

Case Number: 2003C0062
Date of Violation: 03/30/2003
Date Received: 04/02/2003
Date To Station: 06/19/2003

How Received: Not Specified
Type of Complaint: LAB
Date Back from D/C: 09/03/2003

Complainant(s): Mr [REDACTED] DOB: [REDACTED]

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	109	Unnecessary Force	306		Exonerated	District 2

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	1042	Unnecessary Force	306		Exonerated	District 2

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	74065	Unnecessary Force	306		Exonerated	District 2



JOHN W. HICKENLOOPER
Mayor

CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

DENVER POLICE DEPARTMENT
ADMINISTRATION BUILDING
1331 CHEROKEE STREET
DENVER, COLORADO 80204-2787
PHONE: (720) 913-2000

August 15, 2003

Mr. Irin [REDACTED]
[REDACTED]
Denver, CO 80205

Dear Mr. [REDACTED]

Your complaint alleging improper conduct by several Denver Police officers has been thoroughly investigated by the Internal Affairs Bureau and reviewed by members of the District Two Police Station command staff. Command officers of the Denver Police Department have reviewed the results of that investigation.

Included in the results of this investigation was a review of your statement, the civilian witnesses and officers' statements, medical records and the audio and videotapes for this case. There must be a preponderance of evidence that any of the officers violated certain Denver Police Department standards, rules and regulations in order to discipline that officer. This was not the case in this incident. There was not enough evidence to sustain this complaint. Therefore no formal disciplinary action will be taken in this case.

I am sorry that your encounter with members of the department was not satisfactory. I hope that any future contact you may have with any member of the Denver Police Department will be a positive experience. A copy of your complaint will be maintained in the officers' files in the event there is similar conduct in the future.

If you have any questions concerning this matter, you may contact Lieutenant R.T. "Pete" Conner, Jr. at 303-331-5909.

Sincerely,

Gerald R. Whitman
CHIEF OF POLICE

By: Michael O'Neill
Commander Michael O'Neill, District Two Station

2003 SEP - 9 AM 10: 07

INTERNAL
AFFAIRS BUREAU

**DENVER POLICE DEPARTMENT
INTER-DEPARTMENT
CORRESPONDENCE**

TO: Michael O'Neill, Commander, District Two

FROM: R.T. "Pete" Conner, Jr., 89046, Lieutenant, Detail One Commander

DATE: August 2, 2003

SUBJECT: Internal Affairs Bureau Complaint # 2003C0062
Complainant: [REDACTED]
Technician Paul Westerkamp, 74065
Officer Michael Nuanes, 00109
Officer Jason Vincent, 01042

Incident:

On March 30, 2003/0025hrs, the above named officers responded to the area of E. 24th Ave. and Franklin St. to investigate a Hit and Run accident-domestic violence. The officers contacted the reporting party for the accident who directed the officers to one of the vehicles involved. It was contacted at E. 22nd Ave. and Gilpin St. During their investigation, the officers were speaking with the driver, [REDACTED] [REDACTED] and a passenger, [REDACTED] [REDACTED] when they were approached by the complainant, [REDACTED] [REDACTED] was only wearing a t-shirt and boxer shorts. [REDACTED] was yelling obscenities towards the officers and swung at Officer Vincent with a closed fist for no apparent reason. The punch missed Officer Vincent and he and Technician Westerkamp wrestled [REDACTED] to the hood of a patrol car. Officer Nuanes armed with a taser deployed it one time. This incapacitated [REDACTED] after the two officers were unable to hold him down on the patrol car. Officer Vincent and Technician Westerkamp handcuffed [REDACTED] without further incident.

Sergeant Paul Pazen responded to the scene to investigate the Use of Force. Sergeant Pazen contacted [REDACTED] who first denied knowing the two females. He later admitted knowing them. [REDACTED] stated that [REDACTED] took his pants off because they had been arguing and his pants were inside of the car. [REDACTED] did not admit to swinging at the officers, but admitted to "yelling stuff". [REDACTED] was intoxicated and was medically cleared before being transported and booked at District Two

Complaint:

[REDACTED] responded to the Internal Affairs Bureau on April 2, 2003 and made an excessive and unnecessary force complaint. [REDACTED] stated he was walking from a friend's house in the 2500 blk Welton St. when a car hit him. The vehicle then left the scene. [REDACTED] stated the car "must have ripped his pants off". [REDACTED] stated he saw the officers and went to them to report the accident. One of the officers grabbed him around the neck for no reason. [REDACTED] stated he then laid face down on the patrol car with his hands above his head and was choked and put into a Full Nelson. [REDACTED] then stated the officer stood him up while another officer tased him, shocking him several times. [REDACTED] was then transported to District Two.

█████ stated he was handcuffed to a bench. █████ then states he began vomiting excessively. He tried to move out of the way of the vomit, when he slipped, fell and injured his eye. █████ was transported to DHMC and woke up with stitches over his eye.

█████ stated that the short Hispanic officer shot him with the taser and began bragging. █████ admitted to having a couple of beers. █████ stated that while he was being choked out, he was just trying to talk to the officers to tell them what had occurred. █████ also denied knowing the two females.

█████ called the Internal Affairs Bureau at their request. The Internal Affairs Bureau wanted to interview the two females but they weren't able to locate them. █████ admitted to knowing the two females, but not their phone numbers. █████ stated he would try and locate them to have them call the Internal Affairs Bureau. █████ further stated he was hanging out at E. 31 Ave. & Downing St. with friends. Sergeant Wilson of the Internal Affairs Bureau wanted the friends' names and phone numbers to contact them, but █████ refused to give their names. █████ stated he hadn't told his friends about the incident. As of this report, the females have not called or been interviewed.

Investigation Summary:

This case was presented to the District Attorney's Office for review who declined to prosecute due to **No Reasonable Likelihood of Conviction**. I received the case and reviewed all of the statements, audio and videotapes. Included in the audiotapes was a phone interview with █████ █████. She is Officer Vincent's █████ and was a civilian rider. She stated she heard Officer Vincent ask █████ when he first arrived at the scene if he needed anything and could he help. She then stated that █████ started screaming, yelling and swearing for no reason. She then observed █████ swing at Officer Vincent. Officer Vincent and a second officer were unable to hold █████ down, before he was tased by a third officer. Lastly █████ stated she heard the females calling █████ by name.

█████ █████ the original complainant called the Internal Affairs Bureau and related the events that caused him to call the police. █████ stated that when he last saw the vehicle, he pointed it out to the officers. That was the last time he saw the officers or vehicle. The vehicle that █████ called about was stopped by the officers about four blocks away. █████ was not in a position to see what had occurred.

I reviewed the holding cell videotape where █████ was placed. The officers had handcuffed each hand to an eyebolt. █████ was the only prisoner in the cell. █████ was moving around a lot, appearing to try and get comfortable. At one point, the tape showed Sergeant Pazen enter the cell to take photos of █████ injuries. The tape was poor quality and I was unable to determine exactly when █████ vomited in the cell. However, I was able to observe █████ squatting on the bench, lose his balance and fall headfirst onto the floor. This is most likely when █████ cut his eye. The tape is clear enough to show that no officer inflicted injury or mistreated █████. A few minutes later, the Sheriffs arrive to transport █████. They did not. I can only assume it was due to his injury. The tape stops at that point and doesn't show him being removed from the cell by the paramedics, officers or anyone else. However, in Sergeant Pazen's cover letter in the last paragraph, it states that █████ injured his eye somehow and an ambulance responded and transported him to DHMC.

Findings:

I find that [REDACTED] complaint is without merit and should be disregarded in its entirety. His first claim that a car struck him and it must have ripped his pants and shoes off is unbelievable and an impossibility. Next, I find that [REDACTED] was intoxicated and did swing at Officer Vincent. [REDACTED] has a history of assaultive behavior. The officers acted appropriately, first by attempting to use body force to try and hold [REDACTED] down, then by the use of the taser. [REDACTED] denied swinging at the officers, but admitted to "yelling stuff" as he approached them. [REDACTED] first denied knowing the females, but later admitted to the Internal Affairs Bureau investigator that he knew them. When [REDACTED] was placed in the holding cell, both of his wrists were handcuffed to the bench. This extra level of security was due to his previous assaultive behavior. When Sergeant Pazen photographed [REDACTED] injuries, he had not yet hurt his eye. The videotape confirms this. It wasn't until the sheriffs arrived that the injury was noticed. An ambulance was immediately called and transported [REDACTED] to DHMC. DHMC medical records showed that [REDACTED] had injuries caused by a taser and a laceration over his right eye caused by a fall. Therefore I find that [REDACTED] statement and complainant against the officers is false, without merit and his credibility in this matter is questionable. The officers did not violate any Denver Police Department rule, regulation or policy while effecting the arrest of [REDACTED]

Did Technician Paul Westerkamp violate RR-306, Unnecessary Force;

Officers shall not use unnecessary force or violence in making an arrest or in dealing with a prisoner or any person. Prisoners and suspects shall be treated in a fair and humane manner. They shall not be humiliated, ridiculed or taunted.

EXONERATED

Did Officer Michael Nuanes violate RR-306, Unnecessary Force;

Officers shall not use unnecessary force or violence in making an arrest or in dealing with a prisoner or any person. Prisoners and suspects shall be treated in a fair and humane manner. They shall not be humiliated, ridiculed or taunted.

EXONERATED

Did Officer Jason Vincent violate RR-306, Unnecessary Force;

Officers shall not use unnecessary force or violence in making an arrest or in dealing with a prisoner or any person. Prisoners and suspects shall be treated in a fair and humane manner. They shall not be humiliated, ridiculed or taunted.

EXONERATED

R.T. Conner by [signature] 8-26-05
 R.T. "Pete" Conner, Jr., 89046, Lieutenant Date

Commander's Finding and Recommendation:

I have reviewed Lieutenant R.T. Conner's summary of the complaint against Technician Paul Westerkamp and CONCUR/DISAGREE with the findings.

EXONERATED UNFOUNDED NOT SUSTAINED SUSTAINED

Penalty:

Comparative discipline for this violation is suspended time from 3-15 days.

I recommend

I have reviewed Lieutenant R.T. Conner's summary of the complaint against Officer Michael Nuanes and CONCUR/DISAGREE with the findings.

EXONERATED UNFOUNDED NOT SUSTAINED SUSTAINED

Penalty:

Comparative discipline for this violation is suspended time from 3-15 days.

I recommend

I have reviewed Lieutenant R.T. Conner's summary of the complaint against Officer Jason Vincent and CONCUR/DISAGREE with the findings.

EXONERATED UNFOUNDED NOT SUSTAINED SUSTAINED

Penalty:

Comparative discipline for this violation is suspended time from 3-15 days.

I recommend

M.P. O'Neill 67037 8-26-03
Commander Michael O'Neill, 67037 Date

Division Chief's Findings and Recommendations:

I have reviewed Commander O'Neill's findings and CONCUR/DISAGREE.

I have reviewed Commander O'Neill's penalty recommendation and CONCUR/DISAGREE.

Comments:

Daniel J. O'Hayre 72030 *8-28-03*
Division Chief Daniel J. O'Hayre, 72030 Date