



Case Summary for Appeal Hearing –
2016-C-0061/2017-X-0004

INVESTIGATION OVERVIEW

Involved persons

Appellant
Officer A
Witness Officer B
Witness Officer C
Witness Cadet A

Allegations

No.	Allegation summary	Category	Finding
1	1. Officer A used excessive force while taking Appellant into custody.	Force	Not Sustained

Incident/Complaint Summary

On November 2, 2015, at approximately 1pm in the afternoon, Appellant robbed the US Bank at 160th and Division. Portland Police officers were dispatched and began setting up a perimeter nearby, where a GPS attached to the stolen money was signaling. Officer A spotted Appellant running out from between two houses and followed him, yelling for him to stop. Appellant jumped into the bed of a truck in a driveway and then over a fence. The officer ran around the end of the fence, where he saw appellant on the ground and got on top of him. Two other officers arrived almost immediately. Appellant’s left arm was under his body as he was face down on the ground. Initially, the second officer and then the third officer, held his right arm and kneeled on the right side of his back. Officer A punched Appellant several times and used an elbow strike on appellant’s shoulder.

Appellant filed a Tort Claim notice with City of Portland Risk Management in February, 2016. IPR opened the case and referred it to Internal Affairs.



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

Appellant

Appellant describes running from officers, jumping over a fence and landing feet first in a tub filled with water. He states that he then went down to the ground and put his right arm out in front of him. The first officer rounded the fence in time to get splashed by the water and the second arrived shortly after, followed by a third. Appellant describes as follows:

“There was so much weight on me that they were trying to pull my left arm out and they kept punching me in the face and they were kneeling me in the side repeatedly. Like two of them took turns kneeling me in the side. Like one got off me was kneeling me and they couldn’t pull my arm out because there was a thousand pounds worth of weight on my back. I mean, I couldn’t pull my arm out and they couldn’t pull my arm out. Finally, a couple of them jumped off of me and yanked my arm out, my left arm, and pulled it and handcuffed me.” When asked to quantify, Appellant states that he was punched twice and kned in the back six to eight times.

Officer A

Officer A describes seeing Appellant running, holding something in his hand. He chased him, drew his gun, and gave orders to stop. Appellant kept running and jumped into a truck bed and then over a fence. The officer reholstered and followed. He describes that appellant was on the ground, with water spilling from a bucket all around him, as he attempted to get back up. Officer A states he got on him and was able to grab his right arm, while appellant’s left arm stayed under his body. Officer A describes giving a “sharp, short” punch towards Appellant’s face. He thinks he only punched once, but acknowledges that it could have been twice. Officer A states that he repeatedly told Appellant to pull his left arm out from under his body. He describes knowing that Appellant had just robbed a bank and that the officers did not know the details of that robbery, including whether he was armed. Officer A describes that he considered the TASER as an option, but decided that it would be risky with the amount of water from the spilled bucket.

Early in this struggle, Officer B and then Officer C arrived and took control of Appellant’s right arm.

Officer A states: “Officer [C] stayed on the right side of me and helped control the hand. I gave a short blow to kind of the left side to try to pull his hand out. We were having trouble getting the suspect’s hand out from underneath him. And then at one point just prior to doing that I gave a short elbow to the fatty part of the back. At that point we were able to pull his hand out.”

Witness (Officer B)

The second officer to arrive describes seeing Officer A chasing Appellant and running to catch up with them. He saw Appellant jump into the truck and describes seeing him go “head first” over the fence. When Officer B got around the fence, he describes that Appellant was on his hands and knees, getting ready to run more. He saw Officer A get on top of Appellant. Officer B was then also close enough to take control of Appellant’s right arm. He describes seeing Officer A punch Appellant twice in the back and then elbow him in the back, and then his hand came out. Officer B pulled his TASER out, but did not use it. When Officer C arrived, he took control of the right arm from Officer B.

Witness (Officer C)

The third arriving officer arrived on his motorcycle in time to see Appellant go over the fence. He parked and then describes that when he came around the façade style fence, he saw Officer A on the left side of Appellant, and Officer B on the right, with his TASER out. He describes that “the guy was being told to bring his

hand out, wasn't bringing his hand out." Officer C then stepped in and took Appellant's right arm and put one of his knees on his back. Officer C states: "I did see that the left hand was underneath the waistband area and knowing from experience and training that this is the area where people would possibly hold a weapon and being the fact that the person had just committed a federal felony, I'm kind of concerned that the guy might be more desperate and pull out a weapon." He describes letting up his knee at one point to see if that would facilitate the left hand coming out from under Appellant's body, but that he didn't pull it out. He describes that then he saw Officer A elbow strike Appellant's shoulder blade area and then the arm came out.

Witness (Cadet A)

Cadet A had been riding with Officer A that afternoon. He kept his distance during the foot pursuit, and estimates he was 100-150 feet away when he saw Appellant go over the fence. He then moved to a position where he could see the officers with Appellant on the other side of the fence. He describes Appellant as "clenching up" and struggling and that he heard Officer A giving orders. He describes seeing one elbow strike by Officer A and that Appellant's left arm came out directly after that.

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.

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.