



City of Phoenix

To: Harold Hurtt,
Police Chief

Date: November 25, 2003

From: John L. Buchanan, Assistant Police Chief
Professional Standards Division

Handwritten initials, possibly 'JB', in black ink.

Subject: INTERNAL INVESTIGATION PSB 03-11

Internal Investigators:

Commander William Louis
Lieutenant Ken Johnson
(Investigative Review)

Sergeant Patrick Kotecki
(Primary Investigator)

Sergeant Mark Cousins

Sergeant Ronald Vasquez
South Mountain Precinct

Sergeant Yolanda Mathews
Maryvale Precinct
(Interviews)

Criminal Investigators:

Detective John Norman #2993
Special Investigations

Detective John Vasquez #3242
Assisting Special Investigations

Detective Juan Rivera #5750
Robbery Detail

Detective Karl Martin #5292
Robbery Detail

Detective Matt Verthein #5881
Robbery Detail

Polygraph Examination:

Mr. Jack Ogilvie #A3587
Polygraph Examiner
Professional Standards Bureau

Outside Agency:

Department of Defense Polygraph Institute
7540 Pickens Avenue

Fort Jackson, South Carolina 29207

Employee/s Involved:

1. Officer Jerry Hester II #6438
Duty Assignment: Maryvale Precinct
Squad: 83K
Hours: 9:00pm – 7:00am
N-Days: T,W,T.
Date of Hire: August 16, 1996.
2. Officer Michael Penn #7290
Duty Assignment: Maryvale Precinct
Squad: 83K
Hours: 9:00pm – 7:00am
N-Days: T,W,T.
Date of Hire: July 24, 2000.

Civilian Witness/es:

1. Mr. Ron Boring
Desk Clerk/Night Security
The Budget Inn
5259 West McDowell Road
DOB: [REDACTED]

Allegation #1 for Officer Hester:

Officer Jerry Hester #6438 failed to properly investigate and document an incident which occurred on February 24, 2003 between approximately 0443hrs to 0509hrs at 5259 West McDowell Road.

During the incident it is alleged that he illegally entered room #118 and searched the occupants, struck a citizen with a flashlight, pointed an empty handgun at the same citizen, ushered the same citizen into the bathroom of the hotel room and sprayed him with Oleoresin Capsicum (OC) spray. He then illegally searched a vehicle parked in the hotel parking lot.

This is in violation of Operations Orders 4.11 1.D. Probable cause to search. And Operations Orders 3.18 Addendum A 3.E.(1)(d) Intentional unjustified arrest or search (willful false arrest or willful illegal search).

This is also in violation of Operations Order 8.4 2.A. Departmental report purpose. And Operations Order 1.5 6. Reporting use of force – Employees will document the use of each response option. And Operations Order 1.5 6.A. Chemical agents reporting requirements, a supervisor will be contacted and details of the use of the chemical agent will be documented in the narrative section of the Department Report. Operations Orders 3.18 Addendum A 3.B.(1)(g) Failure to prepare departmental report when required. And Operations Orders 3.18 Addendum A 3.D.(2)(d) Failed to report use of force incident to a supervisor (on or off duty incidents). This is also in violation Operations Orders 1.5 4. D. Chemical Agents, Improper use of Oleoresin Capsicum spray. And Operations Orders 3.18 Addendum A 3.A. Minor policy violation.

This is also in violation of Operations Orders 1.5 4.F. Impact weapons may be used when facing the active aggression level of resistance and flashlights may be used as impact weapons. And Operations Orders 3.18 Addendum A 3.B. Improperly striking another person with an impact weapon. And Operations Orders 1.5 4.H. Deadly force, use of firearms, employees will not unnecessarily draw or display any firearm, or carelessly handle a firearm. And Operations Order 3.18 Addendum A 3.F.(2)(a) Unprofessional conduct where the elements of a felony are met, regardless of whether the employee was prosecuted or convicted.

Findings:

The Illegal searches of the room, occupants, and vehicle are Sustained.

The failure to document the incident and notify a supervisor about the use of force and the improper use of Oleoresin capsicum is Sustained.

The striking of a citizen with a flashlight and pointing an empty handgun at the same

citizen are Unfounded.

Allegation #2 for Officer Hester:

On February 24, 2003 between approximately 0447hrs to 0509hrs at 5259 West McDowell Road while in room #118 it is alleged that Officer Jerry Hester #6438 stole money, stole a cell phone and struck a citizen in the face with his fist.

This is in violation of Operations Orders 1.5 4. F. Guidelines for use of hard empty hand techniques

And Operations Orders 3.18. Addendum A. 3.F.(2)(a) Unprofessional conduct where elements of a felony are met, regardless of whether the employee was prosecuted or convicted.

Findings:

Unfounded.

Allegation #3 for Officer Hester:

On May 12, 2003 at 2:17pm, during Officer Hester's interview with Professional Standards investigators he gave false, incomplete, or misleading statements, or willful omissions during an investigation in reference to an illegal search of a vehicle parked in the hotel parking lot of 5259 West McDowell Road.

This is in violation of Operations Orders 3.13 5.A.(2) Employees will not lie during any criminal and/or administrative investigation or in matters of legitimate concern to the department. And Operations Orders 3.18 Addendum A.3.F.(1) (b). Giving false, incomplete, or misleading statements, or willful omissions during an investigation.

Findings:

Sustained.

Allegation #1 for Officer Penn:

Officer Michael Penn #7290 failed to properly investigate and document an incident which occurred on February 24, 2003 between approximately 0447hrs to 0509hrs at 5259 West McDowell Road.

During the incident it is alleged that he

illegally entered room #118 and searched the occupants, stole money and stole a cell phone. He then illegally searched a vehicle parked in the hotel parking lot.

This is in violation of Operations Orders 4.11 1.D. Probable cause to search. And Operations Orders 3.18 Addendum A 3.E.(1)(d) Intentional unjustified arrest or search (willful false arrest or willful illegal search).

This is also in violation of Operations Order 8.4 2.A. Departmental report purpose. And Operations Orders 3.18 Addendum A 3.B.(1)(g) Failure to prepare departmental report when required.

And Operations Order 3.18 Addendum A 3.F.(2)(a) Unprofessional conduct where the elements of a felony are met, regardless of whether the employee was prosecuted or convicted.

Findings:

The illegal searches of the room, occupants, and vehicle are Sustained.

The failure to document the incident is Sustained.

The stolen cell phone and money allegations are Unfounded.

Complainant:

Fernando Arrellano-Garcia
H/M, DOB: [REDACTED]
Description: 5'10", 195 pounds

Summary of Investigation:

On February 24, 2003 between 4:43am and 5:09am, Officer Jerry Hester #6438 was at the Budget Inn, 5259 West McDowell Road. Officer Hester had gathered information from an

unknown group of subjects in the parking lot who told him they "believed" they had family members that had just arrived from Mexico in the hotel, but they "weren't sure." These family members were supposed to be coming from Mexico, crossing the border illegally, and they stated that they, "might be in the hotel." Officer Hester asked them which room the family members were in, and the group replied they, "think it was 118." Officer Hester contacted Officer Penn on his cellular phone to assist him with the situation. Officer Penn arrived at 4:47am and spoke with Officer Hester. Officer Penn's knowledge of the situation came from what Officer Hester told him. He understood that Officer Hester had talked to "some guy" and there is "probably a room full of illegals" adding they were going to check it out.

The officers entered the hotel. Officer Hester waited near hotel room 118, while Officer Penn went to the front desk and got a master key for the room from the front desk clerk. The officers withdrew their handguns and without probable cause they entered room 118 using the key. Once inside, the officers performed pat down searches on all the occupants. The officers estimated there were from 15 to 20 people in the room. The people inside denied to the officers that they were being held against their will and denied that a person was in control of them.

Officer Hester found one individual (Mr. Fernando Arrellano-Garcia) by himself in the bathtub of the bathroom. Officer Hester ordered Mr. Arrellano-Garcia to come out, but he did not. Officer Hester stated that this aggravated him, but he also had tactical concerns, so he used his Oleoresin Capsicum (OC) spray on Mr. Arrellano-Garcia. Officer Hester stated Mr. Arrellano-Garcia was angry but compliant after he sprayed him. Officer Hester stated he did not inform Officer Penn that he sprayed Mr. Arrellano-Garcia with OC in the bathroom during the incident. Officer Penn stated he was unaware of what Officer Hester had done in the bathroom during the incident.

Once the searches were complete, the officers told all of the occupants to leave the hotel room through the window. The purpose of this was so that the officers would not draw attention or questions from citizens to the fact that they had found several undocumented aliens in the room and had decided to tell them to leave rather than take another course of action.

Officer Penn stated that at the conclusion of the room incident, he and Officer Hester left the hotel and entered the parking lot. Officer Penn stated he had been given a set of car keys by Officer Hester with a keyless remote. The investigation revealed that these keys belonged to Mr. Arrellano-Garcia. Officer Penn used the keyless remote to locate a vehicle in the parking lot by

setting off the alarm. Officer Penn stated he was unable to unlock the vehicle doors, but was able to open the trunk. He saw a car seat in the trunk but nothing else. Officer Penn stated the vehicle search was in an attempt to tie it into what had occurred in the hotel room, but he was unable to do so. Officer Penn stated he returned the keys to Officer Hester who was with him.

Officer Hester stated in his interview that he does not recall any vehicle search in the parking lot or possessing the car keys. Officer Hester was administered a polygraph examination to determine his truthfulness as it relates to the search of Mr. Arrellano-Garcia's vehicle. The result of the polygraph examination found that Officer Hester was not truthful and deception was indicated. This polygraph was forwarded and reviewed by four officials at the Department of Defense Polygraph Institute (DoDPI). The DoDPI officials each agreed with the polygraph results and rendered a "deception indicated" opinion.

