



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

*Washington, D.C. 20531*

November 3, 2014

Sarah J. Martin  
Assistant Jefferson County Attorney  
Jefferson County Attorney's Office  
531 Court Place, Suite 900  
Louisville, KY 40202

Re: Notice of Findings  
[REDACTED] v. Louisville Metro Police Dep't (14-OCR-0462)

Dear Ms. Martin:

Thank you for the position statement and relevant documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) in regard to the administrative Complaint that [REDACTED] (Complainant) filed against your client, the Louisville Metro Police Department (LMPD). In his Complaint, the Complainant alleges that the LMPD discriminated against him based on race in violation of Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), and their implementing regulations.

The OCR has completed our review of the documentation provided by both the LMPD 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 May 21, 2013, at approximately 11:40 a.m, the Complainant, who is Black, was walking toward South 1<sup>st</sup> Street and Broadway Street in Louisville, Kentucky, to catch a bus to the airport. The Complainant observed the bus drive past him while he was still walking, and he called a cab company to request a cab to take him to the airport. The Complainant had to give the cab company a specific location to arrive at, so he gave them the address of a house that he was near, [REDACTED] [REDACTED]. The Complainant decided to wait for the cab at this address, and he sat down on a set of stairs that were adjacent to the public sidewalk and approximately fifty feet in front of the house at [REDACTED] [REDACTED]. While the Complainant was waiting for a cab, a Louisville Metro Police

Department (LMPD) vehicle pulled up to the curb and a Black Male LMPD officer (hereinafter referred to as “Stopping Officer”) got out of the vehicle, approached the Complainant, and asked the Complainant if he lived at [REDACTED] [REDACTED]. The Stopping Officer requested the Complainant’s identification and asked him what he was doing there, and the Complainant explained that he was waiting for a cab to take him to the airport and that he attended college in South Carolina. The Stopping Officer then asked the Complainant where he was coming from; as a result of not knowing what to think and being caught off-guard, the Complainant responded “South Carolina.” The Stopping Officer inquired where he was coming from in Louisville, and the Complainant said that he walked over from a house on South 3<sup>rd</sup> Street. The Complainant asked the Stopping Officer if the Complainant looked suspicious, and the Stopping Officer said yes; the Complainant told the Stopping Officer that he could look through the Complainant’s bags if he wished, and the Stopping Officer did so. Shortly thereafter, a White Male LMPD officer (hereinafter referred to as “Responding Officer”) arrived on the scene. The officers continued questioning the Complainant, and the Stopping Officer went to his vehicle to check the Complainant’s identification. While they were waiting for the Stopping Officer to return, the Responding Officer told the Complainant that he was acting like “something is wrong” with him and asked the Complainant if he had ever been diagnosed with a psychological illness. The Complainant stated that in the past he was diagnosed with depression, and the Responding Officer said “no wonder you act so stupid” and said that if it was up to him, he would arrest the Complainant because he seemed incoherent and unstable.

The Stopping Officer returned and told the Complainant that his identification was clear, but that it was his discretion whether to issue the Complainant a citation and that he was going to in this case because the Complainant “was all over the place” and was “not all there.” The Stopping Officer issued the Complainant a citation for criminal trespassing, and the Complainant questioned how he could receive a citation when he was just sitting near the sidewalk. The officers answered that the Complainant was sitting on someone’s private property.

The Complainant believes that the only reason that the officers interrogated him, verbally abused him, and issued him a citation is because of his race, and that they would not have acted this way if he was White. The Complainant filed a complaint with the LMPD, but the Complainant asserts that the LMPD has not yet notified him of the results of the investigation.

In its Position Statement, the LMPD denied that the LMPD officers treated the Complainant differently because of his race. The LMPD stated that its Professional Standards Unit (PSU) conducted a thorough investigation into the Complainant’s complaint filed with the LMPD, and that the investigation revealed that the Complainant’s experience with the officers in question had no relation to his race. According to the PSU’s investigative file provided to the OCR, the Stopping Officer told the PSU that he observed the Complainant running towards 1<sup>st</sup> Street, which is an area known for frequent burglaries, and that he initially thought the Complainant may have

shoplifted from a nearby convenient store. The Stopping Officer denied stopping the Complainant because of his race. The Stopping Officer said that he cannot recall specifically what the Complainant said to him but that he kept making “really odd statements” and was not making a lot of sense, and that when the Stopping Officer asked the Complainant where he was coming from the Complainant said he was coming from South Carolina. According to the Stopping Officer, he issued the Complainant a citation because he was trespassing on someone’s property and the Stopping Officer wanted to document the Complainant’s location in case “something hinky was going on.”

The Responding Officer told the PSU that when he arrived on the scene the Stopping Officer told him that the Complainant was running through an alley and appeared to change directions, and the Responding Officer noted to the PSU that there have been a lot of burglaries in that alley. The Responding Officer said that he noticed that the Complainant seemed very fidgety and nervous and that when he spoke to the Complainant the Complainant changed his story regarding where he was coming from and kept cutting off the Responding Officer when he tried to explain the reason for the stop. The Responding Officer said that the Complainant was “all over the place” and seemed really disorganized, and that pursuant to the crisis intervention team training that he has received he asked the Complainant if he has ever been diagnosed with a mental illness. The Responding Officer said that he does not recall telling the Complainant “no wonder you act so stupid,” and the Stopping Officer said he did not hear the Responding Officer make this comment.

The PSU found that based on the officers’ observations of what they felt was erratic behavior and incoherent statements, it was reasonable based on crisis intervention team training to ask the Complainant whether he has a mental illness so that the officers could determine what they were dealing with. The PSU noted that both officers denied that they made disparaging remarks to the Complainant and that absent independent witnesses there is no way to prove whether such remarks were made.<sup>1</sup> The PSU found that based on the officers’ stated observations of the Complainant combined with the fact that the area of the encounter is known for frequent burglaries, the Stopping Officer’s actions appear to be appropriate and in accordance with LMPD Standard Operating Procedures (SOP).

#### Policies and Procedures Relevant to the Allegations

The LMPD provided the OCR with the sections of the LMPD SOPs that were the subject of the PSU’s review. Section 8.8.1 of SOP No. 8.8, *Profiling* (revised March 10, 2013), strictly prohibits LMPD members from profiling, which includes initiating a stop or detention or making discretionary decisions during the course of an enforcement activity solely based on an individual’s actual or perceived race, national origin, gender, sexual orientation, religion, socio-economic status, or disability. Section 5.1.11 of SOP No. 5.1,

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<sup>1</sup> During an October 30, 2014, telephone conversation with OCR attorney Shelley Langguth, you stated that there is no audio or video footage of the Complainant’s May 21, 2013, encounter with the LMPD.

*Rules and Conduct* (revised August 10, 2012), states that members shall be courteous and civil to the public. Additionally, Section 5.1.32 of SOP No. 5.1 states that officers are expected to seek out criminal activity, respond to calls for service, perform assigned job tasks and take appropriate action when performing their duties.

The PSU found that the allegations pertaining to courtesy against both the Stopping Officer and Responding Officer were not sustained and that the allegation of profiling against the Stopping Officer was unfounded, and exonerated the Stopping Officer of the allegation pertaining to failure to take appropriate action.<sup>2</sup>

### Legal Analysis

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 Safe Streets Act, under which the LMPD 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). 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. *Id.*

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the LMPD, and finds that the evidence is insufficient to demonstrate that the LMPD discriminated against the Complainant based on race. The evidence before the OCR is insufficient to demonstrate that the LMPD officers involved in this incident acted in a manner that was contrary to SOPs 8.8 and 5.1. The Stopping Officer said that he initially approached the Complainant and began to question him because he observed the Complainant running in an area known to have frequent burglaries, and that he issued the Complainant a citation because he was trespassing on private property and to document this encounter. The OCR finds that the evidence is insufficient to demonstrate that the proffered reasons for the initial encounter and the issuance of the citation are pretextual and that the Stopping Officer’s actions were based on the Complainant’s race. Both officers testified that the Complainant appeared to be incoherent in his answers to their questions and the Complainant himself states that he was caught off-guard when the officers started questioning him and initially responded that he was coming from South Carolina. The officers deny the Complainant’s allegation that the Responding Officer referred to the Complainant as “stupid” and based on the available evidence the OCR is unable to determine if the Responding Officer said this to

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<sup>2</sup> While the Complainant told the OCR that the LMPD did not notify him of the result of the PSU’s investigation, the LMPD provided the OCR with a copy of a December 13, 2013, letter addressed to the Complainant informing him of the PSU’s specific findings.

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the Complainant and exactly what else the officers said. However, the evidence is insufficient to demonstrate that the officers' questions or remarks regarding the Complainant's mental health status and his answers to their questions were due to his race.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that the LMPD acted with an intent to discriminate against the Complainant in violation of Title VI or the Safe Streets Act. Therefore, we are closing the administrative Complaint filed by the Complainant. However, the LMPD should ensure that it is training its officers to avoid making any remarks to individuals that may be perceived as disparaging or belittling, particularly remarks regarding an individual's mental health status.

Sincerely,  
/s/  
Michael L. Alston  
Director