



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

March 20, 2017

VIA CERTIFIED MAIL AND E-MAIL

Robert Temme
Chief of Police
Southern Pines Police Department
450 West Pennsylvania Avenue
Southern Pines, North Carolina 28387

Neil Godfrey
Sheriff
Moore County Sheriff's Office
302 South McNeill Street
Carthage, North Carolina 28327

Re: [REDACTED] and [REDACTED] v. Southern Pines Police Dep't and Moore Cty. Sheriff's Office (Docket No. 17-OCR-0009)

Dear Chief Temme and Sheriff Godfrey:

I write to inform you of the findings of the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice in the above-referenced matter. On November 15, 2016, the OCR notified you that [REDACTED] and [REDACTED] by and through the Moore County, North Carolina, National Association for the Advancement of Colored People (NAACP), filed an administrative Complaint with the OCR. The Complainants allege that on May 26, 2016, sworn personnel from the Southern Pines Police Department (SPPD) and the Moore County Sheriff's Office (MCSO) acted inappropriately in connection with a traffic stop of [REDACTED] vehicle and the subsequent search of that vehicle. The Complaint contains allegations suggesting that, during this encounter, the SPPD may have violated Title VI of the Civil Rights Act of 1964¹ (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968² (Safe Streets Act), which prohibit discrimination based on race, color, and national origin. Having investigated the Complaint, the OCR concludes that the SPPD and the MCSO did not violate either statute in interacting with the Complainants.

I. Jurisdiction

The OCR is responsible for ensuring that recipients of financial assistance from the OJP and its components comply with federal laws that prohibit discrimination in the delivery of services or benefits based on race, color, and national origin.

The Town of Southern Pines (Town or Southern Pines), which includes the SPPD, and Moore County, which includes the MCSO, currently receive financial assistance from one of the OJP's components, the Bureau of Justice Assistance (BJA), under its Bulletproof Vest Partnership (BVP) Program, and received similar financial assistance in May 2016, which is the time period

¹ 42 U.S.C. § 2000d (2012).

² 42 U.S.C. § 3789d(c)(1) (2012).

of the alleged discrimination.³ The BVP Program is federal financial assistance subject to Title VI.⁴ Moreover, Title I of the Safe Streets Act authorizes the BVP Program,⁵ which means that it is also subject to that statute's nondiscrimination provision.⁶

Because the Respondents currently receive financial assistance subject to Title VI and the Safe Streets Act and received that assistance at the time of the alleged discrimination, the OCR has the authority to investigate this Complaint.⁷ The Complaint is also timely, as the DOJ received it on July 12, 2016, which was forty-seven days after the date of the alleged discrimination.⁸

II. Facts

A. Events Leading to Traffic Stop of [REDACTED] Vehicle

On May 26, 2016, SPPD officers initiated a traffic stop of [REDACTED] vehicle in response to a request for assistance from MCSO deputies, who had themselves received a request for assistance from the Lee County, North Carolina, Sheriff's Office (LCSO). The LCSO was participating in an Organized Crime Drug Enforcement Task Force (Task Force), which also included representatives from the DOJ's Drug Enforcement Administration, the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement, and the North Carolina State Bureau of Investigation (SBI). SBI Special Agent [REDACTED] provided the following information to MCSO [REDACTED] about the Task Force's surveillance activities that led to the May 26 traffic stop. Earlier that day, the Task Force conducted surveillance on a room at the [REDACTED] hotel in [REDACTED] North Carolina,⁹ and that hotel's parking lot. The Task Force concluded that individuals in the room being surveilled participated in an illegal drug transaction. Two additional suspects were in the room next to the room under surveillance. These additional suspects left the hotel parking lot in a silver pickup truck. Special Agent [REDACTED] provided [REDACTED] with a description of this truck and notified him that the Task Force observed it leaving the [REDACTED] hotel parking lot.

The Complainants acknowledge that, on May 25–26, they stayed at the same [REDACTED] hotel being surveilled, lodging there in connection with [REDACTED] participation in the University of North Carolina's annual golf tournament at the Tobacco Road Golf Club.¹⁰ From the early evening of May 25 until the Complainants left the hotel the next morning, [REDACTED] vehicle, which was a silver pickup truck, was in the parking lot of the [REDACTED]

³ See BJA, FY 2016 BVP Awards, <http://go.usa.gov/x9MuK>; BJA, FY 2015 BVP Awards, <http://go.usa.gov/x9Muk>; BJA, FY 2014 BVP Awards, <http://go.usa.gov/x9Mu8>; BJA, FY 2013 BVP Awards, <http://go.usa.gov/x9MuX>; BJA, FY 2012 BVP Awards, <http://go.usa.gov/x9Mu5>.

⁴ 28 C.F.R. § 42.103 (2016).

⁵ 42 U.S.C. § 3796ll.

⁶ *Id.* § 3789d(c)(1).

⁷ See 28 C.F.R. pt. 42, subpt. D, app. A (2016) (discussing 28 C.F.R. § 42.205(c)(1)).

⁸ *Id.* § 42.107(b) (generally, under Title VI, a complainant must file an administrative complaint with the OCR within 180 days of the date of the alleged discrimination); *id.* § 42.205(b) (generally, under the Safe Streets Act, a complainant must file an administrative complaint with the OCR within one year of the alleged discrimination).

⁹ [REDACTED] is in Lee County.

¹⁰ [REDACTED] is the [REDACTED] at the University of North Carolina (UNC) – Pembroke campus and the chair of UNC – Pembroke's [REDACTED].

hotel. According to the MCSO, the Task Force believed that the Complainants were the individuals staying in the room next to the one where it observed the illegal drug transaction. After checking out of the hotel, [REDACTED] accompanied by [REDACTED] drove his truck from the hotel parking lot.¹¹ The Complainants were going to Southern Pines, which is in Moore County, to have lunch at a restaurant that is approximately twenty-nine miles southwest of the hotel. LCSO deputies followed Mr. [REDACTED] truck as it left the parking lot, although they could not stop the truck before it left Lee County and entered Moore County.

After the truck entered Moore County, the LCSO deputies asked the MCSO deputies for assistance. In that request, the LCSO deputies conveyed to the MCSO deputies that they believed that the occupants of the truck had participated in a transaction involving controlled substances. Even though MCSO deputies could observe the truck, they were too far behind it to make a safe traffic stop. Because the truck was traveling toward Southern Pines, the MCSO issued a "be on the lookout" (BOLO) alert to the SPPD's officers. That alert identified a silver sport track vehicle, described the truck's occupants, and asked officers to assist them if the Complainants entered Southern Pines.¹² After issuing the alert, the MCSO asked the SPPD to provide a canine unit for the stop. The MCSO also notified the SPPD that, after Task Force members observed the apparent drug transaction, they had apprehended a suspect who was in the room where the drug transaction allegedly occurred and found a large amount of methamphetamine in his vehicle.¹³ The SPPD knew that LCSO and MCSO personnel had together observed the silver pickup truck from the time the Complainants left the hotel parking lot until the SPPD stopped it.

B. Traffic Stop of [REDACTED] Vehicle

On May 26, 2016, at 12:40 p.m.,¹⁴ SPPD Officer [REDACTED], who had received the BOLO alert a few minutes earlier, stopped [REDACTED] vehicle in Southern Pines. SPPD Lieutenant [REDACTED], who had received the BOLO alert and the additional information about the matter from the MCSO, joined Officer [REDACTED] a moment later. Neither officer knew the Complainants' race or national origin.¹⁵

At the inception of the traffic stop, [REDACTED] was not wearing his seatbelt. To remedy this, he moved his hand behind his back to buckle his seatbelt. Seeing this movement, Officer [REDACTED] and Lieutenant [REDACTED] approached the front of the truck—Officer [REDACTED] on the driver's side, Lieutenant [REDACTED] on the passenger's side—with their guns drawn, directing the Complainants to keep their hands visible and not to move. Officer [REDACTED] and Lieutenant [REDACTED] pointed their firearms through the truck's windows, and Officer [REDACTED] asked the Complainants if they had

¹¹ When MCSO Captain [REDACTED] arrived at the scene of the traffic stop, he confirmed that this truck matched the description of the truck described by SBI Special Agent [REDACTED].

¹² The BOLO mistakenly identified the Complainants as Hispanic.

¹³ According to the Complainants, Mr. [REDACTED] drove his vehicle, without stopping, from the [REDACTED] hotel to Southern Pines.

¹⁴ All times are approximate.

¹⁵ [REDACTED] is African American. Mr. [REDACTED] is Native American.

any weapons. After the Complainants reported that they were unarmed, Lieutenant [REDACTED] holstered his firearm.¹⁶

Lieutenant [REDACTED] reached through the window to unbuckle [REDACTED] seatbelt and asked him to exit the vehicle. Once [REDACTED] exited the vehicle, the Lieutenant conducted a pat-down search of him, which yielded no weapon. Around this time, MCSO Deputy [REDACTED] arrived at the scene. SPPD Officer [REDACTED] also arrived, and asked [REDACTED] to exit the vehicle. Officer [REDACTED] conducted a pat-down search of [REDACTED] finding no weapon.

Officer [REDACTED], who is a certified canine handler, holstered his firearm and walked a certified canine unit around the truck several times.¹⁷ The canine alerted to the presence of contraband at the vehicle's right rear bumper and both passenger doors. The canine then entered the truck's cabin, where he alerted to the presence of contraband at the passenger front row and rear row seats.¹⁸ Officer [REDACTED] reported these positive alert results to the other officers at the scene, which included MCSO Detective [REDACTED], and to the Complainants. These positive alerts prompted Officer [REDACTED] and an MCSO deputy to search luggage in the truck's cabin, as well as the truck's glove box and console. During this search, Officer [REDACTED] observed what seemed to be the barrel of a weapon, which prompted him to handcuff both Complainants. Officer [REDACTED] and several MCSO deputies then continued to search the truck, including its bed; again, they found neither guns nor drugs. What Officer [REDACTED] thought was a gun was actually part of the truck's seat. At the end of the search, the SPPD removed the Complainants' handcuffs.

During the search of the truck, the SPPD officer who handcuffed the Complainants asked them what they were doing in Southern Pines. They responded that they were stopping for lunch after an event at the [REDACTED]. The officer then asked, "Why didn't you just go straight home?" They repeated that they simply wanted to have lunch in Southern Pines.

C. MCSO's Interactions with Complainants

During the traffic stop, MCSO Captain [REDACTED] arrived at the scene and learned that the SPPD canine unit had alerted on [REDACTED] truck for the presence of narcotics. He identified himself to [REDACTED] and described this positive alert to him. Captain [REDACTED] asked [REDACTED] if he would consent to have MCSO Detective [REDACTED] drive his truck to the Moore County Garage (MCG) in Carthage, North Carolina, so that detectives could

¹⁶ The Complainants allege that, at this point, an officer stated, "Do you want us to shoot you?" The SPPD denies that any officer made such a remark. In responding to the OCR's Data Request, the SPPD provided a dashcam video from the patrol vehicle immediately behind Mr. [REDACTED] vehicle that also captured audio from the incident, including Officer [REDACTED] and Lieutenant [REDACTED] communications with the Complainants. The video does not corroborate this aspect of the Complaint.

¹⁷ On May 16, 2016, the North American Police Work Dog Association certified Officer [REDACTED] and the canine as a team, concluding that, working together, they were qualified to detect marijuana, cocaine, heroin, and methamphetamine.

¹⁸ The Complainants allege that two SPPD officers informed them that the canine smelled something in the truck when it was stopped at a red traffic light. The SPPD disagrees with this allegation, and states that the canine only alerted to the presence of contraband after the Complainants exited the truck.

conduct a thorough search of it. Captain █████ explained to █████ █████ that, because of the amount of traffic on the street where the truck was stopped, it would be safer to complete the search at the MCG. █████ █████ replied that he wanted to cooperate and gave Captain █████ oral consent to have MCSO Detective █████ drive the truck to the MCG, which was about fifteen minutes from Southern Pines. Captain █████ also told █████ █████ that the MCSO would detain him and █████ █████ during the search and that, if officers find nothing during the search, the Complainants could leave.

After obtaining █████ █████ consent, at 1:07 p.m., MCSO deputies assumed custody of the Complainants and █████ █████ vehicle. Deputies handcuffed the Complainants and placed them in two MCSO vehicles. Detective █████ drove █████ █████ truck to the MCG, while Captain █████ and Detective █████ transported █████ █████ and █████ █████ respectively, to the MCG, where they arrived at 1:30 p.m.

Once at the MCG, MCSO Captain █████ obtained █████ █████ written consent to search the vehicle. The consent form noted that █████ █████ was providing voluntary and willing consent to MCSO and LCSO detectives to search his vehicle for controlled substances, firearms, U.S. currency, and drug paraphernalia. Then, officers with the Task Force searched the truck for approximately forty-five minutes while the Complainants, still handcuffed, were in separate vehicles. As part of this search, officers placed the vehicle on a lift so that they could identify any concealed compartments underneath the vehicle. The officers did not find any drugs or any other item covered by the consent to search. At 2:25 p.m., deputies removed the Complainants' handcuffs and allowed them to leave.

During the search, █████ █████ asked a deputy to explain why the officers were detaining them and why they were searching Mr. █████ █████ truck. The deputy did not answer these questions.

D. SPPD's Pertinent Policies and Training

The SPPD has a Code of Conduct that prohibits employees from engaging in bias-based profiling and notes that it will provide training to employees on this topic.¹⁹ The policy requires employees to report any suspected bias-based profiling to the on-duty watch commander, Captain, Deputy Chief, or Chief of Police and explains that the SPPD will investigate any allegations it receives of bias-based profiling.²⁰ Under the policy, the SPPD's Captain must annually review training on bias-based profiling that the SPPD provided to employees, any bias-based profiling complaints that the SPPD received, and any corrective action that the SPPD took in response to such complaints.²¹ Each year, officers participate in an in-service training session that covers issues involving interactions with minority youth.

¹⁹ SPPD, Order No. 301-13, Rules & Regulations/Code of Conduct 12 (Dec. 22, 2013) ("Employees will not engage in bias based profiling in traffic contacts, field contacts, arrests, asset seizure, asset forfeiture efforts or any other official action.").

²⁰ *Id.*

²¹ *Id.* at 13. As part of its response to the OCR's Data Request, the SPPD provided the reports that its Captain prepared in 2013, 2014, and 2015 pursuant to the SPPD's Code of Conduct.

The SPPD did not receive any complaints in 2013, 2014, or 2015 alleging race, color, or national origin discrimination in its traffic enforcement activities. On August 26, 2016, [REDACTED] and Mr. [REDACTED] filed a race discrimination complaint with the SPPD about the May 26, 2016, traffic stop. SPPD Captain [REDACTED] investigated the complaint and concluded that race did not motivate the SPPD officers' interactions with the Complainants. On October 17, 2016, SPPD Police Chief Robert Temme notified the Complainants that after investigating their complaint, the SPPD concluded that its officers acted properly and not based on the Complainants' race.

E. MCSO's Pertinent Policies and Training

The MCSO prohibits employees from engaging in bias-based profiling in taking law enforcement action.²² In addressing this topic, the MCSO explains that "[i]t is the policy of this office to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group."²³ The policy requires deputies to report any racial or bias-based profiling to their supervisor.²⁴ The policy also requires the MCSO's Training Officer to provide training on the policy and prohibited profiling.²⁵ In 2016, the MCSO provided training to deputies entitled Juvenile Minority Sensitivity Training: The Color of Justice, which explained how to identify and address explicit and implicit bias.

The MCSO did not receive any complaints alleging race, color, or national origin discrimination in its traffic enforcement activities, from [REDACTED] or anyone else.²⁶

III. Discussion

In evaluating the Complainants' race and national origin discrimination claims under Title VI and the Safe Streets Act, the OCR relies on constitutional standards. Both statutes prohibit discriminatory practices that would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.²⁷ To establish an equal protection claim in the Fourth

²² MCSO, Policy No. 414, Racial or Bias-Based Profiling (Oct. 10, 2016).

²³ *Id.* at 1; *see also id.* (noting that race, ethnicity, and nationality, as well as other protected characteristics, "shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law").

²⁴ *Id.*

²⁵ *Id.* at 3.

²⁶ The MCSO has a policy for receiving, investigating, and resolving discrimination complaints from the public. MCSO, Policy No. 1308, Personnel Complaints (July 10, 2015); *see id.* at 1 (explaining that persons can file complaints in any form).

²⁷ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978). The pertinent part of Title VI's nondiscrimination provision is as follows: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The pertinent part of the Safe Streets Act's nondiscrimination provision is as follows:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.

Circuit in this matter, the OCR must satisfy two *prima facie* legal requirements. First, it must show that a respondent treated a complainant differently than similarly situated persons because of their membership in a protected class.²⁸ A respondent might engage in such differential treatment by explicitly classifying people based on race or by applying a facially neutral law, policy, or practice in a way that “disproportionately affects one class of persons over another and a discriminatory animus is shown.”²⁹ Here, the OCR views the Complaint as alleging that the SPPD and the MCSO selectively enforced their authority in ways that subjected them to prohibited, intentional discrimination. Second, the OCR must “determine whether the disparity in treatment can be justified under the requisite level of scrutiny.”³⁰ Because the Complainants allege that the Respondents discriminated against them based on race, color, and national origin, the OCR applies strict scrutiny to any disparate treatment it identifies.³¹

Given the particular facts and circumstances of the SPPD's and the MCSO's interactions with the Complainants, the OCR concludes that the Respondents did not intentionally discriminate against them, in violation of Title VI or the Safe Streets Act. The OCR acknowledges the unfortunate circumstances that led the MCSO and the SPPD to believe that the Complainants were involved in an illegal drug transaction. But as we will discuss below, the fact that the Respondents did not find contraband during their encounter with the Complainants does not support any finding that those agencies violated Title VI or the Safe Streets Act.

A. Analysis of SPPD's Potential Liability Under Title VI and Safe Streets Act

The Complainants allege that on May 26, 2016, SPPD officers subjected them to prohibited discrimination, based on their race, color, and national origin, when the officers stopped and searched [REDACTED] vehicle, and searched and handcuffed the Complainants. Given the nature of these allegations, the OCR must show that the SPPD subjected the Complainants to worse treatment than those outside their protected class and that the SPPD was animated by a discriminatory purpose in treating the Complainants differently.³² To establish discriminatory purpose, the OCR must show that a respondent made a decision about how to treat a complainant based in part on his race, color, or national origin.³³ Based on the record in this matter, the OCR cannot conclude that the SPPD subjected the Complainants to intentional discrimination based on race, color, or national origin.³⁴

42 U.S.C. § 3789d(c)(1). The Safe Streets Act's civil rights protections were patterned after those contained in Title VI. *See* H.R. REP. NO. 93-249, at 7 (1973); 119 CONG. REC. 20,097 (1973) (statement of Rep. Edward Hutchinson); *id.* at 22,075 (1973) (statement of Sen. Jacob Javits). As a result, we apply the same analytical framework to both statutes.

²⁸ *See* *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *United States v. Johnson*, 122 F. Supp. 3d 272, 349 (M.D.N.C. 2015).

²⁹ *Johnson*, 122 F. Supp. 3d at 350 (quoting *Monroe v. City of Charlottesville*, 579 F.3d 380, 388 (4th Cir. 2009)).

³⁰ *Id.* (quoting *Morrison v. Geraghty*, 239 F.3d 648, 654 (4th Cir. 2001)).

³¹ *Id.* (citing pertinent Supreme Court authority).

³² *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979); *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264–68 (1977); *Washington v. Davis*, 426 U.S. 229, 238–42 (1976).

³³ *See Johnson*, 122 F. Supp. 3d at 356 (quoting *Arlington Heights*, 429 U.S. at 265–66 and *Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 819 (4th Cir. 1995)).

³⁴ Because of this finding, we need not reach the issue of whether the SPPD's practices have the effect of treating the Complainants differently than other, similarly situated persons.

In evaluating whether the SPPD discriminated against the Complainants, the OCR considers whether the SPPD's officers adhered to the requirements of the Fourth Amendment to the U.S. Constitution during their interactions with the Complainants.³⁵ Officer [REDACTED] and Lieutenant [REDACTED] acted properly in stopping [REDACTED] vehicle. The SPPD stopped the vehicle based on a BOLO alert from the MCSO, which had itself sought to assist the LCSO. Police officers who receive a request to stop a vehicle from other officers, including those who work for another law enforcement agency, can stop that vehicle if either cohort of officers (i.e., the one receiving the request or the one making it) had a reasonable suspicion that the vehicle's occupants were involved in criminal activity.³⁶ "Reasonable suspicion" is a "commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."³⁷ At the time of the traffic stop, MCSO deputies and the SPPD officers initiating the stop collectively knew the following facts: (1) Task Force members believed, based on their observations, that suspects in two rooms at the [REDACTED] hotel in Sanford had been involved in an illegal transaction involving controlled substances; (2) the suspects were in two vehicles; (3) Task Force members apprehended a suspect in one of the vehicles and found a large amount of methamphetamine; and (4) the other vehicle (i.e., the silver pickup truck) was under constant surveillance by LCSO or MCSO deputies since it left the [REDACTED] hotel parking lot. Given these facts, the OCR concludes that Officer [REDACTED] and Lieutenant [REDACTED] had reasonable suspicion to believe that the silver pickup truck and its occupants were involved in an illegal drug transaction.

Officer [REDACTED] and Lieutenant [REDACTED] also acted reasonably in approaching [REDACTED] vehicle with their weapons drawn. In discussing this action, the OCR acknowledges that "traffic stops are 'especially fraught with danger to police officers,'"³⁸ and that officers face inordinate risk in approaching persons in a vehicle.³⁹ At the time of the stop, Officer [REDACTED] and Lieutenant [REDACTED] had a reasonable suspicion that the truck's occupants were engaged in a prohibited drug transaction; they also believed that one of the occupants had reached for a weapon. Under these circumstances, Officer [REDACTED] and Lieutenant [REDACTED] appropriately took special precautionary measures to protect themselves.⁴⁰

SPPD personnel also acted appropriately when they asked the Complainants to exit [REDACTED] vehicle, conducted pat-down searches of them, and handcuffed them. For safety, a

³⁵ See *United States v. Johnson*, 28 F. Supp. 3d 499, 514 (M.D.N.C. 2014) (explaining that "any lack of a legal basis for a stop may be evidence of unlawful ethnic targeting under the Fourteenth Amendment").

³⁶ *North Carolina v. Battle*, 427 S.E.2d 156, 158–59 (N.C. Ct. App. 1993) (citing *United States v. Hensley*, 469 U.S. 221, 232 (1985)).

³⁷ *United States v. McCoy*, 513 F.3d 405, 411 (4th Cir. 2008) (quoting *Ornelas v. United States*, 517 U.S. 690, 695–96 (1996) (alterations omitted)).

³⁸ *Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)).

³⁹ *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977); see also *United States v. Sakyi*, 160 F.3d 164, 168 (4th Cir. 1998) (observing that "every traffic stop poses a meaningful level of risk to the safety of police officers").

⁴⁰ See *United States v. Navarrete*, 192 F.3d 786, 791 (8th Cir. 1999) (concluding that officers did not use unreasonable force when they approached a truck with their weapons drawn, when they had a reasonable suspicion that the truck's occupants were involved in drug trafficking); *United States v. White*, 648 F.2d 29, 35–36 (D.C. Cir. 1981) (explaining that officers approaching a vehicle that may contain narcotics can draw their weapons in doing so); see also SPPD, Order No. 308-16, Firearms Use/Training 3 (Apr. 11, 2016).

police officer can ask a driver or a passenger to exit a vehicle.⁴¹ He can also conduct a pat-down search of a driver or a passenger if the officer has reasonable suspicion that the person to be frisked is armed and dangerous.⁴² In addition, it is a reasonable precaution for an officer to use handcuffs during a traffic stop involving suspected drug activity.⁴³ Lieutenant [REDACTED] and Officer [REDACTED] conducted pat-down searches of [REDACTED] and Mr. [REDACTED] respectively, as soon as the Complainants exited the truck. When they conducted those searches, they knew that the Complainants were suspected of participating in an illegal drug transaction. Officer [REDACTED] had also informed Lieutenant [REDACTED] that he observed [REDACTED] reach for a weapon at the inception of the traffic stop. These facts support the officers' conclusion that the Complainants were armed and dangerous.⁴⁴ During Officer [REDACTED] search of the truck, he believed he saw a gun, which, coupled with the possible presence of drugs, prompted the officers to handcuff the Complainants. This decision was reasonably necessary to protect the officers, to allow them to complete their vehicle search, and to prevent the Complainants from accessing contraband.

Officer [REDACTED] also acted properly in relying on his canine unit and in coordinating the search of the truck. When an officer walks a drug detection dog around the exterior of a vehicle, that action is not a search under the Fourth Amendment because it does not require entry to the vehicle and it does not disclose anything other than the presence of drugs.⁴⁵ When the canine walked around the perimeter of the truck, he gave a positive alert for the presence of drugs in the vehicle. Ten days before the stop at issue in this matter, the North American Police Work Dog Association (NAPWDA) had certified the canine and Officer [REDACTED], as his handler, to detect several drugs, including methamphetamine. The NAPWDA is an organization that is qualified to determine whether a police dog can detect narcotics.⁴⁶ This certification, especially so soon before the stop, gives the OCR sufficient reason to treat as reliable the canine's positive alert.⁴⁷ When a trained drug detection dog alerts to the presence of contraband, that alert provides probable cause to search the interior of a vehicle.⁴⁸ In the context of searches, the term "probable cause" means that "there is a fair probability that contraband or evidence of a crime will be found in a particular place."⁴⁹ In determining whether an officer has probable cause, the OCR evaluates the totality of the circumstances.⁵⁰ Given the canine's positive alert, officers had probable cause to search the passenger compartment of the truck and the truck bed.⁵¹

⁴¹ *Arizona*, 555 U.S. at 331.

⁴² *Id.* at 327, 331.

⁴³ *Navarrete*, 192 F.3d at 791 (citing *United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989)).

⁴⁴ *United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir. 1998) (noting that "guns often accompany drugs").

⁴⁵ *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000); *United States v. Place*, 462 U.S. 696, 707 (1983).

⁴⁶ *See, e.g., United States v. Dodwell*, 1:12cr93, 2014 U.S. Dist. LEXIS 54968, *44-45 (W.D.N.C. Jan. 17, 2014); *United States v. Cunningham*, Case No. 15-CR-83, 2016 U.S. Dist. LEXIS 74073, *11 (E.D. Wis. Apr. 29, 2016).

⁴⁷ *Florida v. Harris*, 133 S. Ct. 1050, 1057 (2013).

⁴⁸ *United States v. Mason*, 628 F.3d 123, 130 (4th Cir. 2010); *United States v. Branch*, 537 F.3d 328, 340 n.2 (4th Cir. 2008).

⁴⁹ *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

⁵⁰ *United States v. White*, 549 F.3d 946, 949 (4th Cir. 2008).

⁵¹ *United States v. Kelly*, 592 F.3d 586, 589-90 (4th Cir. 2010) (explaining that, "once police have probable cause, they may search 'every part of the vehicle and its contents that may conceal the object of the search'" (quoting *United States v. Ross*, 456 U.S. 798, 825 (1982))).

The OCR also concludes that the SPPD did not unnecessarily prolong the investigative stop of the Complainants. In determining whether the length of a stop is reasonable, we must ask “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.”⁵² This is a flexible, fact-specific inquiry.⁵³ Here, the SPPD officers acted diligently in investigating their initial reasonable suspicion, and subsequent probable cause, that [REDACTED] truck contained contraband. Officers stopped [REDACTED] vehicle at 12:40 p.m. and transferred custody of the Complainants to the MCSO at 1:07 p.m. During this twenty-seven-minute period, the SPPD stopped [REDACTED] vehicle, searched the Complainants, conducted a canine sniff of [REDACTED] truck, searched the truck’s cabin and bed, and communicated with the MCSO about the positive drug alert and subsequent search. Because the SPPD conducted these investigative activities without delay, we conclude that the length of the stop was reasonable.⁵⁴

Even though the SPPD’s officers acted consistent with their Fourth Amendment obligations, the OCR could still conclude that the SPPD discriminated against the Complainants if there is some other evidence suggesting that it treated them differently because of their race, color, or national origin. In an effort to satisfy this standard, the Complainants point to a question that an SPPD officer posed to them during the traffic stop. When the Complainants told the officer that they came to Southern Pines for lunch, the officer asked, “Why didn’t you just go straight home?” The OCR understands how the Complainants could view this question as an implicit suggestion that they should not have entered the town. But this question, standing alone and given the valid basis for the stop, does not show that the SPPD purposely treated the Complainants differently because of their race, color, or national origin.

The Complainants also reference the purported statement by two SPPD officers that the canine unit smelled contraband in [REDACTED] truck when it was on the highway. Recognizing that the SPPD disputes that its officers said this, the OCR will presume, solely for the purposes of this analysis, that the officers did make that statement. Such a statement is not evidence of intentional discrimination. As the OCR discusses above, the SPPD stopped [REDACTED] truck based on information that it was involved in an illegal drug transaction. This information—not an alert from the canine unit while the Complainants were driving—provided the basis for the SPPD’s reasonable suspicion to stop the truck. Also, officers can, consistent with the Fourth Amendment, use subterfuge in explaining the basis for a stop to a suspect, as long as the officers have a legal basis for the stop.⁵⁵ Because the SPPD officers had reasonable suspicion to stop [REDACTED] r. [REDACTED] truck, this statement does not bolster the Complainants’ claim that the SPPD treated them differently because of their race, color, or national origin.

Moreover, the SPPD’s policies and training suggest that it takes seriously its obligation to ensure that its officers do not engage in prohibited discrimination in conducting law enforcement

⁵² *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

⁵³ *Id.* at 685 (emphasizing that, “in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria”).

⁵⁴ *See United States v. Branch*, 537 F.3d 328, 339 (4th Cir. 2008) (concluding that officer had reasonable suspicion that a suspect was engaged in narcotics activity, which rendered reasonable a thirty-minute detention of that person).

⁵⁵ *See United States v. Ittenbach*, No. 5:14-CR-268-FL, 2015 U.S. Dist. LEXIS 145008, *17-18 (E.D.N.C. Oct. 26, 2015).

activities. The SPPD prohibits officers from engaging in bias-based policing; provides training to officers on this requirement; and holds officers accountable, through the disciplinary process, for selectively enforcing the law based on a person's race, color, or national origin.

B. Analysis of MCSO's Potential Liability Under Title VI and Safe Streets Act

Having concluded that the SPPD did not discriminate against the Complainants, the OCR next considers whether the MCSO violated Title VI or the Safe Streets Act after it assumed custody of the Complainants on May 26, 2016. We find that it did not, based on its personnel's compliance with the Fourth Amendment, the lack of evidence suggesting purposeful discrimination, and its development of policies and related training on the prohibition against bias-based policing.

The MCSO's sworn personnel acted consistent with the requirements of the Fourth Amendment. Through their participation in the SPPD's stop of [REDACTED] truck, MCSO deputies developed probable cause to believe that the truck contained contraband; this information allowed it to search the vehicle at another location. If an officer has probable cause to believe that a vehicle contains contraband, the officer can search it, even if the suspect did not provide consent and the officer did not obtain a warrant.⁵⁶ In determining whether such probable cause exists, we are mindful that "probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity."⁵⁷ At least one MCSO deputy was at the scene of the traffic stop when Officer [REDACTED] and the canine unit walked around [REDACTED] truck and the canine alerted to the presence of contraband at the vehicle's right rear bumper and both passenger doors. Similarly, at least one MCSO deputy was present when the canine unit alerted to the presence of contraband in the truck's cabin, and Officer [REDACTED] reported the results of this search to MCSO Detective [REDACTED]. Given the MCSO's close involvement in the traffic stop, the OCR concludes that the MCSO had probable cause to search the vehicle based on the canine unit's positive alerts.⁵⁸

While the MCSO and SPPD personnel did not locate contraband when they searched the truck cabin and bed, they were unable to search for compartments underneath the truck. As the Supreme Court has explained, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."⁵⁹ To conduct a safer and more thorough search of the truck, the MCSO transported it and the Complainants to the Moore County Garage (MCG). This was appropriate. When officers have probable cause to search a vehicle, they may move the vehicle to another location to conduct additional searches, even though they lack a search warrant.⁶⁰

⁵⁶ *United States v. White*, 549 F.3d 946, 949 (4th Cir. 2008).

⁵⁷ *Illinois v. Gates*, 462 U.S. 213, 244 n.13 (1983).

⁵⁸ *See Ittenbach*, 2015 U.S. Dist. LEXIS 145008, at *19.

⁵⁹ *United States v. Ross*, 456 U.S. 798, 825 (1982).

⁶⁰ *See Maryland v. Dyson*, 527 U.S. 465, 466 (1999) (reiterating that an officer need not establish exigency before conducting a warrantless search of a vehicle under the automobile exception to the Fourth Amendment's warrant requirement); *United States v. Johns*, 469 U.S. 478, 484 (1985) (explaining that "[t]here is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure"); *United States v. Gastiburo*, 16 F.3d 582, 586 (4th Cir. 1994) (quoting *California v. Acevedo*, 111 S. Ct. 1982, 1986 (1991)); *United States v. Muhammad*, 658 F.2d 249, 252 (4th Cir. 1981); *see also United States v. Donohue*, 764 F.3d 293, 301 (3d Cir.

Before the MCSO deputies transported the Complainants to the MCG, the deputies handcuffed the Complainants; the OCR cannot conclude that this action violates the Fourth Amendment. The MCSO has a policy that permits deputies to use handcuffs to restrain a person's hands to ensure officer safety.⁶¹ While deputies have discretion in using handcuffs, they "should consider handcuffing any person they reasonably believe warrants that degree of restraint."⁶² When the MCSO deputies took the Complainants to the MCG, they still believed, based on the results of the canine's positive alerts, that the Complainants were drug traffickers. Given these circumstances, the deputies' actions were reasonable and consistent with MCSO policy.⁶³

We also conclude that the MCSO did not unnecessarily prolong the Complainants' detention. MCSO deputies took custody of the Complainants at 1:07 p.m. and released them at 2:25 p.m. During these seventy-eight minutes, the deputies transported the Complainants to the MCG and Task Force members conducted a more thorough search of [REDACTED] truck, which included placing the truck on a lift and inspecting its undercarriage. As discussed above, in evaluating whether an officer detained someone for too long, the OCR considers whether the officer acted diligently in investigating the suspect's possible criminal behavior. There is no suggestion in the record that the MCSO deputies acted in a dilatory manner in participating in this aspect of the Task Force's drug investigation, and the OCR accordingly concludes that the length of the detention was reasonable.

While the OCR concludes that the MCSO acted consistent with its Fourth Amendment obligations, we could still find that this Respondent violated Title VI or the Safe Streets Act if there is some evidence that it subjected the Complainants to intentional discrimination because of their membership in a protected class. The record contains no such evidence. Rather, the MCSO has a policy in place that prohibits deputies from engaging in bias-based profiling, requires deputies to report any prohibited bias to their supervisor, and directs the MCSO's Training Office to provide training on the policy. This policy and related training suggest that the MCSO seeks to ensure that its deputies undertake law enforcement activities in a nondiscriminatory manner and to address promptly any alleged violations of that policy. The Complainants suggest that the MCSO did not explain to them why the deputies were detaining them and why they were searching [REDACTED] truck. The MCSO acknowledges that it did not provide that information to the Complainants, but it explained to the OCR that providing that information would have compromised the ongoing Task Force investigation. Given this explanation, the OCR concludes that the MCSO's failure to provide information to the Complainants in response to their request is not evidence of intentional discrimination based on their race, color, or national origin.

2014). Because the OCR concludes that the MCSO had probable cause to believe that [REDACTED] vehicle contained drugs, we need not determine whether the oral and written consent that [REDACTED] provided to the MCSO was voluntary.

⁶¹ MCSO, Policy No. 1101, Handcuffing and Restraints 2 (Oct. 10, 2016).

⁶² *Id.*

⁶³ See *Wright v. St. Louis Bd. of Police Comm'rs*, Case No. 4:12CV00107 AGF, 2014 U.S. Dist. LEXIS 117097, *42-43 (E.D. Mo. Aug. 22, 2014).

IV. Conclusion

Following a careful review of the record in this matter, the OCR finds that the SPPD and the MCSO did not violate the nondiscrimination provisions of Title VI or the Safe Streets Act in interacting with the Complainants. Therefore, we are administratively closing this Complaint. Even though we take this action, we recognize that the Complainants believe that the Respondents treated them unfairly and without dignity. Because of this encounter, the Complainants view law enforcement officers in Moore County with suspicion and are afraid to travel there. While we conclude that the SPPD and the MCSO did not discriminate against the Complainants, based on the legal test that applies to their claims, we do not seek to diminish their feelings of embarrassment and fear.

The OCR's closure of this matter is limited to its facts and does not preclude the DOJ from taking additional appropriate action to evaluate the SPPD's and the MCSO's compliance with any of the laws enforced by the DOJ. Moreover, the OCR's closure of this matter does not affect the SPPD's and the MCSO's obligations to comply with all applicable federal laws and regulations, provided that the Respondents remain subject to such laws and regulations. Finally, the SPPD and the MCSO should be mindful that federal law protects the Complainants from retaliation for having filed this Complaint. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

Sincerely,

X 

Michael L. Alston

Director

Signed by: MICHAEL ALSTON

cc:



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