

# POLICE CIVILIAN REVIEW BOARD

## Investigation Report

Internal Affairs Case Number C 2016-0010

Complainant: (Race/Gender)	C- The SLCPD & [REDACTED] ([REDACTED])
Alleged Policy Violation:	Improper Use of Force
Subject Officer: (Race/Gender)	S- [REDACTED] ([REDACTED]) S1- [REDACTED] ([REDACTED])
Subject Officer's Years of Service:	S- [REDACTED] S1- [REDACTED]
Date of Alleged Incident:	2/2/16
Date Investigation Requested:	2/4/16
Date Filed with Internal Affairs	2/4/16
Date Investigation Completed:	4/6/16
Panel Members:	Sandy Walsh Dan Cannon Ginger Fletcher Xavier Gondra Dennis Busch Brandon Myers
Date of Panel Meeting:	4/8/16
Interviews Conducted:	7

**It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.**

### Synopsis:

The complainant in this matter is officially the SLCPD as the involved citizen, normally denoted as C, or the complainant, refused to cooperate in this process, upon the advice of [REDACTED] attorney. Therefore, there will not be a section for the involved citizen to provide [REDACTED] recollection and point of view but for the purpose of this report, will be referred to as C.

The “Use of Force” policy, as stated in the SLCPD policy manual states the following:

**Department Use of Force Policy**

A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances. It is imperative that officers act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices whenever using force in the course of duty.

Force should only be used with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person.

**Force in Arrest**

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

**Fleeing or Resisting Person**

The person shall not be subjected to any more restraint than is necessary for his arrest and detention. If the arrested person flees, forcibly resists, or jeopardizes the officers' safety or the safety of others, the officer may use force which the officer reasonably believes to be necessary to effect an arrest or to retain custody by preventing escape. The officer is never authorized to use punitive force or punitive measures while effecting an arrest or preventing an escape.

On the night in question, C was knocking on doors late at night, in a high density housing area when citizens made calls to the police reporting these actions. It was snowing that night, C was wearing shorts and [REDACTED] actions were unusual to those people who called the police.

Officers S and S1 responded to the incident with S1 making initial contact with C. C told the officer that [REDACTED] was there seeking a [REDACTED] friend of [REDACTED] but would not reveal [REDACTED] identity or location to the officer due to C's lack of “trust” in the officer. S1 was very accommodating of C simply telling [REDACTED] to go home, but C, for reasons not entirely understood, refused to do so. S1, noticing an emanating smell of marijuana, told C to depart for home to smoke there. C did not do as suggested at which time S1 asked for C's identification. C refused to provide [REDACTED] ID saying that [REDACTED] did not have it with [REDACTED]. After much banter, C finally provided [REDACTED] true name and gave a date-of-birth to the officer but it is unknown if this date was accurate.

C continued to refuse to leave at which time S arrived to assist, and it appears that the officers were moving C towards a police car when an upright scuffle ensued. S eventually grasped C in a rear facing bear hug wherein the officer's chest was against C's back, with the officers arms wrapped around the upper arms of C. Two videos captured most of this encounter with C refusing to leave or provide [REDACTED] ID and the officers attempting to move [REDACTED] along. The officers believed that C was resisting their lawful orders and so they attempted to detain/arrest [REDACTED] with C offering physical resistance to their plan. C refused to cooperate on this matter so [REDACTED] point of view is unknown.

In any case, officer S1 struck C with [REDACTED] ASP baton numerous times, nearly all of which were aimed for [REDACTED] legs, except for a few that were aimed at the hand holding a decorative metal flower that was used as a weapon by C. S, who was holding C from the rear, was struck twice on [REDACTED] head, one blow causing a two inch long gash in [REDACTED] scalp and the other blow nearly severing the lower third of [REDACTED] left ear.

**[REDACTED], herein referred to as S, is the subject of this matter and provided the following:**

S stated that [REDACTED] was dispatched to a call concerning a [REDACTED] banging on doors and arrived after S1 was already on the scene. S recalled that [REDACTED] remained in [REDACTED] car, illuminating the interaction between S1 and C as the area was generally poorly lit, and it was at night. S said [REDACTED] exited [REDACTED] vehicle as [REDACTED] noticed the interaction escalating, based upon the voices becoming louder and body movements. S said [REDACTED] forgot to turn on [REDACTED] body camera as [REDACTED] was rushing to assist S1.

S said that the first conversations [REDACTED] had with C were about the fact that S1 was also a police officer as C had focused on S's visible metal badge. S said [REDACTED] could not understand C's confusion as S1 was also dressed in [REDACTED] well marked uniform and S1's police car was very near where they were. This initial conversation, when combined with the fact that C's pupils were dilated and C's actions all lead [REDACTED] to believe that C was under the influence of some type of drug.

As C continued to not provide [REDACTED] identification to S1, despite S advising [REDACTED] that [REDACTED] needed to do so, S recalled that S1 reached for C, who stepped back and away from S1. S said that at that point [REDACTED] closed upon C from the rear and "wrapped [REDACTED] up" in a chest-to-back bear hug. This grasp allowed S to control C, who was tall enough to not allow S to see over [REDACTED], and resulted in S having [REDACTED] arms completely around C, pinning [REDACTED] arms from the elbows up, to C's own body. C was able to move [REDACTED] arms below the elbows however. As C began to resist the officer's efforts to move [REDACTED] to the police car and place [REDACTED] in handcuffs, and after S1 giving C numerous commands, S recalled that S1 deployed and used [REDACTED] ASP baton on C's legs. S remarked that S1 struck C in the legs, with some blows landing on S's own legs resulting in [REDACTED] own bruises, yet C continued to resist the officers. S recalls that [REDACTED] delivered a few knee strikes to C but those too were ineffective. As this upright struggle continued, C produced a large, metal, decorative flower and then S felt two blows to [REDACTED] head, one of which hit [REDACTED] ear. S said that only one of the blows caused [REDACTED] any discernible pain but [REDACTED] was aware that [REDACTED] had been hit by the object. S said that [REDACTED] was not positive where C obtained the metal flower from but believes it must have been hidden under [REDACTED] coat as C first had a wind chime in [REDACTED] hand. S recalled watching S1 use [REDACTED] ASP to try to knock the metal flower from C's hand by directing a few blows at the object in C's hands but is unsure how C lost control of the metal flower. *(Note: by watching the video, it is clear that S1 did in fact target the metal flower in C's hand but since C was able to strike S in the head after S1 attempted to strike [REDACTED] hand, C did not lose control of the flower due to a blow delivered by S1.)*

S said that [REDACTED] could not see that any of the ASP blows delivered by S1 at/on C were effective in stopping C's resistance. S described C's resistance by C's pulling away from the officers, [REDACTED] body movements to stop from being handcuffed, [REDACTED] constant kicking at the officers and [REDACTED] attempted bite of S as [REDACTED] was trying to handcuff [REDACTED]. *(Note: S can be heard on the video telling C to not bite [REDACTED] and S1 said [REDACTED] watched this event transpire.)* S explained that after being struck by the flower in the head that [REDACTED] took C to the ground with C continuing to resist [REDACTED] efforts to place [REDACTED] into handcuffs. [REDACTED] further added that [REDACTED] could see C kick at S1 with S1 responding by delivering ASP blows at the legs of C. S said that [REDACTED] felt all the force used by S and S1 was

reasonable. S said that it was not until other officers arrived that they were able to place the handcuffs on C and that even then, it took five officers to do so. S was aware that S1 used [REDACTED] Taser by firing [REDACTED] darts into C but this did not have any effect upon C, with S speculating it was due to the bulky outwear that C had on.

Once the other officers arrived, S became aware of the extent of [REDACTED] injuries and recalled being driven directly to the hospital where [REDACTED] was given 15-16 stitches to close [REDACTED] wounds.

**[REDACTED], herein referred to as S1, is the subject of this matter and provided the following:**

S1 stated that [REDACTED] made initial contact with C who [REDACTED] almost immediately felt was under the influence of some type of drug due to [REDACTED] eyes being dilated and due to [REDACTED] demeanor. S1 recalled that [REDACTED] asked C to leave the location, which C refused to do and instead C asked [REDACTED] for a hug and began to cry, further making S1 believe that C was "high".

S1 said [REDACTED] asked C for [REDACTED] name and DOB with C being very slow to respond, especially on giving [REDACTED] DOB as C gave S1 a long series of seemingly unrelated numbers. *(Note: in reviewing the video, it is clear that S1 asked C for [REDACTED] ID and it is equally clear that neither officer knew who [REDACTED] was, which C seemed to not believe. Based upon the video, C appears to feel as if [REDACTED] is well known by all law enforcement, for reasons unknown since C did not participate in this review. It is equally obvious that the officers did not know who [REDACTED] was during their confrontation and during the officer's interviews.)* Once C failed to ID [REDACTED], S1 said that [REDACTED] decided to put C into handcuffs so [REDACTED] could secure [REDACTED] as [REDACTED] attempted to identify the still, unknown suspect. As S1 attempted to cuff C, S1 recounted that C raised [REDACTED] hands up and began to swing them. S1 recalled telling S that they should move C towards the police car, with [REDACTED] thinking being they could pin [REDACTED] against the car and put [REDACTED] in cuffs. At this point, C was actively fighting them and swinging at them. S1 said [REDACTED] then deployed [REDACTED] ASP baton and attempted to deliver 4-5 leg strikes, which is the target area [REDACTED] was taught to target during [REDACTED] ASP training. S1 said [REDACTED] is unsure how many of those blows actually struck C as S was behind C, holding C, and C was attempting to intertwine [REDACTED] legs into the legs of S. S1 did say that [REDACTED] knows [REDACTED] missed C and struck the police car and probably S.

S1 said [REDACTED] was aware that the ASP blows were ineffective as [REDACTED] did not strike with full force due to the proximity of [REDACTED] partner. At some point C produced a decorative "wrought iron" metal flower that had sharp petals on it. S1 said that [REDACTED] saw C attempt to hit [REDACTED] with the metal flower and [REDACTED] recalled striking at the hand holding the flower at least once, but does not believe [REDACTED] made contact with C's hand. S1 said that [REDACTED] thought C struck S twice in the head but [REDACTED] was not aware that S had been injured until a bit later. S1 described the flower as being a weapon which [REDACTED] agreed could have caused [REDACTED] death or serious bodily injury. At this point S1 recalled thinking that [REDACTED] could not shoot C, due to the proximity of S, and recounted thinking that [REDACTED] life was in danger.

S1 recalled calling for more officers and that C was taken to the ground, landing on [REDACTED] back. C, who had been kicking during the incident then began to kick at S1 using a "bicycle kick" causing S1 to once again use [REDACTED] ASP at C's legs. As other officers began to arrive, S1 put away [REDACTED] ASP and deployed [REDACTED] Taser, firing it at C. S1 stated that it was ineffective and so [REDACTED] did not use the Taser again. S1 was aware that a responding officer used [REDACTED] Taser in the "Drive Stun" mode and that was also ineffective. S1 said that [REDACTED] thinks it took a total of six officers to finally secure C in handcuffs.

**██████████, herein referred to as W, is a police officer, a witness and stated:**

W arrived after all of the events had concluded and did not see what occurred. Based upon this, W was not interviewed as █████ did not possess any first hand information on what had occurred.

**██████████, herein referred to as W1, is a police officer, a witness and stated:**

W1 arrived after all of the events had concluded and did not see what occurred. Based upon this, W1 was not interviewed as █████ did not possess any first hand information on what had occurred.

**██████████, herein referred to as W2, is a police officer, a witness and stated:**

W2 stated that █████ arrived as C was on the ground with multiple officers trying to secure █████ in handcuffs. W2 was asked to help cuff C, who had a single cuff on one wrist so █████ pulled free the hand that was not cuffed. W2 believes that it took 4-5 officers to finally get the resisting C into cuffs and recalled that C was flailing and kicking █████ legs, causing an officer to sit upon C's legs.

W2 felt that C may have been under the influence of something based upon █████ constant yelling. W2 said that it took nearly 45 seconds to get the handcuff on the free wrist. W2 said that C was not responding to commands to get onto █████ stomach and that █████ did not see any officer use an ASP, or kick or punch C to get █████ secured.

**██████████, herein referred to as W3, is a police officer, a witness and stated:**

W3 arrived after all of the events had concluded and did not see what occurred. Based upon this, W3 was not interviewed as █████ did not possess any first hand information on what had occurred.

**██████████, herein referred to as W4, is a police officer, a witness and stated:**

W4 responded to the scene based upon the call for assistance from another officer. Upon arrival █████ noted that C was on the ground with multiple officers trying to restrain █████. W4 said that C was fighting and kicking, twisting and contorting, and was "actively fighting the officers". W4 recalled that W6 used █████ Taser in a "Drive Stun" mode which "somewhat effective" but said █████ felt C was on drugs, most likely spice based upon what █████ was saying, █████ actions and █████ recalled that C did not become compliant until C's free wrist was placed in handcuffs. W4 said that █████ saw the metal flower nearby on the ground and remarked that █████ observed sharp fragments of it lying nearby. W4 did not witness any use of the ASP or blows delivered by officers.

**██████████, herein referred to as W5, is a police officer, a witness and stated:**

W5 stated that █████ too responded to the incident based upon the call for assistance. █████ arrived to see 3-5 officers struggling with C, who was on the ground, and had a single handcuff on one wrist. W5 stated that C was "thrashing about" with █████ arms and legs going all about. W5 said █████ primarily focused on the legs/feet of C and later discovered that some blood, most likely C's, had soaked into █████ pants. The rest of W5's account of the incident is nearly identical with those of the other officers and so will not be recounted herein.

**██████████, herein referred to as W6, is a police officer, a witness and stated:**

W6 stated that [REDACTED] arrived late on-scene, to see three officers attempting to get handcuffs onto C's wrists. W6 explained that C was resisting by flailing around and kicking out at the officers. W6 said [REDACTED] attempted to control C's kicking legs and after noting that C was ignoring the commands of other officers to stop resisting, [REDACTED] gave C a verbal warning of impending use of [REDACTED] Taser, at which time [REDACTED] delivered a single "Drive Stun" onto C's chest, which was covered only by a tee shirt. W6 said that [REDACTED] felt C was "high" on something due to [REDACTED] degree of resistance and [REDACTED] repeated ignoring of various officers commands. While [REDACTED] was present, W6 did not see any use of the ASP baton or a Taser by any other officers.

### **Evidence:**

**E:** Photographic Evidence: pictures of C were taken at the hospital immediately following the events described above. C suffered injuries to [REDACTED] lower legs/shins, consistent with being struck by a baton/ASP. These injuries were minor in nature although some minor bleeding was present. On C's body was a single Taser prong and some Taser wire was visible. C had blood on [REDACTED] face and head but with the exception of a possible minor nose bleed, i.e. a bloody nose that did not bleed sufficiently to even drip down [REDACTED] upper lip, the rest of the blood is not associated with an injury that could be seen on C's face or head. It is likely that the majority of the blood came from another person, likely from the wound S suffered by C striking [REDACTED] with the metal flower. C's knuckles on [REDACTED] left hand were all injured, consistent with the type of injuries seen on a person that had struck something hard. Some minor blood was associated with these knuckle injuries but they clearly were caused by C striking a hard object. C had red marks above, and near, [REDACTED] left nipple. Those marks are very light, not easy to discern, but could be related to a drive stun from a Taser or from another source.

Photographs of S were taken also at the hospital, immediately following this incident. S suffered a 2 and ½ inch gash on the left side of [REDACTED] head, far above [REDACTED] ear, near the crown of [REDACTED] head but still on the side of it. Some blood is present, but the injury appears to have been cleaned up by a medical professional prior to being photographed. S had a cosmetically serious injury to [REDACTED] left ear as it appears as if the lower part of the ear, from just above where the earlobe attaches to the rest of the ear, has been severed almost completely. The injury is serious in that if untreated, S would be without the lower one third of [REDACTED] ear. *(Note: S was observed during [REDACTED] interview and [REDACTED] ear has been surgically reattached with great precision making the injury hardly noticeable.)* S also had minor scrapes/redness to [REDACTED] left arm, just above [REDACTED] wrist, but they were so minor that there is no indication what caused them other than the obvious explanation of the physical wrestling match [REDACTED] was engaged in with C, during the arrest.

A photograph of a metal flower was taken and it shows an all metal item, with what appears to be a wrought iron "stem" that is wavy in nature, mimicking a real flower, topped by an all metal "petal" that is pinkish in color. It is most likely the object that C used to strike S based upon the cut on S's head which is a narrow cut and the cut to [REDACTED] ear that obviously resulted from being struck with a sharp implement, rather than the ragged torn appearance both injuries would have exhibited if the origin was from a blunt object or due to contact with a hard object, such as the ground or car. *(Note: S was never seen on the ground so [REDACTED] injuries were not due to [REDACTED] making contact with it.)*

**E1:** Video footage of the incident was recorded along with footage from multiple officers, including S1. The following is a summary of those recordings:

S1 activated [REDACTED] camera upon initial contact with C and it was noted that the scene is late at night, with decent lighting and with snow falling. At many times, especially once the physical struggle



occurred, S1's camera is obscured by [REDACTED] cold weather jacket. Although the video is not present, the audio is clear and various noises can be heard during the struggle including sounds like an ASP baton being used on a person, a sound related to the ASP making contact with the police car and at least on two occasions, sounds similar to the noises associated with a Taser cycling. In a brief frame or two, the wind chimes photographed on the ground later can be seen in C's hand. In summarizing the events, prior to going into specifics, S1 made contact with C who was standing outside of an apartment complex and asking C where [REDACTED] lives. C avoids answering questions with specifics and is told to leave by S1. S arrived at the scene with C continuing to be evasive and at some point, S1 attempts to grasp C with C yelling out. An upright struggle occurred with S taking C into a rear "bear hug" type of hold wherein S's chest was in contact with C's back. This struggle continues for an extended period of time with the officers giving commands to C to stop resisting and C yelling for help, and other things. Although not caught on S1's camera, it is during this upright struggle that C used the metal flower to strike S on [REDACTED] head, leaving the gash described above as well as the blow that caused S's lower third of [REDACTED] ear to be severed and hanging by a small amount of flesh.

Upon initial contact S1 can be heard asking C where [REDACTED] lives, with C not answering [REDACTED] or at least the recording not capturing a response. At some point S1 replies to something said by C, but not heard on the recording by saying "You don't recognize what?" (*Note: later in the incident, C sees S approaching and points out S's badge and so it is assumed that this missed comment by C was directed at S1 and implies that [REDACTED] does not recognize S1 as police officer despite S1 being in full uniform and with [REDACTED] marked police car as a part of the scene.*) C explained to S1 that [REDACTED] was there to visit a [REDACTED] but [REDACTED] would not identify [REDACTED] and said that [REDACTED] would not do so as [REDACTED] "does not trust" the officer. S1 instructs C to leave, with no action taken by C and then tells C that [REDACTED] smells of marijuana and instructs [REDACTED] to leave the area and smoke marijuana elsewhere.

After not telling the officer who [REDACTED] was going to go visit at the late hour, S1 asks C for [REDACTED] identification (ID). S1 repeats this demand numerous times with C not complying and eventually asking officer S1 "for a hug" and later refers to [REDACTED] as "Cupid". C then tells S1 that the officer knows who [REDACTED] is by saying "...you know who I am" with S1 telling [REDACTED] that [REDACTED] does not know who [REDACTED] is. C then makes reference to the fact that everyone knows who [REDACTED] is but eventually, [REDACTED] tells the officer [REDACTED] true name. C then later provides a date of birth to S1 but denies having ID on [REDACTED] at the time. S1 asks C for [REDACTED] ID countless times.

C is observed reaching into [REDACTED] pockets which caused S to instruct [REDACTED] to stop reaching into [REDACTED] pockets so that "I don't have to shoot you". With refusing to depart or to provide ID, S1 finally uses an authoritative voice and is heard giving strong verbal commands to C. Prior to this, S1's voice is rather conversational, although as the events played out, S1 was obviously getting annoyed with C's inability to act upon any of the commands given to [REDACTED]. (*Note: S1's failure to use a "command presence" with an uncooperative person possibly caused C to feel emboldened.*)

S1 and C then begin to verbally joust with voices being raised and C slowly backing away of the equally slowly advancing officer. S arrived at the scene and at this point C pointed out S's badge with S telling C that S1 also has a visible badge. S further advised C that [REDACTED] needed to provide [REDACTED] ID to S1 with C again denying [REDACTED] had ID with [REDACTED]. (*Note: it is clear that C believed that both officers knew who [REDACTED] was, due to an incident that occurred in the past and was well covered in the media, but based upon the actions of the officers at the time, they did not appear to know who [REDACTED] was.*)

S1 appears to reach for C with C yelling "don't touch me" repeatedly. S is seen in the background, moving behind C while C yells "let go" and "I need you to stop" at S1. As C

continues to yell, S approaches ■■■, and this takes place in front of a police car. C continues to yell that ■■■ doesn't have ID and at this time a passerby is seen walking ■■■ bike on the sidewalk as C yells to that unidentified person "help me". The passerby continues walking as C continues to scream for help as the officer maneuvers to place C into handcuffs. This all occurs with all three involved people standing up, next to and leaning on a car.

At this point a physical struggle is occurring with everyone still on their feet. S1's camera is badly obscured for nearly the entire struggle but it appears that S has grasped C from the rear while S1 has remained out of reach of C. S1 gives C a command to "get down" with C yelling at times "I am not hitting you" to the officers. C continues to yell "stop" to the officers and although not visible on the video, it is likely that S1 is striking ■■■ with ■■■ baton. *(Note: as stated above, the injuries sustained by C were consistent with being struck in the legs by a baton, which is the target generally taught to seek when being trained in the use of an ASP.)* The officers can be heard yelling to C to "stop resisting" as this is going on. In a brief glimpse, C is seen on the ground, face up while continuing to yell "stop" and other similar things and there does not appear to be any use of force during this portion other than the officers trying to handcuff C.

S is then clearly seen, from the rear, as ■■■ is bending down trying to secure the handcuffs onto C. In this section of video, S's left ear is clearly seen *(Note: this occurs at the 8 minute 12 second point on S1's video)*. S's ear is clearly injured with the lower third sticking outward at a 90 degree angle, as if it has been mainly severed but still attached at the point nearest ■■■ head. In reviewing the video portion of this tape, no action can be seen that resulted in this injury. *(Note: C would not cooperate in this investigation so ■■■ did not accept, or deny, responsibility for S's injury, while both officers and the recovered metal flower, tends to demonstrate that C was responsible for S's injuries.)* It was also noted that there were not recorded utterances from S indicating that ■■■ was being struck or was even injured. This may be due to the angles and distances involved and it is also possible that S simply did not realize ■■■ had been injured. However, in the limited part that was recorded on video and was reviewable, it does not appear that S struck the ground or the nearby car with ■■■ head. Once S is cuffing C, ■■■ can be heard telling S1 that C had struck ■■■ with an object and ■■■ can also be heard telling C to not bite ■■■. At this point C says he "is done" a few times but ■■■ continues to yell for help. It is fairly clear that a single cuff had been secured on one of C's wrists but C was not cooperating in allowing the officers to place the second cuff on ■■■. Based upon what can be heard on the recording, it is clear that C was resisting the officer's efforts to cuff and a noise is heard like a Taser being used. *(Note: there are photographs of a single Taser dart and the related wires, and in the interviews of the officers, S1 not only "fired" his Taser while another officer also used his Taser in the "Drive Stun" mode. It is likely that the red marks near C's breast were caused by this Drive Stun.)*

Shortly thereafter, other officers arrive and C stops yelling and is fully compliant. S's injuries are noticed by the other officers and the metal flower is identified as the object used to cause those injuries. The tape continues but is not germane to the allegations of officer misconduct.

**E2:** A citizen made a video recording of the incident, with audio, from an upstairs window that overlooked the scene. The following was noted from that recording:

This video was made by a citizen, from ■■■ balcony, with the view of the confrontation being partially obscured by a tree. The situation is at night but with decent lighting and a light snow is falling. The video is difficult to watch as the recording can only be viewed on CRBs equipment at a 90 degree angle. Due to the distances involved, it is likely that some comments made by the officers were not captured on the recording while most, if not all, of C's comments were captured



due to [REDACTED] primarily yelling. As the recording begins, C is heard yelling, probably causing the citizen to go outside to record the incident, and all three individuals are visible, although not necessarily identifiable. It appears that S1 is facing C with S being initially to the rear/side of C and eventually moving directly behind C. The three are all upright at this point, with S1 finally hunching down to deliver baton blows to the legs of C, who is not complying with the officer's commands.

At some point, C has an object in [REDACTED] hand, but it is unclear how [REDACTED] produces the object or where it came from. *(Note: crime scene photographs captured a wind chime on the ground and it was previously seen in the hands of C, in the video from S1's body camera, while [REDACTED] was upright, and struggling with the officers. It is also possible that the metal flower was secreted on C's body as [REDACTED] was not "patted down" until [REDACTED] was placed into handcuffs.)* In any case, C can be seen striking at S1 who was facing [REDACTED] and had been using [REDACTED] baton upon C's legs and by this point, S has grasped C in a rear, bear hug. S1 has enough distance between [REDACTED] and C to avoid the strikes by C, at which point C transitions from swinging at S1 and instead swings in an upward and backwards motion at S, who was chest to back with C in the bear hug. S1 is noted to change the target of [REDACTED] baton blows from the legs towards the hand holding the metal flower. It is not discernible if these baton blows caused C to lose [REDACTED] grip on the flower or if C dropped the flower once S took him to the ground. *(Note: this video was reviewed numerous times and it is clear that the attempted strikes at S1 did not result in inadvertent contact with S, instead, it is obvious that once C determines that [REDACTED] cannot hit S1, [REDACTED] changes the method of [REDACTED] strikes and intentionally strikes backwards at S, hitting [REDACTED] twice in the head.)*

The only words heard from either officer at this junction was one of them, likely S, said "knock it off" to C. After being struck by C, S continues [REDACTED] bear hug and takes C to the ground with S making first contact in a backwards maneuver. S continued to struggle with C in an effort to cuff [REDACTED], with S regaining [REDACTED] feet and leaning down to cuff C while S1 maneuvered towards the feet of C, who can be seen not complying with the officer's commands. One officer is heard telling C to stop resisting as C is seen kicking [REDACTED] feet in the direction of S1. S1 is once again seen delivering baton blows to the legs of the kicking C, at which time the citizen who was recording the incident is heard to say "Taze [REDACTED]" to [REDACTED]. Once C stops kicking at S1, the video shows that S1 stopped using [REDACTED] baton on [REDACTED].

*(Note: it is clear that a Taser was used in this incident at least twice but this recording does not capture that usage, or at least it is not observable nor is there any associated Taser cycling sounds captured on this videotape.)*

**E3:** The videotapes from D1 and the citizen were matched up, based on the audio portions of both recordings, so that scenes that were obscured in one recording can be compared real time with the other recording. Nothing new was discovered in this side-by-side comparison.

**E4:** A [REDACTED] arrived on the scene to conduct the arrest check on C but did not capture any part of the incident on [REDACTED] body camera.

**E5:** W2 activated [REDACTED] body camera as [REDACTED] was responding to the call for more officers at the scene. W2 can be seen running to assist S who was still attempting to secure C in handcuffs with only one cuff being on C. C is still yelling to not "kill me" and other related things as W2 and S finally get [REDACTED] secured in cuffs. It is clear that the officers have some difficulty getting C in the cuffs most likely due to C resisting their efforts. Once fully handcuffed, "medical" is summoned to treat S and many other officers arrive to assist on the call. There was no force used on this video unrelated to the physical force needed to restrain and handcuff C.

**E6:** An officer who was not interviewed as well as W6 both activated their body cameras and recorded post-arrest events at the scene. However, they did not capture any portion of the physical interaction and therefore their videos will not be summarized herein.

### **Allegations:**

The SLCPD has alleged that based upon the citizen video footage that was publicly released, that it is possible that S and/or S1 used “Improper Force” during the arrest of C.

### **Definitions**

Unfounded: The reported incident did not occur.

Exonerated: The employee’s actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee’s action(s) are in violation of the policy or procedure of the Police department.

### **Analysis and Recommendation:**

C opted to not participate in this investigation and ■■■ lack of participation has resulted in this investigation not being able to understand what ■■■ perceived at that time. CRB certainly understands ■■■ reluctance to participate and it is certainly ■■■ right, but by not participating, this review is denied an opposing point of view to the statements of the officers. The existence of two videos does fill in many blanks that would be present if only the officer’s statements were available but nonetheless, not having C share ■■■ insight to these events does give limited perspective to the events of that night.

It was noted that S failed to turn on ■■■ body camera when ■■■ approached the scene and this oversight failed to provide yet another angle of the incident, which was about to erupt. CRB reminds all officers that the policy on the use of body cameras is very specific and must be followed, if at all possible. In this case, S had plenty of time to initiate ■■■ camera.

In reviewing this incident, it is also clear that the initial contact portion of the event was rather casual with S1 not using a “command presence” until a few minutes into it. There is no way to know if a more assertive, direct and authoritative approach could have avoided this incident as there is much circumstantial evidence, including the recordings and officer testimony, that C was under the influence of some drug. Multiple officers all perceived this with C and based upon C’s actions, including ignoring the commands of multiple officers and ■■■ nearly constant yelling/screaming, it is possible C was either under the influence or was suffering from a mental crisis. In any case, officers need to recall their training and at the first sign of non-compliance, verbally assert themselves so as to prevent an escalation in resistance by the party they are contacting.

As pointed out, S1 was very lackadaisical in ■■■ initial interactions with C and as stated above, this may have contributed to C’s escalating efforts to avoid arrest. But what this also points out is that S1 was trying to be non-confrontational and was in fact attempting to simply get C to leave

the area. In reviewing the matter, it is likely that S1 was not only being very conversational with C but it clearly appears that ■ was trying to defuse the situation by simply allowing C to depart. There does not seem to be any other possible “de-escalation” tactic that would have worked with C on this night, as the best tactic was the initial offer: just go home.

It is important to point out, at the onset of this review, that this incident was a struggle that involved at least two guns (the officer’s guns) and a metal flower, which was wielded as a weapon. From the point that the first upright struggle began until the handcuffs were finally secured onto C, it was best described as a fight. C resisted in many ways, including the use of a weapon, which was employed to administer a serious injury to S. It was also plain to see that C attempted to use the metal flower against S1, but was unable to do so due to the distances involved and the restraint hold being used by S. It is also very probable that had C been able to continue with striking S, S’s injuries could have been much more dangerous, perhaps even fatal. So, although it is assumed that C would not agree, the officer’s position that they were in a serious fight must be considered and is best illustrated by S1’s statement that if S had not been directly behind C, ■ would have shot C, based upon C’s use of the metal flower as a weapon.

It is also a factor that the media’s release of a portion of the civilian’s video recording has resulted in considerable public commentary on this matter.

In reviewing the recordings and by the statements of the officers, it is clear that most of S1’s attempted ASP blows failed to strike C as many struck nothing, while others struck the police car, the ground and a few actually struck S. In reviewing the photographs of C, there are three or so photographs of leg injuries consistent with being hit with an ASP but other than the associated pain, there is little to no injury to C.

The discussion of the events that transpired is tempered by the alleged misconduct in this case, to wit “Excessive Force” vs. “Improper Use of Force”. In reviewing these types of allegations, there are varying levels of allegations of misconduct when dealing with force related matters. Clearly any unwarranted force could be considered “excessive” but generally speaking, matters described as “excessive” are those instances wherein a person uses force in a punitive manner, as if by using this excessive force, the person is administering “street justice” or attempting to “teach the person a lesson”, via repeated applications of force. That did not occur in this case as both officers felt that C was not only resisting but presented a threat to both officers. The videotapes are supportive of this view as C was resisting the officers by fighting against being handcuffed, kicking at the officers, striking at S1, striking and seriously injuring S with the metal flower and lastly, attempting to avoid being taken into custody. The issue at hand is better classified as an examination of “Improper Use of Force” in that: did the officers use the minimum force necessary to effect the safe arrest of C, as their policy guideline dictates. As stated above the policy states the following:

#### **Force in Arrest**

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

#### **Fleeing or Resisting Person**

The person shall not be subjected to any more restraint than is necessary for his arrest and detention. If the arrested person flees, forcibly resists, or jeopardizes the officers’ safety or the safety of others, the officer

may use force which the officer reasonably believes to be necessary to effect an arrest or to retain custody by preventing escape. The officer is never authorized to use punitive force or punitive measures while effecting an arrest or preventing an escape.

S1 employed [REDACTED] ASP on multiple occasions and with limited, if any effect on C. The investigation shows that C was resisting the officer's efforts up until such time as the second handcuff was finally secured on C, at which time; [REDACTED] basically gave up and stopped resisting. The salient issue is: should S1 have attempted as many baton blows as [REDACTED] did, under the circumstances?

S1 had the following tools on [REDACTED] belt: [REDACTED] duty weapon, [REDACTED] ASP, a Taser, and [REDACTED] handcuffs. In reviewing the statement of S1 and by looking at the circumstances of the situation, the following becomes obvious: S1 could not use [REDACTED] weapon, assuming [REDACTED] perceived this situation as a "Deadly Force" situation, due to the proximity of S to C. S1 did use [REDACTED] Taser, by firing the darts at and into C but they appear to have been defeated by the bulky winter coat C was wearing at the time. S1 did not opt to use [REDACTED] Taser in the "Drive Stun" mode but it was attempted by a different officer with no discernible results. That left S1 with [REDACTED] ASP baton or [REDACTED] hands. The ASP is the modern day replacement for the traditional baton, known by many names but most commonly referred to as a "Billy club" in the public lexicon. The ASP replaced the previous baton, the PR 24, which had a small side handle attached to a large, wooden and heavy baton striking surface. The PR 24 could generate a lot more speed and had greater mass causing for a much more severe impact when employed. It was also considerably larger than the collapsible, all metal, and lighter ASP. All officers are trained on the proper use of the ASP, which is supposed to be directed at specific target areas, with the legs being the primary target area. It appears that this is the target that S1 focused on primarily but as in many fights that are out of control or could go out of control, people, including officers, will target any surface if they perceive a threat from that area. That can be seen in this case when S1 targeted the hands of C when [REDACTED] was swinging the metal flower at S1 and then, striking and injuring S with it. But, once C no longer was threatening either officer with the flower, S1 no longer targeted C's hands or upper body. *(Note: none of the photos made of C post-incident, show any signs that [REDACTED] was struck anywhere other than on the legs, with the small possibility that the knuckle injuries C had were caused by a baton blow rather than a blow delivered by C onto a hard surface, which is what they actually look like.)* Those factors left S1 with two options, the ASP or [REDACTED] hands. Officers are discouraged from using their fists for many reasons, injury to both parties being the primary reason. In any case, the only safe and therefore available tool that S1 had at [REDACTED] disposal was [REDACTED] ASP.

The central issue that the Panel must decide is: was the use of force by S and S1, but most specifically S1's use of [REDACTED] ASP, reasonable under the circumstances they were facing?

#### **Panel Findings:**

As to the allegation that S and/or S1 used "Improper Force" during the arrest of C, the Panel makes a finding of "Exonerated" on this matter.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

---

Dan Cannon  
Panel Chair

---

4/8/16