

Case Number: 98C0307
Date of Violation: 10/11/98
Date Received: 10/14/98
Date to D/C:

How Received: Not Specified
Type of Complaint: IAB
Date Back from D/C: 3/8/99

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

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	84055	Improper Procedure - Other	102	OMS-105.01(5)	Exonerated	District 3
2	84055	Improper Procedure - Other Oral Reprimand	102	OMS-105.01.1.c	Sustained	District 3
3	84055	Unnecessary Force	306		Unfounded	District 3
4	84055	Discourtesy	102	OMS-116.05.2	Not Sustained	District 3

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	90012	Improper Procedure - Other	102	OMS-105.01	Exonerated	District 4
2	90012	Improper Procedure - Other	112		Unfounded	District 4
3	90012	Improper Procedure - Other Written Reprimand	102	OMS-105.01.1.c	Sustained	District 4
4	90012	Improper Procedure - Other	102	OMS-114.03	Exonerated	District 4
5	90012	Unnecessary Force	306		Not Sustained	District 4
6	90012	Discourtesy	102	OMS-116.05.2	Not Sustained	District 4

	<u>BADGE</u>	<u>VIOLATION</u>	<u>RR</u>	<u>OMS</u>	<u>DISPOSITION</u>	<u>ASSIGNMENT</u>
1	95052	Improper Procedure - Other	102	OMS-105.01(5)	Exonerated	District 1
2	95052	Improper Procedure - Other	102	OMS-105.01.1.c	Exonerated	District 1
3	95052	Unnecessary Force	306		Exonerated	District 1
4	95052	Discourtesy	102	OMS-116.05.2	Exonerated	District 1

DENVER POLICE DEPARTMENT
INTER-OFFICE
CORRESPONDENCE

REVIEWED BY		
	INITIAL	DATE
CAPT.	[Signature]	3/9/99
LT.	[Signature]	3/9/99

TO: Captain Mary Beth Klee, District Three Commander

FROM: Lieutenant Charles F. Smith 71111

DATE: January 6, 1999

SUBJECT: Internal Affairs Complaint # 98C0307 involving:

Officer John James 84055

Officer [REDACTED] Rossi 90012

Officer Jode Sprague 95052

INCIDENT:

On 10-11-98, the complainant, [REDACTED] [REDACTED] [REDACTED] was arrested at the Baja Beach Club for assault and disturbance. Officer James was one of three officers involved in the arrest.

COMPLAINT:

Mr. [REDACTED] stated he asked Officer Rossi a question, didn't believe the answer, and told Officer Rossi that he was, "fucking with me." He was taken to the ground, handcuffed, and then taken to a back room where several officers called him names and assaulted him.

INVESTIGATION:

On 10-14-98, Mr. [REDACTED] responded to Internal Affairs and filed his complaint. The investigation was assigned to Sergeant Dave Fisher on 10-16-98. Sergeant Fisher conducted a complete and thorough investigation, and no additional interviews needed to be conducted.

Mr. [REDACTED] stated that he was at the Baja Beach Club and asked Officer Rossi what direction Blake Street ran. When the Officer Rossi answered him, he did not believe it and told Officer Rossi he was fucking with him. Mr. [REDACTED] was then taken to the ground by someone other than Officer Rossi, handcuffed so tightly that the circulation in his hands was blocked, and kned in the ribs. He was then picked up by the handcuffs, taken to a back room where he was thrown on the floor and kicked a few times, and called a "faggot" by an unidentified officer. Mr. [REDACTED] was shown several photo arrays containing the four officers who were working the Baja Beach Club on the date of his arrest. He stated he could identify the officer who kicked him and called him a "faggot", but that the officer was not in any of the photo arrays.

When Mr. [REDACTED] responded to Internal Affairs, Sergeant Fisher had the Crime Lab photographs the injuries he claimed he received when he was arrested. The photographs were shown to Sergeant Jon Priest of the Homicide Unit who is an expert witness on wounds. Sergeant Priest stated the injuries were not consistent with a person being handcuffed or receiving a blunt injury. There is no bruising around the injuries. He stated, "The fact that

many of these injuries are in conflict with each other and the fact the most serious of the injuries indicate tearing, it is unlikely they occurred at the time of arrest."

Mr. [REDACTED] did not make an outcry of any injuries to anyone and in fact the PADF medical screening report stated no injuries visible or reported. It should be noted that Mr. [REDACTED] was wearing a long sleeve shirt when he was arrested which would have covered the injuries to his arms if in fact he had them at the time.

Deputy Christopher Calvillo S96063 and Deputy Robert Gressner who transported Mr. [REDACTED] in the Scout Car stated he made no complaint of injuries nor did they observe any. Both stated Mr. [REDACTED] was very loud and extremely intoxicated.

There were four Civilian witnesses to this incident, three who work at the Baja Beach Club, and the roommate of Mr. [REDACTED]. [REDACTED] is Mr. [REDACTED] roommate and stated that he was standing 3 ½ feet away and saw a police officer trip Mr. [REDACTED] and then jam his elbow into Mr. [REDACTED] back, causing him to fall to the ground. Then 4-5 other police officers joined in to detain him. He stated he saw an abrasion on Mr. [REDACTED] cheek and also noticed that he had a bloody mouth. ***This is in direct conflict with the booking photo which does not show any injuries.***

[REDACTED] was the doorman at the club and witnessed the arrest. He stated that Mr. [REDACTED] was intoxicated and Officer Rossi refused to let him re-enter the club. He stated [REDACTED] stumbled and when Officer Rossi tried to help him up, Mr. [REDACTED] attempted to punch Officer Rossi in the head. Officer James came over to assist and Mr. [REDACTED] kept swinging his arms and resisting efforts to handcuff him. Mr. [REDACTED] stated that he never saw either officer hit, kick, or punch Mr. [REDACTED].

The other two employees, [REDACTED] and [REDACTED] observed Mr. [REDACTED] in the kitchen area after his arrest. Both stated Mr. [REDACTED] appeared intoxicated or "on something." Neither saw any officer punch, strike, kick, or mistreat Mr. [REDACTED]. None of the three employees saw any injuries on Mr. [REDACTED] or heard him complain of any injuries. Mr. [REDACTED] kept yelling that the officers were violating his constitutional rights and that "Jesus is God."

Officer James stated that he saw Officer Rossi struggling with Mr. [REDACTED] and ran to Officer Rossi's aid. Together they placed Mr. [REDACTED] on the ground and handcuffed. Officer did not see Mr. [REDACTED] punch Officer Rossi, but Officer Rossi told him about the incident as they were walking Mr. [REDACTED] to the kitchen. Officer James went back to the front of the club for a short period of time and then returned to the kitchen to see if Officer Rossi was ready for the Scout Car. As Officer James entered the kitchen [REDACTED] was laying face down on the floor and Officer Sprague was just finishing hobbling him. Both Officer Sprague and Officer Rossi told Officer James that Mr. [REDACTED] had tried to kick them several times prior to being hobbled.

All of the involved officers denied calling Mr. [REDACTED] a "faggot" or hearing anyone else refer to him as a "faggot."

None of the civilian witnesses heard any officer call Mr. [REDACTED] a "faggot."

Only the charges against Officer James will be addressed as the other officers work for different commanders.

Based on all available information, I believe the following findings are appropriate concerning the actions of Officer James.

Did Officer James – 84055 violate:

SPECIFICATION # 1

RR-306 Unnecessary Force

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

I recommend this specification be **EXONERATED**.

SPECIFICATION # 2

RR-102 Violation of Any Department Rule

Officers shall obey all departmental rules, duties, procedures, instructions, or orders, and the provisions of the Operations Manual.

As it pertains to:

105.01 Use of Force in Making Arrest (Failure to Make a Use of Force Report)

(1) Officers shall immediately report the circumstances of all resistance incidents to a command or supervisory officer who shall respond to the scene or personally contact the officers immediately after the incident.

a. The primary involved officer will prepare DPD Form 12, Report of Use of Force/Injury Prior to Arrest (UOF), paying particular attention to the facts of the incident. The report should include:

c. The UOF Report is required in the following circumstances:

2. The officer takes any official action that results in, or is alleged to have resulted in, the injury or death of another person.

4. The officer applies force through the use of the following, whether or not an arrest is made:

✓ d) The officer was warding off a physical attack

I recommend this specification be **SUSTAINED** as it pertains to Officer James for the following reasons. Although there is no evidence that the reported injuries happened during the arrest of Mr. [REDACTED] it is clear that the incident started with Mr. [REDACTED] hitting or attempting to his Officer Rossi. Officer James stated he assisted because Officer Rossi was still struggling with Mr. [REDACTED]. It was necessary to take Mr. [REDACTED] to the ground in order to handcuff him as he

was struggling with both Officers. Although Officer James returned to the front door and did not assist in completing the paper work, as the senior officer involved in the arrest he should have verified that it was in fact completed.

SPECIFICATION # 3

RR-102 Violation of Any Department Rule

Officers shall obey all departmental rules, duties, procedures, instructions, or orders, and the provisions of the Operations Manual.

As it pertains to:

105.01 (5) Use of Force in Making Arrest (See RR-300 Series)

In any case of assault on a peace officer, an "Investigation of Assault" will be charged. The suspect should not be charged with resistance or any additional charges at this time; however, a General Sessions Summons and Complaint containing any additional charges is to be made describing details of the incident. Upon completing, with the exception of the service area which will be left blank, the form will be forwarded to the Assault Unit with the necessary paper work.

I recommend that this specification be **UNFOUNDED** as it pertains to Officer James as specification # 2 is more specific to the actual violation.

SPECIFICATION # 4

RR-102 Violation of Any Department Rule

Officers shall obey all departmental rules, duties, procedures, instructions, or orders, and the provisions of the Operations Manual.

As it pertains to:

116.05 (2) Courtesy

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

I recommend this specification be **NOT SUSTAINED** as it pertains to Officer James.

Captains Findings and Recommendations:

Officer John James 84055

Specification # 1:

RR-306 Unnecessary Force.

no injury or evidence that any unnecessary force was used MBK

Finding: UNFOUNDED

Penalty: NONE

Specification # 2

RR-102 Violation of Any Department Rule

"Failure to Make a Use of Force Report." Officer

James was responsible for contacting a supervisor and reporting the circumstances of the incident (105.01)(1) which he should have recognized as a resistance MBK

SUSTAINED FOR RR-102 as

Finding: it pertains to 105.01(1)

Penalty: Oral Reprimand

Specification # 3

RR-102 Violation of Any Department Rule

"Failure to Make an Offense Report."

Finding: UNFOUNDED

Penalty: NONE

Specification # 4

RR-102 Violation of Any Department Rule

"Courtesy"

Finding: NOT SUSTAINED

Penalty: NONE

Capt MBKlee 83017

Captain Mary Beth Klee 1/8/99
Commander, District Three

I have reviewed the above recommendations.

[Signature] 84055
ON VACATION - COPY PROVIDED
Officer John James 84055

Division Chief's Recommendations

I agree / disagree with the above Findings and Recommendations.

G.R. Whitman 0208 021599
G.R. Whitman, Division Chief
Patrol Division



WELLINGTON E. WEBB
Mayor

CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

DENVER POLICE DEPARTMENT
DISTRICT THREE STATION
1625 S. UNIVERSITY BLVD.
DENVER, COLORADO 80210
PHONE: (303) 698-3333

January 10, 1999

Mr. [REDACTED]
[REDACTED]
Littleton, CO 80120

Dear Mr. [REDACTED]

The complaint you initiated on October 14, 1998, Case # 98C0307, has been thoroughly investigated by the Internal Affairs Bureau. The results of that investigation have been presented to me for my review and recommendations. I wish to share my findings with you as they pertain to the actions of Officer John James, as he is the only involved officer who works in my Command. You should receive additional letters addressing the other two officers from their commanders.

Included in the investigation were statements from you, several civilian witnesses, the involved officers, and a statement from a wound expert. In order to substantiate your claim of unnecessary force, the preponderance of the available evidence must show that the involved officers did in fact use unnecessary force. After reviewing all of the evidence, it is apparent that the involved officers used only reasonable and necessary force when arresting you. Additionally, the injuries to your arm are not the type of injuries which would have been caused by the application or wearing of handcuffs. However, during the investigation it was found there were certain procedural violations concerning the handling of this incident. Please be assured that the department will administer the necessary corrective discipline.

Thank you for bringing this matter to our attention. I sincerely hope that any future contacts with the Denver Police Department will be of a more favorable nature. It is our continuing goal to provide the best possible police service to our community.

Sincerely,

Tom Sanchez
Chief of Police

By: *Capt M B Klee*

Captain Mary Beth Klee
Commander, District Three

APR 30 12 15 PM '99
INTERNAL AFFAIRS
DENVER POLICE DEPARTMENT