

Case File Review of Case #2001-C-0060 (CRC Appeal #2012-X-0003)

Chair Troy introduced the Case File Review. The appellants were not present for the case file review, but the Appeal Process Advisor and a family representative were present.

Director Baptista presented a case summary, including allegations and findings.

Investigator Barkley summarized the IA investigation.

Lieutenant Davis and Investigator Barkley responded to CRC members' questions.

During the question period, Mr. Bigham noted that the subject of the complaint, now deceased, had stated in his written notes that he heard Officer A admit to Officer B that he had intentionally injured the subject's arm. Mr. Bigham asked Investigator Barkley if Officer B had been interviewed about this, and Investigator Barkley said that he had not.

Mr. Bigham made a motion to request additional investigation, specifically to interview Officer B. Chair Troy seconded the motion. The motion passed by a vote of 6-3.

Yes: Bigham, Bissonnette, Lalsingh, Paris, Silver, Troy

No: Denecke, Pruitt, Yarosh

Chair Troy made a motion to request medical records from American Medical Response and/or Portland Adventist Medical Center. Ms. Lalsingh seconded the motion. The motion failed to pass by a vote of 2-7.

Yes: Lalsingh, Troy

No: Bigham, Bissonnette Paris, Pruitt, Silver, Yarosh

Captain Famous: "In response to the request to send this case back for additional investigation... I think that on this case, clearly the Precinct Command, the Assistant Chief, the IA Captain, and the IPR Assistant Director all felt that they had a reasonable amount of information to each make a determination in this case. So I concur with the minority members of the CRC in that it's not necessary to conduct further investigation as requested."

Jamie Troy: "So Internal Affairs is refusing the request. Is that correct?"

Captain Famous: "Yes."

Jamie Troy: "I remember City Attorney Woboril stating it would be very unusual for Internal Affairs to do that, and it would be a hard thing to imagine any case

when that would happen, but if it did happen, he assumed there would be a very loud protest from the CRC and that The Oregonian would be printing it the next day and talking about how the Police Department...”

Director Baptista: “...The reason IPR is not jumping in to do it is because when I’m looking at the statement made by the complainant, by the deceased, he said, ‘I was unable to overhear all that was exchanged. The second officer kept attempting to engage me in conversation. I saw Officer A take no notes about the presence of new witnesses. Returning to the area where I sat with [Officer 2]’ he writes, ‘You broke my arm on purpose.’ Quote, ‘Yes, I did.’ Officer 1 spoke to Officer 2 and not me.’ It does not say how he heard this information. At best, this is hearsay information. Had there not been any civilian witnesses, yeah, I think this would have been an essential question. Had there been a discrepancy between what the civilian witnesses, what the decedent said, and what the officer said as to the use of force, I think this would be relevant question that could tip the scale. However, when you look at evidence, and you have to determine what is reasonable for a reasonable fact finder to make a decision, you look and determine where is that weight of the evidence. And there are two civilians that were present that did not give inconsistent statements. And so, as a fact finder in this case – I’m not saying because I was a fact finder, I was right – but as a fact finder in this case, whether or not I had the answer to this question – let’s say it was asked, and they said no. Well, you’ve [garbled] out here and said, ‘Well, of course they’re gonna say that. That’s self-serving. It’s another officer.’ The answer to this question is not essential to me as eyewitness testimony of two civilians and pretty detailed information from the decedent that is able to provide you with a sufficient basis. This question would not tip the balance. That is why, as a reasonable fact finder, I did not send it back for additional investigation, and I found it very easy for me to make a decision in this case based on the evidence I had.”

Rochelle Silver: “What’s the sense of us going through this if you’re gonna make the decision. Nine people are sitting here. Nine people worked through this case. Six or seven of the people voted in one direction. We’re asking for a simple piece of information. I don’t understand why it’s being withheld. If it makes no difference to the case, it will make no difference to the case, but why can’t we have that piece of information? I know there’s unions involved, but, you know, you just call the officer and the union, you ask him the question, and done with, and then we don’t have this big argument.”

Captain Famous: “Well, I think that Internal Affairs has in the past considered, reopened, and conducted additional investigation on prior cases. So we have a track record of doing that when we believe – and it’s not just myself or the IPR Director. It’s Assistant Chief of Police, a Captain, and myself, so it’s a group of people that have come to this decision, and we really don’t believe that it’s relevant and it’s going to answer anything more as far as the specific allegation to whether or not excessive force was used.”

Rochelle Silver: "And maybe it won't. And maybe it absolutely won't. But six people are asking for something, and why embody this group, have us agree to all this stuff, carefully think about it, make a motion and second and vote? I just don't understand."

Jeff Bissonnette: "So given where we are, I think that there's no need to debate the issue. I think that at this point if we should schedule the appeal hearing, we can do additional reading based on this discussion and then make a determination after the hearing whether or not we can make a judgment either to affirm the findings, challenge the findings, or make another request to send it back for investigation, and so then we can let chips fall where they may at that point. And so at this point I make a motion to schedule case number 2011-C-0060 for hearing..., and if the schedule works, just to do it next month, but if it doesn't, then we can find another time."

(Motion passed to schedule the appeal hearing.)

Jamie Troy: "Okay... well, we have some gray areas in the ordinance. We'll see how it comes forth. This concludes our case file review."