

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	14-0267
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment by Threatening Arrest
<b>Allegation 2:</b>	Use of Excessive or Unnecessary Force
<b>Allegation 3:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Meaghan H. Davant
<b>Merits Determination Date:</b>	December 4, 2016

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**

The COMPLAINANT filed a complaint with the OPC on April 21, 2014, alleging that WITNESS OFFICER harassed WITNESS 1 by unlawfully, stopping, frisking and handcuffing him, and used unnecessary or excessive force against WITNESS 1 by pointing a gun at him and pushing him against a car.<sup>1</sup> Complainant further alleged that SUBJECT OFFICER harassed WITNESS 2, by threatening to arrest him, used unnecessary or excessive force against him by pushing him, and used language or engaged in conduct toward WITNESS 2 that was insulting, demeaning, or humiliating by using profanity and by placing his finger in WITNESS 2'S face while threatening him.<sup>2</sup>

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<sup>1</sup> The allegations against WITNESS OFFICER were previously adjudicated in a separate Findings of Fact and Merits Determination.

<sup>2</sup> WITNESS 1 further alleged that unidentified officers used language and conduct toward him that was insulting, demeaning, or humiliating by telling him to "Shut his mouth and get the fuck out the car," and to "shut up." WITNESS 1 also alleged that WITNESS 2's vehicle was unlawfully searched. Where OPC was unable to identify the officers associated with these acts with certainty, these allegations are not addressed here.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, 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 Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 21, 2014, COMPLAINANT was at COMPLAINANTS APARTMENT with WITNESS 1 AND WITNESS 2, when members of the Metropolitan Police Department arrived to investigate a complaint made by a neighbor of the COMPLAINANT. Specifically, the neighbor reported that a member of her family was assaulted when an unknown man riding by on a bicycle hit him in the face with a gun.
2. Shortly thereafter, two unidentified MPD Officers arrived at COMPLAINANTS'S APARTMENT to take a report of the alleged assault. At or about the same time, SUBJECT OFFICER and WITNESS OFFICER also arrived at COMPLAINANTS APARTMENT, but remained outside the apartment building.
3. At or about the same time, WITNESS 1 told his family that he believed he may have left his keys in WITNESS 2'S car. WITNESS 1 exited through the front door of the apartment building and walked around to the side of the building, where the car was parked.
4. SUBJECT OFFICER and WITNESS OFFICER witnessed WITNESS 1 exit the apartment building and followed WITNESS 1 around to the side of the building.
5. COMPLAINANT observed the SUBJECT OFFICER and WITNESS OFFICER follow WITNESS 1 around to the side of the building and followed them. Several other members of her family also gathered at the side of the apartment building and were witnesses to the events that followed, including WITNESS 2 and WITNESS 3, who videotaped a portion of the events and provided a copy of the recording to OPC.
6. WITNESS 1 was inside WITNESS 2's car searching for his keys when he realized that the SUBJECT OFFICER AND OFFICER WITNESS 2 were outside the car, telling WITNESS 1 to get out.
7. Complainant heard an officer—later identified as WITNESS OFFICER—claim that he had previously told WITNESS 1 not to enter the car. WITNESS 1 responded that he had

- not heard the officer. The officer did not respond when asked why he was detaining WITNESS 1.
8. COMPLAINANT, WITNESS 2 and WITNESS 3 all stated that, as soon as WITNESS 1 exited the car, WITNESS OFFICER threw him against the car, patted him down, and placed him in handcuffs.<sup>3</sup>
  9. WITNESS 3 heard an officer claim that WITNESS 1 may be a suspect.
  10. In the video, WITNESS 2 can be heard calling out to WITNESS 1, “Just chill out B, let them do what they gotta do so they can leave, B.” WITNESS 1 replies, “I’m not doing nothing, I’m cooperating with them.”
  11. Several seconds later, WITNESS 1 adds, “I don’t even know, they just pulled their pistols out on me and threw me against the car.”
  12. WITNESS 2 then states, “B, why you talking to them, shut up, why is, why you, there’s no reason to talk to nobody else.”
  13. SUBJECT OFFICER, upon hearing WITNESS 2’S comments to WITNESS 1, appears to become enraged and can be seen on the video leaving the car and aggressively approaching WITNESS 2.
  14. The video footage shows SUBJECT OFFICER forcefully pushing WITNESS 2 several feet backwards with both hands. In an angry tone, SUBJECT OFFICER tells WITNESS 2, “I’m not going to tell you again, you cross this fucking line, you’re going to jail.”
  15. SUBJECT OFFICER then points his finger into WITNESS 2’s face menacingly and states, “You hear what I said?” He remains with his finger pointed inches from WITNESS 2’s face for several moments, during which time WITNESS 2 mumbles something like, “get your finger out of my face.”
  16. SUBJECT OFFICER, his finger still pointed in WITNESS 2’s face, aggressively states, “Tell me again,” to which WITNESS 2 again replies, “Get your finger out of my face.”
  17. SUBJECT OFFICER responds, “You tell me one more fucking time,” and then backs away from WITNESS 2 and returns to the car.

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<sup>3</sup> The Complaint Examiner finds it credible, based on the consistency of the statements made by COMPLAINANT, WITNESS 2 and WITNESS 3 and WITNESS 1, that WITNESS 1 was thrown against the car and placed in handcuffs by WITNESS OFFICER, despite the fact that WITNESS OFFICER could not recall the incident and later claimed not to recognize WITNESS 1 from photographs.

18. The video footage returns to a shot of WITNESS 1, who remains in handcuffs at the rear of the car. WITNESS 1 can be heard saying, “I ain’t know who was...I had just walked out of the house...”
19. WITNESS 2 can be heard stating, “You don’t have to say nothing, you can exercise your rights,” and tells WITNESS 1 to “remain silent.”
20. In response, SUBJECT OFFICER can be seen and heard yelling, “Shut up!” in an aggressive tone.
21. The video ends shortly after without further altercation between SUBJECT OFFICER and WITNESS 2.
22. WITNESS 1 remained in handcuffs for 20-30 minutes and was then released without being charged.

#### **IV. 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; [and] (3) use of language or conduct that is insulting, demeaning, or humiliating[.]”

##### ***SUBJECT OFFICER Harassed WITNESS 2 By Threatening to Arrest Him Without Cause.***

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.

Complainant alleged that SUBJECT OFFICER threatened to arrest WITNESS 2 without any cause for arrest. The evidence is clear that at no time was WITNESS 2 ever a suspect in the crime being investigated. In fact, he was a mere bystander. WITNESS 2 told OPC that he was standing a distance away from his parked car where his WITNESS 1, had been detained and was being questioned. While WITNESS 2 admits that he was calling out instructions to his brother, there is no allegation that WITNESS 2 posed any threat to the officers' safety, to the safety of those around him, or that he was in any way inciting threatening behavior from WITNESS 1. In fact, the testimony of all of the witnesses present, as well as the video evidence, show that WITNESS 2 was advising his brother to "just chill," or to stay calm.

The video footage of the incident, shot by WITNESS 3, corroborates this version of events. During the detention of WITNESS 1, WITNESS 2 can be seen at various points standing at least 15-20 feet from SUBJECT OFFICER and WITNESS OFFICER, observing the events without physical interference. At other points in the video footage WITNESS 2 can be heard calling out to WITNESS 1, "You don't have to say nothing, you can exercise your rights," telling him to "chill" and advising him to "remain silent." None of these actions constitutes an offense warranting arrest.

The video footage also shows SUBJECT OFFICER forcefully pushing WITNESS 2 several feet backwards with both hands and, in an angry tone, telling WITNESS 2 "I'm not going to tell you again, you cross this fucking line, you're going to jail." This statement constitutes a clear threat of arrest absent cause. Moreover, in his interview with OPC, SUBJECT OFFICER acknowledged threatening to arrest WITNESS 2 after asking him several times to step back.

Therefore, SUBJECT OFFICER harassed WITNESS 2, in violation of General Order 120.25 (III)(B)(2) and D.C. Mun. Regs. tit. 6A, § 2199.1 by threatening his arrest without due cause.

***SUBJECT OFFICER Used Excessive and Unnecessary Force in His Interactions with WITNESS 2.***

MPD General Order 901.07, Part II, states, "The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others."

The regulations governing OPC define excessive or unnecessary force as "[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the 'reasonableness' of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the

use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

Here, there is no allegation that WITNESS 2 was ever a suspect in the crime being investigated. In fact, he was a mere bystander. WITNESS 2 told OPC that he was standing a distance away from his parked car where his brother, WITNESS 1, had been detained and was being questioned. While WITNESS 2 admits that he was calling out instructions to WITNESS 1, there is no allegation that WITNESS 2 posed any threat to the officers’ safety, to the safety of those around him, or that he was in any way inciting threatening behavior from WITNESS 1. In fact, the testimony of all of the witnesses present, as well as the video evidence, show that WITNESS 2 was advising WITNESS 1 to “just chill,” or to stay calm.

SUBJECT OFFICER denied having any physical contact with WITNESS 2, stating that he “did not touch [WITNESS 2] at all,” according to his recollection. The video evidence, however, clearly contradicts this statement, showing SUBJECT OFFICER aggressively approaching WITNESS 2, shoving him backwards several feet, and pointing a finger inches from his face in a violent manner. During this altercation, as evidenced from the video, WITNESS 2 never evinces any threatening behavior or engages in any retaliatory physical contact.

Based on the clear video evidence of the encounter at issue, and the corroborating testimony of COMPLAINANT and WITNESS 3, both of whose accounts the Complaint Examiner finds credible, SUBJECT OFFICER used excessive and unnecessary force in his interactions with WITNESS 2 in violation of MPD General Order 907.01

***SUBJECT OFFICER Used Insulting, Demeaning or Offensive Language or Conduct in His Interactions with WITNESS 2.***

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.”

COMPLAINANT alleged that SUBJECT OFFICER behaved in an “unprofessional” manner when, in the course of his duties, he used profanity towards WITNESS 2, pointed his finger in WITNESS 2’s face repeatedly, and otherwise acted in a demeaning manner. The video evidence clearly shows that SUBJECT OFFICER, incited by WITNESS 2’s attempts to communicate with WITNESS 1, approached WITNESS 2 aggressively, pointed his finger in WITNESS 2’s face, and warned him that if he “cross[ed] this fucking line,” he was “going to jail.” This type of threatening behavior and unnecessary use of profanity is unbecoming an officer

of the law and clearly in violation of the General Order which requires officers to be “courteous,” “calm” and “orderly,” and to refrain from “harsh” and “profane” language.

SUBJECT OFFICER’s actions in continuing to point his finger in WITNESS 2’s face in a violent manner, including after WITNESS 2 asked the Officer calmly to stop doing so, and his comment to “tell me one more fucking time,” is further evidence of insulting and demeaning conduct.

Finally, SUBJECT OFFICER’s later shout at WITNESS 2 to “Shut up,” also constituted unprofessional, offensive and derogatory language and behavior unbecoming an officer of the MPD.

Therefore, SUBJECT OFFICER used insulting, demeaning and offensive language and conduct in his interactions with WITNESS 1, in violation of MPD General Order 201.26, Part V, Section C.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

Allegation 1: Use of Excessive or Unnecessary Force	Sustained.
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained.
Allegation 3: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained.

Submitted on December 4, 2016.

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Meaghan H. Davant  
Complaint Examiner