



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

April 12, 2011

Patrick A. Stough
Assistant City Attorney
McNally, Fox, Grant & Davenport
100 Habersham Drive
Fayetteville, Georgia 30214-1381

Re: Notice of Findings
v. Union City Police Department (10-OCR-0688)

Dear Mr. Stough:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Union City Police Department (UCPD), in connection with the administrative Complaint that (Complainant) has filed against the UCPD. In his Complaint, the Complainant alleges that officers with the UCPD discriminated against him based on race (African American) in connection with an August 11, 2010, traffic stop and a September 3, 2010, arrest.

The OCR has completed our review of the documentation provided by both the UCPD and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges that the following occurred on August 11 and September 3, 2010:

At approximately 11:59 a.m. on August 11, Officer of the UCPD stopped the Complainant's vehicle in Union City, Georgia, and issued the Complainant a ticket for improper use of a seatbelt. The Complainant explained to Officer that he had temporarily removed his seatbelt while he was stopped at a stop sign in order to reach for his phone, but Officer proceeded to issue him a traffic citation for failure to wear a seatbelt in violation of Ga. Code Ann. § 40-8-76.1 (2011). The Municipal Court of Union City subsequently found the Complainant guilty of failure to wear a seatbelt and issued him a fine.

On the afternoon of September 3, the Complainant went to the Union City Municipal Court, which is located in an adjacent building to the UCPD, to discuss the above-referenced citation. While the Complainant was speaking with one of the court clerks in the lobby of the court services building, the Complainant believes that another clerk contacted the UCPD and notified the UCPD that the Complainant was in the building. Officer of the UCPD arrived in the lobby of the court services building and told the Complainant to turn around and put his hands on the wall. Officer told the Complainant that the Complainant was going to jail, and asked the Complainant if he had been threatening a woman. Officer told the Complainant that if the Complainant moved the wrong way Officer would break every bone in his body. The Complainant told Officer that Officer will never put his hands on another black man again, and Officer replied, “[f]uck you, nigger.” Officer put handcuffs on the Complainant and took the Complainant to the jail located in the back of the building, and Officer and another UCPD officer threw the Complainant down on the ground and began beating the Complainant by punching him in his head, kneeling him in his ribs, and jumping on his back. The other officer pointed a Taser at the Complainant’s face and said, “[n]igger, if you move I will shoot your head off with these volts and kill your ass silently in here.” One of these officers also stated, “[n]igger, we control you. You’re going to be just like the other niggers.” Two other UCPD officers stood nearby and watched while this was occurring. Officer then dragged the Complainant on the floor toward a holding cell, and continued to punch and knee the Complainant in the ribs. The officers’ conduct caused bruising to the Complainant’s ribs, forearms, and knuckles. Officer arrested the Complainant for disorderly conduct in violation of Ga. Code Ann. § 16-11-39 (2011), possession of marijuana in violation of Ga. Code Ann. § 16-13-30 (2011), and obstructing a law enforcement officer in violation of Ga. Code Ann. § 16-10-24 (2011).

After the Complainant was released from jail, Officer returned the Complainant’s drivers license but did not return his keys to his house or truck. Subsequent to September 3, the Complainant called the UCPD to inquire about his keys, and an employee with the UCPD told him, “[n]igger, don’t call here anymore.” The OCR understands that the above-referenced criminal charges are still pending against the Complainant at this time.

The Complainant believes that the UCPD officers’ actions are based on his race. As evidence of discriminatory intent, the Complainant states that UCPD officers have been harassing him since 2005, including improperly arresting him or issuing him tickets and calling him racial slurs. For instance, on two occasions over the past few years, Officer has come to the Complainant’s home and called him a “nigger.” Additionally, on approximately May 12, 2007, the Complainant was walking down the street when he saw of the UCPD and took a picture of him. Shortly thereafter, several UCPD officers pulled up alongside the Complainant, grabbed the Complainant’s camera and took the memory card out of his camera, beat the Complainant, and arrested the Complainant for disorderly conduct. Officer of the UCPD transported the Complainant to the jail on May 12 and called him a “nigger” numerous times; when the Complainant stated that Officer must hate black individuals, Officer replied, “[h]ell yeah.”

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In the UCPD's response to the OCR's Notice of Discrimination Complaint and Data Request, the UCPD stated that Officer [redacted] stopped the Complainant's vehicle on August 11, 2010, after he observed the Complainant not wearing a seatbelt. The UCPD provided the OCR with a copy of the Uniform Traffic Citation that Officer [redacted] issued to the Complainant, in which Officer [redacted] noted that the Complainant argued that he had his seatbelt on, but that it was under his arm.

In regard to the September 3, 2010, incident with the Complainant, the UCPD stated in its data response that when the Complainant arrived at the court services building, Officer [redacted] of the UCPD, who was stationed at the court services building, recognized the Complainant from a warning poster that was posted at the court services building and at the UCPD. The UCPD explained that in March 2010, a representative of a local media outlet contacted the UCPD to state that the Complainant had contacted the media outlet to complain that he was being harassed by the UCPD and that the Complainant made threatening statements to the media outlet that he was going to start shooting citizens and police officers in Union City. The UCPD provided the OCR with a copy of the incident report documenting this telephone call, along with a copy of the warning poster that the UCPD created to warn UCPD and Union City Municipal Court employees of the Complainant's threats and to instruct employees to contact the UCPD if they observed the Complainant on the property.

According to the UCPD's data response, when Officer [redacted] observed the Complainant she contacted the UCPD, and Officer [redacted] Officer [redacted] and Officer [redacted] arrived at the lobby of the court services building. The UCPD said that for officer safety, Officer [redacted] immediately instructed the Complainant to turn around and put his hands on the wall so that the officers could frisk him for firearms, and that the Complainant immediately became agitated and refused to comply with any commands. The UCPD provided the OCR with the incident report that Officer [redacted] completed regarding the September 3 incident, in which Officer [redacted] stated that the Complainant started using vulgarities, removed his right hand from the wall, and attempted to turn around toward Officer [redacted]. The UCPD stated in its data response that the officers had to apply some force through joint manipulation and control techniques in order to restrain the Complainant, and that during this struggle Officer [redacted] drew his electronic control device, pointed it at the Complainant and warned the Complainant that he would be Tased if he did not comply. The Complainant complied with the officers' commands after Officer [redacted] drew his Taser, and the officers handcuffed the Complainant and arrested him for obstruction of a law enforcement officer and disorderly conduct. The UCPD further stated that when the officers were escorting the Complainant to the UCPD offices the Complainant became agitated and combative again, and that the officers placed the Complainant on the ground so that they could re-establish control over the Complainant. The UCPD noted that the Complainant did not complain of any injuries when he was being booked into the South Fulton Regional Jail, and that the jail personnel did not make note of any injuries.

The UCPD explained in its data response that after the UCPD officers arrested and subdued the Complainant, Officer [redacted] walked outside to where the Complainant's

vehicle was parked near the court services building to determine whether the Complainant had any weapons inside his vehicle in plain view. Officer [redacted] looked into the Complainant's vehicle and observed a clear plastic bag containing a green leafy material located on the center console in plain view, and reached inside an open window and collected the bag and subsequently charged the Complainant with possession of marijuana.

As noted above, the UCPD provided the OCR with the incident report regarding the UCPD's September 3 encounter with the Complainant, along with the use of force report that Officer [redacted] completed regarding the displaying of his Taser. The narrative explanations contained in these reports are consistent with the explanation that the UCPD proffered to the OCR in its data response.

Policies and Procedures Relevant to the Allegations

The UCPD provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The UCPD provided the OCR with UCPD Procedure No. 1-11-1, "Use of Non-Deadly Force" (June 1, 2010), which states that officers may use reasonable and necessary force to preserve the peace, to prevent the commission of an offense, to overcome resistance to arrests and searches, to prevent escapes from custody, and to defend against unlawful violence. The policy further states that applied force should be limited to the minimum extent necessary. In regard to the use of electronic control devices or Tasers, the UCPD provided UCPD Procedure No. 1-11-5, "Electronic Control Devices" (June 1, 2010), which states that officers shall deploy a Taser in accordance with UCPD Procedure No. 1-11-1, and at the same force continuum level as chemical agents. Procedure No. 1-11-5 further states that if practical, officers shall verbally warn a subject that the subject will be Tased if the subject does not comply with verbal commands.

Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that "[n]o person in the United States shall, on the grounds 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. Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the UCPD receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265 (1977); Burton v. City of Belle Glade, 178 F.3d 1175, 1202 (11th Cir. 1999). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory

statements. Village of Arlington Heights, 429 U.S. at 265, Elston v. Talladega County Board of Education, 997 F.2d 1394, 1406 (11th Cir. 1993).

Based on the OCR's review of the information that has been submitted by both the Complainant and the UCPD, the OCR finds that the evidence is insufficient to demonstrate that any of the officers' actions in connection with the August 11 and September 3 incidents constitute intentional discrimination based on race. According to the information that is before us, it does not appear that any of the officers' actions were departures from established norms or procedures. In regard to Officer [redacted] August 11 traffic stop of the Complainant, under federal law, a police officer's decision to stop a vehicle is reasonable under the Fourth Amendment when an officer has probable cause to believe that a traffic violation has occurred. Whren v. United States, 517 U.S. 806, 810 (1996); United States v. Simmons, 172 F.3d 775, 778 (11th Cir. 1999). As discussed above, the information provided by the UCPD indicates that Officer [redacted] stopped the Complainant's vehicle after observing the Complainant without a seatbelt in violation of state law. The Complainant admitted to Officer [redacted] and to the OCR that he temporarily removed his seatbelt to reach for his phone, although it is unclear to the OCR whether he completely removed his seatbelt or just removed it from his shoulder and placed it under his arm. Nevertheless, it appears that Officer [redacted] had probable cause to stop the Complainant's vehicle for failure to wear a seatbelt, and the Municipal Court of Union City upheld the Complainant's traffic citation for failure to wear a seatbelt.

The evidence before the OCR further demonstrates that the UCPD's actions on September 3 appear to comply with established norms or procedures. As discussed above, UCPD Procedure No. 1-11-1 states that officers may use reasonable and necessary force to overcome resistance to arrests and searches and to defend against unlawful violence. The UCPD Procedure No. 1-11-5 states that such reasonable and necessary force may include the deployment of a Taser, and instructs officers to verbally warn a subject if practicable that the subject will be Tased.

Based on the information that is before the OCR, it appears that when the UCPD officers observed the Complainant on September 3, the officers ordered the Complainant to face the wall and attempted to frisk him for weapons based on a report that the Complainant had threatened to shoot police officers and citizens, which had led the UCPD to create a poster warning employees of the Complainant's threats. The information contained in the UCPD's data response and attached incident and use of force reports indicates that the Complainant became agitated when the officers began to frisk him and refused to comply with the officers' instructions, which led the officers to apply some force to the Complainant and Officer [redacted] to deploy his Taser. The UCPD provided the OCR with a statement from Officer [redacted] who witnessed the officers interacting with the Complainant in the lobby of the court services building. In this statement, Officer [redacted] states that when Officer [redacted] instructed the Complainant to put his hands on the wall so that he could be frisked for weapons, the Complainant immediately became angry and refused to comply with Officer [redacted] instructions, and that Officer [redacted] then drew his Taser and ordered the Complainant to comply with the officers' commands. Based on the evidence that is before the OCR, it appears that the Complainant was

physically resisting the officers' attempts to frisk him, and the evidence is insufficient to demonstrate that the officers applied excessive force or deployed a Taser in violation of UCPD policies or procedures. It appears that the officers' frisk of the Complainant also complies with federal law, as police officers may frisk an individual for weapons based on a reasonable suspicion that an officer's safety or the safety of others is in danger. Terry v. Ohio, 392 U.S. 1, 27 (1968), United States v. White, 593 F.3d 1199, 1202 (11th Cir. 2010).

The UCPD's data response and incident and use of force reports further state that as the officers were transporting the Complainant to the jail, the Complainant again began to resist and to pull away from the officers, which led the officers to place the Complainant on the ground to gain control over the Complainant. Again, the evidence before the OCR appears to indicate that the Complainant was resisting the officers as they attempted to transport him to the jail and is insufficient to demonstrate that the officers applied excessive force in violation of UCPD policy or procedures.

The UCPD also arrested the Complainant on September 3 for possession of marijuana, after Officer [redacted] looked into the Complainant's vehicle parked outside of the court services building and observed a clear plastic baggie containing a green leafy substance consistent with marijuana on top of the center console. Under federal law, a police officer may seize an object from an automobile without a warrant when an officer is lawfully located in the place from which the object can be plainly viewed and has a lawful right of access to the object itself, and the incriminating character of the object is immediately apparent. United States v. Smith, 459 F.3d 1276, 1290 (11th Cir. 2006). Here, Officer [redacted] was on a public street when he looked into the Complainant's vehicle and observed an object consistent with marijuana in the Complainant's vehicle in plain view. Accordingly, his seizure of the marijuana appears to comply with federal law.

As evidence of discriminatory intent, the Complainant alleges that the UCPD officers involved in his September 3 arrest called the Complainant a "nigger" during the course of his arrest. However, in its data response, the UCPD stated that none of the officers who were involved in the arrest of the Complainant on September 3 made any racial slurs or derogatory comments to the Complainant. In Officer [redacted] statement, she says that during the interaction between the Complainant and Officers [redacted] and [redacted] she did not hear any of the officers use the term "nigger" or use any profanity or derogatory language, and that the only profanity and vulgar language she heard was from the Complainant. The UCPD further stated in its data response that no UCPD employee called the Complainant a "nigger" over the telephone subsequent to September 3. As background evidence of discriminatory intent, the Complainant also alleges that Officer [redacted] came to the Complainant's home on two occasions over the past few years and called the Complainant a "nigger." In its data response, the UCPD said that Officer [redacted] has never visited the Complainant's home and called him this racial slur. As for the Complainant's allegation that Officer [redacted] called the Complainant a "nigger" on May 12, 2007, the UCPD said that Officer [redacted] is no longer employed with the UCPD; accordingly, it appears that the UCPD can not determine the accuracy of this allegation.

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However, the UCPD noted that during Officer _____ tenure with the UCPD, he never received any complaints in reference to racial profiling or using racial slurs. According to the UCPD, on May 12, 2007, _____ observed the Complainant taking photographs of secure areas of the jail, and based on a fear that the Complainant was gathering intelligence information on the jail or on undercover agents or informants located within or accessing the jail, _____ requested that Officer _____ question the Complainant regarding why he was taking photographs of the jail. The UCPD stated that the Complainant became very agitated and combative and refused to answer any of Officer _____ questions or comply with his instructions, and that the only force that Officer _____ used against the Complainant was to overcome the Complainant's resistance to being handcuffed. The UCPD provided the OCR with the incident report for the Complainant's May 12 arrest, which is consistent with the information contained in the UCPD's data response.

According to the information that the UCPD provided to the OCR, the UCPD does not possess any video or audio tapes of any of the above-referenced incidents. Based on all of the information that is before the OCR, which includes a witness statement from Officer _____ regarding the September 3 incident, the OCR is unable to conclusively determine whether UCPD officers made discriminatory statements to the Complainant on September 3 or on prior occasions. However, it does not appear that the UCPD or Officers _____ or _____ has a history of discrimination. According to the documentation submitted by the UCPD, since January 1, 2008, there have been no complaints or lawsuits filed by members of the public alleging race discrimination by the above-referenced officers or by the UCPD.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that UCPD officers acted with an intent to discriminate against the Complainant on August 11 and September 3, 2010, in violation of Title VI and the Safe Streets Act. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director

cc: Assistant Chief Lee Brown
Union City Police Department
5060 Union Street
Union City, GA 30291