

# BURLINGTON POLICE DEPARTMENT



**J. Jeffrey Smythe**  
Chief of Police

**MAILING ADDRESS**  
P.O. Box 1358  
Burlington, NC  
27216

**STREET ADDRESS**  
267 W. Front St  
Burlington, NC  
27215

(P) 336-229-3500  
[www.BurlingtonNC.gov/Police](http://www.BurlingtonNC.gov/Police)



July 28, 2020

Mr. Ahmed Jallow  
Social Justice Watchdog Reporter  
Times News  
(347) 652-7953

Dear Mr. Jallow:

Thank you for your inquiry into the policing practices of the Burlington Police Department. In modern policing it is critical to directly confront the failures of the past and any current practice that may create unequal treatment of people by law enforcement. We, the Burlington Police Department, believe that systemic racism is real and that police in America have been unintentionally or directly responsible for the unequal treatment of minority groups. As a member of the media, you are part of the 4<sup>th</sup> pillar of democracy. We value your review of traffic stop search data of the Burlington Police Department.

### **Analysis of Traffic Stop Data**

The analysis of police traffic stop data is one of several tools the public and police agencies may use to evaluate potential unfair treatment of people. This is a complex and nuanced practice that may or may not provide some insight into how the police work and treat people in a community. Your questions involve search percentage by demographic of people during traffic stops by officers of the Burlington Police Department. Traffic stop data, including search percentage by demographic, should not be analyzed alone, but rather with a full understanding of the daily interactions between the public and the officers of the Burlington Police Department.

### **Search Percentage Evaluation**

Your inquiry on Friday, July 24, questioned the search percentage of African American and Hispanic drivers during traffic stops in Burlington from 2010-2019. Search percentage evaluation is "...often used erroneously to draw conclusions regarding racial bias." Dr. Fridell provided further evaluation of this practice saying:

"In many jurisdictions higher proportions of stopped minorities are searched than stopped Caucasians. Analysts, stakeholders, reporters, and even expert witnesses have mistakenly concluded that this disparity between the frequency of searches of minorities and searches of Caucasians necessarily indicates bias on the part of police. Such conclusions are not supported by 'percent searched' information."

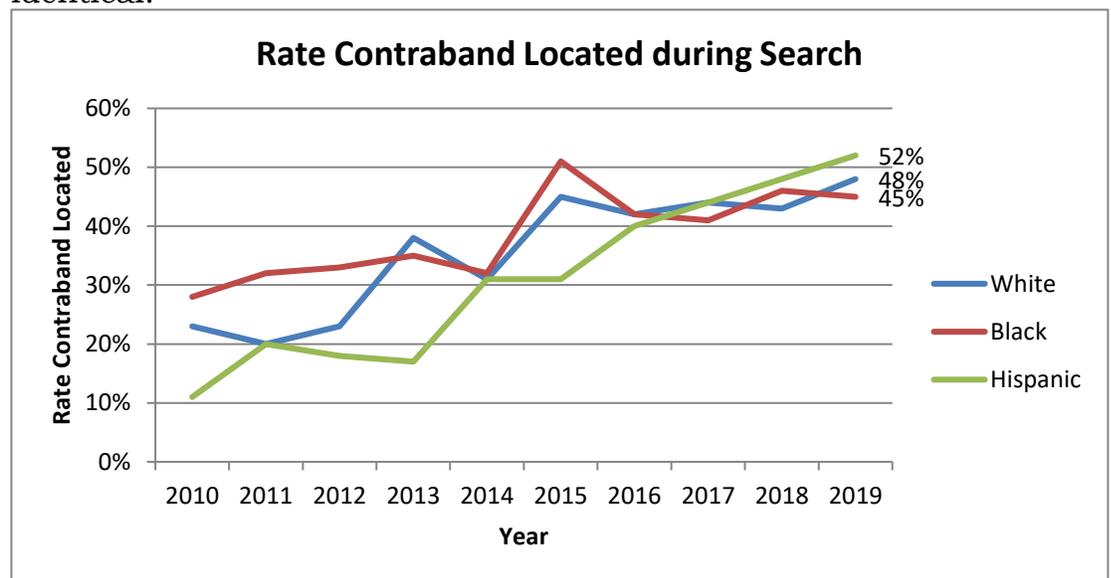
"'Percent searched' information may show disparity, but it cannot identify the *cause* of disparity between searches of

racial/ethnic groups or, relatedly, whether or not the disparity is justified. Not every person who is detained is at equal risk of being searched by police; there are very legitimate reasons why some persons are at greater risk of being searched than other persons. Indeed, the public should not expect equal search proportions across stopped groups. Virtually all agencies report that stopped men are searched in greater proportions than stopped women. Does this finding indicate police bias against men? Not necessarily. It could be that more men are at greater legitimate risk of being searched by police than women because men, more than women, manifest behaviors that provide legal grounds for a search.” (2005)

A review of the percentage of drivers searched in Burlington does not sufficiently evaluate the cause for the search to identify unfair treatment of drivers or passengers by the Burlington Police Department. An evaluation of all searches across a decade is insufficiently broad and lacks the precision required to determine whether there is actual unfair treatment of drivers and passengers in Burlington. In order to better answer this question, additional analysis is required.

### **Outcomes of Searches**

A more complete evaluation of traffic stop data for potential bias is needed to determine what percentage of searches located contraband or other evidence of a crime.<sup>1</sup> This is most commonly referred to as “hit rate.” The theory is that if a racial or ethnic minority group is searched more frequently than other race or ethnic groups, but less contraband is located, that officers may be receiving faulty training or may be biased. The Burlington Police Department has consistently improved the percentage of searches that have located contraband from 2010 to 2019. Since 2016, the rate that officers have found contraband in the possession of each demographic subcomponent has been nearly identical.



<sup>1</sup> Tomaskovic-Devey, D., Mason, M., & Zingraff, M. (2004). Looking for the driving while black phenomena: conceptualizing racial bias processes and their associated distributions. *Police Quarterly*, 7(1). 3-29.

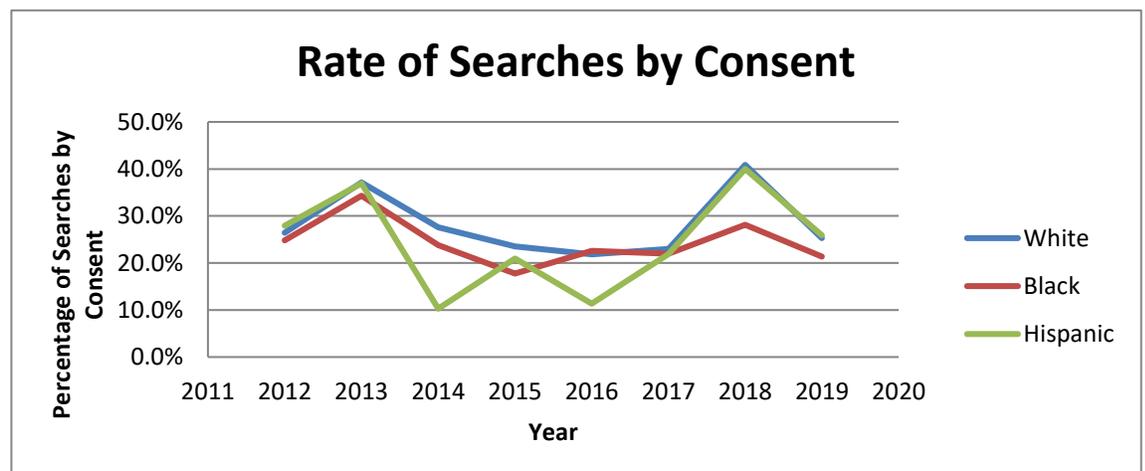
The analysis of this data, particularly the converging rate at which contraband has been locating during searches since 2016, demonstrates that Burlington police officers are properly evaluating the circumstances and facts of each stop before requesting consent to search or conducting a search otherwise authorized by law.

### **Low Discretion and High Discretion Searches**

Searches during a traffic stop are an important part of crime prevention strategies. There are multiple kinds of searches that can generally be divided into two categories for low discretion and high discretion. Low discretion searches are those based on a search warrant, search incident to arrest of a driver/passenger, or a protective frisk of the vehicle for weapons. A search in these circumstances is generally considered to be based on objective facts and is therefore not considered to be influenced by bias.

High discretion searches are those based on the consent of the person in apparent control of the vehicle. At the time an officer requests consent to search a vehicle, the officer is evaluating a tremendous number of factors such as the proximity of the traffic stop to a known crime scene, criminal history of the driver or other occupant, nervousness in excess of what is normal during interaction with police, false or conflicting information, no identification, vehicle matches the description of a suspect vehicle, or observation of suspected contraband. An officer's request for consent to search a vehicle is considered to be the time most likely to demonstrate overt or implicit racial or ethnic bias.

The following graph shows the rate of searches by consent (high discretion) by Burlington police officers. This is determined by dividing consent searches by total searches for each race or ethnic group. This data shows that officers conducted consent searches at equivalent rates for white and Hispanic demographics and less frequently for black drivers and passengers. This analysis demonstrates that Burlington police officers fairly utilize high discretion consent searches equitably in our community.



## **Complaints of Biased Policing**

An additional mechanism for identifying biased policing is to review complaints by citizens against officers. The Burlington Police Department accepts complaints from known people or anonymously. Complaints may be submitted in person, by telephone, digitally, anonymously by mail, or any other method. Every complaint is thoroughly investigated, including the detailed review of body-worn and in-car camera footage.

In order for a complaint to be classified as biased policing, the person making the complaint need merely allege, but offer no proof, that the officer acted unfairly due to race, ethnicity, national origin, gender, sexual orientation/identity, socio-economic status, mental capacity, religion and/or age. Since 2016, the Burlington Police Department has received a very small number of complaints for biased policing considering the hundreds of thousands of interactions between staff members and the public that have occurred during this time. Our staff investigations into these complaints determined that, in each case, the officers were not biased in the performance of their duties.

	2016	2017	2018	2019	2020 YTD
Total Complaints of Biased Policing	5	0	0	5	0
Not sustained / unfounded	5			5	
Sustained	0			0	

### **Conclusion based on Review of Traffic Stop Data**

After a more thorough review of the searches conducted during traffic stops by the Burlington Police Department (percentage of searches, discovery of contraband during searches, and use of high discretion consent to search) and complaints of biased policing against staff, it is clear that there is no unfair treatment of any racial or ethnic minority group by the Burlington Police Department.

### **Policies, Procedures, and Training to Deliver Fair & Impartial Police Services**

As previously stated, systemic racism is real and police in America have been directly or indirectly responsible for the unequal treatment of minority groups. The negative impact of biased policing on a community cannot be understated. Knowing this, each police agency must intentionally and proactively prevent biased policing through the best available policies and procedures, supervision, and training. The Burlington Police Department is significantly committed to the process of developing and implementing these practices and our work is ongoing. Several of our actions are briefly described below and we invite you to become more intimately involved in our agency, over time, as you continue your investigative reporting.

## **Policy and Procedures**

The Burlington Police Department is accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) having achieved the Gold Standard, with Excellence. This places the Burlington Police Department at the very top of the policing profession. Accreditation requires that the department implement and apply industry best practices in police policy and procedures. One such policy, Burlington Police Department policy 01-02 entitled “Fair and Impartial Policing,” states:

“Officers of the Burlington Police Department are prohibited from considering race, ethnicity, national origin, gender, sexual orientation/identity, socio-economic status, mental capacity, religion and/or age in a biased manner in the performance of their duties and will not allow such characteristics to influence their conduct toward individuals.”

This is a requirement of every employee and failure to follow this directive subjects the employee to discipline, up to and including termination. The Burlington Police Department conducts a yearly evaluation of traffic stops, traffic stop searches, and biased policing complaints to identify potential bias in police practice.

### **Supervision**

Supervisors of the Burlington Police Department conduct regular unannounced audits of the body-worn and in-car camera footage of officers, including traffic stops. This review procedure is in place to ensure that officers are following the policy, procedures, and training of our agency. This practice helps to ensure that officers are fair and equitable during their interactions with the public and adhere to the principles of procedural justice.

### **Training**

Burlington police officers are highly trained professionals. The Burlington Police Department has placed significant emphasis on training officers to recognize explicit and implicit bias during interactions with the community. These lessons and others are infused in every agency training, employee counseling, and mentoring session at the Burlington Police Department. Formalized training in recent years has included, but is not limited to, the following:

1. “Understanding Bias” – Course provided to all staff and focused on implicit bias and how it can impact decision-making under stress.
2. “Fair and Impartial Policing” – Yearly training for staff on all aspects of possible bias in policing.

3. Racial Equity Workshop – Phase 1 – Course provided to most executives, as well as additional supervisors and frontline staff. Course delivery capacity has limited the number of attendees and we are working with the vendor to increase the number of classes with a goal of total agency attendance. The course is presented by the Alamance Racial Equity Alliance and provides instruction on the historical, cultural, and structural analysis of racism. Our staff has learned a shared language and clearer understanding of how institutions and systems are producing unjust and inequitable outcomes.

### **Strategic Planning**

The Burlington Police Department has engaged in a public facing, detailed Strategic Planning Process and we have solicited input from a wide array of groups and individuals in the creation and modification of our policies. We believe these actions create a feedback loop increasing trust and transparency. The use of external input in the development of policy most certainly improves our end result.

### **The Future of the Burlington Police Department**

The Burlington Police Department remains committed to transparency and public accountability. We encourage you, other members of the media, and the public to engage with the Burlington Police Department to evaluate our practices and procedures to ensure that the very best police service continues to be provided to our community.

Respectfully,

J. Jeffrey Smythe  
Chief of Police

As a footnote to our response, please review the “Analysis of Traffic Stop and Search Data” Report completed by the Greensboro Police Department several years ago. In the forward and executive summary sections, they begin to drill into the myriad issues surrounding data collection, data interpretation, criminal investigative practices, assisting communities with quality of life issues, and the list goes on. Add to this the disparities in how race and ethnicity is addressed by different actors in the system including police, Census workers, and NC DMV. Each have subtle or not so subtle differences in how we capture or record race and ethnicity. All of these variables make your work substantially more difficult. And then when you ask for comment from us, that is equally difficult.