



Case Summary for Appeal Hearing
2018-C-0001/2018-X-0003
August 1, 2018

INVESTIGATION OVERVIEW

Involved persons

Appellant
Lieutenant A
Officer A

Witnesses

Officer B
Community Member

Allegations

No.	Allegation summary	Category	Finding
1	Lieutenant A used inappropriate force when taking the Appellant into custody. (FORCE) (Directive 1010.00 – Use of Force)	Force	Exonerated
2	Lieutenant A did not appropriately attempt to de-escalate during his interaction with Appellant. (FORCE) (Directive 1010.00 – Use of Force)	Force	Exonerated
3	[Internal reporting allegation – not appealable]		
4	[Internal reporting allegation – not appealable]		
5	Lieutenant A asked Appellant for her identification and threatened her with arrest if she did not comply. (CONDUCT) (Directive 315.00 - Laws, Rules and Orders)	Conduct	Exonerated
6	Lieutenant A acted in a manner that was confrontational, threatening, or aggressive during his interaction with	Courtesy	Not Sustained



	Appellant. (COURTESY) (Directive 310.40 - Courtesy)		
7	Leutenant A provided untruthful testimony in court on 11/21/2017 regarding his contact with Kristin BOWLING. (CONDUCT) (Directive 310.50- Truthfulness)	Conduct	Not Sustained
8	Officer A issued a citation to Kristin BOWLING in retaliation for exercising legal rights. (CONDUCT) (Directive 310.20 - Retaliation Prohibited)	Conduct	Not Sustained
9	Officer A wrote a report that was inaccurate or incomplete. (PROCEDURE) (Directive 910.00 Field Reporting Handbook Instructions)	Procedure	Not Sustained
10	Lieutenant A prohibited Community Member's lawful ability to observe the interaction with Appellant by ordering him to leave the area. (CONDUCT) (Directive 635.20- Community Member Observation of Police)	Conduct	Not Sustained
11	Officer A provided untruthful testimony in court on 11/21/2017 regarding the basis of Appellant's citation. (CONDUCT) (Directive 310.50 - Truthfulness)	Conduct	Not Sustained
12	Officer A failed to provide his business card to Appellant. (PROCEDURE) (Directive 312.50 - Identification)	Procedure	Not Sustained
13	Lieutenant A failed to effectively manage the confrontation. with Appellant (CONDUCT) (Directive 315.30- Satisfactory Performance)	Conduct	Exonerated

Incident/Complaint Summary

On May 15, 2017, Appellant crossed the street in the middle of a block while recording police vehicles as they entered the North Precinct parking structure. Lieutenant A issued Appellant a citation for jaywalking (ORS 814.070 - Improper position upon or improperly proceeding along a highway). Appellant believes she was stopped for exercising her legal right to film the police. During this interaction, Appellant said she felt threatened by Lt. A and stated he used force on her, causing a bruise on her arm. Appellant contested the citation in traffic court and alleges that Lieutenant A and Officer A were untruthful during testimony on November 21, 2017 about the nature of their interaction with her and believes that Officer A's written report did not contain all of the relevant facts.

Appellant's attorney provided notice to IPR of this complaint in a letter dated 12/29/2017. IPR opened the case on January 2, 2018.

Summary of Appellant and Officer Interviews

Appellant

Appellant filed this complaint through her attorney and it was opened by IPR on January 2, 2018. An IPR investigator interviewed Appellant at her attorney's office on January 16, 2018 and she also provided a written statement and other evidence at this time and in follow-up correspondence from her attorney.

Appellant wrote "Traveling along public sidewalks and crossing residential streets void of vehicular traffic and lacking both crosswalks and pedestrian signals, I observed and photographed policed vehicles that were in the public and police parking lots and garage..." She then describes going around the corner where "I noticed that a second SERT armored vehicle was being parked in the lower deck of the garage, hidden from public view by tarps, so I squatted down to better view and photograph it through the fence." She describes that Officer A appeared on the roof of this garage, asked her what she was doing and took several photographs of her. At this point she then moved down the block to her parked car. Lieutenant A approached her as she got to her car, and asked for ID to issue a jaywalking citation.

Appellant describes: Lieutenant A "proceeded to threaten me with arrest several times during my encounter with him. He did so first when I questioned the authority under which I was required to identify myself, again when I placed my hands in the pockets of my jacket, and a third time when I questioned why he was requiring me to move from standing in front of my car, blocking to traffic, to the adjacent sidewalk."

She further writes: "The third time [Lieutenant A] threatened me with arrest, for supposedly failing to comply with his order for me to step onto the sidewalk, he also assaulted me by roughly grabbing my left arm and pulling me into the sidewalk." She then states that when asked about this, Lieutenant A "lied when he stated that 'he had asked me to move three times'." She describes a bruise on her left upper arm and also provided pictures of the bruise.

Appellant states: "I had also asked neighbor [Community Member], a black male whom I had spoken with earlier and who was then passing back... to stop and observe police on my behalf." She stated Lieutenant A then interacted with Community Member by "questioning him how he knew me and for how long, then was illegally asked to stand approximately 50 feet away on the next street corner, despite me assuring [Community Member] that he had the right to stand much closer..."

Officer A was present during these interactions and walked Community Member down the block at the direction of Lieutenant A. Officer A issued the citation.

Appellant also describes that Officer B pulled his car behind hers and was present for parts of this interaction.

Officer A

Officer A wrote a report following this interaction, testified in traffic court and was interviewed by Internal Affairs. In his report he describes “On May 15th at approximately 1717hrs I was returning to the precinct in the armored bear truck. I noticed a white female in a bright teal/blue jacket on NE 6th Ave. She seemed to be very interested in what [name redacted] and I were doing driving the armor. Normally that would seem normal, but she had a look of disgust on her face, pulled out her phone, and started following us down 6th and onto NE Emerson. I watched in the passenger side mirror as the female walked out into Emerson street to take photos or video of us. The female remained in the street, walking and holding her phone up as if she was taking photos of what we were doing.” He further wrote: “Over the past few years there has been a spike in police ambush style attacks, as well as vandalism to police property and vehicles. With this in mind, and the lawful reason of Improper placement on a highway, I decided to go and try to identify [Appellant] for purposes of writing her a citation. By the time I walked out the front of the precinct, [Appellant] was making the northbound turn from Emerson onto NE 6th. I walked up to our upper lot to see if I could speak to her before she got too far away. While I was walking I ran into Lt. [A] and explained briefly what I had seen. I was not in the standard police blue uniform so Lt. [A] went to contact [Appellant] while I tried to get an eye on her from the police secure upper lot. When I looked over the edge I saw [Appellant] down on her knees with her phone out taking pictures of vehicles in the underground secure police parking lot.”

Officer A was still on the parking lot roof when Lt. A arrived at Appellant’s location to speak with her. At that point, he then moved back down and came around the building to meet them and write the citation. He stated, “I was hoping to like introduce myself and maybe be like hey, you know, Officer [A], and talk to her, identify her for the purpose of the citation and maybe have a good conversation with her, explain to her what we were doing or something like that.”

In his interview, he describes that as he arrived, Appellant was in the street, talking to Lieutenant A, who was on the sidewalk: “I don’t recall exactly what he’s saying but he’s asking her to identify herself for purposes of the citation that I had seen her jaywalk and that he needed her to identify herself.” He continues: “And he’s saying that she’s subject to arrest if she doesn’t provide her name or her identity for purposes of the citation. And she’s still refusing to get out of the road, won’t move, won’t give a name, is trying – is like – is talking over Lieutenant [A] at the time and so at some point in this interaction we like...we’re going to have to detain you to at least get your iden – and we go to grab onto her arms and I remember how we’re taught is to grab the front of the wrist and the back of the arm and I remember I got to that..I don’t even think – like I was on for maybe a second or two – before she did this little like shimmy shake thing where she shook both of her arms and said okay, okay, okay, okay, okay and walked herself over to the sidewalk and provided me with an ID...”

When asked to describe the demeanor of Lieutenant A during the course of this interaction, Officer A stated: “Calm, like describing what he was asking her to do. He has like a kind of a tone of voice that's kind of like the consummate, kind of just very direct person but he wasn't yelling. His voice wasn't raised. I mean he was professional.”

His report further describes: “After [Appellant] provided her ID for citation, I wrote her a cite for Improper

placement on a highway... I completed the citation and walked over to [Appellant]. I introduced myself as Officer [A] and shook [Appellant]'s hand. I explained to [Appellant] what she had done and discussed her ticket in detail with her. I told [Appellant] if she had any problems to consult the back of the ticket for instructions. [Appellant] took the yellow copy of the cite, her ID and said "I'll see you in court."

During his interview, Officer A describes his interaction with Community Member. "So, I explained the situation to him, what was going on, and I said he was more than welcome to stay and watch but he needed to stand down on the corner so wasn't like right with us."

Lieutenant A

Lieutenant A was interviewed by an Internal Affairs investigator in March 2018. He described that he became involved as he was leaving the precinct. "I was walking out the front door, I saw Officer {A} and he got my attention... he explained to me that there was a lady that had been standing in the middle of the street on Emerson and she had been using her phone, I believe to film him... he was wearing his SERT training uniform. It's not usually recognized as a police uniform... he asked me, since I was in full uniform displaying a badge, if I would accompany him while he contacted her to talk to her."

Lieutenant A describes that he saw Appellant walking in the street on 6th and that as he got close he asked her to stop. "I remember walking up and just asking her right then, you know, can you step over onto the sidewalk because again, my initial concern was just being out in the street..." He describes that Officer A joined him fairly quickly after he started talking to Appellant. "It wasn't a long time that we were standing in the street and at one point, I remember I reached out and I touched her on the arm and I was just going to guide her and kind of direct her to the – stand on the sidewalk and when I did touch her arm, she immediately, you know, either threw her hands or pulled back or even – I don't know if she took a half step back or what. Clearly she was unhappy with that and I don't remember exactly what she said, you know, either get off me or – I don't recall exactly but she did indicate to us that, you know, she didn't want to be touched..." He then describes that she moved onto the sidewalk. When asked if he squeezed her arm, he stated: "I don't think so. I don't think I had that opportunity. I think she pulled her arm away almost immediately as soon as my hand touched her elbow was my – I remember her immediately pulling away." He states "I did not pursue any other physical contact with her." He described that "She never brought it to our attention that she was in any pain, discomfort, injury." Lieutenant A reviewed the pictures provided by Appellant, which he first saw in Traffic Court, and stated that he did not believe he could have caused the bruise.

Lieutenant A describes that Appellant had multiple questions about why she needed to provide identification and that it appeared that she had identification and was refusing to provide it. "I basically told her, I said, listen, I said we can lawfully detain you in order to identify you for purposes of issuing you a citation."

When asked if this citation was given to retaliate against Appellant for filming, he stated "No. I don't think that was it at all. I think he cited her for standing in the street because she was standing in the street."

Community Member

Community Member lives near the location of this incident and first spoke with Appellant when she was filming the parking of the SERT vehicle. He then walked to the store and when he was arriving back from the store, he saw Appellant with police on NE 6th Avenue. At that point, he describes that Appellant and

Lieutenant A were standing in the street and as Community Member passed by “the lady was telling me, asking me to stay, so that that way basically could witness about what he was doing.” He stated in his interview that he felt Lieutenant A was speaking to Appellant disrespectfully. When asked to provide more detail, he said, “It was his tone. His tone, his volume, all that. It was like, and then it was like, and then when he told me like basically go away.” He recalls walking partway down the block with Officer A and then leaving. When asked specifically if he was “moved further away than necessary to observe the interaction” he stated: “Yes.”

Officer B

Officer B was called to this incident by Lieutenant A for the purposes of providing a citation book and the computer in his car. He was interviewed by Internal Affairs on March 22, 2018. He states that he did not see either Officer A or Lieutenant A touch appellant. He describes observing some interaction between Lieutenant A and Appellant. He stated in his interview: “most of the conversation was just him telling her, hey, you committed a violation and you have - you are required by law to give your ID and you are not free to go and her arguing that she was not going to give her ID. I do not remember her exact words, but - and then him saying, Well, if you do not produce your ID you can be arrested for not producing your ID. And, I mean, he was forceful telling her, but he was not rude or anything like that, and she was just - she was pretty angry about the whole thing...”

Complaint Received: 1/2/2018
Investigation Completed: 4/2/2018
Findings Completed: 4/25/2018
Appeal Received: 6/15/2018

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.