

Case Number: P201109049

Date of Violation: 09/17/2011

Date Closed: 05/22/2012

Date Received: 09/20/2011

Complainant(s):

██████ ██████

Involved Officers:

Nuanes JR, 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 Fined</u>	<u>Days Suspended</u>	<u>Days Abevance</u>
Inappropriate Force	306			Not Reviewed	Resigned			
Date Sustained:								
Disposition Category:								
Disposition Level:								

Martinez, David (P07019)

<u>Violation</u>	<u>RR Code</u>	<u>OMS Code</u>	<u>Other Desc</u>	<u>Disposition</u>	<u>Penalty</u>	<u>Hours Fined</u>	<u>Days Suspended</u>	<u>Days Abevance</u>
Improper Procedure - Other	102.1	118.02	Biased Policing	Unfounded				
Date Sustained:								
Disposition Category:								
Disposition Level:								

Brandl, Douglas (P80045)

<u>Violation</u>	<u>RR Code</u>	<u>OMS Code</u>	<u>Other Desc</u>	<u>Disposition</u>	<u>Penalty</u>	<u>Hours Fined</u>	<u>Days Suspended</u>	<u>Days Abevance</u>
Improper Procedure - Other	102.1	105.02	Use of Force Procedures	Sustained	Fined Time	16		
Date Sustained: 05/18/2012								
Disposition Category: Category B								
Disposition Level: Level 2								



Michael B. Hancock
Mayor

CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY
FIRE • POLICE • SHERIFF

Office Of Manager
1331 Cherokee Street
Room 302
Denver, CO 80204
Phone: (720) 913-6020
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May 18, 2012

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No. P2011 09 049

DOUGLAS BRANDL (80045)
Sergeant in the Classified Service
of the Denver Police Department

This is before me pursuant to a disciplinary recommendation involving Sergeant Douglas Brandl. Conduct Commander Michael Battista has recommended that I find that Sergeant Brandl violated RR-102.1, Duty to Obey Departmental Rules and Mayoral Executive Orders of the Denver Police Department Operations Manual, as it pertains to OMS 105.02(c), Use of Force Procedures, for his failure to respond to the scene of a use of force incident and conduct a use of force investigation as required by policy. Commander Battista has recommended that I impose a fine of 16 (sixteen) hours. Sergeant Brandl agrees with the recommendation. The Independent Monitor has reviewed this matter and concurs with the recommendation.

On September 17, 2011, Officer David Martinez conducted a traffic stop of a vehicle driven by the complainant in this case. Technician Michael Nuanes responded as a cover officer. After the initial contact, the driver was reaching under the seat, and fearing for his safety, Technician Nuanes drew his handgun. Officer Martinez approached as well and the officers removed the driver from the vehicle, handcuffed him, and had him sit on the curb. The driver, who was sitting on some thorns, stood up because the thorns were causing him pain. Technician Nuanes, believing that the driver was standing up to escape or assault him, used a headlock to take him to the ground and the driver sustained a minor injury over his eye. Technician Nuanes contacted his supervisor, Sergeant Brandl, to inform him about the incident. However, Sergeant Brandl did not respond to the scene to conduct the investigation required by the above referenced departmental rule. Moreover, Sergeant Brandl did not assess the injuries to the complainant and did not assist in the preparation of the Use of Force Report that is required. I find that Sergeant Brandl's conduct had "more than a minimal negative impact on the operations" of the department, and as such, is a Category B violation. Sergeant Brandl does not have prior sustained Category B violations within the four-year time period and, therefore, the appropriate penalty level is level 2. I further find that the recommendation of an aggravated penalty is warranted, given Sergeant Brandl's complete failure to perform the duties the rule requires of a supervising officer. Accordingly, I approve the recommended penalty of sixteen (16) hours of fined time. The fined time shall be served as sixteen (16) hours in period 7, 2012.

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION
Case No. P2011 09 049

DOUGLAS BRANDL (80045)
Sergeant in the Classified Service
of the Denver Police Department

Please be advised that the discipline enumerated in this Order is based upon the Manager of Safety approving Sergeant Brandl's agreement to accept the discipline as stated above and waive further disciplinary process.

BY ORDER:

Alfred Martinez 5-18-12
Manager of Safety Date

Jess Vesel 5-18-12
Deputy Manager of Safety Date

OFFICER'S RETURN

I hereby certify that I received the within Order and Command of Disciplinary Action and have delivered a true copy thereof to the within-named Douglas Brandl this 22 day of May, 2012.

Doug Brandl

Ron Oshy 83017



CITY AND COUNTY OF DENVER
DEPARTMENT OF SAFETY
FIRE • POLICE • SHERIFF
9-1-1 • COMMUNITY CORRECTIONS
CRIME PREVENTION & CONTROL • SAFE CITY

Conduct Review Office
Denver Police Department
1331 Cherokee Street
Denver, CO 80204-2720
Phone: (720) 913-6880

May 14, 2012

Mr. [REDACTED]
[REDACTED]
Denver, CO 80249

Dear Mr. [REDACTED]

The complaint you initiated on September 20, 2011, Complaint P2011 09 049, was investigated by the Internal Affairs Bureau of the Denver Police Department and then forwarded to the Conduct Review Office of the Denver Police Department for final review and recommendations.

Included in the case were documentation and statements from multiple involved parties and witnesses. Taking into consideration the totality of the circumstances, it was found that there is not sufficient evidence to support your allegations of Biased Policing against Officer David Martinez 07019, and of Inappropriate Force against Technician Michael Nuanes 00109. In regards to the allegations that Officer Martinez stopped you without cause based on your appearance, the facts presented cannot demonstrate that the action occurred and that specification was found to be Unfounded. In regards to the allegation of Inappropriate Force by Technician Nuanes, there was insufficient evidence to either prove or disprove the allegation and it was found to be Not Sustained. However, the investigation did reveal that Technician Nuanes and Sergeant Douglas Brandl 80045 violated the department's policy regarding investigating and documenting uses of force. Appropriate disciplinary actions will be taken regarding that violation.

These findings were based on many factors, including:

- Officer Martinez and you both indicated that you remained stopped at the light for a period of time after the light cycled to green. This is a potential indicator of a person driving under the influence as well as a violation of Denver Municipal Code. This established reason for the officer to make a traffic stop. Additionally, the notes that Officer Martinez wrote on the back of the traffic citation indicate that you infringed upon the northbound lane after turning southbound on Yampa St. This supports the City Attorney's change of charge on your court date.
- The investigation revealed that Technician Nuanes did use force in taking you to the ground, causing the injury over your eye. This was in response to your standing up after being seated on the curb. After the fact, it is understood that

you did so because of the pain from sitting on thorns. However, the officer did not know this at the time and perceived that you may be attempting to escape. The facts of the case indicate that this was a reasonable use of force by Technician Nuanes.

- The facts surrounding the allegation that you were then hit multiple times in the face and shoulders by Technician Nuanes are not sufficient to sustain this allegation.

I want to assure you that the Denver Police Department takes these types of allegations seriously and a thorough review of the incident was conducted. I also want to thank you for bringing this matter to our attention. Input from citizens is very important to us as we constantly strive to better the Denver Police Department. If you have any questions, please contact Commander Michael Battista of the Conduct Review Office at (720) 913-6880.

Sincerely,

Robert C. White
Chief of Police

By:

 5/15/12

Commander Michael H. Battista
Conduct Review Office

**DENVER POLICE DEPARTMENT
INTER-DEPARTMENT
CORRESPONDENCE**

TO: Lisa Fair, Commander, District Five

FROM: Rick Bridges, Lieutenant, District Five

DATE: January 18, 2012

SUBJECT: Internal Affairs Complaint #201109049
Violation: RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders, as it pertains to OMS 105.02 (c) Use of Force Procedures
Subject Officer: Sergeant Douglas Brandl #80045

Incident:

On September 17, 2011, the complainant [REDACTED] [REDACTED] was stopped by Officer David Martinez, 07019, and issued a citation for Careless Driving and No Proof of Insurance. Technician Michael Nuanes, 00109, responded as a cover officer. A use of force incident ensued, in which Mr. [REDACTED] sustained a slight injury. Technician Nuanes telephoned Sergeant Brandl to make him aware of what happened.

Complaint:

Sergeant Brandl told Technician Nuanes that the circumstances and amount of force used was not enough to require a Use of Force report and that no supervisory investigation of the incident was warranted. Sergeant Brandl said he would not be responding to the scene. His decisions and actions were contrary to department policy and procedure.

Investigation:

I received the case file on Sergeant Brandl, Technician Nuanes and Officer Martinez on January 5, 2012, and reviewed it in its entirety. Summarized below is the sequence of events of the incident, as related in the complainant's and subject officers' written and verbal statements. The investigation into Technician Nuanes and Officer Martinez actions will be covered in a separate rationale form.

On September 17, 2011, at approximately 1010 hours, Officer Martinez, 522B was behind Mr. [REDACTED]'s vehicle, which was stopped at a red light at eastbound Green Valley Ranch Boulevard and Pena Boulevard. When the light cycled to green, the complainant sat for about 10 seconds before accelerating at a high rate of speed. Officer Martinez followed for A short while then activated his lights and siren to stop Mr. [REDACTED] and because of his erratic driving, asked for a cover car prior to making contact. Technician Nuanes, 511B, responded.

Mr. [REDACTED] was asked to provide the required documents. He was uncooperative and yelled out, "I'm a professional driver." His face was wet with sweat and he was clearly agitated. He ignored

Officer Martinez's request for his documents, and had to be asked several more times before finally providing them. Once the documents were provided, Officer Martinez explained why he had stopped him and went back to his car to run a clearance on his MDT.

Technician Nuanes stayed at the passenger's door of Mr. [REDACTED] vehicle because of his aggressive and uncooperative behavior. From his own vehicle, Officer Martinez heard Technician Nuanes say something and saw him draw his handgun. Officer Martinez quickly ran towards the vehicle and drew his handgun. Technician Nuanes said he had seen Mr. [REDACTED] reach suddenly under the front passenger seat and thought he might be reaching for a weapon. Because of Mr. [REDACTED]'s initial display of aggression and lack of cooperation and the possibility he had just reached for a concealed weapon, the officers decided to order him out of the vehicle, handcuff him, and seat him on the curb, for his protection as well as for their own.

Officer Martinez returned to his vehicle to complete his MDT check. From there, he saw a sudden movement involving Technician Nuanes and Mr. [REDACTED] and ran up to assist him. Technician Nuanes told him that Mr. [REDACTED] had tried to jump to his feet and he took him back down to the ground. Officer Martinez did not see the incident. Technician Nuanes told him he thought he was trying to escape. The decision was made to place Mr. [REDACTED] in the back of his patrol car.

Officer Martinez stated that as he was being placed in his patrol car, he noticed a minor abrasion on Mr. [REDACTED] forehead. The abrasion was approximately one-half an inch in size and not significant in his opinion. Technician Nuanes told him that Mr. [REDACTED] had inadvertently received the abrasion when he was taken to the ground, his forehead striking something sharp on Technician Nuanes' uniform shirt.

While Technician Nuanes was calling Sergeant Brandl on the phone to inform him of the incident, Officer Martinez had obtained Mr. [REDACTED] verbal consent to search the vehicle for concealed weapons under the seat or elsewhere. No weapons were found.

While searching for a weapon, Officer Martinez saw in plain view a checkbook containing a Rocky Mountain Law Enforcement Federal Credit Union check from a Denver Sheriff's deputy with whom he had worked with. He thought it was strange, and possibly a theft of some sort. He called the Denver Sheriff's Department to obtain his former co-worker's phone number and called and confirmed that Mr. [REDACTED] was in lawful possession of the check.

After he hung up the phone, Technician Nuanes informed Officer Martinez that, per Sergeant Brandl, no Use of Force report was needed, and that there were no resistance or interference charges, only a traffic citation. The handcuffs were taken off Mr. [REDACTED] and he was issued a citation for Careless Driving and No Proof of Insurance. Mr. [REDACTED] was given a wet wipe for the injury over his eye. As he was being released, he was very apologetic, saying, "I'm very sorry for what I did and how I acted."

Technician Nuanes related in his IAB statement: "I told Brandl the facts as I knew them. I told him about Martinez needing cover, about the driver yelling, about me drawing my gun, about me putting him in "headlock" and sitting him down, and about the small scratch to his head. I told

Brandl that the scratch was small and was very minor and asked him if he wanted to respond. I informed Brandl that the driver was seated in the back of the patrol car and was now calm. Brandl told me to annotate on my log sheet that he was notified of the scratch and that would suffice.”

Sergeant Brandl related in his IAB statement: “Officer Nuanes said they had handcuffed the suspect and seated him on the ground near his car. He told me that the suspect had tried to stand up despite being told to remain seated. Officer Nuanes said he placed the suspect in headlock and pushed him down into a seated position as he was trying to get up. He then told me as a result of the headlock the suspect had accidentally sustained a small scratch on his eyebrow, possibly as a result of Officer Nuanes’ wristwatch or name tag. I asked Officer Nuanes to describe the scratch. He said it was about 1/4 inch in length and barely noticeable. I asked him if the skin was broken and he said no and that he hardly had to apply the headlock with any force. I told him that I did not think that the circumstances rose to the level where a UOF report was needed. I told him to log that he spoke to me and to clear and cite the suspect for the original traffic violation.”

This incident occurred on a Saturday morning at 1008 hours. There were two sergeants working and the district was not busy. Sergeant Brandl stated he was not out on anything and does not recall if he was at the station or out driving around. He remembers taking the call from Officer Nuanes and listening to the details as describe above in the IAB statements. Based on his conversation with Technician Nuanes he reached the conclusion and made the decision that he did not need to respond.

Conclusions:

- The evidence supports a sustained finding that Sergeant Brandl did not fulfill his duties and obligations as a supervisory officer. He readily admits that he did not respond because what he was told on the phone by the officer did not rise to the level of needing to create a Use of Force report.
- By not responding Sergeant Brandl did not observe the extent of the injury to the complainant. Had he responded instead of just relying on what the officer told him over the phone, he would have been able to make a better decision. Sergeant Brandl was asked after looking at photographs of the injury taken by the complainant, if he thought it looked like a report should have been completed. He responded, “Yes, if I thought the injury was that long I would have done the report.” As a result of his negligence, the complainant’s injuries went unreported and were not documented by the Denver Police Department.
- By not responding and documenting the incident Sergeant Brandl put the department and his officers at risk for the possibility of future litigation. Due to his dereliction of duty he was not able to identify possible witnesses, talk to the suspect, or obtain any other investigative information. Additionally, he was not able to counsel Technician Nuanes in improving his methods to handle future situations to avoid or minimize the use of force.

- Finally, there were numerous indicators which should have led Sergeant Brandl to see that a Use of Force report needed to be completed. The fact that the officer told him over the phone that they were dealing with a party who was handcuffed, angry and belligerent, and who was put in a headlock and pushed down causing a minor injury should have been more than enough reason for him to respond. Sergeant Brandl's actions in this incident did not meet the professional standards expected of a Denver Police Department sergeant.

Findings:

Therefore, as to the question of whether Sergeant Brandl violated:

RR-102.1 Duty Obey Departmental Rules and Mayoral Executive Orders

Which states,

Officers shall obey all Departmental rules, duties, procedures, instruction, and orders; the provisions of the Operations Manual; and Mayoral Executive Orders.

As it pertains to:

Operations Manual Section 105.02(c) Use of Force Procedures

Which states

The officer's supervisor shall respond to the scene and shall personally contact the officer immediately after the incident. The supervisor will interview witnesses and suspects, collect evidence and take photographs when appropriate. The supervisor will assist in preparing the Use of Force/Injury Report, paying particular attention to the facts of the incident. When indicated, supervisors shall counsel officers in methods to better handle future situations to avoid or minimize the use of force.

My finding is

SUSTAINED

Respectfully submitted,

Rick Bridges
Lieutenant Rick Bridges #92053