

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0084
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Harassment (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER #1)
Complaint Examiner:	Meaghan H. Davant
Merits Determination Date:	March 25, 2016

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC) has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS¹

COMPLAINANT filed a complaint with the OPC on December 4, 2015. COMPLAINANT alleged that, on October 23, 2014, the subject officers, SUBJECT OFFICER #1, and SUBJECT OFFICER #2, harassed her by unlawfully searching her vehicle during a traffic stop. COMPLAINANT further alleged that SUBJECT OFFICER #1 used language or engaged in conduct that was insulting, demeaning or humiliating when he told her to “climb

¹ Complainant also alleged that SUBJECT OFFICER #1 and WITNESS OFFICER #1 used unnecessary or excessive force against her when they removed her from the vehicle and threw her to the ground; and that SUBJECT OFFICER #1 and WITNESS OFFICER #2 used unnecessary or excessive force when they handcuffed her too tightly. Complainant also alleged that WITNESS OFFICER #1 and SUBJECT OFFICER #1 and SUBJECT OFFICER #2 unlawfully issued her citations and arrested her. Complainant further alleged that WITNESS OFFICER #1 and SUBJECT OFFICER #1 used language or engaged in conduct that was insulting, demeaning or humiliating when they yelled at her and used profanity. Finally, Complainant alleged that SUBJECT OFFICER #1 used language that was insulting, demeaning, or humiliating when he called her “stupid” and “ignorant.” Pursuant to D.C. Code § 5-1108(1), on January 12, 2016, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

down off her high horse” and that “she needed to know her place in this world.”²

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon review of OPC’s Report of Investigation, the objections submitted by SUBJECT OFFICER #1 on February 11, 2016, the objections submitted by SUBJECT OFFICER #2 on February 11, 2016, and OPC’s response to the objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC’s Report of Investigation, the objections submitted by SUBJECT OFFICER #1 on February 11, 2016, the objections submitted by SUBJECT OFFICER #2 on February 11, 2016, and OPC’s response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 23, 2014, complainant was operating a friend’s van when she was pulled over by SUBJECT OFFICER #1 and SUBJECT OFFICER #2, and WITNESS OFFICER #1, for a traffic violation.
2. COMPLAINANT was “in a hurry” and “late to pick up her daughter” from school and admitted that she did not know how fast she was driving at the time of the traffic stop, or whether she came to complete stops at some of the stop signs.
3. WITNESS OFFICER #1 and SUBJECT OFFICER #1 called out to complainant to get out of the vehicle, but complainant refused.
4. WITNESS OFFICER #1 approached complainant’s driver side window and repeatedly asked her to identify herself and to exit the vehicle. Complainant refused to do either.
5. SUBJECT OFFICER #2 returned to his police vehicle and ran the complainant’s vehicle license plate, and learned that the vehicle was not registered to her.
6. SUBJECT OFFICER #2 returned to complainant’s vehicle and opened a back door to speak with complainant.
7. Complainant was physically removed from her vehicle by several officers and placed in handcuffs.

² On March 23, 2015, the OPC also referred this matter to the U.S. Attorney for the District of Columbia (“USAO”) for possible criminal prosecution of the subject officers. On April 3, 2015, the OPC received notice from the USAO declining to prosecute any criminal activity arising from this incident.

8. Following complainant's removal from the vehicle, complainant's vehicle was searched by SUBJECT OFFICER #1 and SUBJECT OFFICER #2. Complainant did not consent to the search.
9. During the course of the traffic stop, SUBJECT OFFICER #1 told complainant to "climb down off her high horse," and that "she needed to know her place in the world."

IV. DISCUSSION

A. Harassment (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)

Pursuant to D.C. Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: (1) harassment.

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as "words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity."

The regulations governing OPC define harassment as "[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating." D.C. Mun. Regs. tit. 6A, § 2199.1.

The Subject Officers' Probable Cause for the Traffic Stop

The Fourth Amendment prohibits law enforcement from conducting "unreasonable searches and seizures," and "this protection extends to a brief investigatory stop of persons or vehicles." *U.S. v. Williams*, 878 F. Supp. 2d 190, 196-197 (D.D.C. 2012) (quoting *U.S. v. Bailey*, 622 F.3d 1, 5, 393 U.S. App. D.C. 131 (D.C. Cir. 2010)). Searches that are conducted without prior approval by a judge are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Id.*

Police officers may stop a vehicle and its occupants without a warrant when they have

probable cause to believe a traffic violation has occurred. *Watson v. United States*, 43 A.3d 276, 282 (D.C. 2012) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)). Police officers may also briefly detain a person without a warrant in a *Terry* stop if they have a “reasonable, articulable suspicion that ‘criminal activity may be afoot.’” *United States v. Edmonds*, 240 F.3d 55, 59 (D.C. Cir. 2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (U.S. 1968)).

However, probable cause exists only where “the facts and circumstances within the officers’ knowledge of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Id.* (citing *Perkins v. United States*, 936 A.2d 303, 306 (D.C. 2007) (internal citations omitted)). Probable cause is measured by the totality of the circumstances and “must be supported by more than mere suspicion.” *Id.* (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003)).

Based on the consistent statements by the subject officers that complainant was speeding and failed to stop at one or more stop signs, and the admissions by complainant that she was in a hurry, did not know how fast she was driving and may not have come to complete stops at the stop signs, probable cause likely existed for the traffic stop. Thereby, under *Terry*, the subject officers were within their rights to briefly detain complainant to determine whether there was “criminal activity afoot.”

The Subject Officers’ Probable Cause to Search Complainant’s Vehicle

Whether or not the subject officers were within their rights to physically remove complainant from the vehicle and to handcuff her is not at issue here. It is, however, clear from both complainant’s testimony and that of WITNESS OFFICER #1, that complainant had already been removed from the car and placed in handcuffs before her vehicle was searched by one or more of WITNESS OFFICER #1, SUBJECT OFFICER #1 and/or SUBJECT OFFICER #2.

Even assuming, without deciding, that the subject officers had probable cause to make the traffic stop, to briefly detain complainant, and to make a lawful arrest for reckless driving, they have failed to further establish probable cause to search complainant’s vehicle. While the automobile exception provides a narrow exception to the Fourth Amendment’s prohibition against unreasonable search and seizure, it does so *only where* the police officer possesses a “reasonable belief based on specific and articulable” facts that the vehicle contains evidence of *the arrestable offense*, or where the arrestee is dangerous and “*may gain immediate control of weapons.*” See *Michigan v. Long*, 463 U.S. 1032, 1049-50 (1983) (emphasis added) citing *Terry*, 392 U.S. at 21, *Arizona v. Gant*, 556 U.S. 332 (2009).

Complainant was stopped, and later arrested, for reckless driving, failing to obey a police order, and failure to exhibit a permit. While the subject officers stated that they thought complainant may have been a “mental health consumer,” or that she may have been “under the influence of PCP or another narcotic,” the only stated basis for this belief was complainant’s “reckless driving [and] non-compliant and belligerent behavior.” No charges were ever brought

against complainant for driving under the influence, possession or use of illegal narcotics. Thereby, the police had no reasonable basis to search the vehicle for narcotics. Nor did the subject officers state that they had any reasonable belief that complainant might obtain a weapon or other object from the vehicle with which she might attempt to harm an officer.

Moreover, even if the subject officers had a reasonable belief that the vehicle may contain a weapon or illicit drugs, the exigent circumstances exception allows for warrantless searches only when “an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate.” *Dorman v. U.S.*, 435 F.2d 385, 391 (1970). Where, according to SUBJECT OFFICER #1, complainant had already been removed from the vehicle and handcuffed prior to the search, and the police were already in possession of the keys to the vehicle, there could have been no “immediate or major crisis.”

Therefore, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed complainant by searching her vehicle without consent, probable cause, or exigent circumstances to justify a warrantless search, in violation of § 5-1107(a) and MPD General Orders 120.25 and 304.1.

B. Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER #1)

MPD General Order 201.26, Part V, Section C (“Conduct Toward the Public”) requires MPD officers to “(1) Be courteous and orderly in their dealings with the public. a. Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.” Section C (3) further requires that MPD officers, “[r]efrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

Complainant’s allegation that SUBJECT OFFICER #1 told her to “climb down off her high horse” and that she “needed to know her place in this world,” are largely corroborated by WITNESS OFFICER #1’S statements. Thereby, complainant’s description of SUBJECT OFFICER #1’S insolent, insulting behavior and language is credible, and complainant’s interpretation of that language and conduct as derogatory, disrespectful or offensive is reasonable.

Thereby, SUBJECT OFFICER #1 used language or conduct that was insulting, demeaning, or humiliating to the complainant in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

1. SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained.
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Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained.
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2. SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained.
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Submitted on March 25, 2016.

Meaghan Hannan Davant
Complaint Examiner