



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

January 21, 2011

John A. Scavelli
Deputy Law Director
City of Stow
3760 Darrow Road
Stow, Ohio 44224

Re: Notice of Findings
v. City of Stow Police Department (09-OCR-0118)

Dear Mr. Scavelli:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice in connection with the administrative Complaint that (Complainant) filed with the OCR against your client, the City of Stow Police Department (SPD). In his Complaint, the Complainant alleges that officers with the SPD discriminated against him based on race (African American) when they stopped his vehicle and issued him a traffic safety reminder or a written warning on October 4, 2007, February 23, 2008, and March 20, 2008.

The OCR has completed our review of the documentation provided by the Complainant and the SPD in regard to all three incidents 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.

October 4, 2007 Incident

The Complainant alleges that the following occurred on October 4, 2007:

At approximately 9:17 p.m, the Complainant was driving on Darrow Road toward the post office when he drove past a SPD vehicle that was parked at a restaurant. When the Complainant was driving back from the post office on Darrow Road, he noticed that the SPD vehicle was still parked at the restaurant. When the Complainant was near the intersection of Darrow Road and Hibbard Street, the Complainant's vehicle was stopped by Officer of the SPD's K-9 Unit, by Officer of the SPD, and by one additional SPD officer; the Complainant appears to allege that these three officers were in separate patrol vehicles and that they all stopped him at the same time. One of the

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officers approached the Complainant's vehicle and asked for the Complainant's identification, and when the Complainant asked the officer why the officers stopped him the officer replied that the Complainant was squealing his tires. Officer issued the Complainant a traffic safety reminder for "peeling tires" in violation of City of Stow Ordinance 331.36.¹ The Complainant disputes that he was squealing his tires.

The Complainant believes that the SPD officers initially observed him when he passed the restaurant where a SPD vehicle was parked and saw that he is African American, and subsequently stopped his vehicle because of his race. In support of this assertion, the Complainant states that SPD officers conducted traffic stops of two female white drivers that evening that also resulted in the issuance of traffic safety reminders, but that the traffic stops of the white individuals were much shorter in duration and did not involve an officer from the K-9 Unit. Specifically, the Complainant provides documentation demonstrating that the traffic stop of the first white individual was initiated at 21:15:03 hours and ultimately cleared at 21:22:27 hours (approximately 7.24 minutes), the traffic stop of the second white individual was initiated at 21:25:52 hours and ultimately cleared at 21:37:22 hours (approximately 11.70 minutes), and that the traffic stop of the Complainant was initiated at 21:17:54 hours and ultimately cleared at 21:53:11 hours (approximately 35.57 minutes).

Immediately following the traffic stop, the Complainant drove to SPD headquarters to file a complaint regarding the traffic stop. The SPD offices at the station accused the Complainant of lying and said that he had to sign a form which notifies complainants that knowingly filing a false complaint against a peace officer is punishable under Ohio Rev. Code Ann. § 2921.15 (2011). It does not appear that the Complainant ever filed a complaint with the SPD. The Complainant did file a complaint with the City of Stow's Mayor's Office alleging harassment in connection with the October 4 traffic stop and seeking \$1.1 million dollars, and the City Council denied his claim on December 13, 2007.

In your response to the OCR's Notice of Discrimination Complaint and Data Request, you stated that Officer [redacted] observed the Complainant peel his tires and stopped his vehicle for that reason. You explained that Officer [redacted] did not summon a K-9 to the scene, but rather that Officer [redacted] is an officer with the SPD's K-9 Unit and that his dog is always present in his police vehicle while Officer [redacted] is on duty. You further said that officers from the K-9 Unit function as regular patrol officers when they are not on a call that requires the use of a K-9, and that Officer [redacted] did not utilize his K-9 during the traffic stop of the Complainant. You provided the OCR with a copy of the SPD policy entitled "K-9 Use Policy & Procedure," which states that a K-9 unit shall be responsible for taking police action that may arise over the course of a shift, such as the enforcement of traffic and city ordinances. According to your response, Officer [redacted] was the officer who stopped the Complainant and Officer [redacted] functioned as a backup

¹ Ordinance 331.36 prohibits an individual from operating a motor vehicle in a manner such that the vehicle is so rapidly accelerated that the tires squeal or leave tire marks on the roadway.

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officer, and these were the only officers present at the traffic stop. You explained that it is the SPD's policy to have a backup officer on each stop to ensure officer safety.

As for the duration of the traffic stop, you provided documentation demonstrating that Officer [redacted] initiated the stop at 21:17:54 hours and ended the stop and cleared it with dispatch at 21:31:15, for a total duration of 13.80 minutes. You stated that Officer [redacted] erroneously failed to officially clear the stop with dispatch until 21:53:11, which may have caused confusion regarding the length of the stop. You further said that the traffic stops of the white female individuals that the Complainant references did not involve the use of a K-9 officer due to the fact that the individuals happened to be stopped by officers who are not members of the K-9 Unit. Additionally, you stated that as the traffic stop occurred at night and with Officer [redacted] stopping the Complainant from behind the Complainant's vehicle, it is unlikely that Officer [redacted] observed the Complainant's race prior to making the traffic stop.

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 SPD 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). 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 SPD, the OCR finds that the evidence is insufficient to demonstrate that Officer [redacted] or Officer [redacted] actions constitute intentional discrimination based on race in violation of Title VI and the Safe Streets Act. According to the information that is before us, it does not appear that the officers' actions were in violation of federal law or SPD policy, or were departures from established norms. 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. Davis, 430 F.3d 345, 352 (6th Cir. 2005). While the Complainant disputes that he was peeling his tires, the evidence is insufficient to demonstrate that this was not the real reason for Officer [redacted] stop. The evidence is also insufficient to demonstrate whether Officer [redacted] had viewed the Complainant prior to stopping the Complainant's vehicle and was even aware of the Complainant's race prior to making the stop. In regard to the fact that a K-9 was present at the search, you have provided documentation demonstrating that

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Officer _____ is a K-9 Unit officer and that K-9 Unit officers function as regular patrol officers when they are not on a call requiring the use of the K-9. The Complainant does not allege, and there is no information to indicate, that Officer _____ utilized his K-9 in any way during his traffic stop of the Complainant. You have also provided documentation demonstrating that the length of the traffic stop was reasonable in length and comparable to the length of the traffic stops of two white individuals occurring on the same evening.

Additionally, the information provided by the Complainant and by you does not indicate that the officers made any discriminatory statements during their interaction with the Complainant. Furthermore, it does not appear that the SPD has a history of discrimination. According to the documentation that you submitted, during the period of January 1, 2007 to September 28, 2009, there have been no complaints or lawsuits alleging police misconduct by a SPD officer.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate discriminatory intent in connection with the October 4, 2007 incident.

The OCR would like to bring the following issue to the attention of the SPD in regard to its complaint procedures. Based on research conducted by the OCR, we understand that Ohio Rev. Code § 2921.15 has been declared unconstitutional by a municipal court. See State v. English, 120 Ohio Misc.2d 16, 776 N.E.2d 1179 (Ohio Mun. 2001). Moreover, please note that the International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center advises law enforcement agencies that it is not a good general practice to inform complainants of the penalties for filing a false complaint, as it creates a chilling effect on the filing of complaints and could be perceived as an attempt to intimidate potential complainants. Additionally, a law enforcement agency's failure to fully document all complaints from the public can create a perception that the agency is covering up some officer misconduct. See Model Policy on Investigation of Employee Misconduct and its accompanying Concepts and Issues Paper, published by the IACP National Law Enforcement Policy Center (revised October 2001). Accordingly, the SPD should not be requiring complainants to sign any document informing complainants of the penalties for filing a false complaint. Furthermore, SPD officers should never make any disparaging or accusatory remarks to complainants designed to dissuade them from filing a complaint against a SPD officer.

February 23, 2008 Incident

According to the Complainant, the following occurred on February 23, 2008:

At approximately 8:04 p.m. the Complainant was driving on Darrow Road near the intersection of Commerce Drive when he saw a SPD vehicle stopped on Commerce Drive at a red light. Approximately five miles down Darrow Road the Complainant observed a SPD vehicle traveling very fast behind him. The SPD vehicle got directly

behind the Complainant and started following him very closely. The Complainant moved over to the next lane and stopped his vehicle so he could determine why the officer was following him. The officer, Officer [redacted] stopped behind the Complainant and issued the Complainant a warning citation for stopping in traffic in violation of City of Stow Ordinance 333.04.² The Complainant believes that Officer [redacted] initially saw him near the intersection of Darrow Road and Commerce Drive and observed that he is African American, and that Officer [redacted] stopped his vehicle and issued a warning citation because of his race. Following this incident, the Complainant went to SPD headquarters to file a complaint, and an officer told him that there are a lot of new officers on the force now and that they do not know who the Complainant is. It does not appear that the Complainant ever filed a complaint with the SPD regarding the February 23 traffic stop.

You provided the OCR with a copy of the "mini report" that Officer [redacted] completed in regard to the February 23 incident. According to Officer [redacted] narrative, Officer [redacted] was driving northbound on Darrow Road when he observed a vehicle ahead of him, and decided to catch up to this vehicle so he could run the license plate through his mobile data terminal. In your response to the OCR's data request, you stated that this is a common practice and is constitutional. Based on Officer [redacted] narrative, upon approaching the Complainant's vehicle he observed the vehicle rapidly slow down, and he had to rapidly slow down himself to avoid hitting the Complainant's vehicle. Officer [redacted] states that the Complainant then quickly and abruptly changed lanes into the curb lane, putting his hazard flashers on, and that a vehicle that was already in the curb lane had to slow down to avoid hitting the Complainant's vehicle. Officer [redacted] notes that he was under the impression that the Complainant may be having mechanical problems and stopped behind his vehicle to investigate. Officer [redacted] then approached the Complainant and asked him if he was having mechanical problems, and the Complainant replied that he was not and that he stopped his vehicle to find out what Officer [redacted] was doing. Officer [redacted] states that he determined that the Complainant had intentionally committed a traffic violation and issued him a written warning for slowing and impeding traffic. In your data response, you noted that as the incident occurred at night, it is unlikely that Officer [redacted] knew the race of the Complainant before he began interacting with the Complainant.

As discussed on page 3 of this Notice of Findings, Title VI and the Safe Streets Act prohibit agencies from intentionally discriminating against individuals in the delivery of services. 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.

Based on all of the information that is before the OCR, the OCR finds that the evidence is insufficient to demonstrate that Officer [redacted] intentionally discriminated against the

² Ordinance 333.04(a) prohibits a person from stopping or operating a vehicle at such an unreasonably slow speed as to impede the normal and reasonable movement of traffic.

Complainant based on race. As an initial matter, the evidence is insufficient to demonstrate that Officer [redacted] actions were in violation of federal law or SPD policy, or were departures from established norms. In regard to Officer [redacted] explanation that he followed the Complainant's vehicle so that he could run the license plate to check for license suspension and warrants, courts have held that an individual does not have a reasonable expectation of privacy in the license plate number of his or her vehicle, and that a police officer's action of conducting a computer check on a license plate number does not violate the Fourth Amendment. United States v. Ellison, 462 F.3d 557, 561 (6th Cir. 2007). However, officers are prohibited from conducting computer checks of vehicle license plates in an intentionally racially discriminatory manner. Unites States v. \$14,000.00 in United States Currency, No. 98-4380, 2000 WL 222587, at *3 (6th Cir. Feb. 14, 2000). Officer [redacted] report does not provide a reason for deciding to run the Complainant's license plate through his mobile data terminal, and your response to the OCR's data request merely stated that this is a "common practice." While this documentation does not provide a specific explanation for why Officer [redacted] decided to conduct a check on the Complainant's license plate, the information in the record is insufficient to demonstrate that Officer [redacted] decision was due to the Complainant's race or that he was aware of the Complainant's race when he decided to conduct the computer check.

As for Officer [redacted] stopping behind the Complainant, as discussed above, Officer [redacted] report indicates that he did so because he believed that the Complainant was having mechanical difficulties. While it appears that it may have been Officer [redacted] action of following the Complainant that caused the Complainant to switch lanes and stop his vehicle, the OCR finds that it is reasonable for Officer [redacted] to observe these actions and assume that the Complainant was having mechanical difficulties. Once the Complainant told Officer [redacted] that he was not having mechanical difficulties and that he stopped his vehicle intentionally, Officer [redacted] had probable cause to issue a warning or citation for stopping his vehicle. Furthermore, the evidence before the OCR does not indicate that Officer [redacted] made any discriminatory statements during the February 23 encounter, and there does not appear to be a history of discrimination by the SPD. Accordingly, based on all of the information discussed above, the OCR has determined that the evidence is insufficient to demonstrate discriminatory intent in connection with February 23 incident.

March 20, 2008 Incident

According to the Complainant, the following occurred on March 20, 2008:

At approximately 1:19 a.m. the Complainant was driving home on Darrow Road and turned left onto Fish Creek Road. A SPD vehicle suddenly appeared behind the Complainant and followed the Complainant to his home. The officer in this vehicle, Officer [redacted] stopped in front of the Complainant's driveway, rolled down his window, and asked the Complainant if he had been drinking. The Complainant replied that if Officer [redacted] believes that the Complainant has been drinking then he should test him.

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Officer [redacted] gave the Complainant a written traffic safety reminder for driving/straddling the double yellow lines in violation of City of Stow Ordinance 331.08A.³ The Complainant believes that Officer [redacted] actions were based on his race.

In your response to the OCR's data request, you stated that Officer [redacted] was patrolling for drivers under the influence of alcohol, and that he stopped the Complainant for driving over the double yellow line on the roadway. You further stated that once Officer [redacted] determined that the Complainant was not intoxicated, he issued him a warning for going over the double yellow line. You noted that Officer [redacted] could have issued the Complainant a citation, but chose to only issue a warning. You further noted that as the incident occurred at night and with Officer [redacted] stopping the Complainant from behind the Complainant's vehicle, it is doubtful that Officer [redacted] was aware of the Complainant's race prior to interacting with the Complainant.

Based on the information in the record, the OCR finds that the evidence is insufficient to demonstrate intentional discrimination by Officer [redacted]. According to your data response, Officer [redacted] stopped the Complainant for driving over the yellow line. Federal law authorizes a police officer to stop a vehicle when an officer has probable cause to believe that a traffic violation has occurred. Whren, 517 U.S. at 810; Davis, 430 F.3d at 352. Furthermore, Officer [redacted] was specifically patrolling for intoxicated drivers that evening, and driving over the yellow line could be an indicator of intoxication. The evidence before the OCR is insufficient to demonstrate that your proffered explanation was not the true reason for the stop, or that Officer [redacted] actions were in violation of federal law or SPD policy or were departures from established norms. Additionally, the evidence does not indicate that Officer [redacted] made any discriminatory statements during the March 20 traffic stop, and there does not appear to be a history of discrimination by the SPD. Accordingly, based on all of the information discussed above, the OCR has determined that the evidence is insufficient to demonstrate discriminatory intent in connection with the March 20 traffic stop of the Complainant.

Based on the foregoing, the OCR has determined that the evidence is insufficient to demonstrate that the SPD engaged in intentional discrimination against the Complainant in violation of Title VI and the Safe Streets Act. Accordingly, we are administratively closing this Complaint.

Sincerely,

/s/

Michael L. Alston

Director

³ Ordinance 331.08A states that whenever a roadway has been divided into two or more clearly marked lanes, a vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic.