

Case Number: 2005C0008

Date of Violation: 01/16/2005

Date Closed: 12/10/2005

Date Received: 01/19/2005

Complainant(s):

██████ ██████

Involved Officers:

Nuanes, Michael (P00109)

<u>Violation</u>	<u>RR Code</u>	<u>OMS Code</u>	<u>Other Desc</u>	<u>Disposition</u>	<u>Penalty</u>	<u>Hours</u>		
						<u>Fined</u>	<u>Suspended</u>	<u>Abevance</u>
Law Violation - Other				Not Sustained				
Discourtesy				Not Sustained				
Improper Procedure - Other	105		Conduct Prejudicial	Not Sustained				
Improper Procedure - Other	112		Departing from the Truth	Not Sustained				



CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

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

JOHN W. HICKENLOOPER
Mayor

November 20, 2005

Ms. [REDACTED]
[REDACTED]
Denver, CO 80207

Dear Ms. [REDACTED]


I have received your complaint of January 19, 2005, concerning your contact with Officer Michael Nuanes #00109. The Internal Affairs Bureau opened an investigation and interviewed all known witnesses and officers who were present at the situation that precipitated your complaint. The statements and pictures that were taken regarding your complaint have been reviewed by the officer's commanding officer.

In order to sustain a complaint for disciplinary action, there must be a preponderance of evidence that an officer's actions were inappropriate. After reviewing the case file I cannot establish evidence that the officer's actions were improper. My decision was made specific to Officer Nuanes's conduct. Any conclusion regarding damage to your vehicle will be formulated at the City Attorney's Office.

Thank you for bringing this matter to my attention. Please be assured that the issues you have raised are important. Improper actions by officers of the Denver Police Department will not be tolerated. I am sorry that your contact with Officer Nuanes resulted in this negative experience. If you have any questions regarding this incident, please contact Commander Tracie Keesee at District Five, 303-376-2300, between the hours of 9:00 a.m. and 5:00 p.m.

Sincerely,

Gerald Whitman
Chief of Police

By: 
Tracie Keesee
Commander, District Five

2005 DEC 10 AM 10:49
INTERNAL AFFAIRS BUREAU

**DENVER POLICE DEPARTMENT
INTER-DEPARTMENT
CORRESPONDENCE**

TO: Tracie Keesee, Commander, District Five

FROM: Mark Drajem, Detail One Commander, District Five

DATE: November 6, 2005

SUBJECT: IAB Case# 2005C0008, Officer Michael Nuanes 00109

Incident

On January 16, 2005, Ms. [REDACTED] [REDACTED] drove her vehicle into/through the area of a police traffic stop near the 3300 block of Dexter and Cherry Streets. Officer Nuanes, who had responded as a cover officer, ran behind Mrs. [REDACTED] vehicle in an attempt to contact her. Officer Nuanes made physical contact with the rear of Ms. [REDACTED] vehicle and eventually was able to stop her and initiate an interview. Officer Nuanes decided that a verbal warning would rectify the situation, opting not to write a citation. Ms. [REDACTED] was released with a warning. Several days later, Ms. [REDACTED] responded to the District Two station and spoke with Sgt Blair about damage to the rear of her vehicle that she claimed was caused by Officer Nuanes. There was slight damage, in the form a small dent, to the left rear quarter-panel and a broken left rear tail-light.

Investigation

Two different police entities examined this incident. IAB Sergeant Hale investigated the misconduct portion of the complaint by taking written and recorded statements from everybody involved. Civil Liability Detective Faris interviewed Officer Nuanes, over the telephone, in an informal type of conversation that included many different topics. Detective Faris did not gather any written or recorded statements.

All witness, complainant, and officer statements are similar up until the point where Officer Nuanes made contact with Ms. [REDACTED] vehicle. Ms [REDACTED] maintains that Officer Nuanes struck her vehicle with his flashlight. Officer Nuanes believes that he struck Ms. [REDACTED] vehicle with his hand after falling into it because he lost footing on an ice covered alleyway. There are no independent witnesses that actually observed Officer Nuanes's contact with Ms. [REDACTED] car. Ms. [REDACTED] does make an audio recorded statement to the IAB investigator saying that Officer Nuanes told her he was upset at her because he almost fell trying to stop her. Detective Faris's recollection of his conversation with Officer Nuanes was that Officer Nuanes "intentionally" struck the vehicle with his hand to "get the driver's attention." Officer Nuanes was asked to explain the disparities in his statements in a follow-up interview conducted by Lieutenant

Drajem. Officer Nuanes believes that the focus of his short conversation with Detective Faris surrounded the intentional use of a flashlight, not the intentional use of a hand.

Conclusion

When this complaint is analyzed, three different questions must be discussed:

1. Did Officer Nuanes make differing statements about the same incident?
2. Did Officer Nuanes cause the damage to Ms. [REDACTED] vehicle?
3. If Officer Nuanes damaged Ms. [REDACTED] vehicle, was it intentional?

I cannot establish an answer for any of these questions using the preponderance of evidence standard. Relying on an undocumented recollection of a conversation with Detective Faris as a basis for believing that Officer Nuanes made differing statements might be plausible if the detective's statements about the entire situation were accurate; however, Detective Faris's interpretation of Ms. [REDACTED] driving actions on the night in question are not reflective of the actual events as portrayed by Officer Nuanes and Ms. [REDACTED]. If Detective Faris misinterpreted Officer Nuanes's statements about Ms. [REDACTED] driving actions it is also possible he was mistaken about Officer Nuanes's intent, or lack thereof.

The City Attorney refused to admit liability for the claim that Ms. [REDACTED] made regarding the damage to her vehicle. The City Attorney's refusal of liability should be enough to vindicate Officer Nuanes from the responsibility for the damage to Ms. [REDACTED] car. I am not sure what standards the City Attorney uses to accept or deny claims in these matters but it seems possible that Officer Nuanes could have caused some, or all, of the reported damage to the vehicle. The cracked tail lens could have been caused by an impact blow, of some sort, administered by Officer Nuanes. The small dent does not appear to be consistent with damage from a hand or a flashlight.

The District Attorney refused criminal charges against Officer Nuanes for intentionally causing damage to Ms. [REDACTED] vehicle. I don't believe that there is a majority of evidence that shows Officer Nuanes intended to damage the vehicle if he, in fact, did.

Findings

The IAB investigator asks us to consider 4 specifications:

Did Officer Nuanes violate RR-115?

Law Violations

Officers shall obey the Charter of the City and County of Denver, all City Ordinances, and all State or Federal Statutes

My finding as it pertains to the conduct of Officer Nuanes is:

NOT SUSTAINED

Did Officer Nuanes violate RR-105?

Conduct Prejudicial

Officers shall not engage in conduct prejudicial to the good order and police discipline of the department or conduct unbecoming an officer which may not specifically be set forth in department rules.

My finding as it pertains to the conduct of Officer Nuanes is:

NOT SUSTAINED

Did Officer Nuanes violate RR-140?

Discourtesy

Officers shall at all times be courteous and civil to the public and to one another. They shall be orderly, attentive, respectful, and shall exercise patience and discretion in the performance of their duties.

My finding as it pertains to the conduct of Officer Nuanes is:

NOT SUSTAINED

Did Officer Nuanes violate RR-112?

Departing from the Truth

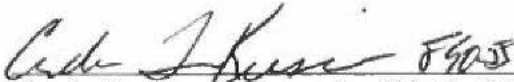
Officers shall not willfully depart from the truth, either in giving testimony or in connection with any official duties.

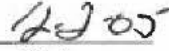
My finding as it pertains to the conduct of Officer Nuanes is:

NOT SUSTAINED

COMMANDER FINDINGS AND RECOMMENDATIONS

I have reviewed Lieutenant Drajem's summary of this complaint and **CONCUR / DISAGREE** with the findings.


Tracie Keese, Commander, District Five


Date

