

Appeal Summary
2016-C-0260
Case File Review/Appeal Hearing
June 7, 2017

Involved Persons

Officer A (Appellant)
Officer B
Complainant
Witness 1
Subject

Allegations

1. Officer A, improperly conducted a civil standby (CONDUCT) (Directive 315.30 – Satisfactory Performance)

Incident/Complaint Summary

Subject called for police assistance on June, 6, 2016. Subject told dispatch staff he needed to retrieve some tools and equipment from a nearby address. Subject told dispatch staff a male at the address had threatened him in the past. Dispatch staff classified the call as a civil standby and assigned Officers A and B to respond.

The officers contacted Subject, and then responded to Complainant's address with him. Residents of the house did not respond to the officers' attempts to contact them. Complainant later indicated Officer A and B watched as Subject forced open the door to a storage area. Complainant also stated that the officers assisted Mr. Subject in carrying items out of the storage area.

After the officers left the scene, residents at Complainant's address called non-emergency and asked that the same officers who had been present earlier return to the scene. The officers returned to the residence. Having returned to the scene, the officers engaged residents in conversation.

Following the incident, Complainant submitted a complaint to IPR regarding the officers' actions. The case was assigned as an IPR Investigation.

IPR Investigation

Summary of Complainant, Officers, and Witness Interviews:

Complainant

Complainant stated that he once worked with Subject but was owed money. Subject was getting “kicked out” of his residence, and began selling and giving away many of his possessions. Complainant bought some of Subject’s possessions. Subject also gave Complainant some other items, in lieu of paying Complainant for his work. The items included a table and chairs, a bicycle, and lawn care equipment. On the night of the incident Subject called Complainant and said, “I’m coming to get my stuff.” Complainant told Subject he could not have the items, and hung up. Subject called police, and “a false police report was filed against me.” Subject told police Complainant and a group of his associates had come to Subject’s house and “confronted” him.

Complainant indicated Officers A and B arrived at his residence and were “banging on the door.” Complainant and other family members did not answer their door. Asked why, Complainant stated, “We didn’t open the door ‘cause we didn’t do anything wrong.” Complainant indicated he watched as Officers A and B walked onto his property, with Subject. Subject forced a shed door open with a crow bar as the officers watched. Asked if the officers helped Subject enter the shed, Complainant clarified the officers watched as Subject forced the door open. Complainant stated that Subject and the officers then began to carry items out of the shed, and over to a neighbor’s lawn.

Complainant stated: His sister later called the non-emergency line, and asked that the same officers who had been at the residence earlier return, and explain their actions.

Witness 1

The Witness is Complainant’s mother and was present when the officers arrived at the residence shred with her son and her daughter. On the night of the incident she was sleeping when she heard “banging at the door.” The noise woke Witness 1, and she went to her living room. A police car was outside, with flashing lights, and there was a bright white light shining into her kitchen window.

When asked, Witness 1 indicated she knew police officers were outside her house, but she did not see how many officers there were. Witness 1 indicated she does not remember police officers saying anything as they banged on her door. Witness 1 indicated she did not open her door. Witness 1 stated, “I was kind of scared to open the door up because I didn’t know what was going on.” Witness 1 indicated she later found marks on her front door, which she believes the officers caused by banging on her door.

According to Witness 1, Complainant was inside the house, as well as her daughter and her two children during the incident.

Police remained outside her house for approximately 20-30 minutes. She could not see if anyone was outside with the police. Witness 1 does not believe Complainant or her daughter spoke to police while

they were present the first time. She was aware the police left, because there were no longer bright lights shining into her windows.

Witness 1 indicated after police left, she, her daughter, and Complainant became aware that items were missing from their storage area. Witness 1 stated:

I heard a real loud noise. And so when we came out here to find – after they were gone, we came out to see what had happened because we heard something, like, screeching out of here, and we were in the house. We wanted to know what was going on. So we came to the back, and then that's when we noticed that they had broken into the shed.

Witness 1 indicated they checked their storage area, and found a bicycle, lawn mower, a leaf blower, and tools were missing. Witness 1 indicated either Complainant or her daughter called police. Asked why they called police, Witness 1 stated, "I think Complainant was going to call the police because we wanted to know what went – what happened."

Witness 1 indicated she and her daughter went with one of the officers around to the back of their house, to show him their storage area. The officer told them, "We didn't help them break into it." Witness 1 stated, "I think that they said that they were just – 'We were just here to help him get his stuff out of the shed.'" Witness 1 indicated the officers asked them if Subject lived at the residence.

Witness 1 stated she, Complainant, and her daughter owned the items that were removed from their storage area. They purchased the bicycle from Subject. Subject gave them the rest of the items to Complainant and Witness 1's brother, in lieu of payment for some work they did for him. Witness 1 stated, "They were never paid, so that's why those things were given to them."

Officer A

Officer A indicated: He conducted a civil standby at Complainant's residence. He met Subject at a gas station, before they both drove to Complainant's residence. Officer A described his contact with Subject, stating he learned that Subject and Complainant knew each other and had a heated argument. Subject also stated to Officer A that he wanted his property back. Subject told Officer A he worked "in the lawnmower business." Officer A and Subject then both drove to Complainant's residence.

Regarding how police should respond, if one half of a civil standby does not answer the door for police, Officer A stated, "Very few times that happens because normally whoever comes to have the standby knows that the party involved would be home, and in this case, they were home." Officer A indicated Subject provided specific details about the items he said were, so Officer A allowed him to remove items. Officer A stated he told Subject if the items were his, "you are welcome to take it, but just remember that if he [Complainant] goes after you, it's you – you're the one who took it." Officer A indicated if anyone from the house had come out and said the items Subject removed were theirs, he would have stopped him from taking anything. Officer A stated, "Subject would have walked away with me with nothing in his hand."

Officer A indicated he also responded back to Complainant's residence. Officer A indicated he also called Subject and asked him to return to the scene, but Subject said he had already left the area. Officer A stated that Officer B was already at Complainant's residence by the time he himself arrived.

Asked to respond to the allegation he improperly conducted a civil standby, Officer A stated:

Not correct. I mean, the conduct was beyond satisfactory, knocking, standing in front of the door, have my light on, taking pictures of what happened. Complainant had more time to think about it – he could have just called, 'Hey, what's going on in front our house?' He had ample time to make a decision to come

Officer B

He assisted Officer A with Subject's request for a civil standby at Complainant's residence. Officer A was the primary officer. Officer A first made contact with Subject at a nearby gas station, and then they both drove to Complainant's residence. Officer A requested a cover officer because Subject reportedly said Subject tried to hit him with his car. Officer A and Subject arrived at the scene before Officer B did. Officer B described the scene upon arrival, stating:

I got there and Officer A was standing on the end of the driveway, and the complainant was getting a lawn mower and a tire that was up against the fence of the house on north side. It wasn't your standard lawn mower. It was one of those, like, landscaping larger ones you walk behind, but it was missing a wheel. So, he just moved it to the yard next door and put it up against that house, and there was a single wheel from an automobile that – the lawnmower and the wheel, tire I should say, is what he moved while I was there.

Officer A told him he attempted to contact the residents of the house by knocking on the door, but they did not answer. He did not attempt to contact the residents himself. While he was present, Officer A remained at the front of the house, and he never saw Officer A or Subject go to the back of the house. He himself never carried any items from behind the house. The only items he saw Subject move were the mower and a wheel.

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint filed with IPR	07/15/16
Date IPR Initial Intake Investigation completed	01/06/17
Date IA Investigation initiated	n/a
Date IA investigation completed	n/a
Date completed IA investigation assigned to IPR for review	n/a

Date completed IPR investigation assigned to RU Manager for recommended findings	02/08/17
Date RU Manager's recommended findings to Branch Chief for recommended findings	02/20/17
Date recommended findings received by IA Captain for recommended findings	02/22/17
Date recommended findings sent to IPR for recommended findings	02/22/17
Date of IA recommended findings	02/22/17
Date of IPR of recommended findings	02/24/17
Police Review Board Held	n/a
Date of IA Disposition Letter	03/08/17
Date of IPR closing cover letter	03/09/17
Date appeal request received	03/23/17

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 (07/15/16 – 08/23/16)	39	14
Time necessary for completion of investigation (08/23/16 – 01/06/17)	136	60
Time from date IPR investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings (02/08/17 – 02/20/17)	12	14
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings (02/20/17 – 02/22/17)	2	7
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review) (02/22/17 – 02/22/17)	0	7
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review) (02/22/17 – 02/24/17)	2	7

Time from date of completed findings recommendations to mailing of the disposition letter (02/24/17 – 03/08/17)	12	14
Totals	203	123
Time from date complaint received to date Disposition Letter sent to Complainant (07/15/16 – 03/08/17)		236

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	Officer A, improperly conducted a civil standby. (CONDUCT) (Directive 315.30 – Satisfactory Performance)	Conduct	Sustained

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.