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The Denver Post**Jury clears ballgame teammate of hitting cop**

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Howard Pankratz Denver Post Legal Affairs Writer

Jurors yesterday rejected a "hotheaded" Denver police officer's claim that he was assaulted by a teammate during a pickup basketball game.

They deliberated less than an hour before acquitting Donald Wullschleger. He quickly attacked the city for turning an on-the-court collision into a full-court legal press. "I'm really disgusted with the city attorney's office," he said. "The taxpayers really got reamed on this."

The jury found Wullschleger not guilty of assault and disturbing the peace. The charges stemmed from a pickup game Oct. 26 in which Wullschleger was a teammate of Denver police officer Kenneth Chavez.

Chavez said Wullschleger punched him in the temple during the game at the **Southwest Recreation Center**. He then showed Wullschleger his badge, told him he was under arrest and ordered him not to leave the gym.

Wullschleger testified yesterday that he merely tripped and fell into Chavez.

"I probably would have fallen to the floor if I hadn't collided with Chavez," Wullschleger told the jury. "Chavez turned around and said, 'What was that? You are under arrest.' I said to myself, 'This guy has totally lost it.'"

After the verdict, Wullschleger added, "Chavez was stuck up for by the police department. And the city attorney's office said, 'Hey, he's a policeman, we have to deal with them on a daily basis, so we will put this on a jury's shoulders.'"

Wullschleger said he's spent about \$2,000 in legal fees to fight the charges.

However, prosecutor Dan Deters said it was important to take the case to trial given that two witnesses - Chavez's 15-year-old stepson and the boy's friend - said they saw Wullschleger hit Chavez. Deters added that yesterday was the first time he heard Wullschleger say he had tripped and fallen into Chavez.

During the two-day trial, Wullschleger, attorney Jim Castle and a series of witnesses said it was Chavez, not Wullschleger, who was out of line that night at the gym.

Stuart Bader, a **recreation** supervisor watching the game, testified that he didn't see anyone get hit.

Other witnesses testified that in an earlier game that night, Chavez disputed which team should get a ball that went out of bounds. In another game, he

became so upset with a teammate for not guarding a man Chavez thought should be guarded that the other player walked off the floor.

It was after Wullschleger took the place of the player who left that Chavez said he was hit by Wullschleger.

After placing Wullschleger under arrest at the **center**, Chavez called for police backup.

Castle said the call went out over the radio as a "Code 9" - a non-emergency response without lights and sirens that nevertheless means respond with haste.

Five police cars went to the gym.

After the verdict, foreman Dwight Becker said, "Everyone agreed from the get-go that (Wullschleger) was not guilty. The argument came down to whether Mr. Wullschleger had intent to take a poke at officer Chavez, and we felt the prosecution didn't make a case to make us feel that way.

Becker said, "What it came down to was: Does a hothead deserve to get popped in the head? Or does a hothead concoct a situation and blow it into something that wasn't?"

Juror Aron Lundy said there was no "clear evidence" as to the "seriousness" of the incident.

"There was no proof," said Lundy. "No one saw anything."

Lundy said he was surprised that Chavez, who was off-duty when

he was playing at the rec **center**, pursued the case against

Wullschleger.

"Had I been in his position, I wouldn't have," said Lundy.

Wullschleger's defense had requested police records on Chavez.

Although it was not introduced as evidence, the police department

gave County Judge Larry Bohning a file of more than 400 pages on Chavez. Now assigned to the gang unit, Chavez has been a Denver officer for 11 years.

Capt. Mike O'Neill of the department's internal affairs bureau said that it is not unusual for officers who have been on the streets for 11 years to have complaints in their files, but he said he didn't know if that was true of Chavez.

He said he did not know if Chavez has a "history of complaints." Lt. John Lamb of the civil liabilities bureau of the Denver Police Department said no complaints were filed against Chavez in connection with the incident, and there has been no internal investigation.

Defense attorney Castle said that in 11 years of practicing law, he had never seen "a more silly case and a worse use of prosecutorial discretion."

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