

LOGGED

entered 3/3/05 Page 1

ADMINISTRATIVE COMPLAINT CONTROL FORM

Supervisor initiated (NO CONTROL # NEEDED) Citizen complaint of police misconduct (CONTROL # REQUIRED)

Attachments: Yes No Control Number SI-03-0315

Complainant: N/A LAST NAME FIRST NAME M.I. ORIGIN SEX DOB SS NUMBER

Address: NUMBER AND STREET CITY STATE ZIP CODE TELEPHONE NUMBER

Employer: COMPANY AND ADDRESS ZIP CODE TELEPHONE NUMBER WORK HOURS

R & I Checked: No Record See narrative I. A. Checked: No history See narrative

Employee Involved: Lesley Fisher 5027 Training Bureau / TTD NAME SERIAL NUMBER DUTY ASSIGNMENT

Employee Involved: Troy Ferencik 6149 Training Bureau / TTD NAME SERIAL NUMBER DUTY ASSIGNMENT

Employee Involved: NAME SERIAL NUMBER DUTY ASSIGNMENT

Witness: LAST NAME FIRST NAME M.I. ORIGIN SEX DOB SS NUMBER

Address: ATTACHMENT NUMBER AND STREET CITY STATE ZIP CODE TELEPHONE NUMBER

Employer: VIDEO TAPES COMPANY AND ADDRESS ZIP CODE TELEPHONE NUMBER WORK HOURS

Witness: MEDICAL RECORDS LAST NAME FIRST NAME M.I. ORIGIN SEX DOB SS NUMBER

Address: NUMBER AND STREET CITY STATE ZIP CODE TELEPHONE NUMBER

Employer: COMPANY AND ADDRESS ZIP CODE TELEPHONE NUMBER WORK HOURS

Complaint received: In person Telephone Letter Fax

Received by: (SUPERVISOR ONLY) TELEPHONE NUMBER DATE TIME ROUTED TO

Verification letter sent to complainant: Yes No If not, why? N/A

Investigating Supervisor: Sergeant James Roberts #4829 Duty Assignment: TRAINING BUREAU / U41

Findings of Complaint: Sustained

Complainant contacted at conclusion of investigation: Yes No Notice of Findings served: Yes N/A

If not, why? N/A

Location of occurrence: 10001 S. 15 Avenue Date: 11/18/03 Time: 0840

Complaint/Incident (summary): On 11/18/03 at 0725 hours Officer Fisher showed up for work late and gave an untruthful statement about being to work on time. Officer Fisher also had alcohol on his breath. His BAC was a registerable amount at 0958 hours. His work hours are 0600-1600. Officer Ferencik wrote a detailed memorandum stating that he saw and spoke to Officer Fisher at 0550 hours. This memorandum was misleading and untruthful because Officer Fisher was not at work until 0725 hours by his own admissions during a formal interview.

RECEIVED

Complaint Routing: Investigator [ ] FEB 25 2005 Investigator's Burr/Pct Commander [ ] PHOENIX POLICE DEPARTMENT

INVESTIGATOR'S SIGNATURE INVESTIGATOR'S LIEUTENANT INVESTIGATOR'S BUREAU/PRECINCT COMMANDER

EMPLOYEE INVOLVED

Officer Lesley Fisher #5027

South Mountain Precinct

43K / MTW

Supervisor: Sergeant Mark Green #6006

Officer Fisher was assigned to the Training Bureau / Tactical Training Detail at the time of this investigation U41, 0600-1600 hours (FSS)

Supervisor: Sergeant James Roberts #4829

Allegation #1

Officer Fisher gave an untruthful statement to a supervisor about being to work on time. This statement was made prior to a formal investigation.

Finding: Sustained

Allegation #2

Officer Fisher had alcohol in his system while on duty at the academy.

Finding: Sustained

Allegation #3

Officer Fisher failed to report for duty at 0600 hours without any notification to a supervisor.

Finding: Sustained

EMPLOYEE INVOLVED

Officer Troy Ferencik #6149

Training Bureau / Tactical Training Detail

U40 Squad, 0600-1600 (SSM)

Supervisor: Sergeant John Stevens #4388

Temporary assignment to the Communications Bureau (ETA)

Allegation #1

Officer Ferencik made an untruthful verbal report in the course of an internal inquiry, and then made false, incomplete, or misleading written statements to impede the investigation.

Finding: Sustained

unresolved A/C J Buchanan 11/24/04

ATTACHMENTS:

1. Three Notices of Investigations for Officer Fisher
2. One Notice of Investigation for Officer Ferencik
3. Two Intoxilyzer instrument print cards
4. IRC form for Officer Fisher
5. IRC form for Officer Ferencik
6. Notice of Findings for Officer Fisher
7. Notice of Findings for Officer Ferencik
8. Two Discipline Matrix worksheets
9. Cassette tape for Officer Fisher interviews
10. Two cassette tapes of Officer Ferencik interviews
11. Memorandum authored by Officer Ferencik

12. Eight Memorandums authored by witness officers
13. Cassette tape of interview of witness Officer's Mason, Hale, and Tormey
14. Lab request form for Officer Fisher's computer

#### WITNESS OFFICERS

Officer Dave Brown #5985  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Brown looked for Officer Fisher's vehicle, at my request. He also observed Officer Fisher arrive at the academy after 0700 hours

Officer Steve Rackley #3641  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Rackley spoke to Officer Ferencik at 0550 hours. He also observed that no one was in Officer Fisher's cubicle.

Officer Jason Toth #4771  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Toth was just outside the entrance to our office area from approximately 0550 hours until 0615 hours and did not see Officer Fisher or his vehicle.

Officer Gary Vigneault #4026  
Tactical Training Detail / U41  
0600-1600 FSS 262-7122

Officer Vigneault arrived at the academy at 0525 hours. He did not see Officer Fisher at the academy until approximately 0800 hours when he observed his vehicle parked in our lot.

Officer Fred Tormey #5095  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Tormey spoke to Officer Fisher on November 18, 2003 at 0815 hours. During that conversation Officer Fisher told Officer Tormey that he was at work before 0600 hours on November 18, 2003. Fifteen minutes later, at approximately 0830 hours, Officer Ferencik approached Officer Tormey to get his opinion on something. He then told Officer Tormey that he thought Officer Fisher was being accused of lying about being to work on time because he (Officer Ferencik) was pretty sure he saw Officer Fisher at approximately 0550 hours on November 18, 2003. Officer Ferencik further told him that Officer Fisher was in his cubicle when he saw him. Officer Tormey was also present on November 19, 2003 at approximately 1400 hours, when Officer Ferencik told Officer Fisher that he wrote a memorandum about seeing him at work prior to 0600 hours on November 18, 2003.

Officer Roger Raley #5231  
Tactical Training Detail / U40  
0600-1600 FSS 262-7122

Officer Raley spoke to Officer Fisher at approximately 0830 hours. Officer Fisher told him that he was in early and that no one saw him before he left to go home because of a torn contact.

Officer Chris Hale #5184  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Hale was present when Officer Ferencik told Officer Fisher that he wrote a memorandum about seeing him before 0600 hours. He also told (jokingly) Officer Ferencik that he could be in some trouble if Officer Fisher is changing his story and going back to being late.

Officer Joe Mason #5152  
Tactical Training Detail / U41  
0600-1600 SSM 262-7122

Officer Mason was present when Officer Ferencik told Officer Fisher that he wrote a memorandum about seeing him before 0600 hours.

#### INVESTIGATION SUMMARY:

On November 18, 2003, at approximately 0555 hours, I arrived for work. I made a point to see if Officer Fisher had arrived on time as required due to his attendance issues. The scheduled work hours were 0600 to 1600 hours. Officer Fisher has been repeatedly talked to about his responsibility to get to work on time. When I did not see Officer Fisher or his vehicle, I started asking the other officers from our detail if they had seen him. At approximately 0730 hours, I observed his vehicle in our parking lot. At 0835 hours, he approached me in my office. When I first looked at Officer Fisher it appeared as though he had just woken up. When asked, Officer Fisher lied and told me that he had arrived at work at 0550 hours and went back home because he had a problem with his contact lens. I told Officer Fisher not to lie to me because I knew that he was not at work on time. I had him leave my office so I could fill out a Notice of Investigation (NOI). After he was served the NOI for being late, I smelled the odor of alcohol on his breath. Sergeant Stevens also confirmed that he smelled the odor of alcohol on Officer Fisher's breath.

Shortly thereafter, I went with Officer Fisher to the Southern Command Station to meet with two Traffic Bureau supervisors. On November 18, 2003, at 0958 hours, Officer Fisher blew into the Intoxilyzer and his Blood Alcohol Content (BAC) was determined to have a registerable amount of alcohol in his system. I made arrangements to have Officer Fisher driven home for the day without a formal interview due to the alcohol in his system. I did tell Officer Fisher that I would be calling him in for an interview and that he should tell the truth when I did so.

When I arrived back at the Academy, I was informed by Sergeant Stevens that he was approached by Officer Ferencik who told Sgt. Stevens that he had seen and spoken to Officer Fisher at 0550 hours on November 18, 2003. Sgt. Stevens also told me that Officer Ferencik had spoken with Officer Fisher while Officer Fisher was sitting at his own cubicle and was very specific to include a description of the clothing that Officer Fisher was wearing. Officer Ferencik's statement to Sergeant Stevens gave Officer Fisher mitigation in reference to being late to work and in regards to relaying a false statement to his supervisor. I informed Sergeant Stevens that I had looked for Officer Fisher earlier and had asked several officers if they had seen him and they had not. The thought was brought up that perhaps I must have missed seeing Officer Fisher or his vehicle.

On November 19, 2003, I instructed Officers Toth, Rackley, Vigneault, and Brown each to write a memorandum in reference to this investigation. All of the above listed officers stated that they did not see Officer Fisher or his vehicle at the Academy at or before 0600 hours. They were also instructed not to discuss the investigation with anyone. Sergeant Stevens spoke to Officer Ferencik a second time and was again told that Officer Ferencik had seen and spoken to Officer Fisher shortly after 0550 hours on the morning of November 18, 2003. Sergeant Stevens then instructed Officer Ferencik to also write a memorandum as a witness officer and not to discuss the investigation with anyone.

On November 19, 2003, at 1340 hours, I conducted a formal interview with Officer Fisher. He informed me that he had woken up at 0640 hours on November 18, 2003, and that he arrived for work at approximately 0725 hours. I asked him if he was untruthful on November 18, 2003, when he told me he was at work early. He informed me that he was not truthful then. At that point I did not stop to serve him with an NOI for untruthfulness because I wanted to only clarify his tardiness to work. I focused my interview on the current NOI's that he received for tardiness and the alcohol that was in his system while on duty.

Officer Fisher stated that he did consume alcohol before he went to bed at approximately 0100 hours the night before. When asked, Officer Fisher told me that he did not ask Officer Ferencik to alibi for him nor did he talk to him on the morning of November 18, 2003. I then realized that Officer Ferencik's detailed memorandum conflicted with not only the witness officers' memorandums, but also with Officer Fisher's

interview.

After the interview with Officer Fisher, I made arrangements for a PLEA representative to come to our location to be present during the interview with Officer Ferencik. Sergeant Stevens and I briefly spoke to the PLEA representative on the investigation prior to interviewing Officer Ferencik. Sergeant Stevens served Officer Ferencik with a Notice of Investigation for an untruthful verbal and written report during an investigation. When asked, Officer Ferencik again stated that he had seen and spoken to Officer Fisher at approximately 0550 hours. As we discussed the issue, I told Officer Ferencik that none of the other officers had seen him (Officer Fisher) or his vehicle. As we discussed the issue, Officer Ferencik started to indicate that he may have been confused about the time he saw Officer Fisher. I spoke to him about how detailed his memorandum was and that he had stated that he had looked at his watch prior to walking upstairs and speaking with Officer Fisher. Officer Ferencik continued to write in his memorandum that he did not see Officer Fisher again until later in the morning. Officer Ferencik further stated that he had discussed with Officer Tormey the possibility of seeing Officer Fisher earlier in the morning of November 18, 2003, prior to speaking with Sergeant Stevens. Officer Ferencik also thought it over in his head "4000" times the evening of November 18, 2003, and was certain that he had seen and spoken with Officer Fisher. I stated to Officer Ferencik if he was debating in his head whether he saw Officer Fisher or not and added that if he had doubts, then he should have told me or Sergeant Stevens that he was not sure. Instead Officer Ferencik repeated his verbal statement to Sergeant Stevens. At Sergeant Steven's request, Officer Ferencik then wrote a memorandum stating that he not only saw him, but also had spoken to Officer Fisher and had included the exact time because he had looked at his watch prior to walking upstairs and seeing Officer Fisher.

On November 20, 2003, I served Officer Fisher with an NOI for untruthfulness for the statement he made to me on November 18, 2003. Officer Fisher stated that he was not telling me the truth when he originally told me he was here early and had returned home because of a contact lens problem. He told me that he did not wake up until 0640 hours on November 18, 2003 and arrived at work at approximately 0725 hours.

