Case File Summary

2013-C-0194/2014-X-0001

for Appeal Hearing on 4 June 2014

Summary Prepared on May 5, 2014 & May 12, 2014

Involved Persons

Appellant

Officer A—initial responding police officer

Officer B—back up officer/trainer

Sergeant C—Sergeant on scene

Officer D—back up officer/trainee

Synopsis of the Complaint

On July 9, 2013, Appellant was contacted on NE Cleveland Street by Officer A in the early morning hours for concern of him stumbling in the middle of the street. Officer A describes approaching Appellant as he was trying to put keys into the driver's door of a car parked on the street, and described him to be fumbling with the lock and visibly intoxicated. Appellant acknowledged he had been drinking and was described by Officer A as swaying and slurring his words.

Officer A describes telling Appellant he is under arrest for a detox hold and to place his hands behind his back for handcuffing. Appellant wanted to be read his rights, but per Officer A would not cooperate with being handcuffed, leading Officer A to call for cover. Before cover arrived, Officer A described Appellant demanding his business card, demanding to be read his rights, using profanity aimed at Officer A and becoming increasingly agitated, yelling about his rights, and not cooperating with Officer A's commands. Officers B & D arrived as cover.

Officers A and D placed Appellant in custody applying handcuffs to him without incident. He was placed in the back of the police car without incident. Once there, per officers, Appellant began screaming for Officer A's business card. Officer A describes rolling down the car window to calm Appellant and discuss placing his business card with his belongings when Officer A states Appellant spit in his face and soon thereafter slipped his handcuffs to the front of his body and then began to kick the back of the patrol car while screaming at the police.

At this point, per police, the involved officers decide to use maximum restraint on Appellant by repositioning his handcuffs and then applying a hobble. The details and timing of how the hobble was applied vary greatly as described by the Appellant and as described by the officers. The Officers describe this occurring before starting to drive the Appellant to jail and all of the activities taking place in the back of the police car and within policy. The report states that Officers A and D drove Appellant to jail.

Appellant describes slipping his handcuffs to the front. He describes either the car stopping, him being pulled out of the car and slammed on a grassy area or describes this occurring at the point of his initial encounter with the police. He then says he was hogtied, thrown in the back of the vehicle, and then repeatedly hit and punched by one or more of the officers. He describes spitting when he tasted blood in his mouth indicating he probably spit on one of the officers though he was trying to spit on the ground. It was then that they put something over his head and he was repeatedly hit. He also states police used profanity accusing him of intentionally spitting on one of them and referring to him in derogatory terms.

Details of the Investigation

On July 9th, 2013 at 1:33pm Appellant and his mother arrived at the IPR office to file a complaint against PPB officers stemming from Appellant's arrest earlier that morning at around 2:00am. The initial interview with Appellant was brief due to his needing to attend a court hearing at 2:00pm. Pictures of the Appellant were taken documenting injuries including injuries found on his head, inside lower lip, shoulder (left side), mid-back section (left side and center), left side torso (chest area), left outside bicep, left elbow, and left hip. Appellant reported swelling and pain around wrists and hands. Appellant was later examined at Legacy Emanuel Hospital ER that same day. Discharge summary documents the following injuries: injury of head, head contusion, contusion to lip, back contusion, contusion to upper extremity, abrasion of right wrist, and cervical strain (acute).

Appellant was asked for and signed a release of information for medical records from Multnomah County Detention Center Nursing staff. These records have observations of the Appellant at 3:20am, 7:14am, and 8:40am describing his condition in the jail facility but not indicating observations of any injuries. Appellant had his shirt neckline covering most of his face on one observation and was asleep on another.

Officer A's police report dated July 9th, 2013 describes the use of a spit sock on Appellant while taking him to jail (to be discussed further below). Officer A saw some blood marks on the spit sock when Appellant was taken into jail. Officer A did not see any injury on the Appellant and indicated in his report that Appellant "was not visibly injured during our custody, but may have cut the inside of his mouth while I held his head down."

Detention Center video was retrieved by IPR. The video contained no audio recording and, for reasons unclear, it appears Multnomah County Sheriff's Office no longer captures audio on these videos. The video shows Appellant being brought in for processing. Appellant makes some head gestures that indicate he may be speaking, but because he is wearing a spit sock at the time of this recording, his

mouth movements are not clear. Appellant is later seen being escorted by 5 MCDC sheriffs to a cell, still wearing the spit sock, which is then removed without incident. When the cell door is closed, Appellant appears to be yelling, but is not physically aggressive. The video is not high quality so it is not useful in terms identifying injuries. Appellant is wearing a white shirt that does not show any visible discoloration. MCDC documentation does not indicate Appellant was subjected to physical force during his intake or stay, nor does Appellant suggest any force occurred while he was at the jail.

GPS information for Officer A's assigned vehicle on 7/9/2013 was obtained by Internal Affairs. A video showing the location of the car every 30 seconds shows the vehicle arriving on NE Cleveland at approximately 2:09 a.m. and remaining stationary at that position until approximately 2:37 a.m. It then leaves the location and heads for the jail, arriving at the jail at approximately 2:45 a.m.

Summary of Appellant, Officer and Witness Interviews

Appellant

Appellant was interviewed twice by IPR and once by Internal Affairs. His description between the 3 interviews was at times difficult to track. He spoke in each interview about his activities the evening of July 8th, 2013/early morning of July 9th, 2013. He described hanging out with a cousin and couple of friends and they were out drinking. He left to catch the bus at 1:30am. While en route to the bus he needed to relieve himself and did so between two cars. He then noticed an officer present who asked if he was intending to steal a car or something. He replied he was not doing anything wrong and was trying to go home. He states the officer put him in handcuffs and threw him in the back of the car and was not told why he was being arrested. He described being angry and yelling and questioning his arrest.

He recalled putting his handcuffs up front and he may have done this because his shoulder hurt from an old injury. He recalled being pulled out of the police car to obtain his identification. He recalled being shoved back into the police car and being hit in the mouth by Officer A. Whether this occurred before or after he was hobbled is not consistently stated by Appellant. When hit in the mouth, he spits out blood and acknowledges he may have spit on Officer A. It was after this event that police put a hood on him. He was pulled out of the car, tossed on a grassy area and hobbled (he calls it being hogtied) then is thrown back in the car and hit repeatedly. In one interview he describes crying in the back of the police car repeatedly stating "Please don't kill me." Whether the hobbling occurred at the initial contact or on the way to the jail is not clear as Appellant's statements are difficult to track from interview to interview. Appellant acknowledges he does not have clear memories of all the events of that evening and pieced together some of what had occurred based on things he heard from jail staff.

Officer A

The IA investigator interviewed Officer A on September 20, 2013. Officer A describes traveling eastbound on Fremont when he observes the Appellant staggering down the middle of the street. He turned his spotlight on him and asked what he was doing. The officer describes him as visibly intoxicated because he was swaying and slurring his speech. The officer indicated in the police report

that he observed the Appellant fumbling with the lock and was concerned he was going to get into the car and drive it. He asked the Appellant for his identification and told him he was going to place him into custody on a detox hold. He asked the Appellant to place his hands behind his back but the Appellant refused and asked to be read his Miranda rights. This led to bit of a standoff as Officer A waited for a backup vehicle. Shortly thereafter Officers B and D arrived. Officer A and D placed the Appellant into handcuffs without incident, searched, and then placed him in the back of the patrol car. While being escorted to and placed into the back of the police car, Appellant was loudly demanding Officer A's business card. Officer A states he rolled down the back window to try to calm him down when the Appellant spit in his face. He states the Appellant slipped his handcuffs to the front and began kicking the back of the patrol car. He describes giving the Appellant a verbal warning to stop kicking the car or he would be placed into maximum restraints and the Appellant continuing to kick the vehicle.

He then formulated a plan with Officer D to place the Appellant into a hobble while the Appellant remained in the back of the vehicle. He states that Sergeant C was called for backup and they began implementing the plan by Officer D opening the passenger side door to apply the hobble to the Appellant's feet and Officer A opening the driver's side back door to apply the hobble to the Appellant's hands. Officer A describes guiding the Appellant by the back of his head laying him on his stomach while Officer D held the Appellant's feet and they waited for Sergeant C to arrive. While they held him, Officer A describes the Appellant as still spitting with his face pointing towards Officer A's knee. Officer A states he was afraid the Appellant would bite him so he pinned his head against the seat with his knee. Officer A also states that this may have caused the injury to the Appellant's lip.

Officer A states that upon Sergeant C's arrival he and Sergeant C each grabbed an arm while Officer B removed the handcuffs from the Appellant. He describes placing the Appellant's hands behind his back, re-handcuffing him, and turning him so that his left side lay against the seat. At this time Officer A also states that Sergeant C placed a spit sock over the Appellant's head. Officer A then states that they double seat belted the Appellant in while he was laying on his side and he and Officer D drove him to jail. Officer A stated that the Appellant was yelling throughout the ride to the jail and was agitated during the booking. He states that he did not stop and remove the Appellant from the vehicle at any point while en route. He also says he did not observe any injuries on the Appellant but did observe blood on the spit sock during the booking process. He did not remove the spit sock for fear the Appellant would spit on someone. Officer A stated that he did not personally strike, kick, or punch the Appellant nor did he observe any other officers do so while the Appellant was in his custody.

<u>Officer B</u>

Officer B stated that she and Officer D were dispatched to assist Officer A. She stated that when they arrived Officer A was standing in the street and the Appellant was standing next to a car. She stated the Appellant appeared agitated and was yelling at Officer A. During much of the incident Officer B stated she took more of an observational role to allow Officer D, whom she was training, to help Officer A while she observed. She indicates that Officer A stated that his belief that Appellant was too intoxicated to care for himself and should be placed on a civil hold and taken to detox. Officer B stated that Officer A and D handcuffed the Appellant and placed him into the vehicle without incident. Officer B then states

that Officer A rolled down the window and she observed the Appellant spit through the window at Officer A, which was when Officer A thought the Appellant should be charged with harassment. While in the vehicle, Officer B states that the Appellant slipped his handcuffs to the front and turned in the seat so that he was facing the rear of the vehicle. She stated that he was kicking the rear window of the car, doors, and then turned and kicked the cage part of the vehicle. Officer B states that Officer A then decided to place the Appellant into maximum restraints and asked Officer D to assist by holding his legs on the other side of the car. She states that Officer A asked for a Sergeant to respond due to the handcuffs being switched to the front, which made it more difficult to apply the hobble.

Officer B states Officer D was on the passenger's side and Officer A was on the driver's side with the Appellant laying on his stomach across the back seat of the vehicle. She states she positioned herself next to Officer A and observed him place his knee on the bottom area of the back of the Appellant's head to hold it in place due to the Appellant being agitated and yelling and attempting to spit on the officers. She states that they then held the Appellant's hands and waited for Sergeant C to arrive. She states that the Appellant was placed into maximum restraints once Sergeant C arrived and that Sergeant C placed a spit sock onto the Appellant. Officer B says she returned to the precinct following the application of maximum restraints and did not follow the officers to the jail. She stated that she did not personally strike, kick, or punch the Appellant nor did she witness any other officer do so while she was in the presence of the Appellant. She states she does not know where the Appellant received his injuries but suggests he may have received them while he was pinned down in the vehicle because he was struggling so much or while he was beating the inside of the vehicle prior to the restraints being applied.

<u>Sergeant C</u>

Sergeant C states that when he arrived Officer D was standing on the passenger side of the vehicle watching the Appellant. He states Officer A briefly told him of the encounter that led to the Appellant being placed in handcuffs, how the Appellant had slipped the handcuffs to the front and began kicking the vehicle, and how the Appellant was physically out of control and uncooperative. He stated Officer A relayed the plan to re-handcuff the Appellant and place him in maximum restraints. He said he and Officer A then approached the vehicle on the driver's side and Officer D opened the passenger side door, which caused the Appellant to look in the direction of the passenger side door. Sergeant C states that Officer A then opened the driver's side door and took hold of the Appellant's hands and pulled him down on the seat. He states that Officer A held the Appellant's left hand and that he held the Appellant's right hand while Officer B removed the handcuffs. Sergeant C states that the Appellant was not physically resisting at this time but was spitting at their feet, which was when Officer A placed his knee against the side of the Appellant's head to prevent the Appellant from turning his head and spitting at them while they re-handcuffed him.

Sergeant C indicates that once the Appellant was re-handcuffed then Officer D applied the hobble, Officer A and D seat belted the Appellant into the vehicle, and Sergeant C placed a spit sock on the Appellant.

Sergeant C states that once the car door was closed the Appellant began to yell insults, state that his mother works for the mayor, and that she could have them fired. He states that he tried to speak with the Appellant to calm him but that the Appellant remained agitated throughout his attempt to converse with him and that he could smell a strong odor of alcohol on the Appellant. Sergeant C then states that the Appellant was transported to the jail with Officer A and Officer D. He states that he did not personally strike, kick, or punch the Appellant nor did he witness any other officer do so while he was in the presence of the Appellant. He also states that he does not know where the Appellant's injuries came from but speculates it could have been from thrashing around in the back seat of the vehicle.

Officer D

Officer D states that he was dispatched with his training officer, Officer B, to Officer A's location to provide cover. He states that when he arrived the Appellant was standing next to a vehicle and Officer A was standing in the middle of the street. Officer D states that he and Officer A placed the Appellant into handcuffs, searched him, and placed him into the vehicle without incident. He states that once the Appellant was in the car he began to scream irately. Officer D states that Officer A rolled down the window to attempt to calm the Appellant and that the Appellant spit into Officer A's face and shoulder. He states that the Appellant had slipped his hands to the front and was kicking the vehicle, which was why Officer A decided to place the Appellant into maximum restraints. He states that Officer B called for a Sergeant and Officer A made a plan for how the restraints would be applied. Officer D states that when Sergeant C arrived that Officer D moved to the passenger side door and Officer A was able to grab the Appellant from the driver's side door. Officer D states he held the Appellant's feet while Office A, B, and Sergeant C re-handcuffed the Appellant and then Officer D applied the hobble.

Officer D states he cannot recall whether the Appellant was facing the front or back of the vehicle but that the Officers used two seatbelts to secure him from falling on his face. Officer D states that the Appellant was never removed from the car prior to arriving at MCDC nor did they stop anywhere en route to the jail. He said that during the journey to the jail that the Appellant would switch between yelling at the officers and then crying. Officer D states that he did not observe any injuries on the Appellant nor does he have an idea of where they may have come from. He does state that the Appellant appeared to be heavily intoxicated. He also states that he did not personally strike, kick or punch the Appellant nor did he witness any other officer do so while the Appellant was in his presence.

It should be noted that there are discrepancies among the officers and sergeant's statements on the issue of when Sergeant C arrived on the scene and whether he was consulted in implementing the plan to hobble Appellant or instead improvised as he came upon the other 3 officers interacting with the Appellant.

Summary of Information from the Case File Review

There was one main point of clarification from the Appellant's mother who was present at the Case File Review. She stated that the main concern was not the application of the hobble to the Appellant but the Appellant's allegations of being stuck by the officers, which she felt was not adequately discussed in the case file. She also requested that the appeal be held in June rather than May so that she could attend.

Timeline

CHRONOLOGY OF CASE PROCESSING	DATE
Date complaint filed with IPR	7/9/2013
Date IPR Initial Investigation completed	7/31/2013
Date complaint referred to IA	8/5/2013
Date assigned for IA Investigation	8/21/2013
Date IA investigation completed	10/16/2013
Date completed IA investigation to IPR for review	10/16/2013
Date IPR returned to IA for additional investigation	10/25/2013
Date IA sent additional investigation to IPR for review	11/19/2013
Date IPR approved the investigation	11/25/2013
Date completed IA investigation assigned to RU Manager for recommended findings	12/3/2013
Date RU Manager's recommended findings to Branch Chief for recommended findings	12/19/2013
Date recommended findings received by IA Captain for recommended findings	12/20/2013
Date recommended findings sent to IPR for recommended findings	12/20/2013
Date of IA sign-off of recommended findings	12/30/2013
Date of IPR sign-off of recommended findings	12/26/2013
Date of IA Disposition Letter	1/9/2013
Date of IPR closing cover letter	1/15/2014
Date appeal received	2/11/2014
Date appellant waived mediation in lieu of appeal	2/11/2014

TIMELINESS OF CASE PROCESSING	TIME ELAPSED (Calendar Days)	BENCHMARK (Calendar Days)
Time from date complaint received in IPR to the date the IPR Director refers the case to IA	27 days	21 days

Time from date received in IA to completion of investigation	56 days	67 days
Time from date IA investigation sent to RU Manager to date of RU's recommended findings received by Branch Chief for recommended findings	16 days	14 days
Time from date recommended findings received by Branch Chief to date referred to IA Captain for recommended findings	1 day	7 days
Time from date recommended findings received by IA to date IA made recommended findings (concurrent with IPR review)	10 days	7 days
Time from date recommended findings received by IPR to date IPR made recommended findings (concurrent with IA review)	6 days	7 days
Time from date of completed findings recommendations to mailing of the disposition letter	10 days	14 days
Totals	126 days	137 days

Allegations, Findings and Definitions of Findings

There were five allegations in this case four of which involved use of the hobble by four different Bureau members. The fifth allegation involved Officer A using inappropriate force by punching complainant in the mouth.

1. Officer A used inappropriate force when applying the hobble to the appellant
    a. Finding: **Exonerated**
2. Officer B used inappropriate force when applying the hobble to the appellant
    a. Finding: **Exonerated**
3. Sergeant C used inappropriate force when applying the hobble to the appellant
    a. Finding: **Exonerated**
4. Officer D used inappropriate force when applying the hobble to the appellant
    a. Finding: **Exonerated**
5. Officer A used inappropriate force by punching appellant in the mouth
    a. Finding: **Unproven**

Definitions of Findings

The possible findings in a case are:

Sustained: an incident alleged in a complaint did happen and does constitute a violation of policy

Unproven: while the incident may have happened, there is no preponderance of the evidence to determine how it happened or whether there was a violation of policy

Exonerated: while the incident may have happened, the preponderance of the evidence shows that there was no violation of policy.

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 Independent Police Review division or Internal Affairs for further investigation.

Respectfully submitted,

Mae Wilson and Jamie Troy

CRC Members