

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Brian Curran, Chief, Chapel Hill Police Department

SUBJECT: Charles Brown Complaint

DATE: September 28, 2009

On July 9, 2009, Chief Curran, Matt Sullivan, and Captain Jeff Clark met with Charles Brown and his attorney Al McSurely, Mr. McSurely spoke on behalf of Mr. Brown. He stated that Mr. Brown was walking home from his barber shop, located on E. Rosemary St. He stated that he was told to stop, by Officer Funk. He stated Officer Funk grabbed him and placed him under arrest. He stated that Officer Funk called him Mr. Fearrington. Mr. Brown told him that he was not Mr. Fearrington. Mr. McSurely stated that officers held Mr. Brown from 11:45 p.m. until 12:23 a.m. (38 minutes).

Mr. McSurely also stated that at the request of Officer Funk, Officer Williams responded to the scene. Officer Williams is an African American officer. According to Mr. Brown, Officer Williams commented to other officers that, "I hate these ones."

During the July 9, 2009 meeting, an audio recording from Orange Central Communications was played for Mr. McSurely and Mr. Brown. The time Officer Funk checked out with Mr. Brown was 12:14 a.m. and the time cleared was 12:30 a.m. (16 minutes).

On August 10, 2009 Mr. Brown submitted a complaint form to the Chapel Hill Police Department. Copies of the form were sent to the Mayor, Town Council and the Town Manager.

The citizen complaint was assigned to Captain Clark to investigate. The officers involved, Officers David Funk, Michael Castro, Keith Sabanosh, Greg Taylor and Doug Williams, were interviewed as part of the investigation. The investigation concluded that Officer Funk had reasonable suspicion to stop Mr. Brown. Officer Funk states that he thought that he was stopping Cumun Fearrington. Mr. Brown and Mr. Fearrington have very similar facial features.

Office Funk did not arrest Mr. Brown. Mr. Brown was placed in investigative detention. When police officers have the reasonable suspicion necessary to justify an investigative stop, the suspect is not free to walk away, and officers may use reasonable force to prevent the suspect from doing so. Physically restraining suspects after lawfully commanding them to stop is a means for officers to encourage compliance. The United States Supreme Court holds that law enforcement officers "may, in appropriate circumstances and in an appropriate manner, approach

a person for the purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." Terry v. Ohio, 392 U.S. 1 (1968) at 22.

In the audio recording given to the Chapel Hill Police Department by Orange Central Communications, the time of the encounter with Mr. Brown began at 12:14 a.m. and ended at 12:30 a.m. (16 minutes). On July 9, 2009, a copy of this audio recording was released to Mr. Brown and Mr. McSurely. There is no evidence to support the claim that Mr. Brown was held in detention for 38 minutes as stated in the initial complaint filed by Mr. McSurely on behalf of Mr. Brown. It is important to note that in documents later filed by Mr. McSurely and Mr. Brown, the time being detained was increased to "almost one hour." The same is true for a recent story written in **The Independent**, in which Mr. Brown claims he was detained for about one hour.

During the July 9, 2009 meeting, a copy of a photo of Cumun Fearington was released to Mr. Brown and Mr. McSurely. During that meeting, Mr. McSurely did acknowledge the similarities in appearance to his client Mr. Brown

This investigation uncovered no evidence to support the claim by Mr. Brown that he was taunted by Chapel Hill Police Officers. In all statements provided by officers, there was no indication that any of the officers mistreated Mr. Brown. The evidence supports the fact that Officer Funk attempted to make Mr. Brown feel more at ease. The fact that an African American officer was called to the scene shows that Officer Funk was attempting to defuse the situation. Officers Castro, Taylor, Williams and Sabanosh were named in the complaint by Mr. Brown. In Captain Clark's investigation, no evidence was found to suggest that these officers acted inappropriately towards Mr. Brown.

Captain Clark concludes that all officers involved in this investigation, Officers Funk, Castro, Taylor Sabanosh and Williams should be exonerated in this matter. No other actions should be taken in this matter. However, Captain Clark did offer two recommendations:

- The Chapel Hill Police Department should work to ensure that all patrol vehicles are outfitted with in-car camera systems. The in-car camera system would provide protection that would benefit both officers and citizens.
- When a Chapel Hill officer places anyone in investigative detention, a written report of the incident should be generated. The department should develop a policy that directs officers to submit a written report to document the incident.