process.

Witness Officer D Interview

Witness Officer D stated that he was a cover officer to assist Officer A and Officer B. When he arrived at the scene, Witness Officer D stated that Appellant was already in handcuffs and Officer A and Officer B were on either side of Appellant at the back of the patrol car. He stated that it looked the officers had made an arrest and were talking to him. Witness Officer D stated that he observed a crowd on the other side of the street yelling and that Witness Officer E was present over there as well.

Witness Officer D stated that he walked over to Officer A and Officer B as they were verbally trying to get Appellant to sit in the car. He further explained that both officers had their hands on Appellant's arms but were not forcing him by pushing or pulling on him. Witness Officer D recalled that Appellant was obviously upset and yelled at times. He recalled that he heard Appellant mention that the officers had no right to stop him and did not have the right to put him in handcuffs.

Witness Officer D confirmed that he went back and forth between the crowd on the sidewalk to the officers dealing with Appellant. He stated he was concerned about the size of the crowd that had gathered and that there was potential of the crowd to grow. When asked how the incident was resolved, Witness Officer D stated that he believed the Appellant's father or uncle arrived at the scene and talked with Appellant, reasoned with him, and Appellant eventually got into the car. Witness Officer D stated that when he left the scene, Appellant was still in the back of the patrol car.

When asked, Witness Officer D stated that he heard a lot of swear words being shouted but could not tell if came from an officer. He further explained that he did not hear Witness Officer E, Officer A or Officer B swear at anybody nor could he confirm whether he heard Appellant swear as well.

Witness Officer E Interview

Witness Officer E and his partner Witness Officer C worked together on June 6, 2015 when they heard Officer A and Officer B request cover on a traffic stop. Witness Officer E stated that when they arrived at the scene he observed the officers' patrol car with overhead lights on as Officer A and Officer B were struggling with Appellant toward the rear of the car, but was unsure if Appellant was handcuffed at the time. Witness Officer E stated that he also noticed half a dozen people standing on the curb yelling and screaming. Witness Officer E stated he stayed with and monitored the crowd.

Witness Officer E stated that his partner went to assist Officer A and Officer B. He further explained that he could not make out what the officers and Appellant were saying to each other as the crowd was yelling at him.

Witness Officer E stated that Appellant's mother and father arrived at the scene. He stated that Appellant's father, Witness F, went to speak with Officer A and Officer B in an effort to calm down his son. He further stated that he heard Appellant's mother say that Appellant had dislocated his shoulder last time. Witness Officer E stated that he observed Witness F shake hands with Officer A and Officer B, and then shake hands with Witness Officer E. Witness Officer E shook Appellant's mother's hand as well.

Witness F interview

Witness F, Appellant's father, explained that he received a call from two of his sons and a cousin about Appellant being stopped by the police. Witness F further explained that when he arrived at the scene, he saw his son in handcuffs and observed some yelling between his son and the officers. Witness F stated his son was upset with the officers for following him prior to approaching him after he parked and got out of the car.

Witness F further explained that he knew a friend of his son's named Mario had borrowed his car when his son was out of town. He further stated that he believed Mario must have done

something in the car as it was towed by police. Witness F stated that officers informed him that Mario's name was still associated with his son's car and when the officers pulled his son over that night, they were just trying to figure out who he was. Witness F provided the officers with Appellant's name, which they checked and found to be OK. Witness F stated that the officers told him that they just wanted to check his identification and that they were not looking for Appellant for any reason. Witness F informed the officers that his son had a previous bad experience with some officers in which his shoulder was injured after he was handcuffed. Witness F stated that he did not see officers use force on Appellant at all.

Witness F stated that he did not hear officers swearing at his son. Witness F confirmed that he heard Appellant complain about his arm hurting after the incident. He further stated that he showed up at the scene that night because he knows how his son gets sometimes and wanted to diffuse the situation.

CASE PROCESSING SUMMARY:

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint filed with IPR	6/09/15
Date IPR Initial Intake Investigation completed	7/10/15
Date Referred to IA for Investigation	7/23/15
Date IA investigation completed	9/23/15
Date completed IA investigation assigned to IA & IPR for review	9/24/15
Date IA investigation approved by IA	9/29/15
Date IA investigation approved by IPR	10/5/15
Date completed IA investigation assigned to RU Manager for recommended findings	10/7/15
Date RU Manager's recommended findings to Branch Chief for recommended findings	10/15/15
Date recommended findings received by IA Captain for recommended findings	10/21/15
Date recommended findings sent to IPR for recommended findings	10/21/15
Date of IA recommended findings	10/21/15
Date of IPR of recommended findings	10/28/15
Date of IA Disposition Letter	11/9/15
Date of IPR closing cover letter	11/16/15
Date appeal request received	11/30/15

TIMELINESS OF CASE PROCESSING	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
Time from date complaint received in IPR to the date case referred for an administrative investigation (06/09/2015 – 07/23/2015)	31	14
Time necessary for completion of investigation (7/29/2015 – 09/23/2015)	56	60
Time from date IA investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings (10/07/2015 – 10/15/2015)	9	14
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings (10/15/2015 – 10/21/2015)	7	7
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review) (10/21/2015 – 10/21/2015)	1	7
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review) (10/21/2015 – 10/28/2015)	7	7
Time from date of completed findings recommendations to mailing of the disposition letter (10/29/2015 – 11/16/2015)	18	14
Totals	129	123
Time from date complaint received to date Disposition Letter sent to Complainant (06/09/2015 – 11/16/2015)		160

Findings and Definition of Findings

The possible findings in a case are:

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 and procedure.

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

Officer A used inappropriate control techniques on Appellant. (CONTROL) (Directive 315.30 – Satisfactory Performance)	CONTROL	Exonerated
Officer B used inappropriate control techniques on Appellant. (CONTROL) (Directive 315.30 – Satisfactory Performance)	CONTROL	Exonerated
Officer B cursed at Appellant. (COURTESY) (Directive 310.40 – Courtesy)	COURTESY	Not Sustained

Options Available to the CRC

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

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

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 challenged finding.

It can refer the case to the Independent Police Review or Internal Affairs for further investigation.