

26th COUNTY INVESTIGATING GRAND JURY REPORT

Introduction

We, the members of the 26th 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 number 16, do hereby make the following findings of fact and issue the following report.

This investigation was commenced in January of 2014 to explore whether criminal misconduct occurred during a stop and frisk of Student #1, a 16-year old juvenile, by members of the Philadelphia Police Department on January 7, 2014. Specifically, “[t]he matter to be submitted to the Investigating Grand Jury is an investigation into the facts and circumstances pertaining to allegations that a Philadelphia Police Officer used excessive force during the arrest of a juvenile – resulting in the purported injury of a testicle.” The allegation that was publicly made by Student #1 was that a white female police officer grabbed his testicles two times during a search incident to his arrest. The 26th Investigating Grand Jury issues this Report in furtherance of its investigation of this incident.

The incident in question occurred on Girard Avenue, between Broad Street to the east and North 15th Street to the west. Several surveillance video cameras are in this area and captured distinct portions of the police interaction with Student #1 and the students he was with as they came out of the Broad Street Line (“BSL”) subway at the Girard Avenue stop, and then walked west on Girard Avenue. Specifically, the Investigating Grand Jury reviewed the following surveillance videos: (1) the street-level view from the Girard Avenue stop of the BSL, which is located on the northwest corner of Broad and Girard and faces west; (2) a Philadelphia Police Department (“PPD”) Real Time Crime Center (“RTCC”) camera affixed to a light pole on

the northeast corner of Girard Avenue and Carlisle Street, which is one-half block west of Broad Street; (3) a RTCC camera affixed to a light pole on the northeast corner of Girard Avenue and 15th Street; and (4) a camera installed in a SEPTA trolley that was traveling east on Girard Avenue.

The RTCC cameras rotate every 10 seconds so that they are able to capture 360-degree video surveillance of intersections at which they are affixed. This rotation, unfortunately, limits the ability to continuously view any one particular direction or view. After staying with a particular view for 10 seconds, the camera takes approximately two seconds to rotate to the next direction. The camera then stays with that direction for 10 seconds before continuing the rotation. The RTCC video greatly assisted the Investigating Grand Jury by presenting some of the events in real time, which also assisted in assessing witness credibility. The videos were unable, however, to capture all of the events at issue in this investigation.

A separate issue that the Investigating Grand Jury confronted was the discrepancy between the embedded times on the different cameras. To present a comprehensive and accurate portrayal of the events, the Investigating Grand Jury has synchronized the times to match those presented on the RTCC camera at 15th and Girard.

Student #1 is a sophomore at Mathematics, Civics, and Sciences Charter School (“MCSCS”), which is located at 447 North Broad Street. He also is a member of the varsity basketball team for MCSCS. The team plays its home games at a gymnasium at the Berean Institute, which is located at 1901 West Girard Avenue. Team members travel to the gymnasium on their own; MCSCS does not provide transportation. Thus, some team members take public transportation – the BSL subway – while students with driving privileges may choose to drive themselves and teammates.

Exiting the Subway

On January 7, 2014, Student #1 traveled to the Berean Institute via the BSL subway with six of his teammates: Student #2, Student #3, Student #4, Student #5, Student #6, and Student #7. The seven students exited the subway at the Girard Avenue stop.



At 1:54:17 p.m., Student #3, Student #5, Student #6, and Student #7 ascended the stairwell from the subway platform to street level at the northwest corner of Broad Street and Girard Avenue. Student #4 joined them at the top of the stairwell five seconds later. Due to the severe cold weather on that afternoon, Student #5, Student #6, and Student #7 wore scarves across their faces. All five students look east down Girard Avenue.



At 1:54:33 p.m., while facing east but walking backwards, Student #6 lifted both of his arms in order to flash his “block sign” east down Girard Avenue to someone “just to let everybody know who we are.”



At 1:54:35 p.m., Student #1 and Student #2 ascended the steps from the subway and were on street level. Student #1 wore a backpack on his back and carried a duffel bag containing his basketball uniform and shoes. Student #2 wore a green parka, and also had a scarf covering the lower portion of his face. The two walked west on Girard Avenue to join their teammates.

The Police Van Approaches



At 1:54:37 p.m., a PPD van traveling east on Girard Avenue entered the view of the Girard Avenue SEPTA camera as the van approached and crossed Carlisle Street. Thus, as the van was traveling east on Girard Avenue, it faced the students, who were walking west on the northern sidewalk of Girard Avenue. Police Officer Thomas Purcell was driving the van, and Officer Frank Sackosky was his passenger. The officers were in the middle of an assignment transferring a homeless elderly man from St. Joseph's Hospital at 1600 West Girard Avenue to Temple University Medical Center.



At 1:54:56 p.m., as the seven students were walking west on Girard Avenue, Student #6, wearing a royal blue jacket and standing the farthest back from the road (the furthest left in the photo above) clearly turned toward the police van, which was stopped in traffic on Girard Avenue. The van and students were almost side-by-side.



At 1:54:57 p.m., two additional students, including Student #1, faced the police wagon. Student #6 crossed his arms across his chest, moved back as if to separate himself from the others, and continued to walk sideways while facing the van, still with his arms crossed.



At 1:55:07 p.m., the driver's side door of the police van began to open. Officer Purcell testified that he thought that the student who was facing the van with his arms crossed was saying something to the officers. His testimony in this regard was corroborated by testimony from the students, including Student #6, who acknowledged that he said something in the direction of the van, as well as Student #1, who testified that someone in his group said something to the police and that the officer's face changed from a smile to a look of concern. Officer Purcell testified that he could not hear the student because the van windows were closed. Unsure whether the students needed help or were trying to communicate with the police, he opened his door and asked the students what they said.¹ The students, including Student #1, also corroborated Officer Purcell's testimony that he asked the students what they had just said, and

¹ Officer Purcell explained that he opened his door because it is much easier to do so than to manually roll down the window on the driver's side door. The police van does not have automatic windows.

nothing more. Officer Purcell further testified that he did not hear any response from the students; the students, including Student #1, agreed that they did not respond to the officer.



At 1:55:17 p.m., the driver's side door of the police van closed.



At 1:55:22 p.m., just after a westbound car drove past the van, Officer Purcell activated the police lights on the van. Officer Purcell testified that he activated the police lights in order to perform a U-turn on a busy street so that other vehicles in traffic could see the lights. He further testified that he was performing a U-turn to further investigate whether the students were victims of or witnesses to a crime, hence their trying to get the officers' attention. He explained that, once he made a U-turn, he could pull over next to the students and his partner in the passenger seat could talk to them and hear what they were saying.



At 1:55:23 p.m., Officer Purcell began to make a U-turn on Girard Avenue.



At 1:55:24 p.m., the police van was halfway through its U-turn, and five students, including Student #1 (partially hidden behind the tree/pole line in the photo above, to the right of

Student #2 in the green jacket) were running west on Girard Avenue. Only Student #3 and Student #4 continued to walk.



At 1:55:28 p.m., the police van completed its U-turn and was traveling west on Girard Avenue. The officers observed the students running west on Girard Avenue and then turning north on 15th Street, which is a one-way street with one lane for southbound traffic.



At 1:55:36 p.m., the police van stopped just before the intersection at 15th Street. At this point, Officer Sackosky exited the van because he observed Student #2 hiding behind a car parked in an open lot next to the northeast corner of 15th and Girard. Officer Purcell waited until the southbound traffic on 15th Street cleared, which occurred at 1:55:56. Officer Purcell then turned the van north onto 15th Street and stopped it at the mouth of 15th Street, just north of the pedestrian crosswalk. Officer Purcell testified that he saw Student #1 hiding behind a car parked along the eastern side of 15th Street, and then stand up when the van pulled into 15th Street. Student #1's teammate, Student #2, also testified that he and Student #1 were hiding "a little bit" by crouching down behind a car until they stood up when the police arrived. Even Student #1 admitted that he was behind one of the parked cars on that side of the street. Student #2 further testified that as Officer Sackosky walked over to him in the lot, Student #1 "went the other way" and walked toward the cars parked on the eastern side of 15th Street.



At 1:55:59 p.m., Student #1 walked alongside the police van, between it and a parked car.



1:56:00 p.m., Officer Purcell opened the driver's door of the van to exit the vehicle. Student #1 was walking south on 15th Street, still along the passenger side of the van. When he reached the crosswalk at the back of the van, two of his teammates, Student #3 and Student #4, were walking west across 15th Street. Student #1 walked right behind them.



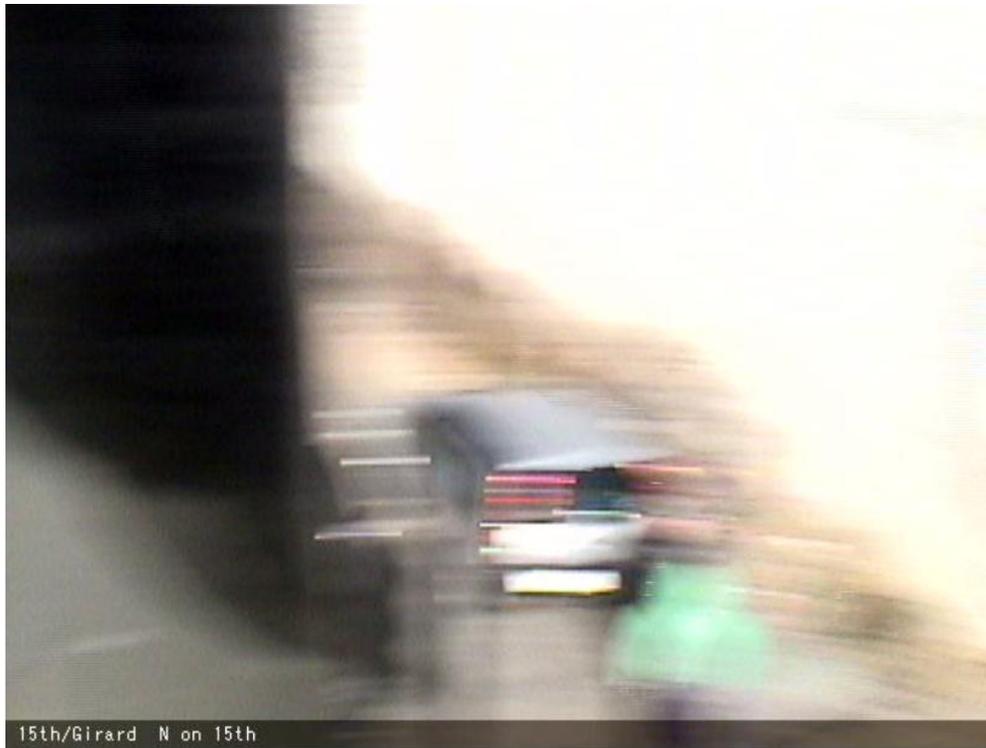
At 1:56:03 p.m., Officer Purcell was at the driver-side rear corner of the van. Student #1 was approximately four feet away, walking behind the van west on Girard across the crosswalk, behind Student #3 and Student #4



At 1:56:04 p.m., Officer Purcell and Student #1 made contact at the driver-side rear corner of the police van. In the photo embedded above, their shadows can be seen cast on the left rear of the police van.



At 1:56:08 p.m., Officer Purcell and Student #1 began walking along the driver's side of the police van from its rear to its front, heading north on 15th Street, toward a white civilian van that was parked facing south along the western side of 15th Street. There does not appear to be any struggle at this point. It is unclear if Officer Purcell had his hand on Student #1's left arm to guide him along the van.

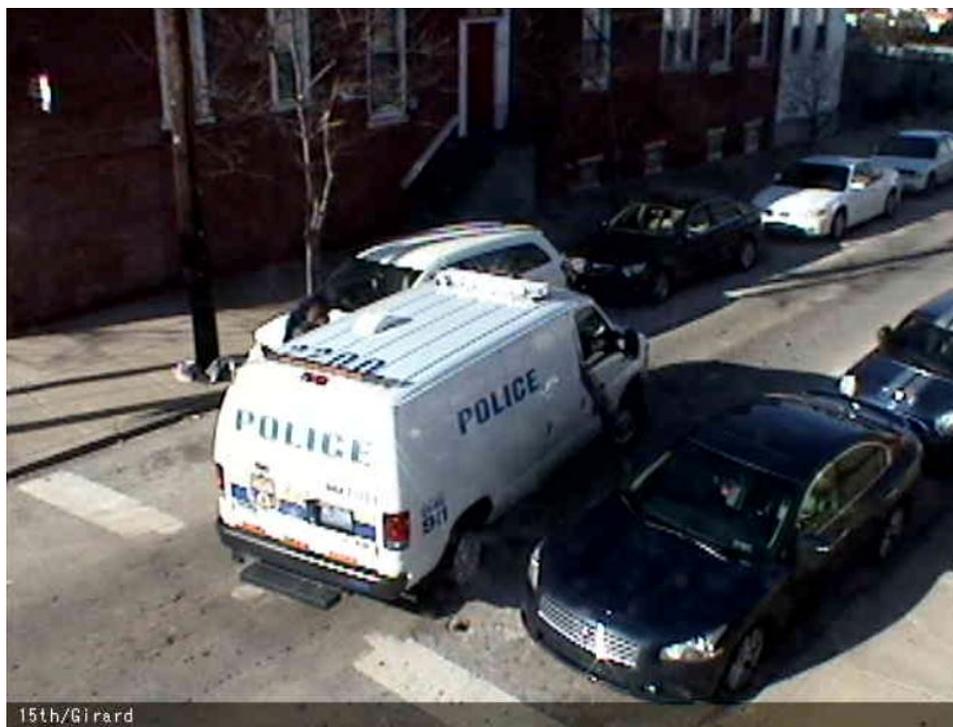


At 1:56:11 p.m., Officer Sackosky was talking to Student #2 in the open lot next to the northeast corner of 15th Street and Girard Avenue.² Student #2, who was wearing a green jacket, ran down Girard Street with Student #1. Officer Sackosky and Student #2 testified consistently that the officer was merely asking Student #2 questions. Student #2 even described Officer Sackosky as being polite and appropriate in his demeanor and interaction with Student #2.

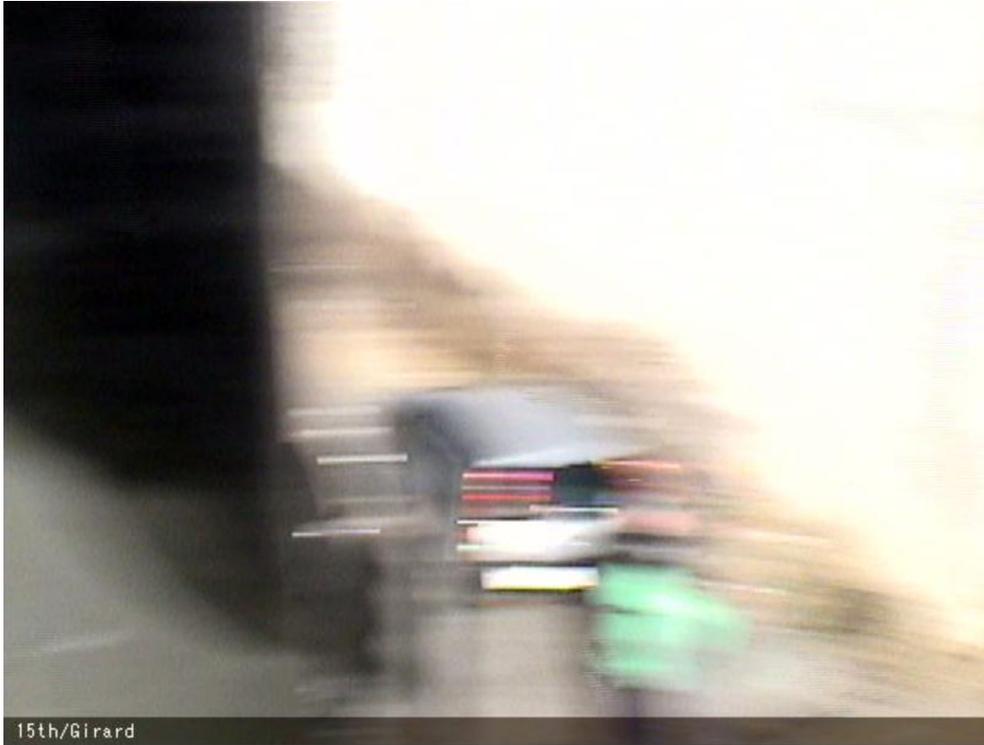
² The still photograph for this interaction is extremely grainy because the RTCC camera was rotating from facing north on 15th Street to east on Girard Avenue. While it was rotating, however, two figures can be seen, including one wearing a green jacket. Moreover, both Student #2 and Officer Sackosky testified that they were in that lot next to the northeast corner of 15th and Girard.



At 1:56:39 p.m., Student #3, Student #4, and an unidentified woman are standing on the northwestern corner of 15th Street and Girard Avenue, looking at Officer Purcell and Student #1.



At 1:56:47 p.m., Officer Purcell and Student #1 were standing on the driver's side of the police van near the hood of a white minivan parked on 15th Street. As the 10-second view of this angle demonstrates, Student #1 was turning his body around to the right as the officer is trying to direct him toward the minivan. Student #1 then faced the officer. Officer Purcell testified that Student #1 was combative and pushed him in his "chest area" in response to being asked to stop and talk to the officer. At this point, there was clear physical contact between Officer Purcell and Student #1, and Student #1 had clearly begun to resist against the officer. The officer's hands were on Student #1 trying to control him, and the officer directed Student #1 against, or at least near, the driver's side door of the police van. Student #1 visibly was physically struggling against Officer Purcell. Student #4 testified that when the officer tried to hold onto Student #1's arm, Student #1 pulled his arm away.



At 1:56:59 p.m., Officer Sackosky was still standing with Student #2 in the lot next to the northeast corner of 15th Street and Girard Avenue.



At 1:57:30 p.m., Student #3 and Student #4 still were standing on the northwest corner of 15th Street and Girard Avenue, watching Student #1 struggle against Officer Purcell. Student #3 testified that the officer told Student #1 to put his hands behind his back, but that Student #1 was trying to prevent the officer from putting the handcuffs on him and “moving the opposite direction as the officer is trying to put him.” Student #3 further testified that Student #1 was moving his body and hands, and doing everything he could to prevent the officer from getting handcuffs on Student #1’s wrists.



By 1:57:34 p.m., Officer Sackosky had joined Officer Purcell to assist the officer against the physically struggling Student #1. At this juncture, the officers and Student #1 were near the back left of the police van, between it and the curb. Student #3 testified that the officers could not force Student #1 to the ground because Student #1 did not want to go to the ground and be arrested. Student #4 consistently testified that Student #1 refused to go to the ground and was resisting the police officers from putting him on the ground.

As can also be seen in the picture above, Student #2 also had moved from the lot next to the northeast corner of 15th Street and Girard Avenue, and was standing next to the unidentified female on the northwest corner of 15th and Girard. Officers Purcell and Sackosky – and two of Student #1’s teammates standing on the corner – testified consistently that the unidentified woman was yelling at Student #1, “don’t fight with the police.”³

³ A.A. and Student #3 testified that the woman told Student #1 “don’t fight with the police.” Student #4 testified that the woman told Student #1 “stop resisting.”



At 1:57:40 p.m., the struggle moved along the driver's side of the van from the rear toward the front. Both officers were employing hand controls on Student #1 while trying to direct him against the police van.

Student #1's three teammates, who stood mere feet away from Student #1 and Officers Purcell and Sackosky during this time period, corroborated the police officers' testimony that Student #1 physically struggled against the two police officers, resisted their efforts to control him by trying to move away from them and moving his body and arms, and refused to listen to or obey the officers' verbal commands. Student #1 conceded as much: he testified that he did not want the officer to arrest him, so he moved his body in order to prevent the officers from handcuffing him.



At 1:57:42 p.m., Officer Sackosky looked back at the crowd on the northwest corner of 15th and Girard while using his shoulder radio to call for more cars to assist him and Officer Purcell. The Investigating Grand Jury also heard the audio of Officer Purcell’s “officer-assist” call. After radioing for back-up, Officer Sackosky rejoined Officer Purcell in trying to control the still-struggling Student #1.

By way of background, an officer-assist call “is the number one priority call for police, to get [officers] there in a timely manner to prevent a situation from escalating to the point where it’s out of the police’s control, or a police officer is facing serious bodily injury or possibly death.” Sgt. Barry Jacobs, who later arrived and was the supervisor on the scene, testified that, “when someone comes over [the radio], whether they physically ask for an assist or if they are asking for more cars, everybody knows on the police force that means drop what you’re doing, whatever that may be, and get over to the area so you can help this individual officer out there.” Furthermore, nothing is set up in advance that would direct certain officers or patrol cars to

respond to an officer-assist call while limiting others; rather, all officers would respond to assure that timely assistance is provided to the requesting officer. Once enough officers are on scene, the police radio dispatcher broadcasts a “resume” directive over police radio, advising those cars not yet on scene to resume their regular patrol.

Sgt. Jacobs testified that the 22nd police district, where the incident with Student #1 occurred, is one of the most violent districts in the City of Philadelphia. He estimated that his district has approximately 10 officer-assist calls per week.



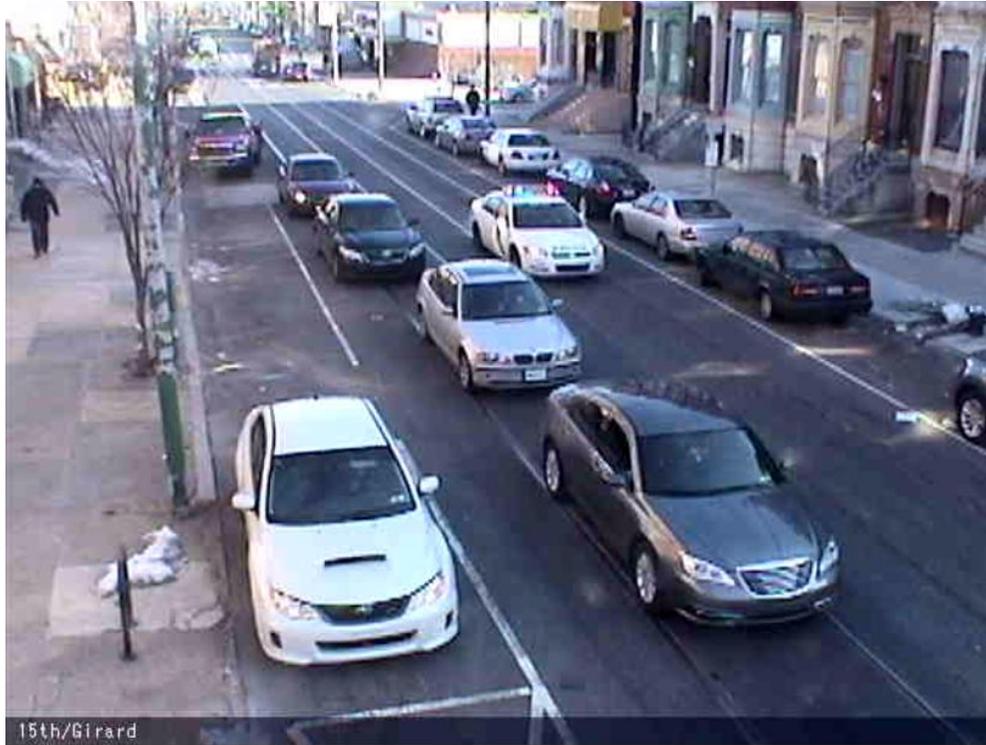
By the time the camera rotates around at 1:58:17 p.m., Student #1 was on the ground resisting, rolling and not staying still with Officer Sackosky on top of him. Student #1’s torso can be seen lifting off the ground while his lower body also moves around as the officer tried to obtain control of him. Student #4 testified that Student #1 was still struggling when he was on the ground, trying to prevent the officers from taking him into custody. According to Student #3,

even after Officer Sackosky threatened to use a taser to subdue Student #1 once Student #1 was on the ground, Student #1 continued to move around and kick his legs.⁴



At 1:58:21 p.m., Officer Purcell rejoined his partner in trying to subdue Student #1. Officer Purcell held Student #1's legs while Officer Sackosky held Student #1's upper body. As can be seen in the photo above, Student #3 and Student #4 were still standing on the northwest corner of 15th and Girard; out of the photograph embedded above are the unidentified woman and Student #2, who remained standing on the northwest corner.

⁴ A taser was not used against Student #1. Only control holds and verbal commands were employed by the officers on the scene.



At 1:58:35 p.m., the first back-up car arrived in response to Officer Sackosky's officer-assist call and can be seen traveling west on Girard Avenue approaching the intersection at 15th Street. This police car was driven by Police Officer Stefanie Cucinotta, who was on patrol by herself.



By 1:59:00 p.m., Officer Cucinotta was out of her patrol car and already had directed the crowd away from the corner next to the police activity with Student #1. When she arrived at the scene, Officer Cucinotta testified that she saw Officer Sackosky on top of Student #1 with one handcuff on Student #1's wrist. Officer Sackosky asked Officer Cucinotta to move the crowd back away from them and Student #1, which Officer Cucinotta did. After she moved the crowd back, she observed Officers Purcell and Sackosky trying to hold Student #1 still. She did not assist Officers Purcell and Sackosky in attempting to subdue or handcuff Student #1 while he was on the ground.

Officer Cucinotta testified that, other than hearing Officer Sackosky's plea for additional cars broadcast on the police radio, she had no idea what was going on at the scene with the initial officers. Officer Sackosky did not come back on the radio after his initial two calls for additional police cars to update any responding officers or the dispatcher as to his status. Sgt. Jacobs testified that, when responding to an officer-assist call, the officers "don't know what [they're]

getting into at that particular time. You don't know if you have an armed suspect, you don't know if there was a shooting that just occurred you don't know – there is [sic] a lot of unknowns, I should say, at that particular time....So you really don't know what you're getting into until you do get there.”



At 1:59:07 p.m., Student #1 continued to struggle against the two police officers' attempts to subdue him even while on the ground. Student #1 continued to flail his arms and legs, trying to move his body around so that the police had difficulty handcuffing him. Officer Purcell then locked his left leg with Student #1's left leg in a further attempt to hold Student #1 still so that the officers could place handcuffs on him. The officers also were giving Student #1 oral commands to be quiet, and to calm down and relax; Student #1 continued to yell at the officers, "get the fuck off me." Even though Student #1 was "extremely belligerent and resistant," the police officers on the scene only employed control holds on Student #1. They did

not use any of the other tools available to them on their force continuum – they did not use pepper spray, asps, batons, or tasers.



At 1:59:09 p.m., an unmarked police vehicle arrived in response to Officer Sackosky’s officer-assist call. Police Officer Sheldon Fitzgerald, in the passenger seat, opened his door even before the car had come to a complete stop. Student #1’s teammates – Student #2, Student #3 and Student #4 – along with the unidentified woman, were still standing near the northwest corner of 15th and Girard, although a bit farther away after Officer Cucinotta directed them to move back.

Officers Fitzgerald and Pazdan, operating that day in an undercover capacity, were three or four blocks away and about to stop an individual when they heard the officer-assist call. Officer Fitzgerald testified that Officer Sackosky sounded “like he was in distress, like he needed cars to get there asap.” Thus, the undercover officers left their own investigation in order to respond to the back-up call. When they arrived, Officer Fitzgerald testified that he saw Student

#1 on the ground, with Officer Sackosky holding Student #1's torso and Officer Purcell holding Student #1's legs.



By 1:59:39 p.m., the patrol car of Police Officers Travis Wolfe and Sean Rios was parked behind Officer Cucinotta's patrol car; the top of their patrol car is visible in the photo above. When they arrived, Officers Wolfe and Rios immediately went to Officers Purcell and Sackosky to see if they needed any assistance, but were told to do crowd control instead.⁵

⁵ Travis Wolfe was promoted to sergeant on January 31, 2014. For clarity and consistency, this Report will refer to him as Officer Wolfe.



By 1:59:47 p.m., Officer Fitzgerald, operating in plain-clothes and wearing a tan winter jacket, had directed the civilians who had been standing on the corner one-third of the way up the 1500 block of Girard Avenue. Officer Fitzgerald then walked with the students further up the block. As they walked, Officer Fitzgerald began to talk to Student #2, who told the officer that Student #1 was their teammate and that they were going to play a game against Frankford High School. Officer Fitzgerald told them that he was not sure what would happen to Student #1, but that they should just go to their game. After their conversation, Student #2, Student #3 and Student #4 walked west toward 16th Street, and Officer Fitzgerald returned to the 15th Street intersection.



At 1:59:48 p.m., Officers Purcell and Sackosky lifted Student #1, now handcuffed, off the ground. Student #1 is fully upright at 1:50:50 p.m. – 3 minutes and 49 seconds after the initial contact by Officer Purcell and 2 minutes and 26 seconds after Officer Sackosky joined his partner in trying to control the resisting Student #1.



At 1:59:59 p.m., Student #1 was standing at the back of the police van with Officers Cucinotta (on Student #1's left) and Purcell (on D.M's right). Student #1 still had his backpack on. The officers initially were going to place Student #1 in the back of the van but could not because the homeless elderly man was already inside.



At 2:00:03 p.m., Student #1 was being escorted towards Officer Cucinotta's patrol car, which was parked directly behind the police van.



At 2:00:46 p.m., Officer Purcell was no longer involved with Student #1 near Officer Cucinotta's patrol car. As can be seen at the bottom left of the photo above, Officer Purcell was standing with the supervisor on the scene, Sgt. Jacobs, and was pointing north on 15th Street and explaining to the sergeant what had just transpired.

As is also evident in the embedded photo above, Student #1 and the officers with him are no longer in the RTCC surveillance video as they stand near the front of Officer Cucinotta's patrol car. Given that fact, the Investigating Grand Jury had to rely on testimony of what happened, along with what and who could be observed in the video, to determine what happened outside of the camera's view during the critical police interactions with Student #1 as they stood near Officer Cucinotta's car.



By 2:01:24 p.m., Officer Fitzgerald was walking back to the northwest corner of Girard Avenue and 15th Street after having been with Student #1's teammates for almost two minutes. As the photo embedded above demonstrates, the teammates are no longer in view of the RTCC surveillance camera.



At 2:01:33 p.m., Student #1 was still at the patrol car of Officer Cucinotta. All of the witnesses agreed that Student #1 was near the right front tire/quarter-panel of the patrol car.

The Investigating Grand Jury heard credible testimony from multiple witnesses concerning the patdown and frisk of Student #1 while he was next to the police car. Pursuant to established police protocol, Student #1 was being patted down and searched incident to his arrest. Due to his prior resistance and continued belligerent conduct, one officer held Student #1's left arm, while Officer Wolfe hooked his left arm into Student #1's right arm to try to gain more control of Student #1's body. Despite the fact that two officers were holding his arms and the heavy presence of police officers in the area, Student #1 continued to yell and curse at the officers (*e.g.*, "get the fuck off of me," "don't fucking touch me") and continued to move his body, turning back toward the officers behind him or laying up against the patrol car. The officers who were holding Student #1 also were telling him to stay still and stop moving, but he refused to do so. Student #1 admitted that he refused to be quiet as requested by the officers.

Officer Cucinotta testified that, as the only female officer on the scene, she wanted to assist in any way possible and, given her slight build⁶ and that the male officers were trying to hold Student #1 still, she attempted to help by performing a standard frisk of Student #1.⁷ Officer Cucinotta stood behind Student #1, off-set a bit to the right. Officer Wolfe stood on her right side. She first checked Student #1's back pockets; the pockets were clear. She then attempted to check his genital area for weapons and contraband, as she was trained to do. But because Student #1's pants were sagged down at the crotch but tight on his legs, and because he was also wearing long underwear beneath his khakis, she was physically unable to reach his genital area, and so she moved on. She next went to check Student #1's waistband area. When her hand touched his front waistband, Student #1 lunged his body forward against the patrol car, stuck out his rear end, and said "get the fuck off of me." Officer Wolfe – who is an African-American male⁸ – yelled out, "I think he's got a fucking gun." He immediately bumped Officer Cucinotta out of the way and, by his own admission, took over the search of Student #1. Using his right hand, Officer Wolfe was able to push the crotch of Student #1's pants up enough that he was able to search his inner thigh and groin area, and moved on to check Student #1's waistband. No contraband or weapons were found.

In searching Student #1's groin area next to and behind Student #1's genitals, Officer Wolfe testified that he did not use a lot of force but conducted a thorough search. He made sure he was able to run his hand all the way up Student #1's inner thigh to his groin on each side. He

⁶ Officer Cucinotta is 5'3", 105 pounds.

⁷ There are no PPD directives prohibiting a female police officer from searching or frisking a male, even a juvenile male.

⁸ The only reason the Grand Jury is noting the race of this individual is because of the claim made by some that the frisk was performed by a white female, and the insistence that an African-American male was not even near the frisk area.

also searched the area between Student #1's testicles and buttocks because "a lot of times" contraband is hidden in that area. To Officer Wolfe, "it looked like he was attempting to hide something, keep [the officers] from going in there for whatever reason. In my experience, when someone tries to turn their body away from you when you area trying to search, they have something in that area they don't want you to find. That's been an experience I've had very, very often."

Officer Wolfe was the only police officer who successfully searched Student #1's genital area. Moreover, Officer Wolfe and Officer Cucinotta testified that they never grabbed, pulled or squeezed Student #1's testicles during their successful and attempted, respectively, searches of Student #1's midsection.



At 2:02:30 p.m., Student #2, Student #3 and Student #4 were walking west across the crosswalk at 16th Street and Girard Avenue. Their backs were to the activity taking place at 15th and Girard.



At 2:02:57, a SEPTA trolley that was traveling east on Girard Avenue stopped just short of the intersection at 15th Street. As can also be seen in the embedded photo above, the officers standing on the passenger side of the vehicle were still directing their attention toward the hood of the car where Student #1 was.



By 2:03:09 p.m., Officer Cucinotta was completely disengaged from Student #1 and was standing at the back of the police van with two other officers and the supervisor on the scene. Ten seconds later, she opened the door to the police van.



At 2:03:33 p.m., Officer Rios moved his patrol car from Girard Avenue and parked it on the southeast corner of 15th and Girard.



At 2:03:57 p.m., Officer Cucinotta and another officer helped the elderly homeless man from the back of the police van. Sgt. Jacobs, the supervisor on scene, decided that Officer Cucinotta should transport the man to Temple Hospital so that Officers Purcell and Sackosky were free to return to their assigned district and complete the necessary paperwork concerning Student #1's arrest.⁹ Sgt. Jacobs also decided that Officers Wolfe and Rios should transport Student #1 to the 9th District police station, where all juveniles arrested in the area are processed.

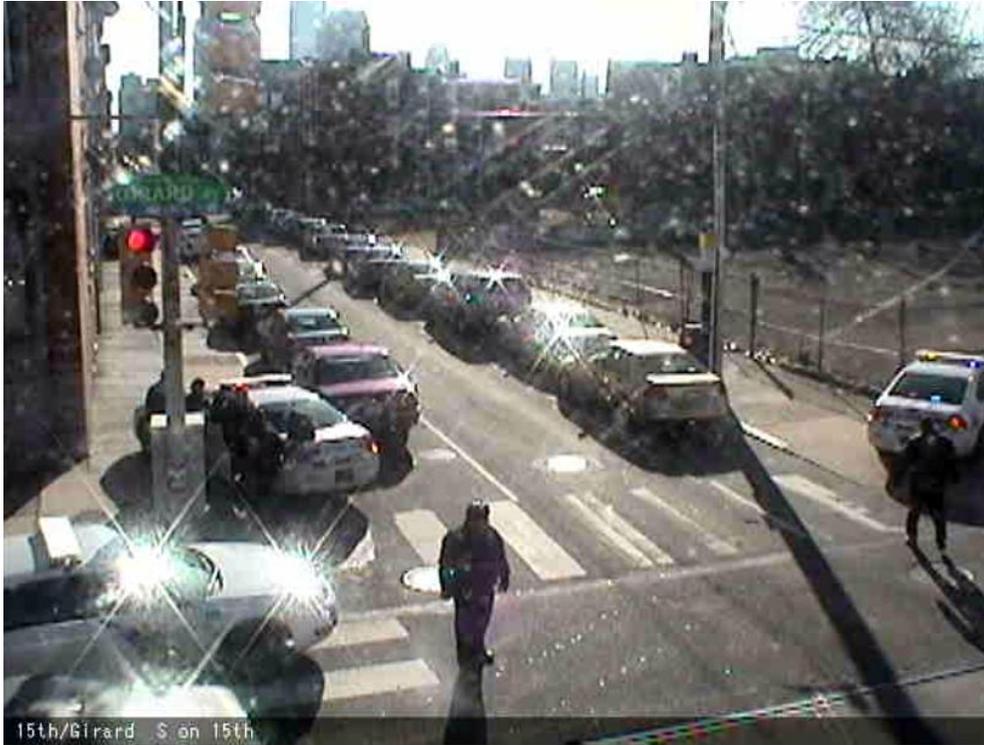
⁹ Student #1 was arrested on four charges: aggravated assault; simple assault; recklessly endangering another person; and resisting arrest. On May 14, 2014, Student #1 entered into a reporting consent decree on only the resisting arrest charge, while the Commonwealth withdrew the other three charges. This is a standard disposition for juvenile cases where, as here, the juvenile has no prior record.



Also at 2:03:57 p.m., Student #1 was escorted across Girard Avenue to Officers Wolfe and Rios' patrol car that was parked on the southeast corner of 15th and Girard for transport to the 9th police district. While walking across the street, mere moments after the search, Student #1 was not limping and appeared to be walking normally. While standing near and/or against the driver's side of the police car, Student #1 was searched again before he was placed in the back of the Wolfe/Rios patrol car; this was done pursuant to standard police procedure. Once again, Officer Wolfe performed the search. No contraband or weapons were found.



At 2:04:31 p.m., Student #1 was still standing on the driver's side of the Wolfe/Rios patrol car. In addition to the second search that Officer Wolfe performed on Student #1, Student #1 also complained during this time that he previously had been hit in the head by handcuffs during his struggle with Officers Purcell and Sackosky. This complaint about a head injury was the only one that Student #1 made. He never complained to any of the officers on the scene about his testicles or having his testicles squeezed, pulled and grabbed.



When the camera rotates back around at 2:05:11 p.m., Student #1 was still standing outside of the driver's side of the Wolfe/Rios patrol car. He remained there on the next three camera rotations, including at 2:07:42 p.m.



By 2:08:19 p.m., Student #1 was inside the Wolfe/Rios patrol car, handcuffed and sitting in the back seat.

The Drive to the 9th District Police Station



At 2:12:20 p.m., Officer Wolfe, with Officer Rios in the passenger seat, began driving south on 15th Street in order to transport Student #1 to the 9th police district. During the drive, Officer Wolfe asked Student #1 two or three times if Student #1 was injured; Student #1 repeatedly responded that he was not. Student #1 admitted that Officer Wolfe asked him if he had any injuries: “I told him no. That was it.” Officer Wolfe even told Student #1 that he was going to take him to the hospital to have Student #1’s claimed head injury checked; Student #1 specifically declined such a visit. Student #1 never said that his testicles had been injured or that they hurt.

During the drive to the 9th police district, Officer Wolfe kept looking back at Student #1 in the backseat using the rear view mirror. He then saw and heard Student #1 slouching down in the seat, to the point that Officer Wolfe could no longer see Student #1 in the rear view mirror. Student #1 admitted that he slouched down in the backseat. Officer Wolfe could hear Student

#1's handcuffs hitting the hard plastic back seat. The officer believed that Student #1 was trying to reach or secrete a weapon or contraband, so he stopped the car in the middle of the street. Officer Wolfe got out of the car and opened the back door; Student #1 had his hands in his waistband behind his back. Officer Wolfe flipped Student #1 over so he could search and look at the back waistband. This search, like the first two, did not find any weapons or contraband – but Officer Wolfe testified that he still believes that he missed something given Student #1's inexplicable behavior during the original search attempt by Officer Cucinotta, his belligerence when touched, and his furtive movements while in the backseat of the police car.

At the 9th District Police Station



At 2:27 p.m., Officer Wolfe parked his patrol car outside of the 9th district police station. Two minutes later, Student #1 was escorted into the building. In the brief walk from the car to the building, Student #1 was not limping and appeared to be walking normally.

Inside the station, Student #1 walked through the lobby, which is separated from the operations center by a door and a large window that allows those in the operations center to see

individuals in the lobby. Student #1 was escorted through the lobby door and sat down on a bench alongside Officer Rios, who completed a Juvenile Contact Report and Detainee's Medical Checklist. While completing the Medical Checklist, Rios asked Student #1 whether he had any pain or injury; Student #1 responded "no," and Officer Rios checked that box on the form. Student #1 also answered "no" to the question "is there anything else you should inform us of to ensure your well being?" After orally answering the questions from the Medical Checklist, Student #1 signed the form. Student #1 never complained to Officer Rios – or any other officer in the 9th District police station – about being in pain, or having his testicles grabbed or squeezed, or having injured his testicles. Student #1 admitted as much.

By 2:41 p.m., Ikea Coney, Student #1's mother, had arrived at the 9th District police station. She was notified in person that her son had been arrested. Ms. Coney stood in the lobby and, through the large glass window, was only approximately 7 feet away from Student #1, and therefore was able to see Student #1 fill out the Medical Checklist with Officer Rios. When she saw Officer Wolfe, Ms. Coney requested to speak with him. Officer Wolfe obliged and went from the operations center to the lobby to speak with her. With Ms. Coney was Daniel Jackson, the head coach of the MCSCS basketball team. Ms. Coney immediately began to complain that the police stop and action was motivated by racism. Officer Wolfe explained to her that he had witnessed Student #1 struggling against multiple officers, even after being handcuffed, and acting belligerently and disrespectfully with the officers on the scene. He also stated that "it wasn't about race, it was about [Student #1's] actions."

While Officer Wolfe was speaking to Ms. Coney, Student #1 began to be led from the operations center to the cells used to hold juveniles, which is located next to the operations center. Ms. Coney asked in a voice loud enough for Student #1 to hear, whether he was okay;

Student #1 responded by nodding his head yes. Student #1 walked normally and without a limp to the holding cell. Ms. Coney thereafter asked Officer Wolfe if he could pass a message to Student #1, and Officer Wolfe agreed to do so. Ms. Coney wanted to tell her son that she was not mad at him. Officer Wolfe then went to the cell where Student #1 was being held. As Officer Wolfe testified and demonstrated to the Grand Jury, Student #1 was sitting on the floor with his back against a wall, with his left leg bent and right leg straight so that his left elbow rested on his left knee. Officer Wolfe delivered the message from Ms. Coney and left the cell.

Student #1 was then brought down to the 9th District's basement to be fingerprinted and photographed. To reach the basement, Police Officer Michael Rivera escorted Student #1 down two flights of stairs, and then back up two flights of stairs once they were finished. Officer Rivera testified that Student #1 did not limp and seemed to be walking normally while descending and ascending the two flights of stairs. Student #1 was photographed at 5:10 p.m. and was fingerprinted at 5:15 p.m.

At 8:35 p.m., Police Officer Stefan Bas called Ms. Coney to advise her that Student #1 was being released from custody and that she could return to the police station to pick him up. Student #1 was then officially released to his mother at 9:15 p.m. by Officer Bas.

When he left the station, Student #1 walked north on 20th Street toward Hamilton Street. He was not limping and appeared to be walking normally as he left the 9th District police station.¹⁰

Student #1 testified that, when he left the police station, he told his mother that a police officer grabbed his testicles twice during the frisk. She asked if he needed to go to the hospital,

¹⁰ The Grand Jury watched the video of Student #1 leaving the 9th District station, but a still photograph could not be printed.

and, according to his testimony, he told her no, and that he was fine. Student #1 also testified that he texted with his best friend later that night and also told the friend that he was fine.

January 8, 2014 – Surgery at Children’s Hospital of Philadelphia

Student #1 went to school at MCSCS the next morning, but did not attend class. Instead, he met with the school principal, Veronica Joyner, and members of the MCSCS school board. Student #1 testified that he told school board members and principal that his “balls got squeezed, but it’s okay. It’s fine.” The school administrators then suggested that Student #1 should go to the hospital “[b]ecause it’s something that could be checked out.” Student #1’s mother then took him to the Emergency Department of the Children Hospital of Philadelphia (“CHOP”). They arrived at CHOP at 12:43 p.m. – approximately 22½ hours after his struggle with and arrest by the PPD.

During his examination in the Emergency Department, Student #1 told the attending physician that he was injured as a result of an assault by a police officer. Specifically, Student #1 told the physician that “a female officer ‘grabbed his balls real hard twice’ while she was frisking him.” Student #1 said “[t]he pain lasted several minutes.” During his physical examination, Student #1 was experiencing “mild pain” to the left testicle, but only when it was touched. There was no discoloration or bruising of his left scrotum. Student #1 acknowledged that he had a varicocele in his left scrotum.¹¹ His mother, Ms. Coney, told the doctor that she

¹¹ As Dr. Gregory Tasian testified, a varicocele is a dilation of the veins that drain the testicle, similar to varicose veins, and presents itself as a mass of veins that are attached to the testicle. It is almost always on the left side. Student #1’s primary care physician diagnosed him with a varicocele in his left testicle in January 2009 when he was 11 years old. He was referred to a pediatric urologist at CHOP at that time and had a follow-up with the urologist in June 2011 in an effort to monitor the varicocele.

filed a report with police and that Student #1's school was providing him with a lawyer.¹² The attending physician then presented the case, including Student #1's narrative, to the CHOP Urology Department, which recommended that Student #1 have an ultrasound of his scrotum to see if the assault he claimed to have suffered had caused any injury to his left testicle.

By 3:33 p.m., the ultrasound had been performed on Student #1's scrotum. When he returned to the Emergency Department, the registered nurse noted that Student #1 "has been sitting, lying and ambulating [walking] without much difficulty noted." At 3:48 p.m., the Radiology Department called the Emergency Department to report that the preliminary results of Student #1's ultrasound showed a concern for a possible testicular rupture. The final result was available at 4:52 p.m. and was consistent with the preliminary results. Specifically, the impression resulted in two findings: a concern for a left testicular rupture, and a stable small left varicocele. The final result also stated that "[t]he left epididymis is normal....The views of the spermatic cords show no abnormalities."

In light of Student #1's narrative and the Radiology Department's interpretation of the ultrasound imaging, the Urology Department was again contacted. Dr. Gregory Tasian was the attending pediatric urologist that afternoon. Along with a fellow and resident, Dr. Tasian visited Student #1 and Ms. Coney at 4:10 p.m. to discuss his claimed injury, his narrative concerning the alleged source of the injury, and the ultrasound results. Student #1 and his mother repeated that Student #1 had been assaulted by a female police officer, who allegedly grabbed Student #1's

¹² Lt. David Hunter of the Philadelphia Police Department's Internal Affairs Division ("IAD") testified that the IAD investigation began as a result of media coverage of the incident; neither Student #1 nor his family had filed a complaint.

“nuts hard,” and “[t]he pain lasted for several minutes.”¹³ He denied being nauseous or vomiting. The doctor also was told that the alleged assault had occurred at 2:00 p.m. that day, January 8, 2014.

Dr. Tasian testified that the narrative that a patient provides to him is one of the most important things he considers when assessing a patient. The patient’s narrative is “essential” to the clinical context of the alleged injury and guides the doctors as they interpret the ultrasound and look for specific things that would be consistent with the trauma described by the patient. Without a particular narrative provided by the patient, the doctor’s interpretation of the ultrasound and recommended plan of action would be different – as was the case here. “So, without that history of trauma, or alleged trauma to the scrotum, then you would have no reason to think that there would be a rupture of the testicle. A testicle doesn’t spontaneously rupture. It has to happen for some reason due to force. So if you saw – for example heterogeneity of the testicle, you would think of other reasons for that, such as infection, maybe. But again, it has to go in a clinical narrative.”

Dr. Tasian then performed a physical examination of Student #1. While Student #1 reported some tenderness when his left testicle was touched near the epididymis, Dr. Tasian could not feel a ruptured testicle and the testicle was smooth all the way around, as it should be. Moreover, as Dr. Tasian noted during his grand jury testimony, pain from a ruptured testicle would “absolutely” last longer than several minutes – it would be continuous, severe pain from the time of rupture until it was surgically fixed. He also stated that, “[w]hen you have injury to the testicles, men often vomit. So that’s one thing we look for.” In addition, Student #1 was

¹³ When asked about the pain during his grand jury testimony, Student #1 said that it was “[n]ot that bad.”

able to sit and walk normally.¹⁴ Finally, there was no discoloration or bruising of his left scrotal area.

Even though Dr. Tasian could not feel a rupture and Student #1 lacked the symptoms that would be associated with a ruptured testicle and trauma to a testicle, he recommended emergency exploratory surgery given Student #1's narrative and the ultrasound findings.¹⁵ He advised Ms. Coney and Student #1 the risks and rewards of the exploratory surgery. Dr. Tasian mentioned that one of the reasons to have the surgery to fix a ruptured testicle is to reduce the risk of sterility. The concern about sterility was only applicable if there was, in fact, a ruptured testicle; this was "absolutely" clear to Dr. Tasian in terms of how he presented and discussed the issue of sterility with Ms. Coney.

Dr. Tasian performed the exploratory surgery on Student #1 at 6:23 p.m. The surgery revealed that Student #1's testicle was not ruptured. Moreover, Dr. Tasian found no evidence of any trauma to Student #1's testicle.¹⁶ Indeed, Dr. Tasian testified that the narrative that Student

¹⁴ Dr. Tasian testified that a man with a traumatic injury to his testicle would not be walking normally – "you sort of walk like a cowboy" – nor would he be able to sit comfortably. This is another indication that Student #1 did not suffer a traumatic injury to his testicle as he claimed, because he appeared to be able to walk normally across Girard Avenue to Officer Wolfe's police car; into the 9th District police station; down and back up two flights of stairs inside the 9th District for photographing and fingerprinting; out of the 9th District with his family; into CHOP's lobby; and to the various rooms in which he was placed once at CHOP and as noted by the nursing staff in the CHOP records.

¹⁵ Dr. Tasian testified that the recommendation of an exploratory surgery was a safe and conservative plan of action given the story Student #1 presented and the risk involved with a ruptured testicle, if found.

¹⁶ The Operative Notes provide the details of the surgery based upon Dr. Tasian's notes, which he dictated immediately after the procedure. Among many significant details, Dr. Tasian noted that a small amount of clear fluid was evacuated when the left testis's tunica vaginalis was incised, which, Dr. Tasian testified, meant that the testicle had not experienced trauma. If it had, the fluid would have been rusty brown, not clear: "That's a sign that says no trauma." Dr. Tasian next noted that the tunica albuginea was intact throughout, which means that there was no testicular rupture.

#1 had given before the surgery – that a female police officer had twice grabbed and squeezed his testicles – was inconsistent with his actual surgical findings.

The “injury” that Dr. Tasian found during the exploratory surgery was a thrombosed appendix epididymis, which is a spontaneously-occurring event and not caused by trauma. Dr. Tasian testified that the appendix epididymis can sometimes twist, resulting in a blood clot and local pain in the testicle. Moreover, Dr. Tasian testified that surgery is not the treatment for such a condition; rather, a physician would recommend that the patient take an ibuprofen and wear tight-fitting briefs rather than boxers. Indeed, had Student #1 presented to him with the very same conditions with the very same ultrasound, but without the narrative that he had been assaulted by the police, Dr. Tasian would not have performed the surgery. But since he already was performing the exploratory surgery for a potential rupture based on the story Student #1 told him, Dr. Tasian cut out the thrombosed appendix epididymis to ensure that Student #1 did not have any future issues with that condition.

Immediately after the surgery, Dr. Tasian spoke with Ms. Coney in the surgical waiting room and informed her that Student #1 had not suffered a ruptured testicle.¹⁷ He then informed her that Student #1 had a thrombosed appendix epididymis, which he cut out, and that Student #1 would be fine with no long-term issues. He did not mention sterility or fertility because that condition is not even a concern with a thrombosed appendix epididymis. He also never recommended to Ms. Coney that she or Student #1 press charges against the police officers, contrary to what was reported in media accounts of Ms. Coney’s statements.

¹⁷ In subsequent media accounts of the incident, Student #1, his mother and his lawyer claimed that his testicle was ruptured. Dr. Tasian testified that those accounts struck him “because what I was reading was not true. That’s not what I conveyed to the mother or to the patient.”

Dr. Tasian discharged Student #1 from the hospital at 9:35 p.m. He advised Student #1 to “[t]ake it easy with minimal strenuous activity for 2 weeks.” He never recommended that Student #1 use a wheelchair for mobility. Student #1 went to school the next day.

Conclusions

We, the members of the Twenty-Sixth Investigating Grand Jury, have heard testimony and reviewed evidence pursuant to submission of Notice No. 16. Accordingly, the Twenty-Sixth Grand Jury makes the following findings:

1. While reasonable evidence existed to support the police officers’ belief that they should question Student #1 and his friends, it was understandable for Student #1 to believe he should not be stopped since he had not committed any criminal activity.
2. Police stopped and attempted to question Student #1 and his friend Student #2. Student #2 testified he was questioned by an officer without conflict or incident.
3. Student #1 physically resisted a police officer when the officer tried to stop and question Student #1.
4. Onlookers, including some of Student #1’s friends, witnessed the resistance and attempted to tell Student #1 not to resist the officers.
5. The testimony and video evidence conclusively demonstrated that it took officers 3 minutes and 49 seconds to place Student #1 into custody because he physically resisted their efforts.
6. The evidence does not support Student #1’s claim that a white female police officer, or any police officer, grabbed and squeezed his testicle two

times during a search following his arrest. In fact, an African-American police officer testified that he was the officer who performed the searches of Student #1's groin and denied using such force that would injure Student #1.

7. The medical evidence is conclusive that there was no trauma or rupture to Student #1's testicle.