



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

October 28, 2009

Lieutenant Colonel Stephen L. Sellers
Deputy Chief of Police
Fairfax County Police Department
4100 Chain Bridge Road
Fairfax, VA 22030

Re: Notice of Findings
_____ v. Fairfax County Police Department (09-OCR-0440)

Dear Lieutenant Colonel Sellers:

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) in connection with the administrative Complaint that _____ (Complainant) filed with the OCR against the Fairfax County Police Department (FCPD). In her Complaint, the Complainant alleges that an officer with the FCPD discriminated against her based on race and national origin when the officer failed to provide the Complainant with an interpreter and arrested the Complainant for trespass. The OCR has completed our review of the documentation provided by both the FCPD 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.

According to the information submitted by the Complainant, on November 29, 2008 the Complainant was shopping at _____ Store in Falls Church, Virginia when she slipped on a liquid substance on the floor and injured herself on her head, ear, leg, and lower back. The Complainant called 911 and requested that the operator dispatch police officers to _____ Store. In response, two Emergency Medical Technicians and FCPD officers _____ and _____ arrived at the scene. The Complainant states that when she requested that Officer _____ watch the store's surveillance video and write an incident report, Officer _____ refused and said that the matter was not criminal. The Complainant also states that she requested that Officer _____ provide her with an interpreter because she believed that he could not understand her words, and that Officer _____ replied "[n]o interpreter." The Complainant alleges that Officer _____ then threatened to send her to jail and twice told her to go to the hospital with the waiting ambulance or to exit the _____ Store and go outside. The Complainant states that she tried to walk outside but became dizzy and had difficulty walking, at which point Officer _____ handcuffed and arrested her without telling her the nature of the charge.

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The Complainant further says that Officer [redacted] falsely stated in a police report that she refused to leave [redacted] Store after Officer [redacted] asked her to and made false statements to Magistrate [redacted] when he stated that the Complainant had no injuries and wanted money as a result of her falling in the store. At a [redacted] court hearing, the Complainant received a suspended sentence on the charge of trespassing. The Complainant alleges that Officer [redacted] discriminated against her based on race and national origin when he refused to provide her with a Chinese-speaking interpreter, and that this refusal resulted in Officer [redacted] misunderstanding the Complainant and further discriminating against her when he arrested her.

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 FCPD 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); Sylvia Development Corporation v. Calvert County, 48 F.3d 810, 819 (4th Cir. 1995). Discriminatory intent may be shown by such factors as a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. Id.; Sylvia Development Corporation, 48 F.3d at 267.

Additionally, under DOJ regulations implementing Title VI and the Safe Streets Act, to avoid discrimination on the basis of national origin recipients have a responsibility to ensure meaningful access to their programs and activities to individuals with limited English proficiency. See 28 C.F.R. § 42.104(b)(2); 28 C.F.R. § 42.203(e). A LEP individual is an individual whose first language is not English and has a limited ability to read, speak, write, or understand English.

Based on the OCR’s review of the record, the evidence is insufficient to demonstrate that Officer [redacted]’s actions constitute intentional discrimination based on race or national origin in violation of Title VI and the Safe Streets Act. The Complainant submitted documentation to the OCR stating that her primary language is Mandarin Chinese and that her ability to speak English and to listen to and understand English is poor, and that when she has head injuries her English language skills are even more impaired. The Complainant told the OCR that she received a law degree in the United States in 2007, and that one of her professors assigned a native English speaker to sit beside her during class to provide language assistance. The Complainant notes that when she called 911 on November 29 the operator provided her with a Chinese-speaking interpreter. According to the Complainant, as a result of Officer [redacted] denying her a Chinese-speaking

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interpreter, Officer [redacted] misinterpreted her words of "difficult to walk" as "refusing to leave [redacted] store," resulting in her arrest.

Following the November 29 incident, the Complainant filed a complaint with the FCPD alleging that Officer [redacted] discriminated against her when he failed to provide an interpreter and that he unlawfully arrested her; the FCPD found the Complainant's allegations to be unfounded. The FCPD provided the OCR with a May 20, 2009 Memorandum from Second Lieutenant [redacted] of the FCPD's Mason District Station to Chief of Police Colonel David Rohrer describing the findings and conclusions of the FCPD's administrative investigation into the Complainant's allegations.

Lieutenant [redacted] conducted this administrative investigation, which included interviews with Officers [redacted] and [redacted], the Complainant, and the Manager of [redacted] Store [redacted]. According to the Memorandum, Lieutenant [redacted] spoke with the contractor who arranged for a Mandarin Chinese interpreter for the Complainant during her May 4 court appearance, and the contractor said that the interpreter told him that the Complainant spoke fluent English. Lieutenant [redacted] noted that he observed the Complainant speaking English to the judge during the court hearing, that mental health clinicians who have treated the Complainant noted that the Complainant spoke English "adequately," that he interviewed the Complainant for more than one hour and her English was more than adequate, that the Complainant has penned several emails and letters in English related to this incident, and that the Complainant said that she is seventeen hours short of graduating from George Washington School of Law.¹ Lieutenant [redacted] found that "[b]ased on these facts, I have high confidence that Ms. [redacted] can articulate and comprehend the English language well enough that she completely understood everything said to her at the [redacted] Store back on November 29, 2008."

Based on the evidence that is before the OCR, the OCR finds that it was not unreasonable for Officer [redacted] to perceive the Complainant as not being LEP and to determine that an interpreter was not necessary to effectively communicate with the Complainant. The OCR spoke with the Complainant on several occasions and was able to effectively communicate with her in English, as were the above-referenced individuals. The Complainant is either pursuing a law degree from a law school in the United States or has graduated from law school; while the Complainant indicates that one of her professors assigned someone to sit next to the Complainant and provide language assistance, presumably the Complainant did not have such language assistance during her other classes. The Complainant told the OCR that she is currently working in a patent law firm in the United States where she presumably interacts with other individuals in English on a daily basis. Accordingly, the OCR finds that there is insufficient evidence that Officer [redacted]'s failure to provide an interpreter for the Complainant is in violation of Title VI and the Safe Streets Act.

¹ In her Complaint to the OCR, the Complainant said that she graduated from a law school in the United States in 2007. Accordingly, it is not clear whether the Complainant already has a law degree from a law school in the United States or is still pursuing such a degree.

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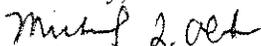
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Additionally, the OCR finds that the evidence is insufficient to demonstrate that Officer [redacted]'s failure to provide an interpreter resulted in Officer [redacted] misunderstanding the Complainant and arresting her in violation of Title VI and the Safe Streets Act. Rather, the evidence demonstrates that Officer [redacted] believed there was a legitimate nondiscriminating reason to arrest the Complainant unrelated to her national origin, and the evidence does not indicate that Officer [redacted] could not understand the Complainant. In Lieutenant [redacted]'s Memorandum, he explained that based on his interviews he found that the Complainant told Officer [redacted], Officer [redacted], and Mr. [redacted] that she would not leave the store until Mr. [redacted] gave her money due to her allegedly slipping on a liquid substance. Lieutenant [redacted] also found that Officers [redacted] and [redacted] tried to convince the Complainant to go to the hospital for treatment and to leave the store peacefully, and that Mr. [redacted] requested that the officers remove the Complainant from the store because she was refusing to leave and she was creating a scene inside the store. According to the Memorandum, Mr. [redacted] also directly asked the Complainant to leave the store, and Officer [redacted] explained to the Complainant several times that she would be arrested if she did not leave the store. Officer [redacted] told Lieutenant [redacted] that the Complainant's willful disregard of the requests by Officer [redacted] and Mr. [redacted] to leave the store resulted in Officer [redacted] arresting her for trespass.

In documentation submitted to the OCR, the Complainant states that Mr. [redacted] never asked her to leave the store. The Complainant provided the OCR with the surveillance video taken from [redacted] Store which shows part of the Complainant's interactions with Officers [redacted] and [redacted] and Mr. [redacted]; unfortunately, the video does not have any audio and does not provide evidence of what communications the parties exchanged. Lieutenant [redacted]'s Memorandum contains an excerpt from the notes from a mental health clinician who treated the Complainant following the November 29 incident, and the clinician notes that the Complainant reported having auditory hallucinations and persecutory delusions in the past along with memory impairment, and that the Complainant reviewed the surveillance video from [redacted] Store and told the clinician that what she saw did not match her memory of the incident.

Based on all of the information discussed above, including the findings of the FCPD's administrative investigation, the OCR finds that there is insufficient evidence that Officer [redacted] arrested the Complainant based on her race or national origin or on an inability to understand the Complainant. The record does not indicate that Officer [redacted] made any discriminatory statements and the evidence is insufficient to demonstrate that Officer [redacted] departed from standard procedures in arresting the Complainant. Accordingly, the OCR finds that the evidence is insufficient to demonstrate intentional discrimination in violation of Title VI and the Safe Streets Act, and we are closing the administrative Complaint filed by the Complainant.

Sincerely,


Michael L. Aiston
Director