

Stunned: Matt Klug's saga with Portland police finally ends

Officers Taser a man with epilepsy and a diagnosed mental illness at least four times, commissioners vote against exoneration

BY EMILY GREEN
STAFF WRITER

For the first time in 14 years, Portland City Council was called upon Wednesday to issue a decision in a citizen complaint against the Police Bureau. This only happens when the Citizen Review Committee and police cannot come to a consensus.

The complaint stemmed from an incident on Sept. 17, 2014 when Matt Klug was involved in a road-rage-fueled altercation with a motorist while he was riding his bicycle in Northwest Portland. He began yelling at a female motorist after she allegedly struck his bike. A member of the police bureau witnessed the incident.

The Citizen Review Committee challenged Police Bureau findings to exonerate officer Bradley Nutting who used a Taser on Klug following the incident, claiming the officer used excessive force. The motorist declined to press charges.

Klug has epilepsy, a diagnosed mental illness and a traumatic brain injury.

According to witness statements taken on the scene and during a follow-up investigation, Klug was exhibiting behavior that led them to believe he was in the throes of a mental health crisis immediately before Portland police deployed the Taser multiple times. Witnesses also stated they believed the use of a Taser was unnecessary.

Records show the Taser discharged six times, but it remains unclear whether Klug was Tased four, five or six times. What is known is that at least three of the discharges occurred while he was on the ground, pinned down by three officers who were attempting to handcuff him.

The entire incident occurred over the course of approximately 15 seconds. After being pulled over on his bicycle, Klug began yelling and throwing the contents of his pockets on the ground. Three police pushed him against a wall to cuff him. He struggled, with arms flailing, so they used a Taser citing that he appeared like he might try to strike an officer. He fell to the ground, and as he kicked, they continued to discharge the Taser.

The final charge was accidental, and Police Chief Mike Marshman said it was due to the poor design of the Taser model, which was being tested in the field at that time. Since then, the bureau has fully adopted that model. Because the Taser probes were still attached to Klug's back, it can be concluded the accidental discharge made contact.

The Citizen Review Committee felt that because the bureau's Taser directive clearly prohibits the use of a stun gun on a handcuffed or otherwise restrained subject, "for example a subject being held to the ground by multiple officers," the use of the Taser went against policy.

Marshman argued that Klug was exhibiting active aggression – which allows for stun gun usage – and that the officers did not have him in their control. It became clear at the hearing that there is a gray area between what constitutes resisting arrest and active aggression.

Marshman also argued that a Taser is a step below more escalated actions such as punching or striking a subject with a baton, which have residual effects, where a Taser does not.

Commissioner Amanda Fritz said some people would argue that Taser's do have residual effects and that its impact should not be minimized.

City Council voted 3-2 to not sustain the bureau's



PHOTO BY EMILY GREEN

findings to exonerate, but this decision doesn't mean the officer definitively broke from policy either. Commissioners felt they didn't have enough evidence to draw a conclusion either way and there was no recommended discipline.

Commissioners found it difficult to decipher exactly what was happening in a witness-provided grainy video reviewed at the hearing.

Mayor Ted Wheeler and Commissioner Dan Saltzman were the two dissenting votes, sticking by their earlier votes to exonerate.

This comes one day after Wheeler released a statement that said, "I ran on a platform of police accountability and I intend to see it through."

Commissioner Fritz was the only commissioner who voted to sustain the decision of the Citizen Review Committee, but changed her vote so the council could come to a decision – otherwise the bureau's findings would stand by default.

Both commissioners Nick Fish and Chloe Eudaly voiced concerns about the number of times the Taser was deployed. Fish said he was struck by the history of this case.

"This case has become the poster child for delays with the CRC process," Citizen Review Committee Chair Kristin Malone told commissioners.

It's been nearly two and a half years since the incident occurred.

Street Roots began following Klug's case to see how the city was handling a complaint that appeared to mirror the issues the Department of Justice said it needed to fix.

In 2012 the U.S. Department of Justice found Portland police had a "pattern and practice" of using excessive force, including unjustified stun gun use, against people with mental illness.

This is exactly what a tort claim filed by Klug in March of 2015 alleged.

A string of dubious setbacks in his case (see timeline) not only illustrate failures in the city's handling of an excessive force complaint against its police bureau, but also the bureau's detachment from people on the other end of the stun guns it deploys.

According to targets set by the Department of Justice, Klug's case should have been closed in October 2015.

Malone told commissioners that Klug's case "is an example of how much of that timeline is out of Citizen Review Committee control." She pointed to the length of time the investigation sat with the bureau, how it was the police bureau that didn't show up to one of the appeal hearings causing it to be rescheduled, and that it was the bureau that supplied the wrong Taser directive, which led to another vote in which the Citizen Review Committee reversed its original decision to agree with bureau findings to exonerate.

Klug vs. PPB

2014

Sept. 17 Matt Klug is Tasered. Matt Klug has an altercation with a motorist, and then police pull him over on his bike and use a Taser on him repeatedly.

2015

March 13: Klug files a tort claim. The claim is against city and county agencies and individual officers, seeking \$5 million in damages for alleged psychiatric injury and emotional distress from his interaction with police, and lasting physical ailments from being Tasered and contracting MRSA in the county jail. As a former paralegal, he was able to compose the documents himself. He could not find an attorney that would take his case. This triggers the police department's Internal Affairs to conduct an investigation into the altercation.

April 28: Portland's Independent Police Review starts its investigation. According to targets set by the Department of Justice settlement, the case should be resolved within 159 days of this date, or if there is an appeal, within 180 days.

May 5: Klug agrees to drop his lawsuit in exchange for the Multnomah County District Attorney's Office dropping the charges against him.

June 30: PPB Internal Affairs completes its investigation. The only third party witness it re-interviewed was a security guard. Other witnesses that originally said they thought police used excessive force were not contacted. Internal Affairs determined that both officers involved should be exonerated, and then sent its conclusion to the Independent Police Review Board for review. The next month, both Internal Affairs and the IPR approved the investigation.

Oct. 7: Klug goes before the Citizen Review Committee to appeal the decision to exonerate the officers. The police bureau supplied the CRC with an outdated version of the Taser rules – which contained no dates – for consideration. At this hearing, Klug's advocate noted that investigators failed to interview the three civilian witnesses, some of whose statements were not consistent with the police reports. The committee then sent the case back to the police bureau for further investigation.

Oct. 26, 2015 – Target date for the completion of Klug's case. This includes the extra time allotted for an appeal.

2016

April 20: Klug has his second appeal hearing. No one from the police bureau showed up, citing safety concerns following a CRC meeting where an audience member threw water at a CRC member on March 30. The appeal hearing was rescheduled.

May 4: Klug gets his second appeal hearing. Back from its second investigation, the bureau has determined that while both officers should be exonerated, one should be debriefed. Klug has brought with him the correct copy of the Taser rules, repeatedly telling the committee they were considering his case while looking at an outdated version of the rules. The committee refused to look at the evidence he had brought with him, assuring him that the bureau had given them the correct paperwork. When a Police Bureau lieutenant offered to list the dates the rules had been revised – which would have indicated Klug had the correct version – acting committee Chair Julie Ramos said no.

May 6: The mistake is acknowledged and the police bureau said that the incorrect directive was used. A new review is initiated.

June 22: Exoneration upheld.

Sept. 7: Klug's final appeal. Klug comes before the CRC for the fourth time to appeal the exoneration of the officer he alleges used excessive force against him by repeatedly using the Taser. This time, when looking at the correct Taser rules, the CRC agrees that excessive force was used, and voted to challenge police findings, sending it back to internal affairs.

2017

Dec. 7: Citizen Review Committee challenges police findings. Police Chief Mike Marshman tells the committee that it stands by its findings of exoneration with debriefing. The committee disagrees, particularly because it has been revealed the final "accidental" deployment of the Taser was due to inadequate training on a new model the department was "experimenting" with. Because no consensus can be reached, the case is sent to Portland City Council for a final decision. The hearing is scheduled for Jan. 19.

Dec. 27: The Independent Police Review reschedules the hearing.

Feb. 22: City Council Hearing. Portland City Council votes 3-2 not to sustain the bureau's findings to exonerate, but declined to suggest any discipline in the case. Citizen Review Committee Chair Kristin Malone told the city commissioners that the case "has become the poster child for delays with the CRC process."