



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

*Washington, D.C. 20531*

April 12, 2013

Carrie E. Lathan, Assistant City Attorney  
Office of the City Attorney, City of Daytona Beach  
P.O. Box 2451  
Daytona Beach, FL 32114

Re: Notice of Findings  
[REDACTED] v. Daytona Beach Police Department (13-OCR-87)

Dear Ms. Lathan:

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 Daytona Beach Police Department (DBPD), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the DBPD. In his Complaint, the Complainant alleges that the DBPD discriminated against him based on race (African American).

The OCR has completed our review of the documentation provided by both the DBPD 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 the following:

On August 4, 2012, the Complainant was walking down the street near the intersection of Martin Luther King Boulevard and Bellevue Street when he noticed a DBPD patrol vehicle stopped at a light at this intersection. Suddenly two DBPD officers, a white female officer and a white male officer, jumped out of the vehicle, pulled out their guns and pointed the guns at the Complainant. The officers then made racial and derogatory slurs to the Complainant, stating, “[n]igger, put your hands on your head,” and telling him to move his “monkey ass” or they were going to shoot. The officers handcuffed the Complainant, pushed him to the ground, and searched his pockets, where they found marijuana and a BB gun. One of the officers stated to the Complainant, “[n]igger, we are taking you where all your kind should be,” and they arrested him for possession of marijuana. The officers then led the Complainant to the patrol vehicle, where they took

his money and said, “[n]igger, if you didn’t get your forty acres and a mule what makes you think you deserve our money.” The officers did not tell the Complainant what they initially stopped him for; the Complainant subsequently saw a police report that indicated that there was a robbery nearby and that the Complainant matched the description of the robber. The Complainant was arrested for carrying a concealed weapon and possession of marijuana. The Complainant believes that the officers’ conduct was due to his race.

In the DBPD’s Position Statement regarding the Complaint, the DBPD asserted that the Complainant’s allegations are completely fabricated, that the Complainant was arrested because he was in the area of a reported armed robbery and he fit the description of the suspect, and that the officers did not make the alleged racial slurs. The DBPD stated that at approximately 1:00 a.m. the DBPD received a 911 call from an individual who said he had been the victim of an armed robbery while walking on Seagrave Avenue, between South Street and Bellevue Avenue. The individual described the suspect as a young black male wearing an orange striped shirt and wearing dark glasses and a hat, and said he was walking with a female. The two DBPD officers referenced in the Complainant’s Complaint heard the call on the radio and subsequently spotted the Complainant, who was wearing a striped shirt<sup>1</sup> and had on dark glasses, walking with a female in the general vicinity of the reported robbery. One of the officers noticed a bulge in the Complainant’s waistband that she suspected was a gun, and she yelled out “gun” as the officers exited the police vehicle to warn other officers in the area. The officers then approached the Complainant and searched him, and discovered a BB gun, marijuana, and some money. The DBPD noted that the DBPD was not able to locate the victim after the initial 911 call and could not pursue an armed robbery charge against the Complainant.

The DBPD provided the OCR with the incident report and written affidavits from the two responding officers which are consistent with this account. In their written affidavits, both of the officers denied making any racial or derogatory comments to the Complainant or hearing the other officer make any such statements. The DBPD also provided the OCR with written affidavits from four other DBPD officers who subsequently arrived at the scene; all of these officers stated that they did not hear any DBPD officer use any racial or derogatory language at the scene. One officer stated that he heard the Complainant yelling that he had an attorney and that he was going to get paid and that the arrest occurred because he is black.

#### Policies and Procedures Relevant to the Allegations

The DBPD provided the OCR with its written policy relating to discrimination, Directive No. 71.3, *Bias Based Profiling* (effective Nov. 23, 2009). According to Directive 71.3, it is the policy of the DBPD to provide individuals with the highest degree of law enforcement services, regardless of race, ethnic origin, gender, age, income status, sexual orientation, and religious and political affiliation. Directive 71.3 prohibits the use

---

<sup>1</sup> According to the Complainant’s mug shot picture that the DBPD provided, the Complainant was wearing a pink shirt with thin green and white stripes at the time of his arrest.

unlawful bias based profiling, which includes the exercise of discretionary police authority based solely upon an individual's race, in accordance with the laws of the Federal government, the State of Florida, and ordinances of the City of Daytona Beach. Directive 71.3 further states that sworn officers must attend training on bias based profiling as required by the DBPD, according to the Criminal Justice Standards Training Commission guidelines.

### 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 DBPD 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. Metro.Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1202 (11<sup>th</sup> 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. *Vill. of Arlington Heights*, 429 U.S. at 265, *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11<sup>th</sup> Cir. 1993).

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the DBPD, and finds that the evidence is insufficient to demonstrate that the arresting officers discriminated against the Complainant based on race. Based on the information that is before us, it appears that the officers' actions are consistent with the DBPD's norms or procedures. The evidence demonstrates that the officers heard a call regarding a reported armed robbery, and that they stopped the Complainant because he was in the general area where the robbery reportedly occurred and matched the description of the suspect. While it appears that suspect was described as wearing an orange striped shirt, and the Complainant had on a pink striped shirt, due to the similarities in color and the fact that the incident occurred at night where there is decreased visibility it is not unreasonable for the officers to have stopped the Complainant, especially considering he matched other aspects of the description. The evidence is also insufficient to demonstrate that the officers engaged in bias based profiling in violation of Directive 71.3. While the Complainant alleges that the officers called him racial slurs and made other derogatory statements, the responding officers both denied making such statements, and four other officers at the scene denied hearing any such statements. The OCR finds that the evidence is insufficient to demonstrate that the DBPD officers' conduct on August 4 departed from any established norms or procedures or that the officers made any discriminatory statements.

Carrie E. Lathan, Assistant City Attorney

April 12, 2013

Page 4

Based on the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that the DBPD discriminated against the Complainant in violation of Title VI or the Safe Streets Act. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director