

Appeal Summary
2015-C-0109
Appeal Hearing
May 18th, 2016

Involved persons

Appellant
Officer A
Officer B
Witness
Subject

Allegations

1. Officer A's use of a control hold on Appellant constituted unnecessary force. (CONTROL)(Directive 1010.00 – Use of Force)
2. Officer A engaged in unprofessional conduct during his contact with Appellant. (CONDUCT)(Directive 310.00 – Conduct, Professional)
3. Officer A used profanity during his contact with Appellant. (COURTESY)(Directive 310.40 – Courtesy)
4. Officer B engaged in unprofessional conduct. (CONDUCT)(Directive 310.00 – Conduct, Professional)
5. Officer B used inappropriate force when taking Subject into custody. (FORCE)(Directive 1010.00 – Use of Force)

Incident/Complaint Summary

On April 26, 2015, Officer A and Officer B. were dispatched to a Goodwill Industries store located in Southeast Portland to conduct a welfare check on a female slumped over in a vehicle.

Upon arrival, the officers made contact with Subject in her vehicle. During his approach to Subject, Officer A noticed drug paraphernalia. Subject was removed from her vehicle and questioned by the involved officer, subsequent to being provided Miranda rights. While the involved officers were questioning Subject, the Appellant who had been viewing the encounter from a distance approached. The Appellant approached the Subject and told her that she did not have to answer any of the officers' questions. Appellant also stated that she was an attorney. Officer A told Appellant to stand back, the appellant maintained her position. Officer A then placed hands on Appellant and physically removed her from the area where subject was being questioned. After a brief conversation with Witness, Appellant went inside the Goodwill.

Appellant eventually returned to the location and restated that she was an attorney and exchanged words with both Officers A and B.

Subject was arrested for possession of a control substance after the involved officers discovered methamphetamine and heroin residue in her vehicle and transported to the Multnomah County Detention Center.

IPR Investigation

Summary of Appellant, Officer and Witness Interviews:

Summary of Appellant Interview

The Appellant is a criminal defense attorney who practices outside of Portland. On April 26, 2015, she visited the Goodwill at roughly 3:45 pm and upon arriving she witnessed two officers arresting a woman who was in a parked car in the parking lot. Appellant said she observed one of the officers drag the woman out of the car by her hair.

Appellant believed that the involved officers used inappropriate force and were condescending in their approach.

Appellant then approached the involved officers and Subject stating that Subject should not, "say anything, ask for a lawyer, and don't let them search anything..."

The Appellant then described Officer A making physical contact with her:

"At that point, the police officer grabbed me and pushed me like really hard, like not pushed me to like the point that I was falling, like he like gripped me and pushed me, like took like steps and then gripped me. And he like applied like more force on his, I guess, I don't know, with his right hand on my left shoulder, because my left shoulder hurt for two days.

..And he just said something, he was like, do you want me to arrest you, you're interfering, you can't be here or something like that. And I said, don't touch me, you can't touch me, I'm not doing anything, I'm going to leave. He said, you don't know the law or something like that. And I said, actually, I'm a lawyer, like don't touch me. At that point, he let me go and he said, leave. I said, okay. I left. I was really shaken up and really emotional."

The Appellant stated that she never received a warning to step back or to leave the area. The Appellant then entered the Goodwill store and went shopping. When Appellant returned the location of her vehicle Officer A said to her that just because she went to law school doesn't mean she knows the law. Appellant remembers an officer saying:

"...use some common sense, try using some common sense sometime. And I looked at him and I said, actually, I'm a defense attorney. And he said, no fucking way that you're a defense attorney."

Later in her interview with IPR, appellant stated that she could not be sure if Officer A, said "fucking" citing the stress from the incident. She maintained that the officer

demeaned her by claiming she was unknowledgeable about fundamental search and seizure concepts that a defense attorney would be expected to know. She also remembers the officer saying that if she was an attorney, that Subject would be better off if she did not have Appellant as her attorney.

Witness Interview

Witness is a friend of Subject and watched part of the encounter between Appellant and the involved officers. Witness stated he did not witness the moments where either PPB officer had any physical contact with the Subject or Appellant. Witness reported witnessing Officer A use the word “fucking” at one point during the conversation with Appellant. Witness remembered one of the officers warning Appellant that she could be arrested. Witness reported Officer A being demeaning towards Appellant with statements about her not being a good lawyer and how the officer would not want to use her as a lawyer. Witness described the officer’s statements as “mocking.”

Subject Interview

IPR was not able to interview Subject due to pending legal matters. IPR requested an interview through her counsel who declined to make his client available for an interview.

Officer A Interview

Officer A recalled that he and his partner Officer B were called to the Goodwill due to reports that Subject was passed out in her vehicle. Subject was located in the parking lot of the Goodwill. Subject was passed out, on the “nod,” referring to being under the influence of a controlled substance and her head was down. The officers made contact with Subject and she was removed from the vehicle:

“...we don’t know if weapons are in the vehicle or what’s there, we typically use four officer safety skills to remove an individual from the vehicle. So my partner, Officer B, had Subject essentially place her hands on top of her head. She interlocked her fingers as she was ordered to do, and I was essentially going to take Subject out of the car, but she told me that the driver’s side door was locked and she wouldn’t be able to get out that way, so we had her actually come out of the passenger seat towards Officer B while continuing to give her instructions. When Subject was out of the vehicle, I walked her over to our patrol car, which again was positioned towards the back. I had her sit on the front bumper of the patrol car. She was not placed into any sort of handcuffs.”

Officer A noticed Appellant observing their interaction with Subject. Officer B then provided Subject her Miranda warning. Subject was asked for permission to search her vehicle which she consented to. Officer B started searching Subject's vehicle, while Officer A remained with Subject. Appellant then approached and was about two feet away and stated to Subject that she should not answer any of the officer's question. At some point Appellant was standing between subject and appellant.

Officer A made a request to Appellant to not to interfere with a police investigation. Appellant continued to interact with Subject. Officer A then physically escorted her away, using a control hold, which he described during his IPR interview as:

"It's a very light type of control hold. It's essentially the lowest level of control I can basically use other than a command, which is to grab her arm. I placed in C cup, which I'm demonstrating in my hand, below her elbow and basically started walking her away from where Subject was standing."

Officer A stated that he felt Appellant tense up while he applied the control hold. The Appellant made mention that she was a criminal defense attorney and that the officer had no right to touch her. Officer told Appellant that she could observe the stop at some distance but she could not interfere with the investigation. Appellant was admonished if she interfered with the investigation she would be arrested for Interfering with A Peace Officer.¹

Officer A describes Appellant as "backing off", but as some point Appellant returned to the location. Appellant again stated to Officer A that she was a defense attorney. Officer A responded that, "she must not be a very good attorney." Additionally, Officer A stated that if Appellant was a good attorney she would be aware of core search and seizure concepts, as obtaining consent from a subject and the "motor vehicle" exception to officers needing a warrant prior to conducting a search.

Officer A did not believe his encounter with Appellant was mocking or demeaning in tone. Officer stated that he did not use profanity during his encounter with Ms. Foroshani.

Officer B interview

Officer B recalled receiving a radio call on April 26, 2015 at 1723 hours of a female passed out with a needle sticking in her arm. When the officers arrived, Officer B approached Subject's vehicle where he saw Subject "on the nod" – passed out from the effects of narcotics. Officer B also saw 1.5 X 1.5 inch clear plastic bag filled with a white crystal substance that he recognized from his experience as methamphetamine. Subject woke up and noticed Officer A through the sunroof of the vehicle. Roughly contemporaneously, a needle and syringe fell from subject's hand.

Officer B commanded Subject to put her hands on top of her head, interlacing her fingers so Officer A could get Subject out using the driver's door. Subject informed Officer B that the driver's door did not work, so she Subject was removed through the passenger side door.

¹ Oregon Revised Statute 162.247. Class A misdemeanor.

Subject was Mirandized by Officer B. While Subject was with Officer A, Officer B searched the vehicle.

Officer B recalls once he completed his search of the vehicle he heard Appellant speaking:

“I heard a female screaming to not let [Subject] – to tell her not to allow us to search her car, to not answer our questions, to get a lawyer, that she was an attorney.”

Officer B responded to Appellant that she must not be a very good attorney, as she would have an understanding of the motor vehicle exception and other search and seizure concepts.

Officer B witnessed Officer A placing Appellant in an escort hold (one hand above the elbow and one hand on the wrists) and walk Appellant away from the location.

Officer B remembers Subject being compliant and no force being used.

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint filed with IPR	5/01/15
Date IPR Initial Intake Investigation completed	5/18/15
Date Expanded Intake Investigation completed	6/10/15
Date IPR Investigation initiated	6/12/15
Date IPR investigation completed	7/24/15
Date completed IPR investigation assigned to IA for review	8 /6/15
Date completed IPR investigation assigned to RU Manager for recommended findings	8/21/15
Date RU Manager’s recommended findings to Branch Chief for recommended findings	9/4/15
Date recommended findings received by IA Captain for recommended findings	9/9/15
Date recommended findings sent to IPR for recommended findings	9/9/15
Date of IA recommended findings	9/11/15
Date of IPR of recommended findings	9/20/15
Police Review Board Held	10/19/15
Date of IA Disposition Letter	10/22/15

Date of IPR closing cover letter	10/28/15
Date appeal request received	11/16/15

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 (5/01/2015 – 6/10/2015)	41	14
Time necessary for completion of investigation (6/12/2015 – 07/24/2015)	43	60
Time from date IPR investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings (08/21/2015 – 9/4/2015)	14	14
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings (09/4/2015 – 9/9/2015)	5	7
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review) (09/9/2015 – 09/11/2015)	2	7
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review) (09/9/2015 – 9/20/2015)	11	7
Time from date of completed findings recommendations to mailing of the disposition letter (10/19/2015 – 10/28/2015)	9	14
Totals	125	123
Time from date complaint received to date Disposition Letter sent to Complainant (5/01/2015 – 10/28/2015)		180

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
1	Ofc. A's use of a control hold on Appellant constituted unnecessary force. (CONTROL)(Directive 1010.00 – Use of Force)	CONTROL	Exonerated
2	Ofc. A engaged in unprofessional conduct during his contact with Appellant. (CONDUCT)(Directive 310.00 – Conduct, Professional)	CONDUCT	Not Sustained w/Debrief
3	Ofc. A used profanity during his contact with Appellant. (COURTESY)(Directive 310.40 – Courtesy)	COURTESY	Not Sustained
4	Ofc. B engaged in unprofessional conduct. (CONDUCT)(Directive 310.00 – Conduct, Professional)	CONDUCT	Not Sustained w/Debrief
5	Ofc. B used inappropriate force when taking a suspect into custody. (FORCE)(Directive 1010.00 – Use of Force)	FORCE	Exonerated

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.