

To: [REDACTED] & [REDACTED]
From: Nelson M. Campbell – Human Rights Commission
Date: July 16, 2020
Re: Report on Investigation

Dear [REDACTED] and [REDACTED] –

In the early days of this investigation, you had asked for the courtesy of a weather report on my findings due to your sensitivity about publicity around the [REDACTED]. I am now at a point of being able to provide that to you and your family. I would first like to thank you for your valuable suggestions and your always prompt responses to my requests for information. I would also like to thank you for your patience during the investigation. I have attached a list of the evidence I reviewed, and interviews conducted. I can be available to have an in-person meeting to discuss any questions you may have after you read this through Microsoft Teams due it being a more secure platform than Zoom.

There are four points to be made initially. First, there is insufficient evidence to support the existing legal standard (which I discuss below) that would show that the VSP treated either of you or your family in a discriminatory manner based either on sex or race and color. Second, and importantly, this report will, by necessity because investigators are neutral, examine and discuss evidence that will not be favorable to either side or reflect well on either side. Third, my recommendation is that only. The Commissioners can choose not to accept my recommendation although they do not conduct a full evidentiary hearing. If they overrule me, the report will become public. If they hear the case and agree with me, the report remains confidential. The HRC would not even confirm an investigation had occurred and would not release a report, though there is nothing to prevent a party from doing so. Fourth, a complaining party is entitled to request that the Executive Director allow you to withdraw the complaint and prevent it from being reported and presented to the Commission if the complainant feels it is their best interest, for whatever reason. I do not know whether the VSP would object to that, or on what grounds they would have the right to do so. It has always been the prerogative of the complainant unless there was an opportunity for public interest relief, however both you and the VSP have remained unwilling to come to the table, understandably so. If you decide to withdraw the complaint, you will need to let me know by a date certain, otherwise I will continue to write the report. **Please let me know your position on or before July 30, 2020.**

There are several reasons for my findings and recommendation. In the first instance, for purposes of race and color, a complainant must show “markedly hostile” treatment by the Respondent. That standard derived from a year 2000 Maryland federal district court case¹ involving merchants, not law enforcement, but it has never been embraced by the Second Circuit (our circuit). To prove marked hostility, courts examine indicators of objectively unreasonable conduct including: “(1) [conduct that was][] profoundly contrary to the manifest financial interests of the merchant and/or her employees; (2) so far outside of widely-accepted business norms; and (3) so arbitrary on its face, that the conduct supports a rational inference of discrimination.” Those could be adapted to law enforcement of course, but the Second Circuit has noted that it can be difficult to distinguish instances of “declining civility” versus hostility based on race and color. It is not robust.

Absent (or in addition to) sufficient evidence of marked hostility due to race and color, you need a “comparator” – that is, in this case – a white individual or family in similar circumstances, who was delivered services by the VSP in a more favorable way than your family. At one point, I had considered [REDACTED] as a possible comparator, however (as Leise noted on Thursday in his interview) he was also considered a “person of color” – not white. I also note Leise’s email of 10/23/17 to Lt. Lucas and Sgt.

¹ *Callwood v. Dave & Buster’s, Inc.*, 98 F.Supp.2d 694 (D. Md. 2000) (invalidated on other grounds by *Williams v. Staples Inc.*, 374 F.3d. 662 (4th Cir. 2004)).

Hammond regarding the VCOR: “I just don't want to see someone go down, arrest someone, and then the ACLU gets involved due to both parties backgrounds, etc. and that the biased state police made a bad judgement call.” The instances of comparison found in the other incident reports are not extensive enough for me to make a comparison. This means I do not have a comparator or evidence to support an already weak legal standard. I will return to the issue of discrimination based on sex further below while I review the bases for my recommendation. Please be aware that I am highlighting the areas below, but my report will go into far greater detail.

1. Nature of the VSP

While I believe that there were occasions where the VSP failed to deliver services to you and that that failure likely caused harm to your property, I find that the VSP was not equipped nor able to respond to the needs you had to the extent that you needed and expected them to respond. Their practice is to put fires out and to mediate where possible. This can be seen in the 73 comparator reports. This can be heard in the conversations they had with both you and ██████ that I listened to from the bodycam recorders. They are a top down, command structure organization. They are not nimble. They are compartmentalized. They do not necessarily communicate between shifts. They do not all do things the same way. They are structurally rigid. They sometimes approached things piecemeal. They have days off because they must abide by union contracts. This created frustration. You all reached out to Leise on his day off – 12/9/17 because he and Marchand were there on 12/6/17 and ██████ stuff was all over the place. By 12/9/17 things were the same and you were frightened, so you reach out to Leise for help, only to have him tell you “It’s not my case” – it is Marchand’s. That was accurate and it is the way it works, but it is also incredibly frustrating. The VSP lacks the ability and resources to create a continuous point of contact like a victim’s advocate. The Williston Barracks covers a large area.² From their point of view, they contributed an enormous amount of resources in terms of time and individual trooper time responding to you and ██████. From their point of view, they accommodated you a great deal and delivered services to you above and beyond including time off (Leise). In his interview, Lucas stated that “I’ve never pulled in four, five, six troops, all my sergeants, me, and obviously had a SA [Olney] come down to talk about one instance, you know unless it was obviously a homicide or something along those lines.” I cannot find sufficient evidence to support the legal standard that the decision of the VSPs, their actions and non-actions were based on race and color. The report will cover the criticisms and perspectives of both sides in more detail.

II. Mistrust and Frustration with both parties

There were instances where some of the troopers were rude and insensitive to you and your concerns to your face and in email. There were instances when they dismissed your fears or thought they were silly, such as Ravelin’s reaction to ██████ papering over of windows or finding hearing about the bottles of urine, hatchets, knives etc. There were instances when they ignored the broken locks and obvious VCORs. There is insufficient evidence that these actions or non-actions are connected to your race or sex using the standard the law requires. There was a very high level of frustration with both you and ██████ and a mistrust of you both. There was a belief that you all were playing mind games with each other and setting each other up. Their mistrust and frustration by the VSP toward both parties is evident. When I asked Leise why he wrote the entire barracks that he found you dishonest after only

² Williston Barracks provides primary law enforcement services for the towns of Bolton, Buels Gore, Charlotte, Huntington, Jericho, St. George, and Westford in Chittenden County. We also provide assistance as requested to local police departments to include Burlington, Colchester, Essex, Hinesburg, Milton, Richmond, Shelburne, South Burlington, Williston and Winooski, along with the Chittenden County Sheriff’s Department and the University of Vermont Police Department. The Williston Barracks patrols 40 miles of interstates within Chittenden County. The Williston Barracks oversees an outpost office in Cambridge, which is responsible for police coverage in the towns of Belvidere, Cambridge, Eden, Elmore and Waterville in Lamoille County. We also provide assistance as requested to area law-enforcement agencies including Morristown, Stowe and the Lamoille County Sheriff’s Department.

meeting you for a short time and for such an insignificant reason, he could not really come up with any answer other than to repeat that your guests hadn't shown up after you had been pushing him to stay and help [REDACTED] move. When I asked why he had not written a similar email to the Barracks when [REDACTED] exhibited multiple instances of dishonesty, he told me that was a good question and he was not sure why he had not. I have listened and watched some of the video of 10/22/17. I find Leise was borderline rude when he arrived, ill-prepared, brusque and impatient. In his interview he stated he had arrived not realizing you were a witness against [REDACTED] which seems sloppy. You started to tell him you were a witness and he brushed it off, but you also did not pursue it and it make it clear to him. His behavior reflected the frustration that already existed in the Barracks toward you and [REDACTED]. For instance, Sgt. Hammond believed you and [REDACTED] were both untrustworthy. She claimed that you told the tow company that that VSP said it was ok to tow [REDACTED] car. She stated she did not tell you that. Sgt. Ravelin was irate because he said you had called about papering the windows, not the missing door. He was also irate because he believed you were "trooper shopping."

The VSP was obligated to listen to both you and [REDACTED]. They did not discount [REDACTED] in the beginning just because of his theft charge. Lt. Lucas's perspective was that victims can become offenders and vice versa, thus, it is incumbent for troopers not to take sides. However, both he and Kelton Olney realized that you all were understandably consumed by the situation and because of that, lacked the perspective that he had or a sense of the pressures on resources that your situation was creating. Olney stated "[W]hen you're in the middle of this, it's the most important thing in the world, and it's off-putting and discouraging and upsetting when people, the attorneys, and the judge, and circle social workers and so forth view your situation and don't view it as the most important thing in the world. To you it is, and I think to the [REDACTED] this was. But in the context of every other case that was going on at the time in Chittenden County, it just wasn't." One other thing Lt. Lucas mentioned was the challenge of working with a prosecutor's office with whom they had no relationship. It is not impossible to do so, but it presents hurdles. I can verify that based on my background and experience. I cannot find sufficient evidence to support the legal standard that the decision of the VSPs, their actions and non-actions were based on race and color. The report will cover the criticisms and perspectives of both sides in more detail.

III. Legal Constraints & Varied Interpretations of the COR

Troopers and sergeants were bound by legal constraints and court orders. Windsor County really messed things up with the conditions of release as you well know. It created frustration on your end and theirs and it contributed to the creation of a fraught relationship and confrontations with [REDACTED] that turned to nothing because they could not be enforced. While I (nor Trooper Knight) do not think the conditions of release were as ambiguous as Leise, say, their several iterations created a sense that they were ambiguous. This leads to an important point which is the fact that for the State's Attorney to prosecute a case against [REDACTED] the elements of the legal violation must all be present. This was relayed to you during one of the bodycam recordings. I think that there is an argument that there could have been more charged/cited COR violations as well as other charges. However I do not find evidence sufficient to support the legal standard, that the failure to do so was based on race and color.

A general but not unpersuasive reason for doing so, from the VSP's perspective, is that citing and arresting [REDACTED] over and over could make things worse for you and the property by inflaming him. The reality in fact is he would not have been kept in jail at all or only overnight in most instances. You were informed of this during one of the meetings you had with troopers via body cam recordings. He then would have come back home to the [REDACTED] angry. It does seem that the more pressure they put on him – accosting him at UVM in front of a lot of foot traffic, confronting him with a couple of lies, (his lie about his encounter with [REDACTED] and the "stolen" trail cam), the more bizarre his behavior became. Corporal Leise confirmed in his interview that he came to believe [REDACTED] was dangerous, but neither he, nor anyone else believed that initially. Judge Mello certainly recognized that. I have listened to their early interviews and encounters with him. [REDACTED] can barely string a sentence together. He is evasive. Soft-

spoken. Gentle seeming. He is a con, as you know. Despite the harm you suffered by virtue of having rented to him, I cannot find sufficient evidence to support the legal standard that the decision of the VSPs, their actions and non-actions were based on race and color.

IV. Discrimination Based on Sex

With respect to discrimination based on sex you would need to have a comparator as well in order to show disparate treatment. You do in fact have one in [REDACTED]. He is a male, and a complainant against you at times and the VSP dealt with him as such. His protected status does not matter in this context. In order to prove differential treatment, you would need to show that the VSP treated him more favorably because he is a male. The law allows for the VSP to provide what are called “legitimate non-discriminatory reasons” for its actions. They do not have to prove them; they only need to raise them. If they do so, the final burden on you is to prove that those reasons are pretexts for discrimination based on sex. As always, the complaining party bears the burden of proof.

While there was insensitivity to your fears of [REDACTED] that evidence is insufficient to prove pretext – that it was discriminatory rather than simply insensitive. Of particular note, were the allegations surrounding the service of the APO on you by Leise and Ravelin. In our interview, you relayed to me that though Ravelin was courteous, it was essentially a terrifying experience of being bullied and threatened with arrest. Your complaints capture that threat to an extent in #31-32 in the complaint based on sex and #23-25 in the race/color complaint.

I obtained an audio recording of that meeting. I am cognizant that I am unable to see facial expressions or body language. I am also cognizant that having police officers in one’s home, particularly under such awful circumstances is traumatic. I do not dismiss or disbelieve how you felt. However, the audio presents a version of the encounter that is at variance with your account of it and the assertions made in the complaint and interview. They spent about an hour and six minutes with you. Their tone was professional, polite and informative. References to arrest, photos and the like were informational and explained as part of various processes and were not presented as threats towards you. They listened to many of your complaints about [REDACTED] and offered advice about going to court to contest the temporary order and recommended what kind of evidence you should take with you. The meeting ended with laughter, and compliments from them on your [REDACTED] and on the [REDACTED] and comments about the situation someday becoming a movie. After leaving you, they went to see [REDACTED] where they spent about 22 minutes. They treated him very differently than they treated you. They were impatient, slightly threatening in the way I had expected you to have been threatened based on your description. They were dismissive of his efforts to report things you had allegedly done to him. They kept emphasizing that he needed to move out. I will send you a link to the audio. In sum, there is no support for discrimination based on sex attached to that encounter. In addition, collectively, the reasons supplied by the VSP that make it impossible to prove race and color, also make it impossible to prove pretext in the context of sex discrimination. To the extent they treated [REDACTED] “better” or with kid gloves, their reasons – not escalating the situation, “ambiguous” CORs, lack of direct evidence – apply.

V. Conclusion

Again, this is a report that will not reflect well on either party in many instances because each side’s perspectives and grievances against the other will be aired and the facts fleshed out in full. This does not change the fact that [REDACTED] did grievous harm to the [REDACTED] and the [REDACTED] and that he cost you thousands and thousand of dollars in legal fees, repairs, moving and storage costs and the like. Going back and reading the settlement memorandum from 2018, the HRC had high hopes that the parties could resolve the matter and come to the table. I also acknowledged in the memo that I had not heard or reviewed extensive evidence from the State. Having done so and considered it in its totality, I am unable find evidence that would sustain a finding of discrimination based on race, color or sex.

Court Documents

- Statement of Simon Keeling, 12/17/16, regarding theft of the silver coins
- Application for Search Warrant – Officer Simon Keeling – 3/21/17
- Affidavit of Harford County Police Officer Simon Keeling in [REDACTED] Case – 9/22/17
- Criminal Information by State's Attorney, [REDACTED] . State V. [REDACTED]
- Docket No. [REDACTED] Wrcr State vs. [REDACTED] – Windsor Criminal Division, Docket Sheet Printout 9/22/17-1/24/18
- Pro-Se Motion for Entity Change – 12/19/17 – [REDACTED]
- Civil Division - Docket No. [REDACTED]-17 Cnsa, [REDACTED] Vs. [REDACTED] ENTRY REGARDING MOTION – [REDACTED] 19 (J. Toor)
- Motion to Dismiss Complaint for Order – Motion Granted – [REDACTED] 17 – J. Mello
- Temporary Order for Stalking or Sexual Assault – Granted – Docket No. [REDACTED]-17cnsa - [REDACTED] v. [REDACTED]
- Civil Division -Docket No. [REDACTED]-17cnsa, Motion to Dismiss Complaint for Order Against Stalking Or Sexual Assault, Superior Court, Chittenden Unit, [REDACTED] V. [REDACTED] Filed, [REDACTED] 2017
- State of Vermont, Motion to Modify/Extend a Court Order Against Stalking Or Sexual Assault, filed by [REDACTED] [REDACTED] 17 – Superior Court, Chittenden
- Complaint & Affidavit for Order Against Stalking or Sexual Assault, filed by [REDACTED] against [REDACTED] [REDACTED] 17, Chittenden Superior Court
- Vermont Superior Court - Windsor Criminal Division - Amended Conditions of Release, Date of Order: November 7, 2017, [REDACTED] State v. [REDACTED]
- Vermont Superior Court - Windsor Criminal Division – Amended Conditions of Release, Date of Order: October 16, 2017, [REDACTED] -State v. [REDACTED]
- Vermont Superior Court - Windsor Criminal Division - Amended Conditions of Release, Date of Order: October 4, 2017, [REDACTED] State v. [REDACTED]
- Vermont Superior Court - Windsor Criminal Division - Conditions of Release, Date of Order: September 22, 2017, [REDACTED] State v. [REDACTED]
- Chittenden County Superior Court -Hearing on Stalking/Sexual Assault, [REDACTED] v. [REDACTED] December 28, 2017, Case No. [REDACTED] Cnsa, J. Mello.

Vermont State Police Incident Reports Involving Calls from the [REDACTED] and [REDACTED]

1. 17A104268 – CITIZEN ASSIST - 9/18/17
2. 17A104535 – SUSPICIOUS – 10-3-17
3. 17A104581 – COND. OF RELEASE – 10/6/17
4. 17A104610 – AGENCY ASSIST – 10/8/17
5. 17A104859 – CITIZEN DISPUTE – 10/22/17
6. 17A104867 – CITIZEN ASSIST – 10/22/17
7. 17A104889 – WELFARE CHECK – 10/24/17
8. 17A104939 – CITIZEN DISPUTE – 10/27/17
9. 17A104974 – COND. OF RELEASE – 10/29/17
10. 17A104973 – THEFT – 10/29/17
11. 17A104990 – CITIZEN DISPUTE – 10/30/17

12. 17A105043 – BURGLARY – 11/2/17
13. 17A105206 – THEFT – 11/12/17
14. 17A105218 – SERVICE OF APO – 11/13/17
15. 17A105263 – RESTRAINING ORDER – 11/16/17
16. 17A105340 – CITIZEN DISPUTE – 11/21/17
17. 17A105364 – VANDALISM – 11/23/17
18. 17A105432 – SUSPICIOUS – 11/27/17
19. 17A105433 – BURGLARY – 11/28/17
20. 17A105565 – SUSPICIOUS – 12/7/17
21. 17A105577 – SUSPICIOUS – 12/8/17
22. 17A105688 – SUSPICIOUS – 12/15/17
23. 17A105735 – SUSPICIOUS – 12/17/17
24. 17A105742 – SUSPICIOUS – 12/18/17
25. 17A105679 – SERVICE OF APO – 12/19/17

Emails

- **Williston Barracks Emails – Source: Williston Barracks, Windsor County State’s Attorney’s Office, [REDACTED]**
 - Corporal Andy Leise
 - Lt. Robert Lucas
 - Sgt. Julie Hammond
 - Sgt. Paul Ravelin
 - Corporal Mark Magnant
 - Corporal Adam Marchand

Calls for Assistance

- **Williston Barracks Calls for Assistance**
 - 65 call from [REDACTED] & [REDACTED] between 9/18/17-12/18/17
 - 121 Radio Logged Calls between 9/18/17-12/18/17
 - E-911 calls

[REDACTED] Materials

- [REDACTED] Lease
- [REDACTED] Photos of before & after the damage to [REDACTED] property
- Excel Spreadsheet of Financial Costs related to damage allegedly caused by [REDACTED]
- [REDACTED] Photos of knives, hatchets and firearms
- Event and 24-hour notices to [REDACTED]
- Multiple email exchanges between [REDACTED] [REDACTED] to and from the Vermont State Police, [REDACTED] Ward Goodenough, Assistant State’s Attorney, Victim’s Advocate Megan Place

Shelburne Police Report

- Incident Number 17HB01191 Nature Theft – 10/12/17 – Officer Bryan

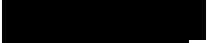
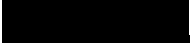
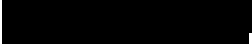

Harford County

- Incident Number 16HF06535 [Harford Cty. theft]

73 Incident Reports from Comparator VSP Responses: Landlord/Tenant Disputes, Trespass and Violations of Conditions of Release

- Time span: January of 2016 - December 2018 – 335 pp. involving direct responses and or supervision by:
 - Corporal Andrew Leise – @11
 - Ravelin – as officer or supervisor - @33
 - Lucas - @24 as officer or supervisor
 - Marchand - @ 18
 - Magnant - @ 13
 - Warner - @ 6
 - Sgt. Julies Hammond – @ 14
 - Clay Knight - @ 4
 - Trooper Bradley Miller - 8

Interviews

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-  – 8/23/18
- Lt. Robert Lucas – 3/9/20, 5/26/20
- Sgt. Julie Hammond – 3/9/20
- Kelton Olney, Assistant State’s Attorney – Chittenden County - 4/2/20
- Trooper Clay Knight – 5/26/20
- Sgt. Paul Ravelin – 6/19/20
- Trooper Adam Marchand – 3/10/20
- Trooper Andrew Leise – 7/9/20