



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

May 8, 2012

Dan Hartzog, Jr.
Cranfill, Sumner & Hartzog LLP
5420 Wade Park Blvd., Suite 300
P.O. Box 27808
Raleigh, North Carolina 27611-7808

Re: Notice of Findings
[REDACTED] v. Kannapolis Police Department (12-OCR-0025)

Dear Mr. Hartzog:

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 Kannapolis Police Department (KPD), in connection with the administrative Complaint that [REDACTED] (Complainant) has filed against the KPD. In her Complaint, the Complainant alleges that Officer [REDACTED] of the KPD discriminated against her based on race (African American) and sex (Female) in connection with citations that he issued her on three separate occasions.

The OCR has completed our review of the documentation provided by both the KPD 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 January 7, June 29, and September 16, 2011:

On January 7, 2011, the Complainant was in her vehicle parked in a fire lane in front of the Food Lion grocery store in Kannapolis, and Officer [REDACTED] issued the Complainant a citation for illegal parking in violation of N.C. Gen. Stat. § 20-162 (2011)¹. When the Complainant went to court for the citation, she overheard another woman speaking to the judge. The Complainant learned that Officer [REDACTED] gave this woman, who is Caucasian, a warning instead of citation for parking in the same fire lane that the Complainant was parked in. On June 29, 2011, the Complainant was traveling north on

¹ N.C. Gen. Stat. § 20-162(b) prohibits parking in area public area that is designated as a fire lane.

South Main Street when she passed a vehicle in front of her in a section of the roadway that had broken yellow lines that permitted passing. Officer [REDACTED] who was traveling behind the Complainant, pulled over the Complainant's vehicle and issued her a citation for improper passing upon the crest of a grade or upon a curve in the highway in violation of N.C. Gen. Stat. § 20-150 (2011)² and for having a frame around her license plate in violation of N.C. Gen. Stat. § 20-63 (2011)³. During this encounter, the Complainant reminded Officer [REDACTED] of the previous incident when he issued her a citation for parking in a fire lane, and asked Officer [REDACTED] why he provided the Caucasian woman with a warning while he issued the Complainant a citation for the same offense. Officer [REDACTED] asked the Complainant, "[a]re you calling me a racist?" and said that the Complainant offended him. The Complainant filed a complaint with the KPD on June 29 alleging that Officer [REDACTED] actions in connection with the January 7 and June 29 incidents were unfair and discriminatory. A sergeant with the KPD subsequently contacted the Complainant and told her that the charges in connection with the June 29 traffic stop were being dropped. The Complainant never received a response from the KPD in regard to her complaint.

On September 16, 2011, the Complainant was driving her taxicab, which has tinted windows, on Leonard Avenue when she saw a KPD vehicle in the next lane traveling in the opposite direction. The KPD vehicle made a u-turn and got behind the Complainant's taxicab and pulled her over. Officer [REDACTED] then approached the Complainant's taxicab and issued her a citation for failure to have a seat belt properly fastened in violation of N.C. Gen. Stat. § 20-135.2A (2011)⁴. The Complainant asserts that she had her seat belt on the entire time she was driving and that it was properly fastened. The Complainant had a passenger in her taxicab at the time of the traffic stop, and this passenger told the OCR that the Complainant did have her seat belt on prior to and at the time Officer [REDACTED] pulled over her vehicle. The Complainant asserts that Officer [REDACTED] actions in regard to these incidents are due to her race and sex.

In the KPD's response to the OCR's Notice of Discrimination Complaint and Data Request (Data Response), the KPD disputed that Officer [REDACTED] was motivated by racial or sex bias in regard to any of the above-referenced incidents, and provided copies of written statements that Officer [REDACTED] prepared on February 5, 2012, discussing the incidents in question. As for the January 7 incident when Officer [REDACTED] issued the Complainant a citation for illegal parking, Officer [REDACTED] stated that he issued the Complainant a citation because she was illegally parked in the fire lane outside the Food

² N.C. Gen. Stat. § 20-150(b) prohibits drivers from passing a vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway when the driver's view is obstructed within 500 feet.

³ N.C. Gen. Stat. § 20-63(g) prohibits individuals from covering a registration plate with any frame that makes a portion of the plate illegible.

⁴ This statute requires that every occupant of a vehicle have a seat belt properly fastened around his or her body at all times when the vehicle is in motion.

Lion. In regard to the Complainant's assertion that he provided a Caucasian women with a warning for the exact same offense, Officer ██████ recalled having contact with a Caucasian woman at the Food Lion where he checked the validity of her driver's license and issued her a citation for driving with a revoked license; however, Officer ██████ said he does not recall giving the woman any type of verbal warning and the KPD said in its data response that there is no record of any written warning. In an April 25, 2012, email to OCR attorney Shelley Langguth, you indicated that Officer ██████ told you that the Caucasian woman was parked in the parking lot to the side of the Food Lion and was not parked in the fire line where the Complainant was parked, as the Complainant had asserted.

As for the June 29, 2011, citation for improper passing and a license plate frame violation, Officer ██████ stated that he was on patrol when he saw a vehicle traveling in front of him unsafely overtake and pass another vehicle which was in front of it, in that the vehicle did not pass far enough to the left, did not signal, and did not provide enough space between it and the vehicle it was overtaking before returning to its lane of travel. Officer ██████ said that he could not see the tag on the vehicle and did not know who the driver was when he made the decision to stop the vehicle. According to the KPD's Data Response, after the Complainant filed her complaint with the KPD regarding the June 29 incident, Officer ██████ supervisors reviewed the in-car video of the incident and in their opinion the actions of the Complainant did not rise to the level of improper passing; the supervisors consulted with the Cabarrus County District Attorney's Office and an assistant district attorney decided to dismiss the citation.⁵ The KPD noted that this was a judgment call by Officer ██████ supervisors and was not an indication that Officer ██████ acted inappropriately in stopping the Complainant or issuing the citation.

According to Officer ██████ written statements, in regard to the September 16, 2011, incident, Officer ██████ was patrolling Leonard Avenue and Dale Earnhardt Boulevard when he observed a taxicab turn onto Leonard Avenue, and when the taxicab passed him he could see that the female driver did not have her seat belt on because he could see both straps from the seat belt side-by-side. Officer ██████ stated that he was not aware of the driver's identity when he pulled over the taxicab. According to Officer ██████, when he explained to the Complainant that he stopped her for not wearing a seat belt, she said that that she had her seat belt on, but that she had pulled it down under her left arm because it scratches her neck. Officer ██████ said he advised the Complainant that having the seat belt under her arm is not properly wearing the seat belt and he issued her a citation.⁶ In your April 25 email to Ms. Langguth, you noted that on April 4, 2012, the court found the Complainant guilty of the seat belt infraction. The

⁵ The KPD provided the OCR with the available video footage from Officer ██████ in-car camera; the footage shows a vehicle traveling in front of Officer ██████ pass the vehicle in front of it. It is difficult to determine the exact manner in which the passing vehicle performed this maneuver.

⁶ In its Data Response, the KPD said that in-car video footage of the September 16 traffic stop no longer exists.

KPD provided the OCR with the KPD Records Management System reports related to these three incidents, and the information in these reports is consistent with the information contained in Officer [REDACTED] written statements.

Lastly, in its Data Response, the KPD denied the Complainant's assertion that she never received a response from the KPD in regard to her complaint. The KPD said that Officer [REDACTED] supervisors conducted a supervisory review of the complaint, and provided the OCR with the report that Sergeant [REDACTED] completed regarding his investigation. In this report, Sergeant [REDACTED] noted that he spoke with Officer [REDACTED] and reviewed the in-car video of the June 29 incident and found that he did not violate any departmental policies relating to his overall conduct and that the Complainant's allegation of racial discrimination is unfounded. The KPD also provided a February 5, 2012, written statement prepared by Sergeant [REDACTED], where he said that he met with the Complainant on two separate occasions to discuss her complaint, and that during the second meeting he informed the Complainant that Officer [REDACTED] supervisors determined that the citation issued to her was not the proper charge for the incident and that the citation was being dismissed, but that the supervisors determined that Officer [REDACTED] conduct was both professional and proper.

Policies and Procedures Relevant to the Allegations

The KPD provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The KPD provided the OCR with KPD General Order 900-04, "Traffic Law Enforcement" (revised October 1, 2007), which states that it is the policy of the KPD to enforce traffic laws and regulations fairly, equitably and uniformly, and that officers must determine the proper enforcement action based on a combination of training, experience, and judgment. Similarly, KPD General Order 900-06, "Parking Enforcement" (revised December 1, 2009), states that it is the policy of the KPD to enforce parking regulations and ordinances in a manner that is impartial, reasonable, and consistent for local citizens and visitors. The KPD also provided the OCR with General Order 900-12, "Traffic Stops" (revised December 29, 2009), which informs officers that legally stopping a vehicle requires a reasonable suspicion that the driver or occupant has committed or is committing a criminal offense or motor vehicle infraction. Lastly, the KPD submitted General Order 500-02, "Internal Affairs" (revised November 1, 2007), which sets forth the internal procedures for the investigation and disposition of alleged misconduct by KPD members, and states that a formal investigation by the police major and selected staff is required for allegations of a serious nature, such as allegations of corruption, brutality, misuse of force, and breach of civil rights, and that complaints of a less serious nature will be investigated and resolved when possible by the immediate supervisor of the accused member.

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 KPD 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. Vill. 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.

Based on the OCR’s review of the information that has been submitted by both the Complainant and the KPD, the OCR finds that the evidence is insufficient to demonstrate that Officer [REDACTED] actions in connection with the above-referenced incidents constitutes intentional discrimination based on race or sex. According to the information that is before us, it does not appear that any of Officer [REDACTED] actions were departures from established norms or procedures. In regard to the January 7 incident, the Complainant does not dispute that she was illegally parked in a fire lane. While she asserts that Officer [REDACTED] did not issue a citation to a Caucasian woman who was parked in the same fire lane, Officer [REDACTED] disputes that the Caucasian woman was parked in the fire lane, and he did issue the woman a citation for driving with a revoked license. The evidence is insufficient that Officer [REDACTED] treated a similarly situated Caucasian woman more favorably than the Complainant and was not enforcing the law equitably in violation of KPD General Orders 900-04 and 900-06.

As for the June 29 and September 16 traffic stops of the Complainant, pursuant to KPD General Order 900-12, officers may stop a vehicle if they have reasonable suspicion that the driver or occupant has committed a motor vehicle infraction. Similarly, under established federal law, if an officer has probable cause or reasonable suspicion to stop a vehicle, the officer has complied with the Fourth Amendment to the U.S. Constitution. U.S. v. Hassan El, 5 F.3d 726, 730 (4th Cir. 1993). The law further holds that when an officer observes a traffic offense or other unlawful conduct, the officer is justified in stopping a vehicle under the Fourth Amendment. Id. As discussed above, the information provided by the KPD indicates that Officer [REDACTED] stopped the Complainant’s vehicle on June 29 after he perceived her to unsafely pass another vehicle, and he stopped her vehicle on September 16 after he observed that she was not wearing her seat belt, in violation of state law. While the Complainant’s supervisors ultimately determined that the Complainant’s actions on June 29 did not rise to the level of improper passing, they noted that this was a judgment call by Officer [REDACTED]; the evidence is insufficient to demonstrate that Officer [REDACTED] did not truly possess a belief that the Complainant was committing a traffic offense. As for the September 16 incident, according to Officer [REDACTED] written statement, the Complainant admitted to Officer [REDACTED] that she had pulled her seat belt down under her arm. While the OCR cannot conclusively determine how the Complainant was wearing her seat belt as the in-car

video of this traffic stop no longer exists, the evidence is insufficient to demonstrate that Officer [REDACTED] is being untruthful, and the court subsequently upheld this citation. Accordingly it appears that Officer [REDACTED] had a reasonable suspicion that the Complainant was committing a traffic or seat belt infraction on June 29 and September 16, and acted in compliance with KPD General Orders 900-04, 900-06, and 900-12 when he stopped her vehicle and issued her citations.

Additionally, the information provided by the Complainant and the KPD does not indicate that Officer [REDACTED] made any discriminatory statements regarding race or sex during his interaction with the Complainant. Furthermore, it does not appear that the KPD or Officer [REDACTED] has a history of discrimination. According to the KPD's Data Response, from January 1, 2010 to March 20, 2012, there have been no lawsuits or state or local administrative actions against the KPD or Officer [REDACTED] alleging race or sex discrimination. During this timeframe, in addition to the complaint filed by the Complainant, the KPD received one other complaint alleging that KPD officers discriminated against an African American woman based on race and sex when the officers questioned her regarding suspected drug use. The KPD's Internal Affairs Division conducted an investigation and found that misconduct was not established. Also in the KPD's Data Response, the KPD provided documentation demonstrating that from January 1, 2010 to January 31, 2012, the KPD issued 83 citations for parking violations, of which 27 citations (33%) were issued to African American individuals, and 56 (67%) were issued to Caucasian individuals. Additionally, the KPD issued 39 of these citations (47%) to female individuals and 44 citations (53%) to male individuals. The most recent available data from the U.S. Census Bureau demonstrates that in 2010, African American individuals comprised 20.3% of the total population residing within the City of Kannapolis and under the service jurisdiction of the KPD. U.S. Census Bureau, QuickFacts, Kannapolis (city), North Carolina at <http://quickfacts.census.gov>. Additionally, this data demonstrates that in 2010, 52.1% of residents were female. A comparison of the percentage of parking citations issued to African American and female individuals with the percentage of African American and female individuals residing within the KPD's service jurisdiction does not indicate a history of discrimination.⁷

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that Officer [REDACTED] intentionally discriminated against the Complainant based on race or sex in violation of Title VI and the Safe Streets Act. Therefore, we are closing the administrative Complaint filed by the Complainant.

⁷ The OCR acknowledges that a statistical analysis comparing these particular data sets does not provide a complete analysis of whether discrimination is occurring, as the percentage of African American and female individuals residing within the service area does not represent the percentage of African American and female individuals parking within the service area and thus subject to the KPD's jurisdiction. See Chavez v. Ill. State Police, 251 F.3d 612, 644 (7th Cir. 2001). However, as the OCR's investigation did not uncover any information on who uses the roads and public areas under the jurisdiction of the KPD, the U.S. Census Bureau data is the best data available at this time, and the OCR is not heavily relying upon this analysis in reaching our overall determination.

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However, we would like to bring one issue to your attention. According to KPD General Order 500-02, "Internal Affairs," when a member of the public files a complaint alleging misconduct by a KPD employee, a formal investigation by the police major and selected staff is required for allegations of a serious nature, such as allegations of corruption, brutality, misuse of force, and breach of civil rights, while complaints of a less serious nature will be investigated and resolved when possible by the immediate supervisor of the accused member. The Complainant filed a complaint with the KPD alleging discrimination, or a breach of civil rights. However, it appears that her complaint was investigated and resolved by Officer [REDACTED] supervisors, and not by the Internal Affairs Division as provided for in General Order 500-02. The KPD should be sure that it is complying with General Order 500-02 and is conducting formal investigations of complaints alleging violations of civil rights.

Sincerely,

/s/

Michael L. Alston

Director