



Case Summary for Appeal Hearing
2017-C-0264/2018-X-0004
February 6, 2019
Supplemental Case File Review

INVESTIGATION OVERVIEW

Involved persons

Appellant
Officer A

Witnesses

Officer B
Officer C
Witness 1
Witness 2
Witness 3

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



This case file summary covers additional investigation conducted at the Citizen Review Committee's request following its September 5, 2018 meeting.

Appellant

Appellant indicated that he had initially received legal observer training several years prior to the protest. Appellant also indicated that he received training with the National Lawyers Guild at unspecified date prior to the protest. Appellant added that both trainings related to "having a notebook, having a camera to record, having you know, a partner with you to, you know, split roles." When asked what prior experience or prerequisites were required in order to become a legal observer, Appellant stated that he submitted a background check through the NLG. Appellant added that he signed confidentiality forms and received a "2 to 3-hour" training.

Appellant's attorney added that refresher trainings were conducted prior to "major events," in addition to other events such as "Portland Occupy" and "Occupy ICE," that are already in progress. Appellant was also asked about the training he received in regard to documenting events. Appellant indicated that he would normally have a partner, and one of them would take notes while the other person filmed. Appellant then added the NLG "terms of engagement as follows:

...it's really clear. The police have authority in that situation. Like, you are following police commands, following police instructions, and not interfering while documenting. And, yeah. I mean, that's pretty clear. The – like, obviously, emphasis on any type of, like, arrest scenarios where there's, you know, particular police engagement. So, you know, in the case on the day I was legal observing, there was, you know, two officers arresting, you know, an individual amongst others. So, that was my, like, area of focus.

Appellant stated that it was "common sense" on how to respond to an officer's commands and added that the appropriate distance was "contextual." Appellant further indicated that if there was a police barrier, "obviously" you could not be three feet away while filming. Appellant added that it was, "Kind of based around not interfering and, you know, sort of common-sense engagement." Appellant additionally indicated that he would have considered himself too close during the incident with Officer A if he had been "past the barrier of officers that were surrounding the arrest." Appellant indicated he was next to bikes and behind the barrier during the interaction and further stated that his proximity to Officer A was on video and was clearer than his "recollection is going to permit." Appellant added that a video short from a "side angle" clearly showed the distance between himself and Officer A and would "let that speak for itself." Appellant's attorney then stated that it appeared Officer A "had to kind of lunge past" the officer on the bike in front of him. Appellant then described his behavior as follows:

I was complying with any commands which none had been directed at me, and I was a safe distance away from the arrest and trying to fulfill my obligations as a legal observer safely and, you know, respecting the sloppy barrier that they had created with some haphazard bicycles that were, you know, strewn in the street and were pulled in afterwards. It was a dynamic situation.

Appellant indicated that at the time his focus was on the "aggressive arrest" and added that he was on the ground momentarily after being pushed by Officer A. Appellant stated that after he got up off the ground, "I think I checked my phone maybe to see if there was the video on there, which was lost." Appellant further indicated that he may have continued filming before additional officers arrived and pushed the crowd back into the street. Appellant additionally stated that during protest events, he would record civil rights violations, arrests, police engagement and police interaction. Appellant then stated that he would turn over any media after an event to the NLG and clarified that it was sent via "an email address or, like, an encrypted data store, I believe, where things could be submitted." Appellant continued that the NLG would then review the media for "relevant legal representation." Appellant additionally stated that there were "security protocols" related to the specifications of the equipment used for documentation and further added that it was "recommended" for legal observers to wear long sleeves "to deal with chemical agents." Appellant stated his backpack worn that day contained "medical supplies, water, backup batteries for filming equipment," in addition to a notebook and

pen. Appellant added that in addition to the bandana and pants he wore that day, he had on “the bright, neon green hat” which was “a critical identifier for legal observers in that context.”

Witness 3

Witness 3 stated she observed a woman with a suitcase arrested by officers and added that “a couple of cops had grabbed her and slammed her into the ground or on top of the bikes because they were bike cops.”

Witness 3 stated that she stood up as Appellant was “pushed” and “landed on his back and dropped his phone.” Witness 3 then indicated she picked up Appellant’s phone and returned it to him before she walked away from the scene because she was “a little rattled.” Witness 3 added that Appellant was next to her at the time and she “had no idea” what would happen when Officer A stood up. In regard to how hard Officer A pushed Appellant, Witness 3 stated that it was a “7” on a scale of 1-10. Witness 3 denied having observed Appellant kick or step on any of the bikes on the ground, as she was “trying to talk to the woman being arrested.” Witness 3 then indicated that she would have seen Appellant kick or step on a bike, as she was “eye level with the bikes.” Witness 3 added that “if they had moved, I would have noticed it.”

Witness 3 also indicated that the level of force Officer A used to push Appellant was inappropriate and stated that, “he could have just kept doing whatever he was doing but ignored Appellant.” Witness 3 additionally stated that it was “kind of weird” for Officer A to focus his attention on one person, and further asked why he could not “do his job without being violent towards other people.” Witness 3 stated that the “group of protestors” at the location totaled approximately 50. When asked to describe the attitude of the crowd, Witness 3 stated the behavior “always gets kind of weird when the counter protestors and the protestors mix because you can’t really tell who is who.”

Officer C

Officer C indicated that he was assigned to Charlie Squad during the protest and stated that the squad had been directed with keeping Patriot Prayer and Antifa separate. Officer C further stated that as the crowd moved west on SW Salmon, approximately five to six members of Charlie Squad moved with them. Officer C further indicated that he could not recall if or when a sound truck had arrived on scene at the intersection, as it was “pretty dynamic.” Officer C stated that there “definitely” not enough officers to deal with the size of the crowd, as their squad size was “roughly half a squad.” Officer C further indicated that ANTIFA attempted to “get at the Patriot Prayer,” as they had larger numbers and “were throwing a lot of objects.” Officer C added that ANTIFA’s “aggression” appeared aimed at the group from Patriot Prayer.

Officer C did not initially remember having provided commands to the crowd as he repeated that the situation was “pretty dynamic” and Charlie Squad did not have the numbers to effectively separate the two groups. Officer C added that when Officer B attempted to make an arrest, he moved to “try to create like a protective circle around where she was making the arrest.” Officer C stated that when he observed Officer B attempt to conduct the arrest, another officer came to assist her, at which time he turned his back towards them to provide protection.

Officer C also indicated that during the arrest, an officer he believed to have been Officer A, came up from behind him and pushed an unidentified individual to his left. Officer C stated that as a result of Officer A’s push, the individual later identified as Appellant, “fell down and they got back up.” Officer C added that he did not observe Appellant’s actions prior to being pushed, as he was involved with the unidentified individual in front of him. Officer C then stated he did not see any of the interaction between Officer A and Appellant that “led up to it,” and only observed that Appellant was pushed and fell. Officer C stated that there were a number of bikes on the ground at the scene, and Appellant “could’ve

tripped over a bike. I couldn't say." Officer C added that Officer A's use of a push at that time appeared appropriate given the "hostile crowd" and having projectiles thrown at them.

Officer C added that "pushing with your hands is like one of the lowest levels of force." Officer C further stated that Officer A could have done "other things," but the use of pepper spray could have potentially contaminated others. Officer C additionally indicated he was not sure what other options would have been appropriate given the "dynamic situation that was going on." Officer C also stated that he could not answer "fairly" as to if it was appropriate for Officer A to get up from an arrest to deal with a separate issue. Officer C stated that it would depend on the situation, and he did not see what led to Officer A having made that decision. Officer C indicated that Officers B and A were "within a few feet behind me" during the arrest and added that Officer A had used a "low level of force" when he stepped forward and pushed Appellant. Officer C did not know if Officer A had issued any instructions or commands during the incident and further stated that during an event such as a protest, he would expect a crowd to comply with the commands he gave. Officer C then indicated that a limited number of individuals in the crowd might hear those commands due to the "level of noise."

Video Evidence

IPR obtained additional video footage from Appellant's attorney of the interaction between Appellant and Officer A. In video XXX1, the 27 second footage showed the arrest of a subject during the protest. In the beginning of the video, Officers A and B attempt to conduct an arrest, as Officer A is pointing and giving commands to someone to his left and off camera. Appellant is in front of and to Officer A's right, filming the arrest. At 00:01, Appellant steps forward and across to the right with his left foot and steps on the police bicycle to his right. At 00:03, Officer A looks up at Appellant, before getting up and pushes Appellant at 00:04. Appellant stumbles back and falls to the ground a second later, before standing up and continues to film at 00:10. The camera then pans to the right to continue shooting footage of the arrest, while Appellant is no longer visible.

Appellant's attorney indicated that the second video submitted, xxx3, was not provided to either PPB or the CRC. A review of XXX3 found it to be the same footage as that found in 2017-C-0264 Video - XXX3. That video was found to have been previously reviewed and included in the original case file.

Videos 2017-C-0264 9-10-17 - Patriot Prayer protest and 2017-C-0264 Portland Police Officer Stops Pulling Womans Hair To Shove NLG Member were previously reviewed, but not included in the original case file as they were found to be "generally consistent with the footage reviewed in 2017-C-0264 Video - XXX3 and 2017-C-0264 XXXX XXXXXXXX."

A review of 2017-C-0264 9-10-17 - Patriot Prayer protest, begins with a number of unidentified protesters in pursuit of an unidentified individual near the location of the arrest at SW 3rd and Salmon. The pursuit continues until a subject is observed hitting an individual at 00:12. At 00:15, Officer B grabbed hold of subject's backpack and attempts to conduct an arrest. An unidentified individual dressed in dark clothing then attempts to take hold of subject's suitcase at 00:21 and an officer's bicycle at 00:23. At 00:27, officers set up a perimeter around the arrest and a chase occurs at 00:30 between officers and an unidentified individual dressed in dark clothing. The camera returns focus to the corner of SW 3rd and Salmon at 00:45 and films from behind the arrest at 01:16. At 01:39, Officer A looks in the direction of Appellant before he stands up and pushes him at 01:42. Appellant gets up off the ground at 01:46 and continues filming until the camera pans left at 01:58. When the camera returns to the arrest at 02:04, Appellant continues to film the incident from the street until the arrival of additional officers at 02:27. Appellant is no longer observed throughout the remainder of the video. Additionally, the view of the push was obscured due to camera's point of view, as the footage was taken from an undetermined distance behind Officer A.

A ten second video, 2017-C-0264 Portland Police Officer Stops Pulling Womans Hair To Shove NLG Member initially showed the arrest being conducted by Officers A and B from their left. At 00:01 of the video, Officer A separates himself

from the arrest, gets up and pushes Appellant at 00:02. The view of Officer A's push of Appellant is obscured due to camera's point of view, as a street sign blocked the view of the physical contact between Officer A and Appellant. As the camera pans left, Appellant is seen on the ground and then stands up at 00:05 and continues filming. At 00:07 the camera returns to the arrest and Appellant is no longer visible.

Complaint Received: 09/13/2017
Investigation Completed: 6/5/2018
Findings Completed: 7/31/2018
Appeal Received: 8/15/2018
Reinvestigation Completed: 10/29/2018
Findings Completed: 12/12/2018

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.