STATESMAN INVESTIGATES RACIAL PROFILING COMPLAINTS

DPS videos raise questions about profiling probes

Some show troopers aggressively questioning motorists with little apparent reason for suspicion.

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SEE THE VIDEOS

For videos and more on the Statesman’s investigation of racial profiling in Texas traffic stops, visit mystatesman.com.

HOW WE GOT THE STORY

Earlier this year, the director of the Texas Department of Public Safety claimed publicly that his agency had received just 40 complaints of racial profiling since 2010, and that none of those complaints had been substantiated. When the director offered to show videos of the traffic stops to lawmakers and the public, American-Statesman reporter Sean Collins Walsh took him up on it, requesting the videos under the Texas Public Information Act. Three months later, the department has released 30 of the 40 videos. They are the basis of this story.
DPS Director Steve McCraw told a panel of state lawmakers in May that the “best evidence” for questions about racial profiling lies not in broad data analyses but in the dashcam videos of the traffic stops and other incidents that result in complaints of racial profiling. JAY JANNER / AMERICAN-STATESMAN 2015

The Texas state troopers said they pulled over the truck driven by Guillermo “Willie” Rios because the license plate was not on the front bumper. It was on the dashboard.

But video of the ensuing traffic stop and vehicle search shows that the troopers were instantly suspicious of Rios and his passengers.

“There’s not a scratch on that truck,” trooper Abraham Martinez said to his partner when they return to their patrol car, out of Rios’ earshot.

“Something is not right. I think all of this is a front.”

The search turned up nothing, and Rios, a South Houston City Council member who also works as a contractor in the oil industry, filed a racial-profiling complaint against the troopers with the Texas Department of Public Safety.

“They passed my vehicle, they look over at me, we all look Mexican, and then they pull us over,” Rios recounted in a recent interview about the 2014 incident. “They treated me like a criminal right when I got out. ... They pulled me over because my truck was too clean. How is that a reason to get pulled over?”

DPS investigated the allegation but did not find evidence of racial profiling. In fact, the agency has rejected every allegation of racial profiling that it has ever received.
When questioned by state lawmakers about data analyses showing state troopers stop and search African-Americans and Hispanics more frequently than Anglos, DPS Director Steve McCraw has encouraged them and the public to instead look at the individual cases in which officers are accused of racial profiling. There have been about 40 complaints since 2010, he said.

However, the dashcam videos from those encounters, which the American-Statesman requested from DPS under the Texas Public Information Act, raise more questions about how the department handles allegations of racial profiling than they answer about racial bias in policing.

A vast majority of the incidents stem from traffic stops for low-level offenses, like driving in the left-hand lane without passing. None released to date shows violence. Some show mundane police work or motorists making accusations at seemingly well-intended officers. But others show troopers asking to search vehicles or aggressively questioning motorists despite there being little apparent reason for suspicion.

Matthew Simpson, senior policy strategist for the American Civil Liberties Union of Texas, said examining the small subset of cases that result in complaints is not a useful measure of racial profiling, which is often the product of a police force’s internal culture rather than the actions of a handful of officers.

“Racial profiling data is more of a canary in the well than it is a means to identify individual bad actors,” Simpson said. “Complaints against law enforcement are actually far less common than people would think. If they are the subjects of police misconduct, many people are unwilling to go back and relive whatever had happened.”

But McCraw told a panel of state lawmakers in May that the “best evidence” for questions about racial profiling lies not in broad data analyses but in the dash-cam videos of the traffic stops and other incidents that result in complaints of racial profiling.

“Every stop that we have is recorded. Every stop. And even the reason we stop is recorded,” McCraw said at the May 5 hearing. “We’ve maintained all 40 of those audio and videos, which we can share, by law. We can share that with the public, and it’s the best evidence.”

DPS spokesman Tom Vinger said the department investigates every complaint.

“If alleged misconduct or potential concern over the conduct of any of our employees is brought to our attention, we will look into it,” he said. “Racial profiling is against the law, against DPS policy, and is not tolerated by the department.”

The American-Statesman requested the videos after the hearing in May. After three months of delays, the department began releasing the records two weeks ago and has handed over 30 of the 40 videos so far.

The department withheld the motorists’ complaints, as well as the investigative reports that resulted from them, which the Statesman also requested, for all but one of the incidents, after citing a state law that makes confidential records from investigations that do not result in significant disciplinary action.
The complaints may have resulted in low-level “corrective action” for the officers, but the department did not concur with the allegations of racial profiling or other serious misconduct, Vinger said.

In the one case that did result in disciplinary action, trooper Brandon Smith was suspended without pay for 30 days for improper conduct during a 2013 traffic stop of Patrick Strong, a Houston criminal defense attorney.

In that case, the Office of the Inspector General found that Smith had acted improperly and engaged in racial profiling and recommended that he be fired. McCraw, however, reversed the racial-profiling decision and reduced Smith’s punishment.

‘Is this normal?’

There are striking differences between the videos of motorists who accuse DPS of racial profiling and those from the incidents that have made national headlines in the ongoing debate over race and policing and fueled the Black Lives Matter movement.

Most of the Texas incidents center around minor traffic stops and do not result in violence or intense confrontations. They typically show drivers being stopped while going about their business, not officers responding to the scene of 911 calls or being placed in threatening situations. The motorists typically left the interactions with a bad taste in their mouth, not with life-threatening wounds or handcuffs on their wrists.

In a video from 2012, a white trooper pulls over an African-American woman driving to Dallas with a passenger. He tells her she was following another car too closely and asks her to exit her sedan and sit in the passenger seat of his patrol car while he interviews her from the driver’s seat.

They have a tense exchange, in which the woman asks, “Is this normal? ... I didn’t do anything.” The officer responds, “Is it normal for you to be so rude?” He goes on to ask why she is traveling to Dallas and whether she plans to stay in a motel that night. When she declines to answer his questions, he says, “Do you agree with people that are involved with criminal activity? I mean, do you support that? ... How would we know that you’re OK if we don’t ask questions?” He lets her go with a warning.

It’s possible the trooper pulled over the wrong car. In the beginning of the video, the car that gets pulled over does not appear to be following closely to any other vehicle. In the opening frames of the video, a separate but similar-looking black sedan is seen tailgating another car. As he realizes there is more than one person in the car he ends up pulling over, the trooper says, “I thought she was by herself.”

DPS did not respond to a question about whether the trooper pulled over the right car.

In a video from 2011, an older black man is pulled over for going too slowly in the left lane. The motorist then tells the trooper, who is white, “Well, last time, when you pulled me over a month ago, I was following in too closely behind a car, so I just figured you were just looking for another reason to just pull me over?”
The officer initially says he didn’t recognize the man. Later in the conversation, he acknowledges the previous stop, saying, “As I remember correctly, aren’t you with the fire department?”

After the trooper issues him a warning, the driver asks, “Who would I talk to about if I felt like I was being harassed when I come down here?” The trooper says the driver can call his sergeant but then says, “Actually, I’m not going to give you the number. You have my name and all that kind of stuff. You can look it up yourself, OK? It’s on that warning. Have a safe day.”

Another video from 2011 shows a black man in a red sedan being pulled over on the center shoulder of a busy highway. The man has no criminal history, but the officer conducts a search of his car, offering no other reason than that the motorist appeared nervous.

“We got a guy here. He’s real nervous. I’m about to check him out,” the trooper says to someone on his radio or phone. “His hands are shaking real, real bad when he was getting his driver’s license.”

Officers search the man’s car, pat him down and call in a K-9 unit to sniff for drugs. It all comes up empty.

Vinger said he could not comment on specific cases but said generally that officers may consider whether a driver appears nervous when investigating.

“An officer may extend the stop to investigate a matter beyond the original purpose of the stop only based on reasonable suspicion that another crime has been or is being committed. Reasonable suspicion is established by a totality of circumstances,” Vinger said. “Obvious nervousness might be among factors that along with other factors constitute reasonable suspicion to extend a detention.”

For all of these incidents, it’s impossible to know what exactly led the motorists to believe racial profiling occurred because DPS has not released the complaints, the investigations or the names of the drivers involved.

For some, the agency provided copies of the warnings or citations drivers received during the stops that led to their complaints.

One driver, Trent Johnson, filed his complaint after being stopped by DPS troopers in Chambers County three times in eight months, receiving warnings for low-level offenses each time: driving in the left lane without passing on Oct. 11, 2012; following too closely on Dec. 15, 2012; and failing to signal a lane change on June 6, 2013.

‘Driving while brown’

State Sen. Sylvia Garcia helped Rios file his complaint with DPS, saying in a recent interview she thought it was a “classic driving-while-brown example.”

But that’s not how DPS saw it. An agency employee, she said, told one of her staffers that the case could not have been racial profiling because the officers involved were Latino and African-American.
“That’s a flawed concept because anybody can profile. It doesn’t have to be a white police officer. If it’s cultural, then that means anybody in that organization,” said Garcia, a Houston Democrat. “With that kind of attitude, I’m sure that they’re going to find nothing.”

DPS later told Garcia’s staff there was insufficient evidence to support the racial-profiling charge. Vinger, the DPS spokesman, said that the “investigation, including a review of the in-car video, found no violations of policy or law.”

Since 2010, DPS has conducted 15 million traffic stops and received about 2,150 complaints of all kinds, Vinger said. The agency determined that 40 of them concerned racial profiling “based on the comments of the complainant,” he said.

Following such a complaint, there is “a formal investigation by the Office of Inspector General that includes interviews and analysis of evidence — including in-car video — and review of applicable policy and law,” he said.

But even when the inspector general finds evidence of racial profiling, the agency can overrule that finding, as it did in the case of Brandon Smith, the trooper who was accused of racial profiling by a Houston attorney Patrick Strong.

Simpson, with the ACLU of Texas, said the agency’s rejection of the inspector general’s findings in the Strong case tarnishes the integrity of the complaint process.

“That raises the question of whether it means anything at all for DPS to say they don’t racially profile,” Simpson said. “They have an incentive to say, ‘We don’t racially profile.’ ”

In the Rios case, Simpson said the officers used “incredibly aggressive investigative tactics based on what I would consider fairly flimsy basis.”

After interviewing Rios, the troopers confirmed several of his claims — calling South Houston’s City Hall to determine whether there was a council member named Rios, and verifying that Rios knew the correct sales price of his truck — but asked to search the truck anyway. Rios initially questioned why they wanted to search the truck but ended up giving them permission, saying he had nothing to hide.

“Once they pulled him over,” Simpson said, “they were just going to continue to dig and investigate until they found something.”

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