

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	16-0376
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER 1 SUBJECT OFFICER 2
Allegation 1:	Harassment (SUBJECT OFFICER 1 & SUBJECT OFFICER 2)
Allegation 2:	Demeaning, or Humiliating Language (SUBJECT OFFICER 1)
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	August 28, 2017

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 filed a complaint with the Office of Police Complaints (OPC) on August 24, 2016. Complainant alleged that on August 18, 2016, Subject Officers of Metropolitan Police Department (MPD) SUBJECT OFFICER 1 and SUBJECT OFFICER 2 harassed Complainant when they unlawfully arrested her for constructive possession of an open container of alcohol (POCA). Complainant further alleged that SUBJECT OFFICER 1 used language or conduct that was insulting, demeaning or humiliating toward Complainant, when SUBJECT OFFICER 1 used a harsh and demeaning tone and profanity, and asked her if she had an attitude and then arrested her.^{1 2}

¹ Complainant also alleged that SUBJECT OFFICER 1 used unnecessary or excessive force against her when SUBJECT OFFICER 1 twisted her arm behind her back while handcuffing her. Complainant also alleged MPD WITNESS OFFICER 1 used unnecessary or excessive force when she pulled on Complainant's handcuffs. Complainant also alleged SUBJECT OFFICER 1 harassed another individual when he searched him in a rough manner. Lastly, Complainant alleged that SUBJECT OFFICER 2 used inappropriate language or conduct toward the stopped individuals when he questioned them in a harsh tone. Pursuant to D.C. Code § 5-1108(1) on June 27, 2017, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. Complaint Examiner agrees with the determination of the Police Complaints Board that these allegations should be dismissed. Therefore, these allegations are not the subject of this determination.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER 1 and SUBJECT OFFICER 2 on August 1, 2017, their supplemental responses, and OPC's response to their 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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER 1 and SUBJECT OFFICER 2 on August 1, 2017, their supplemental objections, and OPC's response to those objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On August 18, 2016, at approximately 7:00 p.m., while Complainant was sitting in her car, the Subject Officers stopped her and three other individuals with whom she was talking near her car. SUBJECT OFFICER 1 asked everyone for their identification, and when he handed Complainant's identification back to her, she "took it with authority" but did not "snatch" it.
2. There were three other people on the scene, WITNESS 1 was standing by the hood of Complainant's car and had a bottle of liquor at his feet. WITNESS 2 had a white styrofoam cup. WITNESS 3 was standing with a beer in a brown paper bag. Complainant had a small plastic cup containing ice and water that was on top of her car the entire time of this incident. Complainant's car door was open while she sat inside. Complainant's car door was between WITNESS 1 and Complainant. The body worn camera (BWC) footage shows that she was at least three to four feet from the alcohol at WITNESS 1's feet.
3. SUBJECT OFFICER 1 asked Complainant, "You got an attitude?" Complainant responded "yes" and SUBJECT OFFICER 1 stated, "Okay, well you coming with us too." SUBJECT OFFICER 1 then placed Complainant in handcuffs and arrested her. At no time was Complainant's cup checked for alcohol by the MPD offices.

² Complainant also alleged that multiple unidentified officers arrived on the scene with their hands on their service weapons. OPC was unable to determine the subject officers related to this allegation, as a review of the body worn camera footage did not show any officers with their hands on their weapons, and all involved MPD officers interviewed denied the allegation. As OPC was never able to identify the subject officers of this allegation, it is not discussed in this determination.

4. Other MPD officers began arriving on the scene and SUBJECT OFFICER 1 returned to his marked MPD vehicle. WITNESS OFFICER 2 leaned against the car door and listened to SUBJECT OFFICER 1 speak.
5. SUBJECT OFFICER 1 stated that Complainant was a “rude bitch.” Additionally SUBJECT OFFICER 1 also stated, “She done fucked this up” and “not even my own sister snatch something from me.” While these statements were being made, SUBJECT OFFICER 2 was collecting evidence for the arrests, emptying the alcohol containers, and taking pictures of the containers.
6. Complainant’s cup was on top of her car during the incident. Complainant asked for her cup to be smelled or checked because she did not have any alcohol in it. Complainant’s cup was not smelled or otherwise tested for alcohol by any MPD offices on the scene. Complainant and her two friends were arrested, charged with possession of an open container of alcohol (POCA), and transported to the police department. Only WITNESS 1 was not arrested and was given a citation.
7. The MPD officers’ interactions with Complainant were recorded on BWC footage.
8. On September 30, 2016, D.C. Superior Court issued a nolle prosequi order in this case.

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; (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.”

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.

Complainant alleged that she was arrested because the Subject Officers determined that she had an attitude. Complainant denied that she was in possession of an open container of alcohol. Complainant was sitting in her car when MPD officer arrived. There were three other people on the scene, WITNESS 1 who was standing by the car and had a bottle of liquor at his feet. WITNESS 2 had a Styrofoam cup and WITNESS 3 had a beer can inside a brown paper bag. Complainant stated that she had a small cup containing water and ice. She asked for her identification and SUBJECT OFFICER 1 asked if she had an attitude and placed her under arrest. Complainant asked the MPD officers to smell or taste her cup because it was just water.

The BWC footage corroborate Complainant’s account of what transpired and shows that Complainant repeatedly requested that MPD officers check her cup by smelling it or tasting it. No MPD officer ever complied with Complainant’s request and therefore MPD officers did not know or have any reason to distrust that Complainant’s cup contained only water.

SUBJECT OFFICER 1 argues that Complainant, and the three other persons present on the scene, were in constructive possession of the open containers of alcohol as they were within her wingspan.

SUBJECT OFFICER 2 could not remember many details of this case. He was not part of the decision-making process as to whether to lock up Complainant. SUBJECT OFFICER 2 stated that constructive possession is within arm’s reach. SUBJECT OFFICER 2 also stated, in his interview with OPC, that he uses discretion to decide who will be “arrested, cited, or given a warning.” SUBJECT OFFICER 2 considers one of the main criteria to be if the incident happened in a problem area where he consistently receives calls. SUBJECT OFFICER 2 stated in his interview with OPC that he never gets calls for people drinking outside the location where this incident occurred. Additionally, as corroborated by the BWC footage, no MPD officer smelled Complainant’s drink.

D.C. Code § 25-1001 states that no person in DC shall possess an open container of alcohol. For Complainant to have been in possession, she would have to be in control or exercise ownership over the containers of alcohol at issue. The BWC footage demonstrates that Complainant was not in the wingspan of the alcohol, and thus there was no constructive possession. The BWC footage also shows that no MPD officer verified that Complainant was

indeed drinking water. Even though SUBJECT OFFICER 2 indicated in his interview with OPC that no arrest would ever be made for POCA without a warning, he did not issue a warning here.

Complainant Examiner determines that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 did not have probable cause to arrest Complainant for POCA. Because Subject Officer questioned Complainant about her attitude immediately before he proceeded to arrest her, she was more likely arrested for appearing to have an attitude to Subject Officers. The BWC footage does not demonstrate that Complainant had an attitude and even if she did it is not a criminal offense. Therefore, Complaint Examiner determines that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 harassed Complainant in violation of D.C. Code § 5-1107 and MPD General Order 120.25 when they arrested her for POCA.

LANGUAGE OR CONDUCT

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.” See MPD General Order 201.26.

Complainant alleged that SUBJECT OFFICER 1 requested her identification and when he returned it to her, she did not snatch it but “took it with authority.” Complainant alleged that SUBJECT OFFICER 1 spoke to her in a harsh and demeaning tone and asked her if she had an attitude. Complainant stated “yes,” and then was arrested by SUBJECT OFFICER 1. SUBJECT OFFICER 1’s account was similar. In his interview with OPC, Subject Officer told OPC that Complainant snatched the identification card out of his hand and then he asked her if she had an attitude, to which she responded “yes,” and then he arrested her.

The BWC footage shows SUBJECT OFFICER 1 asking Complainant, “You got an attitude?” Complainant answered calmly, “Yes,” and SUBJECT OFFICER 1 proceeded to handcuff and arrest Complainant. Thereafter, she was arrested. The BWC footage shows that SUBJECT OFFICER 1 was speaking to Complainant in a rude, demeaning, and sarcastic tone. The BWC footage showed that Complainant was calm and cooperative in her dealings with SUBJECT OFFICER 1 and it showed that Complainant did not snatch her identification from SUBJECT OFFICER 1. Even if Complainant snatched her identification from SUBJECT OFFICER 1, MPD General Order 201.26 requires MPD Officers to respond in a courteous manner and to refrain from sarcastic, demeaning, and insolent language.

Complainant alleged that before her court date, she was given an opportunity to view the involved BWC footage. Complainant alleged that SUBJECT OFFICER 1 said something to the effect of “don’t nobody snatch nothing from me, not even my own sister,” and alleged that SUBJECT OFFICER 1 used profanity toward her. SUBJECT OFFICER 1 could not recall his conversation with the other MPD officer.

When SUBJECT OFFICER 1 returned to his MPD vehicle and while conversing with WITNESS OFFICER 2, the BWC footage shows that he stated, "Don't nobody snatch nothing from me, not even my sister snatch something from me." The BWC footage shows that SUBJECT OFFICER 1 called Complainant a "rude bitch" and stated, Complainant "done fucked this up." Complaint Examiner notes that Complainant did not hear Subject Officer make these comments at the time of their interaction because he made these comments in his vehicle, away from Complainant, and to another MPD officer. Complainant only learned that SUBJECT OFFICER 1 made these statements when she reviewed the BWC footage in preparation for her court case after the events had transpired.

The BWC footage confirms that SUBJECT OFFICER 1 engaged in language or conduct that was rude, disrespectful, and profane toward Complainant. Although SUBJECT OFFICER 1 did not make the comments directly to Complainant, she heard them while reviewing the BWC footage for her case. It is reasonable for SUBJECT OFFICER 1 to know that Complainant or the public would have the opportunity to review the involved BWC footage and both see and hear language or conduct that violates the D.C. Code or MPD orders. Complaint Examiner does not find it material that SUBJECT OFFICER 1's comments were not overheard by Complainant at the time that they were uttered because Complainant eventually heard the statements and was offended by the profane and demeaning language which is in violation of MPD General Order 201.26.

Therefore, Complaint Examiner determines that SUBJECT OFFICER 1 engaged in conduct or used language toward Complainant that violated D.C. Code § 5-1107 and MPD General Order 201.26 when he asked her if "she had an attitude," called her a "rude bitch," and said Complainant "done fucked this up" and used profane language.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER 1

Allegation 1: (Harassment)	Sustained
Allegation 2: (Language or Conduct)	Sustained

SUBJECT OFFICER 2

Allegation 1: (Harassment)	Sustained
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Submitted on August 28, 2017

ARTHUR DENNIS SIDNEY
Complaint Examiner