



Received by:
Erika Shields
2/24/17

CITY OF ATLANTA

Kasim Reed
Mayor

226 Peachtree Street, SW
Atlanta, Georgia 30303
(404) 546-6900

Atlanta Police Department
Erika Shields
Chief of Police

February 20, 2017

Ms. Sherry Williams
Atlanta Citizens Review Board
City Hall Tower, Suite 9100
55 Trinity Avenue, SW
Atlanta, Georgia 30303

RE: 16-088

Dear Ms. Williams:

I am in receipt of the Atlanta Citizen Review Board's letter pertaining to the complaint of Ms. Alexandria Dickens and the Board's recommendations with regard to the actions of **Officer Matthew Harris**.

At this time, the Office of Professional Standards has concluded its investigation into the allegations surrounding Ms. Dicken's complaint. Allegations concerning APD Work Rule 4.1.1 *Appropriate Action* and Work Rule 4.2.33 *Conformance to Directives*, specifically with regard to APD.SOP.3020 "Search and Seizure" were explored. The investigation concluded substantial evidence existed for the traffic stop, so the allegation with regard to Appropriate Action was **Exonerated**. The amount of time extending the stop (44 minutes) awaiting the presence of a female officer was not found to be excessive, so therefore I do not concur with the Board's recommendation to Sustain against Officer Harris for this portion of the allegation. As to conforming to the search and seizure policy, Officer Harris was also **Exonerated**, as his actions with searching the vehicle were not found to be a violation of the controlling Standard Operating Procedure. In his recommendations, Lt. Hajredin Zenelaj cited the same State of Georgia

Vs. Folk case law as noted in the ACRB investigation; in subsequent research (attached), he also found conflicting appellate court rulings regarding the search extending to the vehicle's trunk. With this mind, I respectfully do not concur with the Board's recommendation to Sustain this portion of the allegation against Officer Harris.

OPS did not find any violation with regard to the handcuffing of Ms. Dickens, so I concur with your recommendation with to the use of force.

Major Celeste Murphy, Commander of the Office of Professional Standards, can be contacted at (404) 546-5945, if you have any further concerns regarding this complaint.

Sincerely,



Erika Shields
Chief of Police

ES/shb



M E M O R A N D U M

TO: Lt. S. Bennett

FROM: Lt. H. Zenelaj

DATE: February 20, 2017

RE: Search of Trunk / OPS File 16-C-0633-SOP

The North Carolina cases closest to the mark suggest that a search based on the odor of marijuana may extend to the trunk. *State v. Cash*, 89 N.C. App. 563 (1988) (ruling briefly that a search based on the “odor of marijuana” properly extended to the search of “plastic garbage bags found in the trunk of the car” because marijuana could be located in the trunk). Cf. *State v. Mitchell*, 224 N.C. App. 171 (2012) (holding that the fact that a passenger in a vehicle had marijuana on her person provided probable cause to search the trunk, but expressing this ruling in a way that arguably supports the idea that the odor of marijuana alone would also support a search of the trunk: “We have held that the mere odor of marijuana or presence of clearly identified paraphernalia constitutes probable cause to search a vehicle. . . . Clearly if the odor of marijuana alone is sufficient to constitute probable cause, seeing marijuana constitutes probable cause as well. Therefore, [the officer] could legally search wherever marijuana might reasonably be found, including the trunk and the luggage therein.”).

United States v. Champion, 609 Fed. Appx. 122 (4th Cir. 2015) (unpublished) (noting the split and collecting cases, but finding it unnecessary to take a position on

the issue given additional evidence beyond the odor of marijuana that contributed to probable cause for searching the trunk in that case). The Tenth Circuit has taken the view that the odor of burnt marijuana, at least, does not support a search of the trunk by itself. *United States v. Nielsen*, 9 F.3d 1487 (10th Cir. 1993) (holding that where an officer “said he smelled burnt marijuana,” there was probable cause to support the search of the passenger compartment, but if nothing is found during that search, there is no probable cause to search the trunk). Cf. *United States v. Carter*, 300 F.3d 415 (4th Cir. 2002) (“In the instant case, [an officer] clearly had probable cause to search the passenger compartment of [a] vehicle without a warrant, based on the burning marijuana he smelled as he approached the car.”). Other courts have indicated that the odor of marijuana **does** provide probable cause to support a trunk search. See, e.g., *United States v. Cherry*, 436 F.3d 769 (7th Cir. 2006) (“[T]he government has inexplicably abandoned reliance on [an officer’s] testimony that he smelled marijuana—which seems a simple and compelling foundation for searching [a suspect] and ultimately the car including the trunk.”).