

INTRODUCTION

We, the members of the 27th Investigating Grand Jury, having received and reviewed evidence regarding allegations of violations of the Pennsylvania Crimes Code and related laws, occurring in Philadelphia County, Pennsylvania, pursuant to Notice of Submission of Investigation No. 28, do hereby make the following findings of fact, conclusions, and recommendation of charges.

FINDINGS OF FACT

This investigation was commenced as a result of the District Attorney's Office receipt of a surveillance video that showed the May 29, 2013 arrest of Najee Rivera for aggravated assault and related charges by Philadelphia Police Officers Sean McKnight and Kevin Robinson. Based upon that video, the District Attorney's Office withdrew the charges against Rivera and referred the matter to the Philadelphia Police Department's Internal Affairs Division. This Grand Jury investigation and presentment followed.

The Grand Jury finds that Sean McKnight and Kevin Robinson were in their police car when they assaulted Najee Rivera by knocking him off of his motor scooter and then hitting him repeatedly with a baton and fists causing him bodily injury, including a fractured orbital and numerous facial cuts requiring stitches and staples. Further, this Grand Jury finds that, while acting in their official capacity as police officers, McKnight and Robinson falsified police reports, including statements to the assigned detective and Use of Force reports to Internal Affairs, in order to effectuate the arrest and eventual criminal charging of Rivera.

Najee Rivera testified before this Grand Jury that, on the night of May 29, 2013, he drove a motor scooter, which he had just purchased from a friend, to the area of North 8th Street and Cumberland Street in order to visit his family. Shortly before 10:00 PM, Rivera approached the intersection at North 7th Street and Somerset Street at the same time that a police car driven by McKnight and Robinson arrived at the intersection. McKnight and Robinson waved Rivera on to make a right turn and proceeded to follow him through the next turn at North 7th Street and Cambria Street. McKnight and Robinson activated their lights and sirens and pulled Rivera over.

They stopped approximately twenty feet behind Rivera, stepped out of their police car in full uniform with their batons extended and told Rivera to “Come here!” Rivera became frightened and drove away.

Rivera testified that, with the police car in pursuit, he drove a short distance before turning from Lehigh Avenue onto North 6th Street going the wrong direction against traffic. Rivera further testified that he saw the police car pull up next to him and then felt something hit him in the head knocking him off of the scooter. After that, Rivera recalled being struck while on the ground, but does not remember the incident clearly due to the beating.

A surveillance video of the incident shows the approaching headlights of Rivera’s scooter and the police car driven by Robinson. When both vehicles enter the frame, the police car, without its emergency lights on and without any orders, commands, or sound or sirens, is immediately to Rivera’s left and closing in on him. There is a blur of motion just outside of the front passenger window followed by the police car striking Rivera on his scooter. From the brunt of the impact, Rivera then crashes in towards the police car before spinning around and falling off of the scooter onto the ground.

The video also showed that Robinson exited the driver side door and McKnight exited the passenger side door. Both McKnight and Robinson grabbed Rivera. Robinson pulled Rivera towards the wall while McKnight struck Rivera with his baton a few times. Robinson pushed Rivera up against the wall while McKnight continued to strike him. Robinson eventually brought Rivera down to the ground and both officers repeatedly strike Rivera with the baton and fists.

Throughout the entire encounter that is captured on the video, Rivera was wailing loudly and uncontrollably. Although he was moving around on the ground while being struck, he was not resisting the officers or engaging in any aggressive actions. After about 40 seconds of continued repeated strikes, McKnight and Robinson placed Rivera into handcuffs and held him down with a foot on his back. For at least four minutes, either McKnight or Robinson kept a foot on Rivera’s back as he lay on the ground bleeding.

Based on medical records shown to the Grand Jury, within 20 minutes of the initial encounter, Rivera was brought to the emergency room at Episcopal Hospital. Rivera was treated for a variety of lacerations to his face and head; three required stitches and four required staples. The largest of those lacerations was 2.4 inches long. Medical records indicate that Rivera suffered a fracture of his right orbital. This Grand Jury viewed a police photo taken of Rivera shortly after the incident showing most of the injuries to Rivera including his right eye swollen shut.

The evidence shows that, after spending approximately four hours at Episcopal Hospital, Rivera was discharged into the custody of waiting police officers and brought to a holding cell at the 25th Police District at 3901 Whitaker Avenue. In the time since the arrest, McKnight and Robinson had begun the process of filling out paperwork in order to charge Rivera with various crimes. This Grand Jury viewed a “75-48 Incident Report” filled out and signed by McKnight shortly after the incident. Detective James Brooks, of East Detective Division, testified that this is the initial document filled out by a police officer after an incident. Detective Brooks began work around midnight on May 30, 2013 and was assigned to investigate this incident. The “75-48” filled out by McKnight states, in part, that “Abv compl [referring to Robinson] caught up to blw male [referring to Rivera]. The blw male then grabbed the abv compl and threw him into a brick wall at abv loc. Blw off [offender] then began to throw multiple elbows at abv compl then was attempting to push the abv compl’s face in to the same brick wall.” The Grand Jury determined that false and inaccurate description of the incident is directly refuted by the video.

Based upon that initial account provided by McKnight, Det. Brooks began his investigation by interviewing Robinson at 1:04 AM on May 30, 2013. Robinson told Det. Brooks in his statement that he attempted to stop Rivera for disregarding a stop sign at 7th and Cambria Streets. When Rivera pulled over and both officers exited their patrol car, Rivera fled the scene. Robinson stated that “[a]pprox. 5-10 minutes later, we observed this Hispanic male on the scooter driving E/B on Lehigh Ave from 7th Street...The scooter then drove the wrong way N/B on 2700 6th Street.” Robinson told Det. Brooks that both officers “observed the Hispanic male lose control of the scooter and fall to the ground.” He further stated that he “caught up with

the male quickly and grabbed a hold of him at which time he was able to turn around and grab a hold of me, slamming me against a brick wall building. I struggled to gain control of him for he had a hold of my upper chest neck area and was repeatedly throwing elbows at me.” Despite those claims being false and inaccurate, Robinson reviewed and signed this statement. The Grand Jury determined that the above statement is proved false by the video of the incident.

At 4:15 AM, Det. Brooks took a written statement from McKnight in which he said the following:

“I observed the male losing control and falling to the ground. We pulled up and at that point the Hispanic male stood up held his head with his left hand and attempted to run. We ran about 15-20 feet when my partner was able to catch up to him. I was approx. 10-12 feet back when this happened. While running towards my partner I saw the Hispanic male grab my partner with both his hands by his chest upper vest area and slammed him into a brick wall of the building. The Hispanic male held my partner up against the wall and began throwing elbows towards my partner’s face and head area. I don’t know if any of the elbows connected. Once I got to my partner and the Hispanic male I took my asp out and attempted to strike the male in his upper arm area. The male continued to resist and hold my partner against the wall. I continued to strike the male with my asp, myself and partner after about 1 minute were able to get this male to the ground. While on the ground the male refuse to show us his hands. Then male then reached up with his right hand and attempted to pull my asp out of my hand...I feared that the male may have had a weapon I struck him once with a closed asp in his face...”

McKnight reviewed and signed this false and inaccurate statement which is contradicted by the video.

Det. Brooks testified that, because he was not an actual witness to the officers’ interaction with Rivera, he had to rely on their account of the incident in preparing his investigative paperwork. Det. Brooks prepared a Philadelphia Police Department Arrest Report [hereinafter PARS] which was electronically transmitted to the District Attorney’s Office Charging Unit in order for charges to be filed against Rivera. That PARS report contained a brief summary of the statements of both McKnight and Robinson. As a result of that report, Rivera was eventually

charged with Aggravated Assault, Simple Assault, Recklessly Endangering Another Person, and Resisting Arrest.

The evidence shows that numerous police officers arrived on the scene after the assault had concluded and were not eyewitnesses to the actual event. Neither Det. Brooks nor any of those officers had ever seen the surveillance video of the incident.

Both McKnight and Robinson filed Use of Force reports describing the incident. One of their supervisors at the time of the incident testified to this Grand Jury that a Use of Force report is required in any instance where an officer uses “force.” These forms are reviewed by the writer’s sergeant, lieutenant and captain prior to being sent to Internal Affairs for further review. Both officers’ forms contain the same false recitations of fact that appear in their statements to Det. Brooks that are detailed in the above paragraphs.

Based upon the evidence presented before this Grand Jury, including but not limited to the testimony of Najee Rivera and Detective James Brooks as well as the video, we conclude that McKnight and Robinson knocked Rivera from his scooter and then repeatedly struck Rivera with a baton and fists causing bodily injury. At no time during the incident did Rivera attempt to assault either officer. In addition, this Grand Jury reviewed all of the police paperwork submitted by McKnight and Robinson and concludes that the information in that paperwork was falsified.

RECOMMENDATION OF CHARGES

Based on the evidence we have obtained and considered, which establishes a prima facie case, we, the members of the 27th Investigating Grand Jury recommend that the District Attorney or his designee, institute criminal proceedings against the below listed individuals and charge them with the listed offenses based upon activities described in this presentment:

SEAN MCKNIGHT

- Criminal Conspiracy, 18 Pa. C.S. § 903
- Aggravated Assault, 18 Pa. C.S. § 2702

- Simple Assault, 18 Pa. C.S. § 2701
- Recklessly Endangering Another Person, 18 Pa. C.S. § 2705
- Tampering with Public Records or Information, 18 Pa. C.S. § 4911
- False Reports to Law Enforcement Authorities, 18 Pa. C.S. § 4906
- Obstructing Administration of Law, 18 Pa. C.S. § 5101
- Official Oppression, 18 Pa. C.S. § 5301

KEVIN ROBINSON

- Criminal Conspiracy, 18 Pa. C.S. § 903
- Aggravated Assault, 18 Pa. C.S. § 2702
- Simple Assault, 18 Pa. C.S. § 2701
- Recklessly Endangering Another Person, 18 Pa. C.S. § 2705
- Tampering with Public Records or Information, 18 Pa. C.S. § 4911
- False Reports to Law Enforcement Authorities, 18 Pa. C.S. § 4906
- Obstructing Administration of Law, 18 Pa. C.S. § 5101
- Official Oppression, 18 Pa. C.S. § 5301