



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

December 18, 2012

Sheriff David A. Weaver
Douglas County Sheriff's Office
4000 Justice Way
Castle Rock, CO 80109

Re: Notice of Findings
[REDACTED] v. Douglas County Sheriff's Office (12-OCR-0146)

Dear Sheriff Weaver:

Thank you for the documentation that the Douglas County Sheriff's Office (DCSO) submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) in response to the administrative Complaint that [REDACTED] (Complainant) has filed against the DCSO. In his Complaint, the Complainant alleges that the DCSO discriminated against him and his stepson based on race (African American).

The OCR has completed our review of the documentation provided by both the DCSO 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.

I. Factual Background

A. Spring 2010 Incident at [REDACTED] High School

The Complainant, the Complainant's stepson, and the Complainant's wife all allege that following incidents occurred at [REDACTED] High School:

In March 2010, the girlfriend (race: Caucasian) of the Complainant's stepson began receiving text messages from another youth (race: Caucasian, sex: male) which contained racial slurs toward the Complainant's stepson and threats to kill the Complainant's stepson. The Complainant's stepson, his girlfriend, and the youth sending the text messages all attended [REDACTED] High School. On March 28, 2010, the Complainant's wife contacted the DCSO and DCSO Deputy [REDACTED] came to the Complainant's home to discuss the text messages. Deputy [REDACTED] told the Complainant and his wife that they would receive quicker results if they brought their

complaint directly to the DCSO's School Resource Officer (SRO) who was assigned to [REDACTED] High School. On March 29, the Complainant's stepson approached the SRO, Deputy [REDACTED], and showed him the text messages. Deputy [REDACTED] told the Complainant's stepson that he would take care of the situation and that the Complainant's stepson should let him know if anything else occurred. On April 9, 2010, the student who sent the text messages, the student's brother who was also a student at [REDACTED] High School, and two nineteen-year-old friends who did not attend the school confronted the Complainant's stepson at school and warned the stepson that he better watch his back. That same day, the Complainant's wife called the dean of [REDACTED] High School to report what occurred and to express her concern regarding the racially threatening text messages, and the dean said that Deputy [REDACTED] had not made him aware of the text messages.

On April 12, 2010, the dean contacted the Complainant and his wife and told them that the Complainant's stepson got into a fight at the school with the student who sent the text messages. The Complainant and his wife went to the school and met with the dean and Deputy [REDACTED], and the dean informed them that the school was suspending the Complainant's stepson for three days (he ultimately served a suspension of two days) and was suspending the other student for one week. The Complainant and his wife asked what the school and the SRO were doing regarding the threatening text messages, and Deputy [REDACTED] told them that he could not provide any information because the situation involved a minor. The Complainant's wife subsequently contacted Deputy [REDACTED] supervisor Deputy [REDACTED] and left him a message, but Deputy [REDACTED] did not return her phone call. The Complainant believes that Deputy [REDACTED] did not notify the dean of the racial slurs and threats against his stepson and that Deputy [REDACTED] and the DCSO did not take action to properly investigate the threats and ensure his stepson's safety, based on his stepson's race.

In the DCSO's August 13, 2012, response to the OCR's supplemental Data Request (August 13th Data Response), the DCSO said that there is no written record of this incident and that Deputy [REDACTED] does not recall when he notified the dean of the text messages, but that Deputy [REDACTED] and the dean agreed to meet with the Complainant and his stepson to discuss the situation. The DCSO stated that Deputy [REDACTED] best recollection is that he met with the Complainant, the Complainant's wife, and the Complainant's stepson on March 29. The DCSO noted that problems with texting and social media are not uncommon, and said that consistent with Colo. Rev. Stat. § 22-33-111 (2011)¹, which discourages action by law enforcement agencies in favor of school discipline, such matters are handled primarily as a matter of school discipline. According to the DCSO's August 13th Data Response, SROs meet with the District Attorney on a

¹ Colo. Rev. Stat. § 22-33-111 presents the finding of the general assembly that in public schools across the state students are being ticketed, arrested, or otherwise referred to law enforcement officials for minor misbehavior that could be dealt with using more effective school disciplinary methods. The statute created a task force to assess solutions that promote disciplinary strategies to keep students in school and reduce criminalization of school-based behaviors. The OCR understands that this statute was recently repealed effective July 1, 2012.

monthly basis to discuss issues at the school, and the District Attorney has indicated that electronic messages are generally read outside the presence of the sender and therefore do not meet the "eminent threat" element of a crime. The DCSO stated that when Deputy ██████ met with the Complainant, the Complainant's wife, and the Complainant's stepson he explained to them that the matter would be handled through school disciplinary proceedings, but that if they wanted to pursue criminal charges they should notify Deputy ██████ so that he could speak with the District Attorney. According to the DCSO, Deputy ██████ never heard from the Complainant or his wife regarding pursuing criminal charges and he presumed that the matter was resolved by the school disciplinary action.

The OCR conducted a telephone interview of Deputy ██████ on December 5, 2012, to obtain further information regarding his recollection of this incident, and Deputy ██████ stated that the Complainant's assertion of what occurred is not consistent with his recollection of the events. According to Deputy ██████, to the best of his recollection, he initially learned of the threatening text messages when he received a voicemail message from Deputy Stevenson; Deputy ██████ said he believed he received the message on a Tuesday, which would be March 30, 2010. Deputy ██████ told the OCR that he immediately notified the dean that same day of the threatening text messages, and that the Complainant and his wife came to the school that afternoon to meet with Deputy ██████ and the dean to discuss the situation. According to Deputy ██████, he had been a SRO for five years at the time of this incident, and it was his standard procedure to immediately notify the dean, with whom he had a very good working relationship, whenever he received a report of harassment of a student. Deputy ██████ said that he does recall speaking with the Complainant's stepson about the text messages, but he does not recall exactly when this occurred. Deputy ██████ stated that he explained to the Complainant and his wife at the meeting that unless an incident between students is egregious such as an incident involving drugs or violence, the school generally handles incidents as disciplinary matters, but that the Complainant and his wife could pursue criminal action if they desired. Deputy ██████ said that he believes he notified the Complainant and his wife that they should let him know within 18 months if they wanted to pursue criminal action, and that they never contacted Deputy ██████ to request that he pursue criminal charges. Deputy ██████ further told the OCR that he met with the student who sent the text messages and his father later on the same day, and explained to them that the school would be handling the incident as a disciplinary matter but that the Complainant and his wife may decide to file criminal charges. According to Deputy ██████, he does not generally generate an incident report for this type of incident unless it becomes a criminal matter, and he did not complete an incident report or otherwise document this matter.

B. June 15, 2011, Incident and the DCSO's Subsequent Investigation

The Complainant alleges that the following occurred on June 15, 2011, and during the DCSO's subsequent investigation:

At approximately 12:45 a.m. on June 15, 2011, the Complainant was driving home on Quebec Street in Highlands Ranch, Colorado, with his wife and his two younger sons, with his eighteen-year-old son and his stepson following immediately behind in their vehicle. The Complainant heard two loud thumps as something hit his vehicle, and one of his sons immediately grabbed his eye. Upon arriving at his home, the Complainant discovered egg and eggshell residue on his car door, and his son had a small cut under his right eye that may have been caused by an eggshell. The Complainant's son and his stepson who were driving behind the Complainant called the Complainant to state that they saw approximately eight or ten Caucasian teenagers throw eggs at the Complainant's vehicle and then run away, and that the Complainant's son and stepson were chasing them. The Complainant and his wife each got into their vehicles and drove to where the Complainant's son and stepson were and observed them talking to a male youth who denied egging the Complainant's vehicle. The Complainant's son and stepson got into their vehicle and began driving away with the Complainant following behind, and the Complainant observed his son's vehicle come to an immediate stop next to a field. The Complainant drove to where the vehicle was stopped. Concerned for his sons' safety, the Complainant took two guns out of his glove compartment and put them in his pockets, and got out of his vehicle where he saw his stepson fighting with another young male on the ground and his son and another young male looking on. The Complainant ended the fight, and the Complainant's stepson told the Complainant that he got out of his vehicle to ask the youths a question and that the young male he had been fighting with threw three rocks at his head. The youths denied throwing eggs at the Complainant's vehicle and said they were out toilet papering houses and smoking marijuana, and the Complainant told them to go home; the Complainant denies that he showed the youths his guns or threatened them in any way.

The youths left, and as the Complainant was preparing to drive home five DCSO vehicles pulled up and DCSO deputies ordered the Complainant out of his vehicle. The Complainant told the deputies that he has a concealed weapons permit and the deputies told the Complainant that they did not care and immediately handcuffed him and took the guns out of his pocket. The deputies asked the Complainant if he had any additional weapons, and the Complainant told them that he had two additional guns in the glove compartment of his vehicle; the deputies entered the Complainant's vehicle and removed those guns as well. The Complainant asked the deputies what the issue was, and the deputies said that they received a call that "there was a black guy with guns." The Complainant told the deputies that he has two bulging disks in his neck and that being handcuffed with his hands behind his back was causing him extreme pain, and the deputies told him that they did not care and to shut up. The deputies showed the guns to the youths who had returned to the scene, and one of the deputies told the Complainant that the youths identified the Complainant's gun. The deputies placed the Complainant in a DCSO vehicle for approximately two hours while they took witness statements from individuals on the scene. During this time, the Complainant continued to complain of severe pain in his neck and arm. The Complainant explained that his son was injured from the youths throwing eggs at the car and asked if the deputies would go to his house to observe his son's injuries, and the deputies refused and said that they did not care, and

did not take any pictures of the egg residue on the Complainant's vehicle. The deputies eventually released the Complainant with charges pending. On June 22, 2011, Detective [REDACTED] of the DCSO contacted the Complainant and requested that he come in for an interview, which the Complainant did on June 24. During this interview, the Complainant requested that Detective [REDACTED] interview his wife and stepson, and Detective [REDACTED] said that he had contacted the Complainant's wife but she did not return his call. The Complainant provided the OCR with a copy of Detective [REDACTED] case notes that the Complainant obtained in connection with his criminal case, which contain a notation from Detective [REDACTED] that he called the Complainant's wife on June 21 but her voicemail box was full and he could not leave a message; however, the Complainant asserts that he obtained his wife's phone records and the records indicate that Detective [REDACTED] never attempted to contact her. The Complainant was subsequently arrested on or about June 30, 2011, for menacing, prohibited use of a weapon, and harassment for allegedly threatening the youths with his guns. The Complainant's wife subsequently contacted Detective [REDACTED] on September 6, 2011, to inquire about pressing charges against the youth who threw rocks at her son, and Detective [REDACTED] said that he must interview her son alone without her present. At the Complainant's attorney's advice, the Complainant's wife did not allow Detective [REDACTED] to speak with her son. The Complainant does not believe that the DCSO charged any of the youths with any crimes other than curfew violations.

The Complainant believes that due to his race the DCSO did not conduct a proper and thorough investigation before they arrested him, including failing to interview his wife and stepson. The Complainant further alleges that at his initial court appearance he discovered that the witness statements that the DCSO deputies took on the scene from his wife, son, and stepson were missing from the record that Detective [REDACTED] relied upon during his investigation and which the DCSO initially presented to the District Attorney's office. In support of this allegation, the Complainant provided the OCR with a copy of an October 4, 2011, Progress Report completed by Detective [REDACTED], where Detective [REDACTED] stated that the District Attorney's Office requested the written statements completed by the Complainant's wife, son, and stepson, and that Detective [REDACTED] discovered that the written statements in the DCSO's file had never been scanned and consequently were not available in the PDF file that Detective [REDACTED] has access to for investigation uses and discovery purposes. The Complainant also alleges that the DCSO tampered with some of the witness statements of the youths accusing the Complainant of threatening them. The Complainant was recently found not guilty on all three charges.

Both the Complainant and the DCSO provided the OCR with documentation regarding the initial DCSO response to the scene and Detective [REDACTED] investigation, including incident reports of the responding deputies and written statements completed by those who were interviewed at the scene; the incident reports indicate that the deputies interviewed the Complainant, his wife, and stepson, along with the two youths who interacted with the Complainant's stepson and several other youths involved in toilet papering houses that evening. The DCSO and the Complainant also provided audio

recordings or written transcripts of Detective [REDACTED] interviews of the Complainant and the two youths who interacted with the Complainant's stepson. The written statement that the Complainant's stepson completed at the scene states that the stepson approached one of the other youths and the youth began to run, at which point the stepson grabbed him and slammed him to the ground when the other youth tried to elbow him. The written statement does not allege that the youth threw rocks at his head. The written statement completed by this youth indicates that an unknown Black male got out of the car and grabbed him and slammed him to the ground, and then a tall Black male approached and asked him who egged his car. The youth wrote that he provided the random name of "[REDACTED]" and then the male told him to tell [REDACTED] that he was going to "pop" him and showed him a gun and pointed it at his head, which the youth describes as silver with a wooden grip and black strips. The youth also wrote that this male told the youth that he would find and kill him if the male did not find [REDACTED]. The incident report completed by one of the responding deputies indicates that the youth's description of the gun matches the description of the gun recovered from the Complainant. The written statement completed by the other youth who was present at the scene also states that a Black male threatened the first youth with a gun.

In Detective [REDACTED] interview of the youth who fought with the Complainant's stepson, the youth again stated that the Complainant pulled out a silver gun with a black stripe and held it to his head, and said that he may have hit the Complainant's stepson in the temple with a rock after the stepson grabbed him and pulled him to the ground. Detective [REDACTED] also interviewed the other youth who was present at the scene, and he also said that he observed the Complainant pull out a gun that he described as silver with black stripes on the handle.

In regard to Detective [REDACTED] contact with the Complainant's wife, the transcript indicates that during Detective [REDACTED] interview of the Complainant, Detective [REDACTED] told the Complainant that he had contacted the Complainant's wife but she did not return his call, and he provided the Complainant with his business card and said that he would like to speak with his wife.

In the DCSO's June 18, 2012, response to the OCR's Data Request (June 18th Data Response), the DCSO disputed the Complainant's assertions that the deputies involved in the June 15 incident and the subsequent investigation were motivated by racial animus. The DCSO noted that whenever deputies receive a 911 call that people are fighting and that an individual is brandishing guns, and the deputies discover that the individual does possess some guns, they must take law enforcement action. The DCSO stated that it received a 911 call from a female youth who reported that she observed four males fighting in the parking lot of the school, and that one of the males, who was African American, reportedly pulled a gun out of his pocket and was leaving in a black vehicle. The DCSO provided the OCR with the audio recording of the 911 call which is consistent with the DCSO's account. The DCSO questioned the Complainant's assertion that he never pulled out a gun by noting that the youth allegedly threatened with the gun accurately described the Complainant's gun in his written statement, and asserted that it

seems clear that the gun was out and within the youth's view that evening. The CSO also noted that the Complainant himself described his gun as being silver with black stripes on the handle during his interview with Detective [REDACTED] which matches the youth's description of the gun. The DCSO indicated that Detective [REDACTED] had scheduled an interview with the Complainant's son, but that he canceled the interview, and that after that, no one from the Complainant's family would come in for an interview.² In regard to Detective [REDACTED] request on September 6 to interview the Complainant's stepson without the Complainant's wife present, in the DCSO's August 13th Data Response it stated that investigators generally find more reliable interviews when the interviewee is free from third-party influence. The DCSO also stated that when the Complainant's wife refused to allow her son to be interviewed without her being present, Detective [REDACTED] completed his report based on their written statements from the night of the incident.

Regarding the Complainant's assertions that he was in pain due the handcuffs and that the deputies told him that they did not care, the DCSO referenced the incident report of one of the responding deputies. In this incident report, the deputy wrote that the Complainant began complaining of a shoulder injury that was aggravated by the handcuffs, and that the deputy then removed the handcuff from one of the Complainant's wrists, connected it to his other set of handcuffs, and reapplied the handcuff on the Complainant's wrist so that the Complainant would have less pressure on his shoulders. According to the incident report, the Complainant told the deputy that he did not need medical attention and he would be okay.

Policies and Procedures Relevant to the Allegations

The DCSO provided the OCR with several internal policies and procedures relevant to the Complainant's allegations and which were in existence at the time of the above-referenced incidents. The DCSO provided the OCR with DCSO Standard Operating Procedure (SOP) PAT-J-209, "Offenses at Douglas County Schools" (effective November 1, 2009), which states that when a criminal offense is committed on school property the SRO will be the primary responding officer. The DCSO also provided the OCR with SOP PAT-J-204 (effective November 1, 2009), "Juvenile Zero Tolerance Policy" (effective November 1, 2009), which states that the possible commission of any of the below-listed criminal acts by a juvenile requires that officers conduct an initial investigation and complete an offense report; the listed criminal acts include homicide, assaults, arson, harassment/stalking, ethnic intimidation, weapons violations, or drug offenses. In regard to investigations, the DCSO provided SOP INV-A-404 (effective November 3, 2009), which states that a detective's follow up investigation of a criminal offense includes reviewing and analyzing all of the reports that were prepared during a

² The case notes of Detective [REDACTED] that the Complainant provided to the OCR indicate that Detective [REDACTED] called the Complainant's son on June 21, 2011, and scheduled an interview for June 29. The Complainant also provided the OCR with a copy of a Progress Report that Detective [REDACTED] completed on September 15, 2011, regarding his investigation of this incident, which indicates that the Complainant's son canceled the interview.

patrol deputy's preliminary investigation, and that the detective is also responsible for conducting a second interview, or more, with the principles involved in the case, including victims and witnesses.

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 DCSO 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 procedural and substantive departures from the norms generally followed by the decisionmaker, discriminatory statements, a history of discriminatory actions, or substantial disparate impact. Id.

Based on the OCR's review of the information that has been submitted by both the Complainant and the DCSO, the OCR finds that the evidence is insufficient to demonstrate that the DCSO's actions in connection with either of the above-referenced incidents constitutes intentional discrimination based on race. According to the information that is before us, the evidence is insufficient to demonstrate that any of the officers' actions were departures from established norms or procedures. In regard to the incident involving the Complainant's stepson receiving threatening text messages from another student, Deputy ██████ told the OCR that based on past precedent and guidance from the District Attorney such matters are generally handled by school discipline and are not treated as a criminal matter, unless the parents wish to treat the matter as such. There is no evidence in the record that the Complainant or his wife requested that the DCSO handle this issue as a criminal matter. Accordingly, it does not appear that Deputy ██████ acted contrary to DCSO SOP PAT-J-204 in not treating this incident as a criminal matter.

Based on the information in the record, it appears that Deputy ██████ did take some action to address the text messages, such as meeting with the Complainant and his wife and with the student who sent the text messages and his father, and that the student who sent the text messages was disciplined. The Complainant and Deputy ██████ present very different accounts of when these actions occurred and when Deputy ██████ notified the dean of the text messages, and the evidence before the OCR is insufficient to resolve this discrepancy. However, regardless of exactly when these actions occurred, the evidence is insufficient to demonstrate that any action or inaction by Deputy ██████ was motivated by the Complainant's stepson's race.

As for the incident occurring on June 15, 2011, and the DCSO's subsequent investigation, the evidence before the OCR is also insufficient to demonstrate that any of the responding deputies or Detective [REDACTED] departed from established norms or policies. On the evening of June 15, the DCSO received written statements from two youths who alleged that the Complainant pulled out his gun and threatened one of the youths with the gun, and one of the youths described the gun, which matched the description of one of the guns recovered from the Complainant. In Detective [REDACTED] follow up interviews of these youths, both youths reiterated these statements and both described the gun which again matches the Complainant's own description of his gun. The evidence indicates that the DCSO appeared to have a valid law enforcement reason for arresting the Complainant. In regard to Detective [REDACTED] alleged failure to conduct follow up interviews of the Complainant's wife and stepson, it appears that Detective [REDACTED] did attempt to contact the Complainant's wife, although he did not leave a message, and he provided the Complainant with his contact information and indicated that he wanted to speak with his wife. While it does not appear that Detective [REDACTED] made any subsequent attempts to contact the Complainant's wife before the Complainant was arrested, the evidence is insufficient to demonstrate that this failure violates DCSO SOP INV-A-404, as Detective [REDACTED] did provide his contact information to the Complainant and said that he wanted to speak with his wife. As for the DCSO's failure to pursue criminal charges against the youth who allegedly threw rocks at the Complainant's stepson, it appears that the Complainant's wife declined to allow her son to be interviewed regarding that matter.

Regarding the Complainant's allegations that he complained of severe pain in his neck and arm and that the deputies told him that they did not care, the incident report completed by one of the responding deputies indicates that the deputy adjusted the handcuffs so that there was less pressure on the Complainant's shoulders and that the Complainant said that he did not need medical attention. The evidence before the OCR is insufficient to demonstrate that the incident report does not accurately reflect what occurred. As for the Complainant's allegation that the witness statements from his wife, son, and stepson were missing from the record that Detective [REDACTED] relied upon during his investigation, while it appears that the statements may not have been scanned into the electronic record, the evidence is insufficient to demonstrate that Detective [REDACTED] did not possess and review hardcopies of these statements. The evidence is also insufficient to demonstrate that the DCSO tampered with any of the witness statements.

Additionally, the information provided by the Complainant and the DCSO does not indicate that Deputy [REDACTED], Detective [REDACTED], or any of the patrol deputies who responded to the June 15, 2011, incident made any discriminatory statements regarding race during their interactions with the Complainant or his stepson. Furthermore, it does not appear that the DCSO has a history of discrimination. Based on the information contained in the DCSO's June 18th Data Response, from January 1, 2010 to June 18, 2012, there have been no lawsuits or state or local administrative actions against the DCSO or any of the above-referenced deputies alleging race discrimination in the provision of services. During this timeframe, the DCSO received four complaints from

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members of the public alleging that one or more deputies with the DCSO discriminated based on race; none of these complaints involved any of the deputies involved in the incidents discussed in the Complainant's Complaint. The DCSO's Office of Professional Standards conducted an investigation into these complaints and found that the circumstances involved in each of the complaints did not constitute a violation of DCSO policy.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that the DCSO intentionally discriminated against the Complainant or his stepson based on race 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: Kelly Dunnaway, Deputy County Attorney
Douglas County Office of the County Attorney
100 Third Street
Castle Rock, CO 80109

Sergeant Jenny McMillan
Douglas County Sheriff's Office