

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 16-0053 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 |
| Allegation 1: | Failure to Identify (SUBJECT OFFICER #1) |
| Allegation 2: | Harassment (SUBJECT OFFICER #2) |
| Allegation 3: | Harassment (SUBJECT OFFICER #3) |
| Complaint Examiner: | Adav Noti |
| Merits Determination Date: | August 3, 2016 |

Pursuant to D.C. 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 alleges that on November 19, 2015, SUBJECT OFFICER #1 failed to identify himself upon request. The Complainant also alleges that SUBJECT OFFICER #2 harassed the Complainant by issuing him a notice of infraction for jaywalking even though the Complainant had been invited to walk across the street by SUBJECT OFFICER #1. Finally, the Complainant alleges that SUBJECT OFFICER #3 harassed the Complainant by unlawfully arresting him for failure to obey in an emergency and for failure to identify himself.¹

¹ The complaint also alleged that (1) SUBJECT OFFICER #3 and #2 harassed the occupants of a vehicle by conducting a traffic stop that the Complainant observed, (2) the three Subject Officers and one additional officer harassed that vehicle's occupants by searching it, (3) SUBJECT OFFICER #3 and #2 and three other officers failed to identify themselves upon request, and (4) SUBJECT OFFICER #3 harassed the Complainant by mishandling his property. Pursuant to D.C. Code § 5-1108(1), a member of the Police Complaints Board dismissed these allegations on May 13, 2016, concurring with the determination made by OPC's Executive Director. ROI at 1 n.1 & Ex. 2.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by the Subject Officers on June 2, 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 the Subject Officers on June 2, 2016, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 19, 2015, at approximately 6:00 p.m., a group of MPD officers that included SUBJECT OFFICERS #1, #2, and #3 was conducting a traffic stop in the 600 block of Malcolm X Avenue, SE. At the same time, the Complainant was walking on the sidewalk on the opposite side of the street from where the officers were conducting the traffic stop.
2. The Complainant called out to the occupants of the car, urging them to obtain the names and badge numbers of the officers engaged in the traffic stop.
3. SUBJECT OFFICER #1 and the Complainant began speaking to each other from opposite sides of the street. In response to the Complainant's statements regarding obtaining an officer's badge number, SUBJECT OFFICER #1 said, "Wanna come look at it?"
4. The Complainant began to cross the street to where the officers were standing. While he was crossing, SUBJECT OFFICER #1 called out, "Oh, you just jaywalked now, sir."
5. The Complainant completed crossing the street, and upon arriving at the farthest lane — in which the officers were standing and their patrol cars were parked — said that he wanted the officers' names. SUBJECT OFFICER #1 directed the Complainant to "get off the street." The Complainant asked SUBJECT OFFICER #1 for his name. SUBJECT OFFICER #1 responded, "You don't need to know. Get off the street." The Complainant said, "I don't need to know?" SUBJECT OFFICER #1 pointed to his nameplate and said, "This is my tag right here, my nametag's right here."
6. SUBJECT OFFICER #1 asked the Complainant, "Where's your ID, man?" The Complainant replied, "I don't need any." Several other officers, including SUBJECT OFFICER #3, then asked the Complainant to produce identification. The Complainant challenged the officers as to their legal basis for demanding his identification, and he pointed out that SUBJECT OFFICER #1 had "invited" him to cross the street.

7. SUBJECT OFFICER #3 placed the Complainant under arrest for failure to identify himself and for failure to obey in an emergency, and SUBJECT OFFICER #2 issued the Complainant a notice of infraction for crossing where prohibited (i.e., jaywalking). The Complainant was then transported to an MPD station for booking.
8. The foregoing events were collectively recorded by the body-worn cameras of several of the officers who were on the scene, including SUBJECT OFFICER #2 and #3.
9. The criminal charges against the Complainant were no-papered.²

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; . . . 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. Failure to Identify³

MPD General Order 201.26 requires MPD officers to “give their first and last name and badge numbers in a respectful and polite manner” when requested to do so by a member of the public.

The body-worn camera videos resolve this allegation in its entirety. When the Complainant asked SUBJECT OFFICER #1 for his name, SUBJECT OFFICER #1 responded, “You don’t need to know.” Even upon the Complainant’s renewed request, SUBJECT OFFICER #1 still did not “give [his] first and last name . . . in a respectful and polite manner,” but rather pointed to his nameplate and said, “This is my tag right here, my nametag’s right here.”

SUBJECT OFFICER #1 states that he did not identify himself because the Complainant’s request “was interfering with his ability to do his job.” (Obj. to ROI of SUBJECT OFFICER #1 at 4.) That assertion is inconsistent with the fact that SUBJECT OFFICER #1 repeatedly and

² The disposition of the notice of infraction for jaywalking is unclear. *See* ROI Ex. 25 (notification from Department of Motor Vehicles to OPC that notice of infraction issued to Complainant “did not appear” in DMV’s records).

³ For the sake of clarity, the Complaint Examiner notes that there are two distinct “failure to identify” allegations at issue in this matter: One is the allegation that SUBJECT OFFICER #1 failed to identify himself to the Complainant, and the other is the allegation that SUBJECT OFFICER #3 unlawfully arrested the Complainant for failing to identify himself to SUBJECT OFFICER #3. The former allegation is addressed in this Part IV.A; the latter is addressed below in Part IV.B.2.

aggressively responded to the Complainant's identification requests, first by inviting the Complainant to "come look at" his badge, then by telling the Complainant that he didn't need to know the officer's name, and finally by telling the Complainant to view the officer's nametag. At any of those points, SUBJECT OFFICER #1 could have instead simply provided his name; indeed, doing so would have taken *less* time and caused *less* interference than the evasion in which the officer instead engaged.

Because SUBJECT OFFICER #1 chose not to provide his name upon request, the allegation that SUBJECT OFFICER #1 failed to identify himself as required by MPD General Order 201.26 is sustained.

B. Harassment

Harassment is defined in MPD General Order 120.25, Part III.B.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.

1. Notice of Infraction for Jaywalking

SUBJECT OFFICER #2 issued the Complainant a notice of infraction for crossing where prohibited. But as the Complainant testified and the body-worn camera videos confirm, the Complainant crossed the street only in response to SUBJECT OFFICER #1 saying, "Wanna come look at it [i.e., his badge]?" For one officer to invite a pedestrian to cross the street only to have another officer then issue the pedestrian a citation and fine for doing so is patently harassing.⁴ SUBJECT OFFICER #2 does not appear to dispute this. (*See* Obj. to ROI of SUBJECT OFFICER #2 at 19 (noting ROI's conclusion that SUBJECT OFFICER #2 "harassed

⁴ It is also entrapment. *See Minor v. United States*, 623 A.2d 1182, 1187 (D.C. 1993) (noting elements of entrapment defense) (citing *Mathews v. United States*, 485 U.S. 58, 63 (1988)).

COMPLAINANT when [SUBJECT OFFICER #2] unlawfully . . . issued him a bad ticket,” but providing no response to that conclusion).) The Complainant’s allegation of harassment against SUBJECT OFFICER #2 is sustained.

2. Arrest for Failure to Identify

Pursuant to D.C. Code § 50-2303.07, a pedestrian who is issued a notice of infraction must verbally provide a police officer upon request with the pedestrian’s “true name and address,” but “no pedestrian shall be required to possess or display any documentary proof of his or her name or address.” MPD General Order 303.01, Part I.G.2, accordingly provides that “[p]edestrian violators shall not . . . be required to produce or display documentary evidence of identity.” *See also* MPD Circular 04-10 (same).

The body-worn camera videos make clear that SUBJECT OFFICER #3 unlawfully arrested the Complainant for not displaying his identification. Near the beginning of their interaction, SUBJECT OFFICER #1 asked the Complainant, “Where’s your ID, man?” The Complainant correctly replied, “I don’t need any.” Several other officers, including SUBJECT OFFICER #3, then asked the Complainant to produce identification and threatened to arrest him if he did not. The Complainant continued to correctly challenge the officers as to their legal basis for demanding his identification documents. Although SUBJECT OFFICER #3 wrote in his arrest paperwork that “[a]fter being stopped” the Complainant “refused multiple times to tell officers his name” (ROI Ex. 18 at 4), at no point after the Complainant allegedly jaywalked did he refuse to state his name and address — the officers did not even ask him for that information. SUBJECT OFFICER #3 nonetheless arrested the Complainant for failing to identify himself. That arrest was, at a minimum, in reckless disregard of the plain text of D.C. Code § 50-2303.07 and MPD General Order 303.01, Part I.G.2.⁵ The allegation of harassment against SUBJECT OFFICER #3 is sustained.

3. Arrest for Failure to Comply in an Emergency

SUBJECT OFFICER #3 also arrested the Complainant for failure to comply in an emergency. The putative authority for this arrest was D.C. Mun. Regs. tit. 24, § 2100.1-2, which provides as follows:

⁵ Because the Complainant had correctly informed SUBJECT OFFICER #3 (and the other officers on the scene) that the law did not require the Complainant to produce identification, it would be reasonable to conclude that SUBJECT OFFICER #3’s arrest of the Complainant for failure to identify himself was knowingly or purposefully unlawful. *See* D.C. Mun. Regs. tit. 6A, § 2199.1 (defining harassment as actions “purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD”). Furthermore, when the Complainant challenged the legal basis for the officers’ actions, the officers mocked him, asking him sarcastically where he had gone to law school. Such sarcasm, in addition to being based on the officers’ own legal error, constitutes a *per se* language-and-conduct violation. *See* MPD General Order 201.26, Part V.C (“All members of the department shall be courteous and orderly in their dealings with the public. . . . Members shall refrain from harsh, violent, course, profane, sarcastic, or insolent language.”).

When fires, accidents, wrecks, explosions, parades, or other occasions cause or may cause persons to collect on the public streets, alleys, highways, or parkings, . . . an officer acting for [the Chief of Police] may establish an area or zone that he or she considers necessary for the purpose of affording a clearing for the following:

- (a) The operation of firemen or policemen;
- (b) The passage of a parade;
- (c) The movement of traffic;
- (d) The exclusion of the public from the vicinity of a riot, disorderly gathering, accident, wreck, explosion, or other emergency; and
- (e) The protection of persons and property.

Each person present at the scene of an emergency occasion shall comply with any necessary order or instruction of any police officer.

The regulation provides no basis for SUBJECT OFFICER #3's arrest of the Complainant. First, no "persons [were] collect[ing] on the public streets" where the officers were conducting the traffic stop. The only person on the scene other than the officers was the Complainant, who, as noted above, was invited there by SUBJECT OFFICER #1. Second, although SUBJECT OFFICER #3 stated in his arrest paperwork that the Complainant had been "obstructing traffic," that statement is belied by the body-worn camera footage, which demonstrates that the Complainant crossed the street expeditiously once SUBJECT OFFICER #1 invited him to do so and was out of the flow of traffic when SUBJECT OFFICER #3 arrested him. Finally, even if the Complainant had acted as the officers claimed, MPD orders provide that

[i]n most circumstances, officers shall not summarily arrest a person who has violated the "Failure to Comply" provision.⁶ *Only* in a situation where the *continued refusal* creates a flagrant and immediate danger to the violator, other persons or the motoring public, or interferes with ongoing traffic enforcement activities of the police, may an officer consider summary arrest. . . . *If it is determined that the circumstances are serious enough to warrant an arrest, members shall . . . [c]autio[n] the person that continued refusal to comply with the officers [sic] order could result in the violator's arrest*

MPD Special Order 96.10 (emphases added). Thus, SUBJECT OFFICER #3 was authorized to arrest the Complainant for failure to comply in an emergency only if he had been "creat[ing] a

⁶ The particular "Failure to Comply" provision to which the Special Order refers is D.C. Mun. Regs. tit. 18, § 2000.2, which provides that "[n]o person shall fail or refuse to comply with any lawful order or direction of any police officer . . . invested by law with authority to direct, control, or regulate traffic." But the Special Order also "appl[ies] to all other traffic control situations." MPD Special Order 96.10 at 1.

flagrant and immediate danger . . . or interfer[ing] with ongoing traffic enforcement activities of the police,” which the evidence shows he was not. And even then, SUBJECT OFFICER #3 first would have been required to warn the Complainant to leave, on pain of arrest, but SUBJECT OFFICER #3 provided no such warning. The only warning offered to the Complainant about potential arrest related to his (lawful) refusal to produce identification. Accordingly, SUBJECT OFFICER #3’s arrest of the Complainant had no basis in D.C. Mun. Regs. tit. 24, § 2100.2, and that arrest also contravened the plain text MPD Special Order 96.10. The allegation of harassment is therefore sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

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| Allegation 1 (Failure to Identify): | Sustained |
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SUBJECT OFFICER #2

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| Allegation 2 (Harassment — Notice of Infraction for Jaywalking): | Sustained |
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SUBJECT OFFICER #3

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| Allegation 3 (Harassment — Arrest for Failure to Identify and Failure to Comply in an Emergency): | Sustained |
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Submitted on August 3, 2016.

Adav Noti
Complaint Examiner