GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	19-0723
Complainants:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment by Unlawful Stop and Handcuffing
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	October 13, 2020

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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 ALLEGATIONS

Complainant COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on August 22, 2019 alleging that, on the early morning of the same day, Metropolitan Police Department (MPD) SUBJECT OFFICER, harassed her boyfriend, WITNESS, by unlawfully stopping WITNESS and placing him in handcuffs during the a traffic stop of COMPLAINANT. COMPLAINANT further alleged that SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning, or humiliating towards WITNESS.[1]

[1] Complainant alleged that SUBJECT OFFICER harassed her by performing an unlawful traffic stop, and that WITNESS OFFICER harassed her by issuing an unlawful traffic ticket. COMPLAINANT further alleged that SUBJECT OFFICER and WITNESS OFFICER unnecessarily prolonged the traffic stop. Finally, COMPLAINANT alleged SUBJECT OFFICER used unnecessary or excessive force against WITNESS by twisting his arm as he placed WITNESS on in handcuffs. Pursuant to D.C. Code § 5-1108 (1) on August 4, 2020, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's Executive Director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and exhibits thereto, the objections submitted by SUBJECT OFFICER on September 1, 2020, 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 and the exhibits thereto, and the officer objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 2:20 a.m. on August 22, 2019, SUBJECT OFFICER conducted a stop of COMPLAINANT's vehicle as she parked in front of her home. SUBJECT OFFICER cited, as the basis for his stop, that COMPLAINANT did not have a front tag, or license plate, on her car.

2. Complainant was visibly annoyed at being stopped and made several attempts to leave her car to enter her house. She also tried to connect on a personal level with SUBJECT OFFICER, noting that she was a teacher in one of the schools in which he worked. SUBJECT OFFICER refused to engage with complainant. When COMPLAINANT stated that the subject officer is "making this hard," he responded sarcastically that he was "OK with that."

3. Several minutes into the stop, COMPLAINANT answered her cell phone and began speaking with someone, stating that "some man is bothering me," clearly referring to SUBJECT OFFICER. As she searched through her purse for identification, she also told the caller that she had attempted to leave her car and enter her home and that she didn't know why she was being stopped. Based on the body worn camera (BWC) footage of the incident, it appeared that the person she was speaking with was her boyfriend, WITNESS, who then appeared on the scene.

4. WITNESS approached COPLAINANT and SUBJECT OFFICER and began questioning the subject officer as to why COMPLAINANT had been stopped. SUBJECT OFFICER told WITNESS that he needed to "keep on walking" unless he was "related to" COMPLAINANT. WITNESS responded that he was "related" to the complainant, that he was her boyfriend and that he "lives here," gesturing to his and COMPLAINANT's house.

5. Although WITNESS stated that he was a "relation," and the complainant confirmed that WITNESS was her "significant other" SUBJECT OFFICER nonetheless responded, "I don't care" and shouted loudly at WITNESS, "It doesn't matter. I'm on a traffic stop, so just leave." The subject officer ordered WITNESS to go inside his house.

6. In his interview with OPC, SUBJECT OFFICER stated that, once he learned WITNESS was the complainant's partner, he became fearful for his own safety. SUBJECT OFFICER stated that the two leading causes of police officer deaths are "calls for domestic violence" and traffic stops and that "once you have a domestic traffic stop, you've doubled your chances of getting shot or killed or injured." SUBJECT OFFICER further stated that he believed that WITNESS was intoxicated and that he was concerned that WITNESS might be in possession of a weapon.

7. The BWC footage of the incident, however, showed that WITNESS's demeanor was relatively calm and collected. At no point did WITNESS appear to be intoxicated, overly agitated or physically aggressive. Despite SUBJECT OFFICER's statements that he believed WITNESS might have a weapon, the subject officer did not immediately pat down or search WITNESS. Moreover, WITNESS was dressed in form-fitting clothes, including a short-sleeved t-shirt and fitted pants and did not appear to have a weapon on his person, or any place to conceal a weapon. He kept his hands at his sides throughout the interaction.

8. It is clear from the BWC footage, however, that SUBJECT OFFICER grew increasingly annoyed and combative throughout the course of the stop, first in response to COMPLAINANT's attempts to avoid a ticket, but particularly after WITNESS arrived and began asking questions. Throughout the remainder of the stop, the subject officer repeatedly shouted at complainant and WITNESS, often in sarcastic and condescending tones, and interrupted them every time they attempted to speak.

9. WITNESS immediately complied with SUBJECT OFFICER's order to leave the scene, retreating to the front steps of his property. According to SUBKECT OFFICER, the distance between WITNESS and the scene was approximately 10 yards. WITNESS told the subject officer that he was going to "stand here," to which SUBJECT OFFICER responded, "that's fine" and then "good job" twice, the second time in a mocking and sarcastic tone, as if insincerely congratulating WITNESS. WITNESS again asked if he could speak with SUBJECT OFFICER for a moment, to which the subject officer replied, "No, you cannot."

10. SUBJECT OFFICER stepped away for a moment to respond to a question from WITNESS OFFICER, who was also on the scene but remained seated in the police car. When SUBJECT OFFICER returned to COMPLAINANT's car, WITNESS again called out that he just wanted to ask the subject officer a question, to which SUBJECT OFFICER responded "ok, but don't bother me while I'm working, alright? If you want to talk, just wait 'till I'm finished.

11. Complainant again attempted to engage with SUBJECT OFFICER, reminding him that she was a teacher. The subject officer responded in a mocking, insulting tone, "Great. I'm glad you're highly educated."

12. WITNESS then asked for the subject officer's name and badge number. SUBJECT OFFICER angrily shouted his response, spelling out his name and repeating his badge number three times in succession. When WITNESS stated, "Look, just tell me one time, that's it," SUBJECT OFFICER responded, "Nah, I wanna tell you more than once to make sure you get it."

13. Responding to the subject officer's visible anger, WITNESS asked, "what's wrong?" SUBJECT OFFICER shouted angrily in response, "What's wrong is I'm workin'. Stop talkin' to me! Stop talkin' to me!" The subject officer then approached WITNESS, who was still standing on his property approximately 10 yards away and loudly threatened, "Now the next time you gettin' ready to go into handcuffs, because I said so. You understand? Do you hear me?"

14. WITNESS responded, "I'm on my steps. What [] can you do?" to which SUBJECT OFFICER responded, "You wanna see what I can do?" The subject officer then placed WITNESS in handcuffs, led him to the police vehicle, and frisked him. No weapons were found.

15. While WITNESS was being handcuffed, complainant cried out that his shoulder was "broken." SUBJECT OFFICER responded by shouting, "stay over there! Last warning or you're going too," threatening to place her in handcuffs. When she asked why WITNESS had been handcuffed, SUBJECT OFFICER responded angrily, "Do you wanna go next?"

16. COMPLAINANT responded that she believed the situation was "ridiculous," that SUBJECT OFFICER had not treated her or her boyfriend as "people," and that she had done "nothing wrong." SUBJECT OFFICER then reviewed the reasons for the stop, noting that complainant's car did not have a front license plate, and ended by shouting angrily, "Period! That's it!" When complainant tried to ask additional questions, SUBJECT OFFICER repeatedly interrupted, yelling "we don't need to talk."

DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public."

A. 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 … 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.

1. *SUBJECT OFFICER Harassed WITNESS by Stopping Him and Unlawfully Placing Him in Handcuffs.*

The Fourth Amendment sets forth "[t]he right of the people to be secure in their persons, … against unreasonable searches and seizures" and that this right "shall not be violated … but upon probable cause." Under *Terry v. Ohio*, 391 U.S. 1 (1968), even a "brief stop" of a person for investigative purposes is a Fourth Amendment seizure because it constitutes a temporary restriction of a person's liberty by show of authority or use of physical force. *Id.* However,

although a *Terry* stop constitutes a "seizure," an investigatory stop is held not to the higher standard of "probable cause" but most only be supported by a "reasonable and articulable suspicion that the person stopped has committed a crime or is about to do so. *U.S. v. Simpson*, 609 F.3d 1140, 1146 (10th Cir. 2010).

Similarly, MPD General Order 304.10, Field Contacts, Stops, and Protective Pat Downs (effective July 9, 2019), defines the reasonable suspicion required for a stop as "more than a hunch or mere speculation, but less than the probable cause necessary to arrest." Finally, MPD General Order 304.10 requires that "[e]very officer conducting a stop must be prepared to cite the particular factors which supported the determination that 'reasonable suspicion' was present."

a. SUBJECT OFFICER Lacked Reasonable Suspicion That WITNESS Committed a Crime, Possessed a Weapon or Posed a Threat of Violence.

SUBJECT OFFICER stated that the reason for the stop of complainant, COMPLAINANT, was that her vehicle lacked a front tag, or license plate. Seconds into the stop, the subject officer learned that he had pulled COMPLAINANT over directly in front of her home. Given that it was 2:20 a.m. and she was alone with the officers on a dark street, COMPLAINANT reasonably telephoned her boyfriend, WITNESS. WITNESS arrived at the scene within minutes and, in response to SUBJECT OFFICER's questions, told the officers that he was her boyfriend and that he and COMPLAINANT lived together in the house. Thereby, WITNESS's mere presence at the scene was in no way "nefarious," suggestive that there was some crime in progress, or that he posed a physical threat to the subject officer. Rather, WITNESS acted as any concerned boyfriend might under the circumstances.

In his interview with OPC, SUBJECT OFFICER stated that WITNESS arrived on the scene "shouting questions," and that the fact that WITNESS identified himself as the complainant's boyfriend only caused the subject officer further alarm. SUBJECT OFFICER stated that "calls for domestic violence," and traffic stops were the two leading causes of death for police officers, adding "once you have a domestic traffic stop, you've doubled your chances of getting shot or killed or injured." First, SUBJECT OFFICER's statements as to the deadly nature of nearly all traffic stops is unfounded and unreasonable. Second, SUBJECT OFFICER offered no evidence of domestic violence. At no point did WITNESS attempt to approach his girlfriend, or even raise his voice to her. Moreover, nothing in WITNESS's demeanor, as shown in the BWC footage, suggested that he was overly agitated or physically aggressive. In fact, WITNESS acted in a reasonable calm manner, keeping his hands to his sides and, on SUBJECT OFFICER request, maintaining his distance from the scene.

Nor did anything in WITNESS's demeanor or appearance suggested he was in possession of a weapon. WITNESS did not behave nervously or make any furtive gestures, as if to access a weapon. He was dressed in form-fitting clothes, including a short-sleeved t-shirt, that would make it very difficult to conceal a weapon and the BWC footage showed no discernable bulges that might be mistaken for a weapon.

Further, nothing in WITNESS's demeanor or actions suggested that he posed a physical threat to SUBJECT OFFICER, or anyone else at the scene. After being asked to "leave" the scene, WITNESS immediately complied, retreating to the front steps of his property, approximately 10 yards away. Thereafter, WITNESS made no further attempts to leave his property and re-approach the scene. It was SUBJECT OFFICER who "closed the gap," between himself and WITNESS, entering WITNESS's property and confronting him face to face. SUBJECT OFFICER then stated that WITNESS put his "right foot back," which he interpreted as a threat, but admitted that WITNESS was "not necessarily taking [an] aggressive stance to fight" the officer.

Now face-to-face, SUBJECT OFFICER shouted at WITNESS, "I told you to stop talking to her." WITNESS responded that he would continue to speak to COMPLAINANT and argued, "I am on my property talking…What are you gonna do?" SUBJECT OFFICER responded, "You wanna know what I'm gonna do?" as he grabbed WITNESS by the arm and placed him in handcuffs. The subject officer then walked WITNESS to his cruiser and placed him inside until the conclusion of the traffic stop. Based on a review of the footage, SUBJECT OFFICER's actions appeared to be motivated by his own frustration and desire for retaliation against WITNESS, and not on any reasonable threat of harm.

SUBJECT OFFICER thereby lacked the requisite "reasonable suspicion" for his stop, detention and handcuffing of WITNESS.

b. SUBJECT OFFICER Failed to Follow MPD Guidelines Regarding De-Escalation and Proportionate Response in Handcuffing WITNESS.

MPD Police Officers are required, first, to use de-escalation tactics to gain control of the scene and, failing such efforts, to apply proportionate and reasonable force to contain any threat. SUBJECT OFFICER did neither.

MPD General Order 901.07 states, in pertinent part, that "[a]ll members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication or other de-escalation techniques."

At no time prior to placing WITNESS in handcuffs did SUBJECT OFFICER attempt to de-escalate the situation. While he technically warned WITNESS that he would place him in handcuffs, he did so only in a fit of rage, screaming into WITNESS's face, and without leaving any time for WITNESS to respond. Had SUBJECT OFFICER made even the most *basic attempt* to calmly, respectfully respond to complainant's and WITNESS's questions, this entire situation could have been avoided. Instead, the subject officer escalated the conflict at the scene by repeatedly, dismissively, shouting at the complainant and WITNESS to stop speaking, and by addressing them in increasingly mocking, condescending and disrespectful tones. Nor did SUBJECT OFFICER engage in an any of the other de-escalation techniques laid out in the General Order. For example, if SUBJECT OFFICER found WITNESS's speech distracting, or feared that he posed some threat of violence at the scene, he could have sought assistance from WITNESS OFFICER, or called other officers to the scene.

General Order 901.07 continues on to state that, where attempts to de-escalate a situation fail, an officer shall then use only " the force response that is reasonably necessary to bring the situation under control." Later the Order reiterates, "in response to a perceived threat, members shall apply the proportionate and objectively reasonable force response … consider[ing] the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, the suspect's mental capacity, his or her access to weapons, agency policies, and available options (e.g., calling upon [other] members … for assistance."

Courts have similarly held that, "[t]he measure of the scope of permissible police action in any investigative stop depends on whether the police conduct was reasonable under the circumstances." *In re M.E.B.*, 638 A.2d 1123, 1127 (D.C. 1993), *citing United States v. Sharpe*, 470 U.S. 675, 682. D.C. courts have specifically approved of the use of handcuffs "where it was reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee." *Womack v. United States*, 673 A.2d 603 (D.C. 1996), *citing In re M.E.B* at 1128.

According to complainant, and as witnessed in the BWC footage, WITNESS did not "resist" or substantially interfere with the traffic stop. In fact, when directed to "leave" the scene, WITNESS immediately complied, retreating to the front yard of his own property, and made no additional attempts to approach SUBJECT OFFICER or COMPLAINANT. Although SUBJECT OFFICER continued to speak to the complainant and ask the subject officer questions after SUBJECT OFFICER told him to stop, this speech, in and of itself, does not rise to the level of "resistance," that would frustrate SUBJECT OFFICER's attempts to complete the stop.

Nor could WITNESS's actions be construed as so "violent" that they could not be "defused through advice" or "warning." Indeed, SUBJECT OFFICER attempted to "advise" WITNESS against speaking to his girlfriend but could not point to any specific harm caused by their continuing to speak, other than it resulted in his own escalating frustration and annoyance.

Finally, WITNESS made no attempt to "flee" the scene. Quite the opposite, he returned to his own property and remained within full site of the subject officer throughout the course of the stop.

Given all of these factors, SUBJECT OFFICER failed to use proper de-escalation techniques to bring the situation under control, as required under MPD General Order 901.07 and used disproportionate measures by placing WITNESS in handcuffs in an attempt to curb his speech.

***

Based on the totality of the circumstances, SUBJECT OFFICER unlawfully stopped and handcuffed WITNESS, constituting harassment in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

B. Insulting, Demeaning, or Humiliating Language or Conduct

According to MPD General Order 201.26, Part V, Section C, "All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall refrain 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."

In her interview with OPC, the complainant described SUBJECT OFFICER's tone during the traffic stop as "harsh and aggressive," and stated that she felt "disrespected" by the way the subject officer conducted himself. WITNESS similarly described the subject officer's conduct and demeanor as "the worst he has ever witnessed from a police officer….very disrespectful, very harsh…unprofessional" adding that the officer had a "very bad" temper. SUBJECT OFFICER described his demeanor as "no nonsense," and appropriate to maintain command over the situation.

An objective review of the BWC footage of the incident supports the complainant's and WITNESS's recollections of SUBJECT OFFICER's conduct and speech during the incident. From the very beginning of the stop, the subject officer is visibly annoyed with the complainant's attempts to speak with him. Whenever complainant attempts to speak, he immediately cuts her off or delivers condescending, insulting remarks. For example, when complainant stated that SUBJECT OFFICER was "making this hard," he responded sarcastically that he was "ok with that." While it is clear that the complainant was being somewhat difficult, MPD Officers must be held to a higher standard of polite, respectful discourse.

Similarly, when WITNESS arrived on the scene, SUBJECT OFFICER quickly dismissed his inquiries. After asking WITNESS if he was "related" to the complainant and WITNESS responded that he was, SUBJECT OFFICER nonetheless dismissed him angrily, shouting at WITNESS to leave the scene. When WITNESS attempted to explain further that he was her boyfriend and "lived here," the subject officer responded, "I don't really care."

Later, when complainant reminded him that she was a teacher, the subject officer mocked her sarcastically, stating that he was "glad she was highly educated." That comment appeared to anger WITNESS, who then asked for the subject officers' name and badge number. SUBJECT OFFICER responded in a childish manner, spelling his name and badge number out in a mocking tone, three times in quick succession. WITNESS, exhibiting more restraint than the officer, replied, "Look, just tell me one time, that's it" to which SUBJECT OFFICER responded, "Nah, I wanna tell you more than once to make sure you get it," in an insulting tone.

Throughout the remainder of the stop, SUBJECT OFFICER acted in an increasingly childish fashion, taunting and threatening the complainant and WITNESS. Although WITNESS remained on his own property after being directed there, SUBJECT OFFICER refused to show even a modicum of patience when WITNESS continued to speak to COMPLAINANT. The subject officer stormed on to their property and shouted in WITNESS's face. Later, after WITNESS was released, the subject officer continued to speak to both him and the complainant in a sarcastic, insulting tone and refused to answer their questions regarding the stop.

In their statements to the police and the OPC, both COMPLAINANT and WITNESS also noted that SUBJECT OFFICER was training WITNESS OFFICER at the time of the incident. MPD Order 304.10 specifies that field training officers must , "set examples for others with respect to ….professional demeanor …respect [and] courtesy." Based on the aforementioned examples, SUBJECT OFFICER not only failed to act in an appropriate member, but set a terrible example for WITNESS OFFICER, in violation of his responsibilities.

Based on the totality of the circumstances, SUBJECT OFFICER engaged in conduct toward the complainant and WITNESS that was insulting, demeaning or humiliating when they used profanity and acted in an unprofessional manner, thereby violating § 5-1107(a) and MPD General Order 201.26.

[Remainder of Page Left Intentionally Blank]

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Harassment by Unlawful Stop and Handcuffing	Sustained
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct	Sustained

Submitted on October 13, 2020

_____

Meaghan Hannan Davant
Complaint Examiner