

Case Summary for Appeal Hearing

2019-C-0024/2019-X-0001

September 4, 2019

INVESTIGATION OVERVIEW

Involved Persons

Appellant
Officer A
Officer B
Officer C

Witnesses

Community Member
Sergeant A

Allegations

No.	Allegation Summary	Category	Finding
1	Officer A used inappropriate force on Appellant. (FORCE) (Directive 1010.10 – Use of Force)	Force	Exonerated
2	Officer B used inappropriate force on Appellant. (FORCE) (Directive 1010.10 – Use of Force)	Force	Exonerated
3	Officer C used inappropriate force on Appellant. (FORCE) (Directive 1010.10 – Use of Force)	Force	Exonerated
4	Officer A was discourteous when he did not address Appellant’s statement that he was injured. (Directive 310.00 – Professional Conduct and Courtesy)	Conduct	Unfounded
5	Officer B was discourteous when he did not address Appellant’s statement that he was injured. (Directive 310.00 – Professional Conduct and Courtesy)	Conduct	Unfounded
6	Officer c was discourteous when he did not address Appellant’s statement that he was injured. (Directive 310.00 – Professional Conduct and Courtesy)	Conduct	Unfounded

Incident/Complaint Summary

On 1/3/2019, Police responded to the Safeway at 1010 SW Jefferson Street in response to a call from Safeway Security regarding "a high subject acting erratic." Safeway Security reported that Appellant had been in the bathroom for two hours repeatedly flushing the toilet and had run from the bathroom when he was told that Police were on the way. Safeway Security told Police that Appellant then acted as if he were going to steal from the store, was moving and acting strangely in the store and that customers were afraid of Appellant. Appellant then left the store and circled the block four times assuming "fight-like poses and postures" as he passed the front doors.

Officer A arrived first and saw Appellant moving strangely in the street. Appellant was in the parking lane and not blocking traffic. Officer A decided to watch Appellant and follow him as he was not endangering others and more officers were en route. Soon after, Officer A saw Appellant run forward and apparently dive headfirst onto the sidewalk near a retaining wall close to the loading dock of Portland Art Museum. Officer A concluded that Appellant was a danger to himself and decided to take Appellant into custody on a hold.

The Portland Art Museum provided video footage which shows Appellant attempting to jump onto or over a retaining wall along the west side of the Museum. Appellant attempts the jump twice and the second time Appellant falls back onto the sidewalk and remains on the ground, as if injured. Two officers in uniform arrive in the video frame and appear to speak to Appellant, who is still on the ground. An IPR Investigator viewed the wall which Appellant was attempting to scale and measured it from where Appellant appeared to be jumping. At that area, the wall height is approximately fifty inches. There is an opening in the wall that is clearly visible on the video. It is unclear as to why Appellant is attempting to jump the wall, rather than to walk through the break in the wall.

Officers A and B contacted Appellant as he was lying on the ground and took him into custody. Officers report that as they handcuffed Appellant he tensed his arms, brought them near his chest and jerked them back and forth to avoid being handcuffed. Officers searched Appellant and found needles, a pipe and other drug paraphernalia in Appellant's pockets as well as substances that NIK tested positive for heroin and methamphetamine. Officers believed that Appellant was displaying behavior consistent with excited delirium (rapid breathing, sweating, increasing aggression) or extreme intoxication so they called for medical assistance. Officer C arrived and reports that Appellant was violently kicking his legs and Officer C assisted Officers A and B by controlling Appellant's legs. Officers report they then attempted to place Appellant in the back of a patrol car but Appellant continued to resist and Appellant was lowered to the ground in a controlled takedown. Once medical assistance arrived, Appellant was placed on a gurney with help from medical and fire personnel before being sedated and transported to the hospital.

Community Member witnessed part of officers taking Appellant into custody and was concerned about use of force by the officers. Community Member reports that Appellant told Officers that he had just had surgery and that Appellant screamed in pain continuously while being taken into custody. Community Member said he was concerned that officers were not taking Appellant's pain seriously and that officers were white and Appellant was African American and race may have

played a role in their use of force. Community member filed a third-party complaint via IPR's website on 1/22/2019. Community Member also submitted a video taken from his cell phone.

This video, at first, is of an interior space, and Appellant can be heard saying something like, "Ow!" The video then shows what appears to be an officer squatting, an officer kneeling, and three officers standing with Appellant on the ground. One of the officers says, "Relax." Appellant is making coughing and hacking sounds, and then yells, "Help!" Then the door from which the video was shot closes, and then the video continues again, from a different perspective. Appellant continues to cough. There appear to be several police officers in the video along with two Portland Fire employees. Appellant says something like, "Aah!" And then another wailing sound and a cough. An officer can be heard saying, "So here's what the original call (inaudible)..." Appellant then states something like, "Ow, my neck! I can't feel (inaudible)" before the video stops. The video is one minute and seven seconds in duration.

Appellant

IPR and Internal Affairs were unable to contact and locate Appellant during the course of this investigation. Appellant's attorney was located and information about the third-party complaint was sent to her who in turn provided Appellant the Appeal Request Form. Appellant completed this form requesting an appeal.

Officer A

Internal Affairs interviewed Officer A on March 13, 2019. In his report, Officer A described seeing Appellant apparently dive onto the concrete and then contacting Appellant with Office B:

Suddenly, he dashed forward and dove head first in the sidewalk near the cement wall on the edge of the museum property for no apparent reason. At this point, I believed [Appellant] was clearly a danger to himself. I notified radio. Officer B and I exited our cars and contacted [Appellant]. [Appellant] was in a heap on the ground. One his shoes had fallen off. As we spoke to him, he sat up, but would not speak with us when we asked him if he was okay. Since he was clearly a danger to himself, and was exhibiting signs of drug use, I decided to take [Appellant] into custody on a hold. Officer B and I took [Appellant] into custody. [Appellant] struggled and screamed. I handcuffed him and made sure his wrists had plenty of room and then double locked the handcuffs. When I searched him, I could feel needles in his pockets. [Appellant] continued to resist and struggle, so Officer B used a seat belt cutter to remove the contents of his pockets. I watched Officer B remove a needle plunger, a needle cap, a cooker lid with a brown tar residue that in my training and experience I knew to be heroin, a glass smoking pipe with brillo and burnt residue, and a clear plastic wrapper with white crystals inside I knew from my training and experience I knew to be methamphetamine. In his jacket, Officer Brown found more needles. **(Officer A report)**

Internal Affairs interviewed Officer A on March 13th of 2019. He said officers were holding Appellant down and slowly getting him into custody. Officer A said that Appellant did not want to be handcuffed and Officers A and B tried to pin his arms and put them behind his back but Appellant was pulling away so officers rotated him so that his stomach was on the ground and were then able to handcuff Appellant. Officers then put Appellant into a side recovery position so that they could search him and there would be less danger of positional asphyxia.

Officer A described requesting medical assistance and an old wound on Appellant's arm:

... then say to [Officer B], hey, make sure we get medical going because this is obviously excited delirium, cocaine, or like meth psychosis, something that he's just completely out of control. And he's really screaming like he's hurt. He's got some old ancient wound on his arm that's this big on his forearm, but it's not fresh. It's not even remotely fresh, it's years healed. And so a group starts forming on the opposite side, kind of screaming and heckling at us, but we're kind of going slow, and finally the sergeant gets over there because I say hey, we need a sergeant over here because obviously use of force, trying to hold him on the ground, and the sergeant goes hey, we need to get him in a car. (Officer A Transcript Lines 85-92)

Officer A said that Officers A, B and C attempted to place Appellant in a patrol car but Appellant "literally runs up the interior door jam of the car, so then we have to take him down to the ground and pin him down again and hold him even longer, and then we wait until medical comes and it takes medical like 8, 9 minutes to get there." (Officer A Transcript lines 96-98)

Officer A also said that during the wait for medical transport they used additional force to control Appellant including a "segment" maneuver:

One guy has got the head, one guy has got the feet, I got the center, we're just going to pin him down that way. When the guy is on the ground it's like okay, we can slow down, we're just going to take our time with this and then when he stops struggling as much we're like okay, we can start letting up a little bit, and then just one of us can hold onto him. I think we, he was kicking a bunch, so I think [Officer B] hobbled him at some point, then that hobble broke so then we had to hobble him again, and we just did a strike leg so he wouldn't keep on kicking, because he ended up, I think, I don't remember if his feet, I think his, I don't remember which way he was pointing when we got him to the, to the ground, but he was kicking so we had to hobble him to keep him from, from kicking on us and, and trying to break free. (Officer A Transcript Lines 101-109)

Officer A said that other than the old injury to Appellant's arm he did not see any injuries on Appellant's body at the time of officers contact with him. The IA Investigator showed Officer A a photo of Appellant with a scrape or bruise on his face and Officer A was not sure if the scrape or bruise had been there before officers arrested Appellant or if it had been caused by officer use of force when Appellant was taken into custody. Officer A described the use of force on Appellant as "scrumming, where you kind of grab the guy, try to hold onto him, try to get him into handcuffs, use your body weight to get on top of somebody, to then search them properly and then get him into a patrol car." (Officer A Transcript Lines 340-345)

Officer B

Internal Affairs interviewed Officer B on March 13, 2019. Officer B's description of events was very similar to Officer A's description. Officer B said he did not see any injuries on Appellant and described the use of force on Appellant:

... we went to put hands on him to put him in handcuffs. I took hold of his left arm, and as soon as we grabbed a hold of his arms he immediately flexed up and tensed and everything, so we just kind of like rolled him, because he was already sitting on the sidewalk, we just kind of rolled him onto his stomach to try to get him in handcuffs. We let other officers know that we were kind of struggling with him and everything to get them in there, and could 't get handcuffs on him, because he was still flexing up and screaming and kicking and everything, so I believe another officer, Officer C arrived, and we were able to get him in - I think we were able to get him in handcuffs. (Officer B Transcript Lines 64-71)

Officer B also described the attempt to put Appellant in the patrol car and the additional use of force while waiting for medical assistance to arrive:

As we got him- as we were getting him around to the back of the patrol car, we tried to have him sit in the back there, and as we pushed him towards the opening, he used his feet kind of to run up the side of the patrol car, and we thought he was going to just flip over us and do a head dive into the ground, so we laid him back down on the ground, kept him on his side, and at this point we already had medical coming. We laid him on his side, and as he was on his side he kept kicking at either Office A or Officer C, so I put a hobble on above his knees just to secure his legs together. I didn't hook it to anything, just put it on his legs. He kept kicking his lower leg, so I put another hobble on his ankles to keep his ankles secured together. Basically, we just sat there and waited until medical got there, and they were able to put him on the gurney and were able to get him in soft restraints and all that stuff and then I am out of there, so. (Officer B Transcript Lines 75-84)

Officer C

Internal Affairs interviewed Officer C on March 13, 2019. Officer C arrived third and described his use of force on Appellant:

Basically, when I was - when I first got there actually Officer A and Officer B already had Appellant handcuffed, but he was rolling around and violently kicking his legs on the ground, tensing up his muscles, thrashing his body back and forth on the sidewalk and he was not under control - fully under control by Officer A and Officer B. He was incredibly strong on the ground so what I did was basically gloved up and actually controlled his legs. So, we did kind of like a segmenting like we're taught by the bureau to control his legs while they were doing a pat-down precursory search of Appellant. (Officer C Transcript Lines 64-70)

Officer C described the same medical concerns about Appellant:

So, basically we're trying to control him, get medical - medical is already en route Code 3 to try to get this guy in - we're trying to get him medical care. That's our number one goal is to get him medical care. And he's screaming on the ground, thrashing around, people are witnessing, they're all yelling at us hey, leave him alone and we're - I'm trying to explain I - I even said this to some of the crowd, I said hey, we're trying to get him help, I even said that. I said hey, we're trying to get him medical help, okay? Just back up. So, I was telling people on the scene just letting them know kind of what we're doing. But with three of us we were able to control him pretty well so that no more force needed to be used on him at that point while he was on the ground because he was handcuffed and we had three bodies that were segmenting him at that point. (Officer C Transcript Lines 77-89)

Officer C recognized Appellant from previous contacts and attempted to speak to him:

... I tried to de-escalate by telling him - you know, basically asking him - telling him to relax like in a calm voice. And I was like hey, you know - because we already knew who Appellant was, he - I mean, he's - he's known to me and so - as a - as a citizen downtown and I've had contacts with him before so I knew who he was. But basically I was trying to like hey, [Appellant] just relax, you know, I go can you calm down for us we're trying to get medical for you. And, you know, he in his mind it was like oh, you're trying to hurt me. He's screaming all these things, I - I can't breathe, I can't - you know, he's - he's yelling all kinds of things out and so nothing that I'm saying to him is going - is getting- is - is actually absorbing in his brain at all. Yeah, I'm trying to de-escalate him and calm him down and I don't want to hurt him, I have no intention of hurting him. My actual - my intention is to get him on the gurney and get him to the hospital to get him the help he needs because I don't want him to stop breathing on us, I don't want him to have some kind of medical condition that happens and we're - we're worried about - you know, we - we put him in a recovery position, which is like on his side so he can basically - and that was one of the things that we - we were taught as well because we know with excited delirium they could have an in-death custody- or - or in-custody death where they stop breathing. So, we - we know that's a serious - you know, a serious thing to happen, we don't want that to happen to him. (Officer C Transcript Lines 136-151)

Officer C said that he did not see any injuries on Appellant and that he did not see any officers step on or apply pressure to Appellant's neck but that he did control Appellant's head as part of the "segment" maneuver which might have been misunderstood by an observer.

Acting Sergeant A

Internal Affairs interviewed Acting Sergeant A on 3/13/2019. Acting Sergeant A completed the Use of Force After Action Report and his description was similar to that of Officers A, B and C. The After Action Report did not document any excessive or unnecessary use of force. He described officers placing Appellant in the recovery position so that his airway would not be blocked and did not hear Appellant complain of injury at the scene. Acting Sergeant A described Appellant as one of the more extreme cases he's seen in ten years working downtown:

I was, I don't know, 10 to 15 feet away from him as they're controlling him, holding onto him and, you know, making sure that everything's going well. This guy seemed like he may have a potential for, you know, potentially coding out, having a cardiac issue based

on his intoxication. I think I asked two or three times how far out medical was. It seemed to be taking forever and I was extremely concerned that this guy - he was medically fragile based on his intoxication at that point. (Acting Sergeant A Transcript Lines 109-113)

Community Member

Internal Affairs interviewed Community Member on 3/5/2019. Community Member works nearby and described seeing officers contact Appellant:

as I was passing through right in front of the dock I saw a young black dude getting arrested by a couple of cops, and then he was telling them that he had just gotten surgery and not to be rough or anything, and they were just putting his arms behind him and cuffing him, and he was screaming in pain, and I was kind of like bewildered by this. I have seen a lot of this kind of thing on television, you know, and on the internet; but I didn't really do anything. I just kind of stared at it for a couple of minutes and then walked down into the building to get changed. When I came back, the situation had apparently escalated enormously. There was now paramedics and a couple of more cop cars. There were like eight cops circling this guy. They were holding him down. He was continuing to scream. He - I remember him saying something about, you are stepping on my neck. So, I got some footage, which I think I attached in my submission. It was not very good. It didn't really capture much of anything. (Community Member Transcript Lines 36-46)

Community Member said that this seemed to be an incident that could potentially have a racial component because it seemed to him that the police were ignoring Appellant's "request for gentleness because of his medical condition." Community Member stated:

if he had not been complaining that he had particular pain I don't think they would have been doing anything inappropriate just in terms of like what they would need to do to get the cuffs on him. No, I just think they were - what was inappropriate was that they weren't trying to do it in a way that was acknowledging what he was saying. (Community Member Transcript Lines 103-106)

Summary of Appellant and Officer Interviews

Complaint Received:	1/22/2019
Investigation Completed:	5/1/2019
Findings Completed:	5/20/19
Appeal Received:	6/19/2019

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.