



City of Phoenix

To: Jack F. Harris
Public Safety Manager

Date: December 28, 2010

From: Blake A. McClelland, Assistant Chief *BAM*
Professional Standards Division

Subject: **INTERNAL INVESTIGATION - PSB09-0175**

Internal Investigators:

Commander David Harvey
Lieutenant John Collins (Investigative Review)
Detective Tom Walters (Primary Investigator)
Sergeant Gabe Lopez (Interviews)
Sergeant Tad Cline (Interviews)

Allegation #1:

On November 1, 2009, at approximately 9:45 p.m., Officer Joshua Mesquita #8502 inappropriately displayed his service weapon by completely removing it from his holster and pointing it at the ground, from above waist level while another Phoenix Police officer was interviewing Mr. Edgar Cabrera, who was handcuffed behind his back, at [REDACTED].

Findings:

Sustained

Allegation #2:

On November 1, 2009, at approximately 9:45 p.m., Officer Timothy Wheeler #8727 spit on Mr. Edgar Cabrera, a handcuffed prisoner, while he was sitting in the rear of a patrol vehicle at [REDACTED].

Findings:

Sustained

Allegation #3:

On February 18, 2010, Officer Timothy Wheeler #8727 gave false, incomplete, or misleading statements, or willful omissions during an internal investigation.

Findings:

Sustained

Allegation #4:

Officer Timothy Lynch #9141 gave false, incomplete, or misleading statements, or willful omissions during an internal investigation on separate interviews.

Findings:

Sustained

Employee/s Involved:

Joshua Mesquita #8502

Division: Patrol Operations South
Precinct: Estrella Mountain Precinct
Squad: 33K
Schedule: 2100-0700 / W,T,F
Date of Hire: January 30, 2006

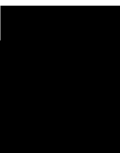
Timothy Wheeler #8727

Division: Patrol Operations South
Precinct: Estrella Mountain Precinct
Squad: 33K
Schedule: 2100-0700 / W,T,F
Date of Hire: January 29, 2007

Timothy Lynch #9141

Division: Patrol Operations South
Precinct: Estrella Mountain Precinct
Squad: 33J
Schedule: 2100-0700/ S,M,T
Date of Hire: March 27, 2006

Complainant:

Edgar Cabrera 

Witness Employees:

See Witness Employee section

Diagrams:

See Diagram section

Departmental Reports:

2010-00102097/ Aggravated Assault
2010-00102097A/ Threatening and Intimidating

Attachments:

See Attachment section

SUMMARY OF INVESTIGATION:

On November 1, 2009, at 9:45 p.m., Phoenix Police officers responded to [REDACTED] [REDACTED] reference a report of shots being fired from a vehicle. After arriving, they detained Mr. Edgar Cabrera as being a possible suspect. Officer Timothy Lynch #9141 was trying to interview Mr. Cabrera, who was handcuffed and seated on the ground. Mr. Cabrera was not answering any of Officer Lynch's questions. Officer Joshua Mesquita #8502 observed Mr. Cabrera not answering any questions and intervened by telling Mr. Cabrera, in Spanish, to start speaking English and answering questions. Officer Mesquita then removed his service weapon (a .45 caliber Glock handgun) from his holster, held the weapon fully exposed above the holster and then re-holstered the weapon. Officer Mesquita said he did this in an attempt to try to calm Officer Lynch.

At the time, there were four Phoenix Police officers in the area around Mr. Cabrera. All of these officers observed Officer Mesquita remove his weapon. None of these officers had their weapons drawn or felt it was necessary to draw their weapons, and it had been approximately 10 minutes since Mr. Cabrera was taken into custody. Mr. Cabrera observed Officer Mesquita remove the weapon from the holster approximately half way and felt threatened.

The allegation that Officer Mesquita inappropriately displayed his weapon, while Mr. Cabrera was handcuffed with his arms behind his back, as he was being interviewed is sustained.

The officers at the scene could not determine Mr. Cabrera's true identity. As a result, he was transported from the scene to the Phoenix Police Department's Records and Identification Bureau, 620 West Washington Street, in order to determine his identity through a fingerprint analysis. Mr. Cabrera was later returned to the scene after a witness at the scene agreed to help identify him. Mr. Cabrera was still handcuffed with his arms behind his back, and was kept in the rear seat of a fully marked police vehicle.

Officer Lynch had opened the rear passenger door, where Mr. Cabrera was sitting, and was standing in the threshold of the opened door in order to block Mr. Cabrera from being able to exit the vehicle. Officer Timothy Wheeler #8727 approached the vehicle, stood by the exterior side of the open door where Mr. Cabrera was seated, and spit over the door. Officer Wheeler could not say where the spit traveled, but said it was possible the spit could have landed on Mr. Cabrera.

Officer Lynch was looking at Mr. Cabrera when he heard Officer Wheeler spit and then observed Mr. Cabrera react by acting "crazy" in the rear of the vehicle. Mr. Cabrera told investigators that an officer, later identified as Officer Wheeler, approached the vehicle, called

him a "mother fucker" and spit in his face. Although Mr. Cabrera is a Spanish speaker, he does understand certain words in English. Mr. Cabrera said the spit struck him on the right side of his face close to his eye. Mr. Cabrera was unable to wipe the spit from his face because he was still handcuffed at the time.

The allegation that Officer Wheeler spit on a handcuffed prisoner is sustained.

During Officer Wheeler's interview, he denied ever spitting in the face of Mr. Cabrera. However, through the course of this investigation, it was determined that Officer Wheeler did spit on Mr. Cabrera. According to Officer Adam Harness #9143 and Officer Nate Jordan #8463, Officer Lynch told both of them, on separate occasions, that he witnessed Officer Wheeler spit in the face of Mr. Cabrera, while Officer Lynch denies telling this to either officer. Mr. Cabrera answered several questions from investigators about the officers' conduct on the night of his arrest saying "they were bad," and "one called me a mother fucker and spit in my face." Although Officer Lynch told investigators he did not see where Officer Wheeler spit, investigators determined that Officer Lynch was deceitful throughout his interviews during this investigation about what he witnessed.

The allegation that Officer Wheeler gave false, incomplete, or misleading statements, or willful omissions during an internal investigation is sustained.

On November 23, 2009, Officer Harness reported Officers Mesquita and Wheeler's misconduct to Sergeant Janina Austin #6618. Officer Harness told Sergeant Austin that Officer Lynch had disclosed witnessing Officer Wheeler spit in Mr. Cabrera's face while he was seated in the rear of Officer Lynch's patrol vehicle. Officer Harness said Officer Lynch relayed this information when the two were eating at a Chipotle restaurant.

On November 23, 2009, Sergeant Austin interviewed Officer Lynch about what he witnessed. Officer Lynch told Sergeant Austin that Officer Wheeler had spit between him and Mr. Cabrera. According to Sergeant Austin, Officer Lynch told her apparently some spit may have landed on Mr. Cabrera, because Mr. Cabrera moved and had some sort of verbal reaction in Spanish, which sounded irritable.

On January 13, 2010, criminal investigators interviewed Officer Lynch about what he witnessed. Officer Lynch said he did not know if Officer Wheeler's spit struck Mr. Cabrera, but described Mr. Cabrera's reaction as crazy, belligerent and wailing around the back of the patrol vehicle.

On February 24, 2010, professional standards investigators interviewed Officer Lynch.

Officer Lynch told investigators after he heard Officer Wheeler spit, Mr. Cabrera's reaction was to jerk around in the rear of the patrol vehicle, but he did not feel Mr. Cabrera's jerking was worse after the spit than before the spit. Officer Lynch said Mr. Cabrera did not attempt to say anything to him about the spit and did not give any indication of anger towards Officer Wheeler.

On July 10, 2010, PSB investigators interviewed Officer Lynch about the discrepancies between his previous statements. Officer Lynch told investigators he never disclosed any information to Officer Harness about Officers Mesquita or Wheeler's actions against Mr. Cabrera at a Chipotle restaurant or any other location. Officer Lynch told investigators Officer Harness may have overheard him talking to Officer Max Decker #8874 about the incident. Officer Lynch confirmed he did not see where Officer Wheeler's spit landed and said he believes the three different descriptions he provided about Mr. Cabrera's reactions are the same.

On September 29, 2010, Officer Nate Jordan #8463 told investigators he had at least two conversations with Officer Lynch where he disclosed that he witnessed Officer Wheeler spit in the face of Mr. Cabrera. Officer Jordan said Officer Lynch told him he confronted Officer Wheeler after the spit.

When Officer Lynch was confronted with this information, he denied ever telling Officer Jordan that he witnessed Officer Wheeler spit in Mr. Cabrera's face. Officer Lynch said that Officer Harness had a "vendetta" against Officers Mesquita and Wheeler for having to take a report in their assigned beat area.

Investigators obtained a copy of Officer Lynch's supervisor monthly inspection report from November 2009. In this report, Sergeant Austin documented that Officer Lynch told her he met with Officer Harness at dinner where the two discussed this incident. This report was acknowledged by Officer Lynch by his initials and there was no rebuttal information attached by Officer Lynch.

Investigators discovered a series of messages between Officers Lynch and Harness' mobile data computers on November 2, 2009. In the messages, Officer Lynch asked Officer Harness if he wanted to go to Chipotle. Officer Harness declined at first, but changed his mind and both officers sent each other a message stating they were in route to Chipotle. According to both officers' unit history, there was a period of at least 28 minutes where there was no activity on either officer's mobile data computer after the messages stating they were in route were sent.

Public Safety Manager Jack F. Harris

INTERNAL INVESTIGATION

PSB09-0175

Page 6 of 22

The allegation that Officer Lynch provided false, incomplete, or misleading statements, or willful omissions during an internal investigation on separate interviews is sustained.

