

Appeal Summary  
2015-C-0254/2016-X-0005  
Case File Review/Appeal Hearing  
November 2, 2016

**Involved persons**

Appellant  
Officer A  
Witness

**Allegations**

1. Officer A spoke rudely to appellant when he called appellant “stupid” during a traffic stop. (COURTESY) (Directive 310.40 - Courtesy)
2. Officer A used inappropriate force during a traffic stop when he “kicked” appellant in the knee. (FORCE) (Directive 1010.00 – Use of Force)

**Incident/Complaint Summary**

On August 15, 2015, Appellant filed a complaint online about an incident that took place at night on August 14, 2015 between I-205 northbound and I-84 eastbound. Appellant informed IPR that he was riding his motorcycle northbound on I-205 and another bike went speeding by him at 100 plus mile per hour. Appellant then wrote that he took the exit for I-84 eastbound when he was pulled over by Officer A, who also rode a motorcycle.

Appellant reported that Officer A used his motorcycle to strike appellant’s motorcycle and then kicked both his knee and motorcycle. Appellant also complained that Officer A referred to him as “stupid” several times during the traffic stop. Appellant further complained that he was given a ticket for someone else’s actions and would rather have the ticket go away than to start a lawsuit against the officer and the department.

**Administrative Investigation**

**Summary of Appellant Interview**

The appellant told the IA investigator that he was on the I-205 northbound near Foster riding his motorcycle with a friend who was also riding his own motorcycle. Appellant then added that he agreed to meet up with other riders from a Facebook group and ride together.

The appellant stated that as he approached the I-84 eastbound there was one rider ahead of him, one that sped past him on the shoulder and his friend that rode behind him. The appellant told the IA investigator that he was traveling at 60-65 miles per hour. The appellant stated that he first saw the motorcycle officer when he just getting onto the I-84 and that Officer A was next to him yelling at him to pull over.

The appellant told the IA investigator that Officer A rammed his motorcycle into appellant’s motorcycle and hit his side case and mirror. The appellant said he almost “dumped” his bike. The appellant further stated Officer A kicked him twice with his foot while appellant was driving.

After the appellant pulled over, he stated that Officer A kept repeating how stupid appellant was and asked repeatedly if the bike was registered to appellant. When asked, appellant stated that due to Officer A's contact, his motorcycle's mirror was scratched. The appellant also told the IA investigator that he did not have any injuries.

#### Witness Interview

Witness is a friend of appellant who also rode his motorcycle with appellant at the time of appellant's interaction with Officer A. Witness explained that at the time appellant was pulled over he had his headphones in order to take a phone call and pulled off to the side of the road. Witness further explained that when he attempted to catch up with appellant by the I-84 exchange, he saw Officer A pull up behind appellant and it appeared as though Officer A had hit appellant's motorcycle with his motorcycle. Witness also stated that he saw Officer A kick appellant in the leg twice. Witness stated that when appellant was pulled over, he rode by and met him at the next rest stop.

When asked by the IA investigator, witness stated that before he took his phone call, he and appellant rode at 55-60 miles per hour. When asked by the IA investigator, witness stated that he could not tell if there was actual contact between appellant's motorcycle and Officer A's motorcycle but that he saw appellant's tail light shake.

#### Officer A Interview

Officer A has served in the Traffic Division since 2010. Officer A explained that on the incident date he was working speed enforcement of I-205 and that he parked on the center median of I-205. He recalled that he saw two motorcycles in the number one lane and that their speed was over 100 miles per hour and that used his LIDAR to obtain a reading of 101 miles per hour.

Officer A turned on his motorcycle lights and came down the median. He explained that he saw both motorcycles take the I-84 eastbound exit and then had to cross three lanes of traffic to get over to access I-84. He continued by stating that the on-ramp to I-84 is a single lane and both motorcycles did a head turn towards him. Officer A acknowledged to them that he was coming after them but that they both laid on the throttle. He observed the lead motorcycle rider, who was not appellant, take off but appellant was not able to do so, which allowed Officer A to pull up next to appellant.

Officer A recalled pulling up in front of appellant and appellant immediately slowed down.

Officer A told IA investigator that he heard appellant yelling "okay, okay, okay" through his helmet. Officer A stated that he was positioned at one or two feet in front of appellant and told appellant to turn off his motorcycle. When asked by the IA investigator, Officer A stated that his motorcycle did not have contact with appellant's motorcycle, nor were the motorcycles close enough to touch. When asked by the IA investigator, Officer A stated that he did not kick at appellant during the stop and his foot did not come into contact with appellant.

Officer A described appellant's demeanor as calm and receptive to what he told him. Officer A stated the following during his Internal Affairs interview:

*I did make a comment that his riding was stupid and it endangered our lives, mine, his and other drivers on the road. I also went into we had a fatal motorcycle crash on 205. Told him that it was on the news. A motorcycle over a 100 miles an hour hit the rear end of a car that did a lane change, because they can't see somebody coming up that fast behind them, and was killed, and I had to come out and investigate it. And riding at 100 miles an hour, you're going to die and I told him that.*

When asked by the IA investigator, Officer A stated that he used the word stupid once during his conversation with appellant and that he did not refer to appellant as being stupid himself.

**Chronology of Case Processing**

CHRONOLOGY OF CASE PROCESSING		DATE
Date complaint received by IA		10/08/15
Date IA Investigation initiated		10/16/15
Date IA investigation completed		12/08/15
Date completed IA investigation assigned to IPR for review		12/08/15
Date completed IA investigation assigned to RU Manager for recommended findings		12/16/15
Date RU Manager's recommended findings to Branch Chief for recommended findings		12/29/15
Date recommended findings received by IA Captain for recommended findings		12/30/15
Date recommended findings sent to IPR for recommended findings		12/30/15
Date of IA recommended findings		12/30/15
Date of IPR of recommended findings		01/06/16
Police Review Board Held		n/a
Date of IA Disposition Letter		01/13/16
Date of IPR closing cover letter		01/19/16
TIMELINESS OF CASE PROCESSING	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
Time from date complaint received in IA to the date case referred for an administrative investigation (10/08/15 – 10/16/15)	8	7
Time necessary for completion of investigation (10/16/15 – 12/08/15)	53	60

Time from date IA investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings (12/16/15 – 12/29/15)	13	14
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings (12/29/15 – 12/30/15)	1	7
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review) (12/30/15 – 12/30/15)	0 (IA) + 7 (IPR)	7
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review) (12/30/15 – 01/06/16)		
Time from IPR controverted Finding to PRB Finding (date – date)	n/a	28
Time from date of completed findings recommendations to mailing of the disposition letter (01/06/16 – 01/19/16)	13	14
Totals	95	137
Time from date complaint received to date Disposition Letter sent to Complainant (08/17/15 – 01/19/16)		155

### **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	Officer A spoke rudely to appellant when he called appellant "stupid" during traffic stop.	COURTESY	<b>NOT SUSTAINED</b>
2.	Officer A used inappropriate force during a traffic stop when he "kicked" appellant in the knee	FORCE	<b>UNFOUNDED</b>

### **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.