



Case Summary for Appeal Hearing
2017-C-0028/2018-X-0001
January 3, 2018

INVESTIGATION OVERVIEW

Involved persons

Appellant
Officer A
Detective B
Sergeant C
Officer D

Allegations

No.	Allegation summary	Category	Finding
2	Officer A unreasonably used less than lethal projectiles against an unidentified individual.	Force	Exonerated

Incident/Complaint Summary

On January 29, 2017, there was a large political demonstration at the Portland International Airport in response to President Trump’s January 27 executive order halting all refugee admissions and suspension of entry into the United States of travelers from seven majority Muslim nations. Port of Portland Police requested that the Portland Police Bureau stage officers at the airport. At approximately 5:05 p.m., a counter protester was injured by one of the protesters inside of the public area of the airport terminal. PPB officers from the Rapid Response Team (RRT) wearing protective gear entered the terminal to conduct a citizen rescue and provide medical aid to the unconscious person. Inside of the terminal, there was large crowds of protesters and counter protesters

Summary of Appellant and Officer Interviews conducted by the Independent Police Review (IPR)

Appellant

Appellant stated that he was present at the protest at the airport and witnessed a group of Police Bureau officers go through a crowd of protestors. The appellant said he saw an officer later identified as Officer A, fire projectiles using a less than lethal weapon (FN 303). Appellant said he saw a person in front of him get hit.



The Appellant only described only one individual being shot by the FN 303. The Appellant was unable to identify any of the protestors or provide contact information.

In IPR's initial review of Appellant's complaint, we identified three uses of force that would be reviewed during the administrative investigation and forwarded to Police Bureau command staff findings. Appellant's appeal before the CRC only covers the use of force that he witnessed.

Video

The Appellant provided IPR with a link to a video which captures the incident and was uploaded onto YouTube. The video was downloaded and placed in the case file by the IPR investigator. The video is one minute and forty-four seconds long and captures the parts of the incident which led to Appellant's complaint to IPR.

The video begins with a group of officers walking through a large crowd of protestors inside of the Portland airport near the ticketing counters. There are two Portland Police officers carrying FN 303s. One officer was later identified as Officer A. The protestors are within a foot of the officers. Officer A can be seen pushing back against a couple of the protestors. At 00:12, one protester, wearing a grey winter hat and a black jacket, is following closely behind Officer A. The man appears to be yelling over Officer A's shoulder and continues to walk towards him.

At 00:16, the sounds of what may be a FN-303 being deployed can be heard. Officer A appears to be pointing the FN 303 at the protester wearing a dark hat. When interviewed, Officer A confirmed this was the first time he deployed his FN 303. The protester then quickly takes off his jacket and backpack which fall to the floor.

Appellant can subsequently be heard saying, "Sergeant, can we get this officer's name?" The camera pans back and forth multiple times and it is unclear whom Appellant is addressing. Appellant continues for a few seconds to repeat that he wants an officer's name.

At 00:54, an apparent discharge of a FN 303 is heard again. In his IPR interview, Officer A identified the subject of the use of force as a heavysset woman in a blue sweatshirt and blue pants seen at 1:17 in the video.

The third use of the FN 303 by Officer A was not captured by Appellant's video and was not mentioned by the Appellant during his IPR interview.

Police Report

In his police report, Officer A described his rationale for his use of force.

In an effort to keep the subject back and keep him from assaulting one of us, I launched a three-round burst from my FN-303 launcher at the subject's belt line from about 8-10 feet. I could see the projectiles impact in the area I was aiming. Based on my experience with the FN-303, launching a single projectile is ineffective. A series of short bursts impacting a small area has been the most effective use of this piece of equipment. Also, given the small amount of irritant contained within the projectile, multiple rounds are required to get the desired effect with the PAVA powder. Although I struck him with FN-303 projectiles, the subject continued to charge toward us. He quickly threw off his jacket and balled his fists

while screaming that he wanted to fight. He was so enraged that spit was flying from his mouth as he yelled. I again aimed the FN-303 in his direction as several people in the crowd grabbed him to slow his momentum. This allowed us to create distance from him until he was no longer an immediate threat...

We changed direction and moved back into the crowd to locate him in order to provide aid. As we did, the crowd again closed in on us. We began pushing the hostile subjects back away. Having so many hostile people so close created a dangerous situation for us given that at any given time there were multiple people within an arm's length would could easily assault us, grab onto our gear or otherwise hinder our ability to perform the rescue. I pushed several people back with my left hand while yelling for them to move away as loudly as I could. One subject, a heavy set Hispanic female in her 20s wearing all blue, charged toward me after I pushed her back. She was swearing with an angry look on her face. As she got within about 7-8 feet of me, only a couple of steps, she raised her arms up toward me. I believed she was about to grab me or make an effort to strike me. I again used my FN-303 to launch two projectiles at her waistline. I saw both projectiles strike her in the intended area. The subject immediately stopped advancing and remained back away from officer positions for the remainder of the time I observed her.

We formed a defensive circle once again around the [injured] subject, but were allowed little room to get him medical attention as the crowd continued to close. In a coordinated effort to create a safe working area for the RRT medic and others, the Alpha Squad line pushed the crowd back... As I pushed one person back I saw an object quickly swinging toward me from overhead. It appeared to be cloth and I could not tell if it was a backpack or possibly a coat or piece of clothing. It was being swung by a white male in dark clothing and was clearly and intentionally aimed at me. I saw the object pass immediately in front of my face. Given the obvious attempt to strike me with an object and the likelihood of an immediate follow up attempt I quickly launched three FN-303 projectiles at the subject aiming for the belt line from about 6-8 feet. I could see the projectiles impact one of the subject's hands and possibly his cell phone.

The use of the FN-303 had the immediate desired effect as the subject retreated into the crowd. I did not see him for the remainder of the time I was there. After several moments of remaining in our position, it was determined the injured subject had been assaulted to the point he was unable to leave the area under his own power. Members of Alpha Squad carried the subject to a nearby elevator through the crowd...

Sergeant C and Officer D

IPR interviewed Sergeant C and Officer D who did not witness Officer A's use of force. Officer C heard the FN 303 being used but did not see who was operating it and did not see anyone hit by projectiles coming from the FN 303.

Detective B

Detective B witnessed the use of force and is a member of the same Rapid Response Team squad as Officer A and serves as a grenadier. Detective B's squad was tasked with initiating a citizen rescue and providing medical attention to the person. The squad of officers walked into the crowd to locate the injured person. Detective B stated that the protesters were very agitated and yelling at the officers. He described the interaction by stating the following:

And then we pulled back out and as we were backing out, the first thing I recall is that there was a gentleman – a sizeable gentleman –fairly stocky, but rabidly enraged and – and he was screaming and yelling, “fuck you!” and all whatever different verbiage he has, but he was stalking toward us. fists clenched, like he wants to do some screaming and yelling and aggressively pursuing us. We were backing out and I was with my back turned, I’m walking backwards in the back of a fifteen-whatever person column, and he kept moving toward us and I don’t remember how many times but I put my hand out. We didn’t want any conflict. I try to use least force necessary whenever possible. So, I put my hand out – I don’t, you know, whether I put my hand on his shoulder to kind of keep him at a distance and then it could have been two, three maybe more times that I pushed him back to – to, you know, put some distance because he kept closing the distance. You know, I – we’d take a couple of steps and he’d close the distance to an unsafe distance. And his demeanor was such that it was impossible to know his intent but very easily – very easy to assume it was violent and it was not to have a friendly conversation. And we do have friendly conversations with people in crowds, but not people that are acting like him and visibly, you know, yelling and screaming and doing what he was doing. So, as he advanced, several times I pushed him back. I know Officer A pushed him back at least once and I pushed him back anywhere from one – two to four times, I know it was more than once, but maybe – it could have been as many as five. I – but he was given ample opportunity and ample physical gesture to stay away from us and he would none the less charge forward and continue to charge forward. And after several times of that, being told to get back, back, back, Officer A fired at him with the FN.

Detective B noted that the use of force did not stop the protester and described the individual removing items of clothing indicating that he wanted to fight.

Detective B described the second use of the FN 303 by Officer A:

there was a lady, I want to say she was on the left and she, you know, she was – I think she was definitely on our left as we’re going to – closer to the doors, and Officer A had to push her back and again. She was enraged and she came grabbing or pushing back or came back at him after he tried to push her back and I believe him firing one or two times at her.

Detective B did not witness the third use of force by Officer A.

Officer A

Officer A described how his squad learned about an unconscious person in the airport by stating:

... there was information that came across the radio that there was a fight in the – the terminal, or in the, I guess kind of by the ticketing area, and one of the, if I remember correctly, one of the – either the airport police or one of the kind of the security, I don’t know if it was a TSA agent, kind of came back and had mentioned, “yeah, there’s this fight that’s going on out in the ticketing area”. And we were getting information that there was somebody down, and so we were given the – kind of the order from command to go in and do a citizen rescue, which is a citizen rescue is a real dynamic movement that an RRT squad does where basically in a dangerous situation, which is what this apparently created, we – we will come out and encircle an injured person or a person that needs to be rescued, push back all of the kind of the agitators and – and protestors that are, you know, creating the situation and we’ll kind of be security so we can get medical to the scene and – and help out with the person that was injured...

Officer A described encountering an individual whom he described as acting aggressive towards the officers.

...the next thing I know, there was – I looked over my shoulder and there was somebody who was right on my shoulder and he was kind of like, chest bumping me. Real aggressive and, I mean, I clearly – I perceived it as a – he – a clear indication that this guy was – it's like he was looking for a fight, like a physical fight, and so I ended up pushing him back away from me hoping that that would be enough to keep him back and he just kept coming. I mean, he just – angry look on his face, just yelling and screaming.

Officer A stated the individual continued to advance towards the officers despite being pushed away. Officer A described using his FN303.

This guy just kept coming. And I kind of – I spun around and I started kind of backing up and he was just keep – kept coming, kept coming. I put – I pointed my launcher at him and – and, you know, was hoping that that would be enough to get him to stop, but he didn't. He just kept coming. So, I launched three FN303 PAVA projectiles at his, you know, his mid-section – belt line.

So, I – I launched three rounds, three of the projectiles and he did – wasn't even fazed. He tore off his coat and, kind of, balled up his fists and kept coming. And I remember seeing another protester, kind of, grab him and it almost, like – they, kind of, almost enveloped – the crowd, kind of, almost enveloped him, like, pulling him back and he stopped.

After initially being unable to find the injured individual, the officer left the immediate area. The officers returned to continue their search for the injured individual. Officer A described his second use of force:

... given the circumstances and everything, we're trying to find this guy who's potentially injured and they're surging, my perception is – is, well, these people are coming up to challenge us. They're coming up to confront us and create, you know, more of a contentious situation. Plus, you know, potentially they're trying to stop us from getting help for this person who's injured. And so, I see this, kind of, crowd surge and I was at a point where she, kind of, she came up and I pushed her back and as I did, thinking back on it now, I'm not quite exactly sure exactly what happened but she, kind of wrapped – almost wrapped my arm up, and, you know, what I perceived was, is that she was swatting or grabbing or doing something to my arm and pushing – kind of pushing back. And I stepped back and then I ended up launching, I think, two rounds at her to get her to stop, and she didn't – after that I didn't see her, really, again. She, kind of, disappeared into my peripheral, so it was effective at that point. And she didn't, like, you know, she didn't go down, she just stopped.

Officer A described his third use of force occurring when the officers reached the injured individual, who was unconscious and being carried out by police. The officers were attempting to move the injured individual through the crowd when an unknown male swung a backpack at Officer A, who responded by firing "three projectiles" at him. Officer A noted that he saw the impact around the individual's hands and the man disappeared into the crowd.

Officer A described the three instances utilizing the FN 303, as the least amount of force given the circumstances, noting that he felt it was less of a use of force than using pepper spray, a bean bag, or a baton strike.

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.