



Case Summary for Appeal Hearing
2017-C-0264/2018-X-0004
September 5, 2018

INVESTIGATION OVERVIEW

Involved persons

Appellant
Officer A

Witnesses

Officer B
Witness 1
Witness 2

Allegations

No.	Allegation summary	Category	Finding
1	Officer A used inappropriate force when he pushed Appellant to the ground during a protest. (FORCE) (Directive 1010.00—Use of Force)	FORCE	EXONERATED
2	Officer A failed to provide Appellant direction to move back prior to their interaction during a protest. (FORCE) (Directive 0635.10—Crowd Management/Crowd Control) (Directive 1010.00 – Use of Force)	FORCE	EXONERATED

Incident/Complaint Summary

IPR received a complaint from Appellant, who indicated that he had volunteered on 09/10/2017 as a legal observer for the National Lawyers Guild during a Patriot Prayer Group protest. Appellant stated that as he filmed the arrest of two individuals at the SE corner of SW Salmon St. and SW 3rd Ave., Officer A used inappropriate force when he pushed him to the ground without cause. Due to the protest element of this complaint, IPR conducted the administrative investigation.



Video Evidence

Video 1 shows Appellant filming the arrest of two individuals by PPB officers as he stood to the left of an unidentified officer. At 00:06 of the video footage, Officer A appeared to look over in Appellant's direction before he returned his attention back to the individuals on his left. At 00:09, Officer A points to an unidentified individual, while instructions were given by an officer to an unidentified individual to "back up or you'll be arrested." At 00:13, Appellant steps forward with his left foot and then down on the back tire of a police bicycle which is on the ground to his right and in front of him. At 00:16, Officer A gets up off the ground and pushes Appellant a second later. Appellant falls and gets up off the ground at 00:20.

In Video 2, initial footage shows the crowd making its way on SW Salmon St towards Lowndale Square at SW 3rd Ave. Then at 03:25, Officer B is observed through the crowd, attempting to apprehend a resistant subject. Subsequently, additional officers arrive to assist her at 03:28. At 04:42, Appellant visible with bright green NLG hat, filming the arrest of Subject. At 04:44, an unidentified officer is standing in front of Appellant and to his left. Additionally, an unidentified individual with blue hair was observed standing directly to Appellant's left. Footage then showed the officer push the individual with blue hair, which subsequently caused him to lose his balance. At 04:45, the individual with blue hair reached out to keep from falling and briefly grabbed Appellant's left arm. As a result, Appellant at 04:46 appears to have lost his balance, stumbles, and steps on a police bicycle in front of him before being pushed back by Officer A at 04:49. Appellant gets up off the ground at 04:51 and remained in the street while continuing to film the situation from a distance.

Summary of Appellant and Officer Interviews

Appellant

IPR received a copy of a tort claim notice filed by the Appellant with the City of Portland. The Appellant writes that on 9/10/17 he served as a legal observer for the National Lawyers Guild during a Patriot Prayer Group protest.

The tort claim stated during the protest, "Without any reason to do so, or any prior notice, Officer A assaulted and battered Appellant by pushing him backwards, off of the sidewalk, into the street, and down on the asphalt." The claim further stated Appellant "suffered from back and neck pain" as a result of the incident, and additionally indicated "Appellant's damages include physical damage, pain, fear, and humiliation at the time of the incident."

During his IPR interview, Appellant indicated that on 09/10/2017, he served as a volunteer observer for the National Lawyers Guild. Appellant further indicated that as a volunteer observer, he documented police encounters and added that he had received "mandatory" training through the National Lawyers Guild.

Appellant indicated that prior to his interaction with Officer A, he observed him and another officer on the ground in the process of an arrest. Appellant initially stated that he stood approximately "seven feet or so – eight feet" from Officer A. Appellant added that "[an officer] and someone else who were the bicycle cops that were right in front," were a foot or two from him and had to record around them. Appellant then clarified that he was "a range of, like six to ten feet" away from Officer A, and indicated he was dressed in a long sleeve light gray shirt, a green NLG hat, black backpack, pants, and wore a red bandana around his neck. Appellant confirmed that Officer A had provided instructions for, "somebody else to get back." Appellant further indicated that he had been "nudged" from behind and attempted to regain his balance and continue to film, when he tripped over a police bike. Appellant stated that Officer A pushed him "very hard," and detailed his "really significant back and neck pain."

Appellant stated that he believed that the instruction to move back from Officer A had been directed at another individual who also there filming. Appellant additionally denied that he was contacted by officers, or that he attempted to contact officers after being pushed. Appellant further denied having sensed he was too close to the arrest and added that he would have moved back if he had been instructed to do so.

Witness 1 Interview

Witness 1 indicated that he was at the Patriot Prayer Protest on 09/10/2017, and remembered Appellant being “knocked to the ground by a Portland Police Officer” at Southwest Salmon and Third. Witness 1 stated that he could not remember the officer from the incident and added that he was not “close enough to see anybody’s name.” Witness 1 further stated that prior to Appellant being pushed to the ground, police had “forced their way into Lownsdale Park” at the corner of Southwest Salmon and Third. Witness 1 added that the push was hard enough to have knocked Appellant to the ground, at which time he complained of “physical harm.” Witness 1 also indicated that he was unaware if Appellant received any medical treatment because of his “suffering.” Witness 1 further stated that he and Appellant had not come to the protest together, and added that he “vaguely” knew Appellant, as they occasionally exchanged Facebook messages with one another.

Witness 2 Interview

IPR interviewed Witness 2, who was unable to provide any relevant information to the case as he did not observe the incident.

Officer B

On the incident date, Officer B was assigned to the Rapid Response Team(RRT) Charlie Squad. Officer B indicated that the protest was an “extremely dynamic and volatile situation” that started in Waterfront Park and involved members of Antifa and Patriot Prayer. Officer B stated that the bike squad was one of the only RRT squads “embedded” between the two groups, and they eventually moved west on Salmon with them to the intersection at 3rd. Officer B indicated that at that time, there were individuals in the street that blocked traffic and the 10 to 15 members of bike squad attempted to move them out of the intersection and onto the sidewalk. Officer B stated that as she and other members of the squad held the area at SW 3rd and Salmon, she observed an individual later identified as Subject, who appeared to have “punched a person that was unrelated to it.” Officer B then indicated she went to arrest the individual.

Officer B added that she was injured during the event when her leg was scratched by the individual she arrested and took into custody. Officer B stated that continual calls for assistance were made due to the volatility of the crowd, the squad’s limited numbers, and because “Multiple people in the area were being taken into custody.” Officer B stated the crowd threw “full sodas” and “rocks” as the squad attempted to create a “buffer” in order to take someone into custody. Officer B added that they struggled to “maintain that area with the limited officers we had. So that’s why we were requesting additional to come assist us.”

Officer B further indicated that Subject initially pulled back from her upon initial contact. Officer B stated at that time, Officer A observed her struggling with Subject and came to assist with the arrest. Officer B also stated that Subject was non-compliant as she and Officer A attempted effect the arrest. Officer B then indicated that as they worked to take Subject into custody, she observed somebody that was “very near us.” Officer B stated that Officer A got up and pushed the individual, later identified as Appellant, in the chest with two hands. Officer B additionally stated that she did not see what happened to Appellant after he was pushed and added that Officer A came back to assist her with the arrest of Subject after the incident. Officer B indicated that Officer A provided them “more safety” when he pushed Appellant, who was approximately 1 to 2 feet from them prior to being pushed. Officer B did not recall having observed Appellant kick any of the police bikes laying on the ground prior to the incident, and further detailed the concern for Appellant’s proximity

due to experience at protests and concerns that individuals aligned with a protest may attempt to “unarrest” individuals in police custody. Additionally, Officer B noted her concern that her RRT squad was outnumbered with limited resources.

Officer A

Officer A was assigned to the RRT Charlie Squad which for the event was designated as a bicycle squad for the Patriot Prayer protest. One of Charlie Squad’s assignments during the protest was to keep the opposing sides separated.

Officer A indicated at approximately 1300, a group of individuals that were members of the “Patriot Prayer group” arrived at the location designated for them in Waterfront Park. Officer A stated at around 1328, individuals from the Patriot Prayer group left the area and walked south on SW Naito Parkway and then turned west on SW Salmon Street. Officer A further stated that the “departure caused a large number of counter protesters to immediately leave the park in the direction of the Patriot group.” Officer A added that instructions were given to get on bikes and follow the groups and keep them separated. Officer A additionally indicated that counter protesters attempted to encircle the Patriot Prayer group as they walked, and refused to comply with instructions given by police.

Officer A stated the groups were followed to SW Third Avenue and SW Yamhill, at which time he crossed over to the NE Corner of Lownsdale Square. Officer A additionally stated that “several individuals dressed all in black with their faces covered” threw objects at people and refused to comply with “police commands.” Officer A further stated the individuals blocked traffic and screamed profanities at police and the Patriot Prayer group, and he also “heard loud popping noises that sounded like fireworks.” Officer A then indicated he observed a female, punch an unidentified man’s arm. Officer A saw Officer B struggle with Subject. Officer A further stated as he went to assist Officer B, he observed “another individual dressed all in black attempting to pull Subject away from Officer B.”

Officer A stated that at that time, objects were being thrown and officers worked to keep the crowd back. Officer A indicated that there were officers next to him and Officer B that were also involved in an arrest, and another officer stood “above me shielding us with his bicycle.” Officer A additionally stated that “police bicycles were on the ground in front of us and in the street.” Officer A then indicated that out of the corner of his eye, he observed an individual come up from the street and kick a police bicycle that had been laying on the ground in front of him. Officer A described the individual, later identified as the Appellant, as dressed in “all dark clothing with a completely full backpack and a bandana tied around his neck and a yellow hat. The subject was dressed in the same manner as many of the violent protesters in the crowd.” Officer A stated that Appellant was “right up against the officer who appeared to be looking in another direction,” and became concerned that due to Appellant’s proximity, he would “take action while the officer was unaware.” Officer A added that officer had provided directions numerous times to “back away,” and “it was obvious police were trying to make the scene secure.” Officer A indicated that with the number of people in the crowd, the situation was unsafe and caused attention to be divided between threats. Officer A then added that Appellant “ignored” police instructions as he “walked up from the street over police bikes, kicked a police bike and positioned himself up against a police officer only feet away from Officer B and I struggling with an arrest.” Officer A summarized his contact with Appellant as follows:

I waited a few moments to see if the subjects would back away as I scanned the crowd for other threats. In the meantime Officer B was still struggling with Subject while I held her arm. When the subject standing up against the officer next to me did not retreat I got up and forcefully pushed the subject with two hands in the upper chest while yelling “Back up.” A warning was not feasible due to the fact that I was still struggling with Subject.

Officer A stated the only time he provided Appellant instruction was when he told him to “get back,”

Officer A indicated that he was concerned with the proximity of Appellant to their arrest of Subject. Officer A stated that with the attempt by someone to unarrest Subject, things being thrown at them, and having torn ligaments in his thumb, his attention was divided between those issues and being crouched down with someone above him. Officer A stated that

he observed Appellant out of the corner of his eye, but was not aware of where he had come from. Officer A denied that observing Appellant filming or was aware of the NLG that appellant was wearing, until after he got up from being pushed.

Officer A also indicated that the push had been the most effective option in that situation, as it created appropriate space for their safety.

Complaint Received: 09/13/2017

Investigation Completed: 6/5/2018

Findings Completed: 7/31/2018

Appeal Received: 8/15/2018

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.