

ORDER DENYING APPELLANT'S MOTION TO SUPPRESS

IN THE MATTER OF THE APPEAL OF:

DARRELL S. BOONE, Appellant,

vs.

DEPARTMENT OF PUBLIC WORKS, SOLID WASTE MANAGEMENT
and the City and County of Denver, a municipal corporation, Agency.

On September 9, 2013, Appellant filed a motion captioned "Appellant's Motion to Suppress Video From Cameras Where Only Short Sections of Video Have Apparently been Preserved," followed by an amended version of the same motion on September 10. The Agency filed a timely objection.

Appellant denies allegations that he permitted or participated in unlawful dumping using City equipment on May 24, 2013. One of Appellant's claims is private dumping is a sanctioned common practice at the Agency and, pertinent to this order, video of the premises prior to the date in question would demonstrate such practice. The Agency states it keeps video of the premises 30 days before it is re-recorded. Since snippets of video remain, Appellant asks for "suppression" of those videos as they do not show the entire context of practices at the Agency's facilities.

The primary policy underlying suppression of evidence is deterrence of unlawful police conduct. People v. Press, 655 P.2d 1384 (Colo. App. 1982). Suppression of evidence in civil cases has been applied, but only where the suppression motion followed a prior seizure by police or other government agent, a necessary element lacking here. U.S. v. Janis, 428 U.S. 433, 455 (U.S. 1976); Ahart v. CO Dept. of Corrections, 964 P.2d 517 (Colo. 1998).

Interpreting Appellant's motion as a motion for discovery sanctions, Appellant cites the following as wrongful conduct deserving limitation of the Agency's evidence. 1. Supervisors sanctioned unlawful loads and dumping. 2. Supervisors sanctioned overweight trucks to travel on City roads. 3. Appellant was treated differently than other, similarly-situated members of non-protected employees. 4. Missing video would show exculpatory evidence.

None of Appellant's allegations, even if true, tend to show the Agency acted improperly in its practice of recording over prior recordings after 30 days, thus no sanction is justified. Moreover, Appellant did not request preservation of Agency video recordings until his August 9 motion, more than two months after the incident.

For reasons stated above, Appellant's motion is DENIED.

DONE September 11, 2013.


Bruce A. Plotkin
Career Service Hearing Officer