



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

September 19, 2013

Kurt Vorndran  
Chairman  
Police Complaints Board  
1400 I Street NW, Suite 700  
Washington, DC 20005

Dear Chairman Vorndran:

Thank you for the opportunity to review and provide comment on the report of the Office of Police Complaints (OPC), "Draft, MPD Enforcement of the District's Window Tint Law." As an initial matter, although we frequently disagree on matters of policy, I believe we are often able to find common ground. However, in this case, I strongly disagree with both the conclusions and recommendations of this report.

As OPC should be aware after reviewing the issue, tinted vehicle windows are a significant safety concern for law enforcement throughout the country. Even a cursory search of the internet for just the past six months alone reveals the serious implications of tinted windows for law enforcement and the community at large. In the past six months, at least three police stops for tinted windows have resulted in vehicle occupants drawing a firearm or shooting at police.

- On March 17, 2013, a Fullerton, California, police officer was shot multiple times at point blank range when conducting a traffic stop. The officer was approaching the driver's side of the vehicle, but due to a dark tint on the car's windows, he could not see into the back of the car. Police credit the ballistic vest worn by the officer for stopping the bullet to the chest and saving his life.<sup>1 2</sup>
- Two officers with the Fayetteville Police Department (North Carolina) conducted a traffic stop for a suspected window tint violation on the morning of May, 2013. The passenger jumped from the car and, after displaying a handgun, was shot by an officer. The passenger died two months later, possibly as a result of the gunshot wound.<sup>3</sup>
- Less than a month ago, police in Hanahan, South Carolina exchanged gunfire with an individual fleeing a traffic stop. Fortunately, the officer had called for back-up because the windows of the vehicle were "completely blacked out." Three of the vehicle occupants

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<sup>1</sup> Ellen Frere, "Fullerton Police Officer's Vest, Training Credited with Saving His Life", *KABC-TV Los Angeles*, [http://abclocal.go.com/kabc/story?section=news/local/orange\\_county&id=9032294](http://abclocal.go.com/kabc/story?section=news/local/orange_county&id=9032294), (March 2013).

<sup>2</sup> Alejandra Molina, "Fullerton Police Officer Recovering After Shooting", *Orange County Register*, <http://www.ocregister.com/articles/police-500171-officer-fullerton.html>, (March 2013).

<sup>3</sup> Caitlin Dineen, "Man Shot by Fayetteville Police in May Dies", *The Fayetteville Observer*, <http://fayobserver.com/articles/2013/07/02/1267327?sac=fo.crime>, (July 2013).

surrendered without incident, however the one who fled and fired on the officers was fatally shot. Three of the four vehicle occupants had outstanding warrants.<sup>4</sup>

The OPC report makes a bold claim that “there is no evidence that enforcement of the law against out-of-state drivers has increased public safety in the District.” However, not only is it difficult to demonstrate the absence of danger, but it does not appear that OPC has conducted any such analysis to determine this. As such, this statement is disingenuous, at best. At its worst, the statement endangers law enforcement officers and the public by urging the District to cease any enforcement of window tint standards for vehicles registered in other jurisdictions.

Equally important, this is predicated on a false assertion that “it seems unfair for those motorists [from other jurisdictions] who drive cars with tinted windows to have to alter their vehicles in order to avoid a fine when they are only driving on District roads 10 to 20 minutes each work day.” In fact, both MPD policy<sup>5</sup> and training on tint violations specifically instructs members only to issue a “Notice of Violation” if the tint is in violation of the standards in both the District and the jurisdiction in which it is registered.

Moreover, the report raises allegations that the Department is engaging in a practice of racial profiling for stops for window tint violations. This allegation is very surprising because in most cases of window tint violations, the officer conducting the stop cannot even identify the race of the driver because of the window tint. The report goes on to present confusing data to support this allegation.

Out of all the window tint-related complaints that OPC received from 2007 through 2012, 78.2% were from African Americans and 13.8% were from whites. OPC found, however, that 96.9% of the 76 window tint complaints received during that time period—an overwhelming number—were filed by African Americans.

Regardless of whether 78 or 97 percent of all the window tint-related complaints received were from African Americans, as OPC knows, this alone is not an indication of disproportionate enforcement. In order to make a valid comparison, we would need to look at the demographics of the actual window tint violators driving in the city, and not just of the general population.

The report presents five sample cases to illustrate its point. I think it is important to address each one as they raise several questions.

- 1) In the first case, the vehicle was stopped because “the officers could not see inside [the car].” (This statement alone illustrates the improbability that officers make race based stops.) The officers did not issue a violation to the driver. The report does not note whether the officers issued a warning. The lone basis for the complaint, at least as presented in the report, seems to be the driver’s contention that she drives in the city frequently but had never yet been

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<sup>4</sup> Raymond Owens, “Dash Camera Video Released from Hanahan Shooting”, *WCBD-TV Charleston*, <http://www.counon2.com/story/23243336/dash-camera-video-released-from-hanahan-shooting>, (August 2013).

<sup>5</sup> Special Order 95-14 *Motor Vehicle Tinted Window Amendment Act of 1994* appears to have been inadvertently omitted from an index of active directives. However, we are not able to find any evidence that it was ever rescinded, and the Metropolitan Police Academy training is still based on this order. After reviewing the order, it will be either added back to the index of active orders or updated and reissued.

stopped. Based on a plain reading of the facts presented, it is difficult to see how this was handled inappropriately. Just because a violator gets away with an infraction for a time does not make the first stop unwarranted.

- 2) In the second case, a driver stopped because of his window tint was apparently concerned that the officer asked questions which were not directly related to his window tint. However, because the officer did not have a tint meter, he informed the driver that if he did not want to wait for another officer to arrive with a tint meter, he could leave. The driver elected to leave. The complaint was dismissed because the officer did not violate any MPD policies. As anyone familiar with police work knows, asking questions is an essential part of the job. The parameters for doing so have been recognized by the Supreme Court and are frequently referred to as a Terry Stop. If the officer conducted the Terry Stop appropriately, in compliance with both MPD policies and Supreme Court findings, it is difficult to ascertain what he did wrong. We recognize that even during a lawful stop, sometimes people do not like being asked questions by the police, however that alone is not sufficient reason to change a law that is protecting law enforcement and the community.
- 3) A female complainant leaving a club at 3:00 am alleged that her white Ford Expedition with darkly tinted windows was searched even after she denied permission to search it. OPC dismissed the complaint after finding that the officer had valid reasonable suspicion based on a witness lookout for a white Expedition with a male driver who had threatened to shoot a patron of the club once it let out. Again, if OPC has validated this law enforcement action, it is difficult to understand how this supports a recommendation to change the law.
- 4) A male complainant was driving a Maryland registered vehicle with aftermarket tints that reduced the light transmittance to 5 percent. He alleged that the officer stopping his car refused to accept his medical waiver, was argumentative, and threatened to impound his vehicle. While the summary presents no evidence that the officers' response was based on the driver's race (indeed, with only 5 percent light transmittance, the officer would not have been able to identify the race of the driver before the stop unless the window was rolled down), the alleged officer behavior described in the complaint does seem unprofessional and unacceptable. Unfortunately neither the complainant nor OPC was able to identify the officers. In terms of policy, we will discuss with the District's Department of Motor Vehicles (DMV) whether there are ways to improve the process for medical waivers and communication about this process to the force.
- 5) In the final example, OPC notes that the complainant was pulled over by two white officers around midnight after circling the unit block of Q Street and Bates Street, NW, while attempting to find parking. Although the officer told him he was pulled over because of the tint of his rear window and he was circling a block in an area with drug complaints, he was given a ticket for making a turn without signaling. It is good that the complaint was successfully resolved with a mediation. However, there does not appear to be enough information here to support either an allegation of racially biased policing or a repeal of window tint laws. Lastly, in presenting the five examples of complaints, it seems inflammatory that the report only notes the race of the responding officers in the case where there were two white officers. If the report is going to provide this information for one of the examples, it would perhaps be best to provide the same information for all the examples. Given that 58 percent of the force is black, it is likely that the majority of officers involved in these stops were also black.

MPD has the following response to the four specific recommendations in the report.

*1. Amend the District's Window Tint Law to Apply Only to District-Registered Vehicles.*

In the interest of both officer and public safety, I oppose this recommendation.

*2. Attempt to Standardize Light Transmittance Levels Across the District, Maryland and Virginia.*

I will defer to the DMV to determine whether this recommendation is feasible. However, reaching consensus between the executive and legislative branches in three disparate jurisdictions is challenging, and window tint violations may not be a topic that merits the collection attention and will to accomplish this. It is noteworthy that although the report presents New York as the model to support this recommendation, in fact New York has only gone so far as to do what the District did in 1994, which was to create exceptions for commercial vehicles.

*3. Review MPD Enforcement Data and Reconvene Fair and Inclusive Policing Task Force.*

No information on race or ethnicity is captured for either Notices of Infraction or driver's licenses, so an analysis of enforcement data is not possible without significant expense to create a study. Moreover, as noted previously, for window tint violations, officers most often cannot even determine the race of the vehicle operator before initiating the stop, so such a study would not be useful.

The data on DMV ticket dismissals raised in the report merits a response. The DMV was unable to identify the source for the data and provide it to MPD in order to fully respond to this portion of the report. We have requested comparable data on recent trends. However, based on an analysis that we do have from Fiscal Year 2007 through FY2010:

- 19 percent of **all officer-initiated moving violations** were contested, so the 18.7 percent rate for the window tint violations is not an outlier.
- The annual percentage of all contested moving violations that were dismissed varied from 74 percent in FY08 to 31 percent in FY09, so it is difficult to determine the long term trend. However, according to the 2013 data published by DMV on their website, **64 percent of all officer-initiated moving tickets contested are dismissed**. Therefore the 50 percent dismissal rate for window tint violations is actually better. It is important to note that tickets may be dismissed for a variety of reasons that are unrelated to the merit of the ticket, including DMV receiving the ticket late, information missing from the ticket, or the officer failing to appear at the hearing. None of these reasons is good, but it does not necessarily indicate a problem with either the law or the traffic stop.

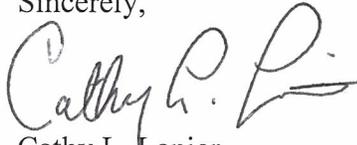
*4. Create a New General Order and Provide Training.*

As you know, General Orders are not designed as the primary tool for communicating simple matters of law. When the General Order on Traffic Enforcement is revised, Special Order

95.14 will be incorporated. In the meantime, we will issue a roll call training to remind members of key elements of window tint enforcement. In addition, window tint enforcement is already a standard session in the recruit training curriculum.

Given this additional perspective on the issue of window tint violations and enforcement, I hope you will reconsider the report and its recommendations. If you have any concerns or questions, please feel free to contact me on 202-727-4218.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy L. Lanier". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cathy L. Lanier  
Chief of Police