

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0132
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Adav Noti
Merits Determination Date:	September 11, 2015

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 ALLEGATIONS

COMPLAINANT alleges that on December 26, 2014, SUBJECT OFFICER used insulting, demeaning, or humiliating language towards the Complainant by telling her that she “there were places for [her] to get help” and that she “needed to find Jesus.”¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC’s Report of Investigation and the exhibits thereto, 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.

¹ The complaint alleged that another officer, WITNESS OFFICER #1, harassed the Complainant on December 26, 2014, by unlawfully arresting her, and that he used unnecessary force and insulting, demeaning, or humiliating language towards her in the process of doing so. These allegations were dismissed on August 5, 2015, by a member of the Police Complaints Board, concurring with the determination made by OPC’s Executive Director.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the exhibits thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 26, 2014, at approximately 1:00 a.m., COMPLAINANT was driving her car on a STREET IN NE when MPD officers pulled her over for driving with her headlights off and for weaving across lanes of traffic.
2. Upon approaching COMPLAINANT'S car, the officers noticed a partially consumed bottle of vodka on the front passenger seat. Another officer was called in to administer a field sobriety test, which COMPLAINANT failed.
3. SUBJECT OFFICER was called to the scene to search COMPLAINANT and transport her to the First District MPD station for processing on a charge of driving under the influence. SUBJECT OFFICER asked the arresting officers if she could instead drive COMPLAINANT home, but this request was denied.
4. Before departing from the arrest scene for the station, SUBJECT OFFICER told COMPLAINANT that there were places where she could receive help for alcohol abuse. The Subject Officer then drove COMPLAINANT to the First District station for processing.

IV. DISCUSSION

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; (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."

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."

Here, COMPLAINANT alleges that SUBJECT OFFICER committed misconduct by telling COMPLAINANT (1) that “there were places for [her] to get help,” and (2) that she “needed to find Jesus.”

COMPLAINANT’S first allegation is without merit. SUBJECT OFFICER did not “insult, demean, or humiliate” COMPLAINANT within the meaning of the relevant statute by stating that there are places to receive help for substance abuse. COMPLAINANT was arrested for operating a motor vehicle in such a state of inebriation that she was driving with her headlights off at 1:00 a.m. and could not keep her car within traffic lanes. Given the potentially fatal consequences of driving while intoxicated and the difficulty that many substance abusers face in overcoming addiction without assistance, SUBJECT OFFICER’S indication that help was available was not only reasonable, it was laudable. The Complaint Examiner is not aware of any provision of the D.C. Code, D.C. Municipal Regulations, or MPD policies that prohibits officers from informing citizens who are engaged in life-threatening, substance-abuse-related conduct about the availability of addiction assistance. COMPLAINANT might not have found SUBJECT OFFICER’S statement helpful, but it objectively did not insult, demean, or humiliate her.² SUBJECT OFFICER is exonerated on this allegation.

In contrast, telling an arrestee that she “need[s] to find Jesus” would almost certainly constitute misconduct. *See, e.g.*, MPD General Order 201.26, Part V.A.7 (Apr. 5, 2011) (“Members shall . . . [r]efrain from political or religious discussions while on duty or in uniform unless they are directly related to police business.”). But there is no credible testimony or other evidence that SUBJECT OFFICER said such a thing. SUBJECT OFFICER denies having made the statement, and four witness officers testified to OPC that they did not recall anyone saying anything to the Complainant about “finding Jesus.” The only evidence SUBJECT OFFICER said this consists of a single sentence in a statement that COMPLAINANT gave to OPC about allegations of misconduct against a different officer — and for the reasons explained below, the Complaint Examiner accords that statement no meaningful weight.

In most cases, a dispute between a complainant and an officer regarding what was or was not said at an arrest scene would be resolved through an evidentiary hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3. Here, however, even assuming that COMPLAINANT would testify at a hearing consistently with her statement to OPC, the Complaint Examiner would not be able to conclude by a preponderance of the evidence that SUBJECT OFFICER told her that she “needed to find Jesus.” There are two reasons that such a conclusion would not be possible. First,

² The record is unclear as to whether that COMPLAINANT even *subjectively* found the Subject Officer’s statement regarding help to be offensive. COMPLAINANT indicated to OPC that SUBJECT OFFICER “told me that I needed to find Jesus and that there were places for me to get help. *I was offended by her comments because she does not know if I have Jesus in my life or not*” (emphasis added). This suggests that COMPLAINANT was offended by the alleged religious portion of SUBJECT OFFICER’S statements but raises no objection to the remaining portion. Similarly, the fact that COMPLAINANT did not mention SUBJECT OFFICER’S alleged statements at all in her OPC complaint (*see supra* n.1) raises questions as to whether she found the incident offensive when it happened.

COMPLAINANT has admitted in open court that both her sworn complaint and her sworn statement to OPC contained material falsehoods. Specifically, COMPLAINANT swore in her complaint and her statement to OPC that she had not been drinking and was not intoxicated on the night of December 26, 2014. But on March 16, 2015, COMPLAINANT pled guilty in D.C. Superior Court to driving under the influence on the night in question and specifically admitted that she was intoxicated that night.³ Because the issue of her drinking goes to the heart of both her arrest and the instant complaint, the fact that COMPLAINANT made multiple perjurious statements to OPC about such drinking necessarily casts grave doubt on the veracity of any other testimony she might provide in this matter. The Complaint Examiner would therefore give her testimony at a hearing such little weight that it could not possibly outweigh the consistent testimony of all the other witnesses to the contrary.

Second, COMPLAINANT’S in-court admission confirms (as noted above) that she was so intoxicated that she was operating a car with no headlights in the middle of the night while drifting into other lanes of traffic. Given this level of inebriation, the Complaint Examiner would not be able to conclude that COMPLAINANT more reliably perceived and remembered the events in question than the four (presumably non-intoxicated) witnesses who have already testified to OPC that they did not recall any statement like the one that COMPLAINANT ascribes to SUBJECT OFFICER. Accordingly, COMPLAINANT’S testimony at an evidentiary hearing could not meet her burden to establish misconduct by a preponderance of the evidence.

In sum, because COMPLAINANT has already provided two false statements regarding the events at issue and was significantly intoxicated at the time of those events, the Complaint Examiner finds that the current record of this case does not raise a genuine issue of fact about whether SUBJECT OFFICER told COMPLAINANT that she “needed to find Jesus.” For the same reasons, the Complaint Examiner concludes that an evidentiary hearing could not provide a sufficient factual basis to find by a preponderance of the evidence that the alleged conduct occurred. The Complaint Examiner therefore renders a determination of “insufficient facts” regarding this allegation. D.C. Mun. Regs. tit 6A, § 2120.2(c).

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 (“places to get help”):	Exonerated
Allegation 2 (“need to find Jesus”):	Insufficient Facts

³ See *District of Columbia v. COMPLAINANT*, Case No. XXXX XXX XXX (D.C. Super. Ct. DATE) (plea hearing).

Complaint No. 15-0132
Page 5 of 5

Submitted on September 11, 2015.

Adav Noti
Complaint Examiner