

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0084
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment: Window-Tint Infraction
Allegation 2:	Harassment: Seatbelt Infraction
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Adav Noti
Merits Determination Date:	September 5, 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 as required by § 5-1107,¹ 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 16, 2016, SUBJECT OFFICER harassed him and his wife by issuing them traffic tickets for unlawful window tints and for a seatbelt violation. The Complainant also alleges that the Subject Officer used insulting, demeaning, or humiliating language by telling the Complainant's wife, who was visibly pregnant and on her way to a medical appointment, that she could "get out and walk" to her doctor's office.

II. EVIDENTIARY HEARING⁸

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on July 31, 2017, and OPC's response to the objections, the Complaint Examiner determined that

¹ OPC's Report of Investigation states that the complaint was "submitted in a timely manner and in proper form" (ROI at 2 & n.1), and the Subject Officer has not objected to either the timeliness or the form of the complaint.

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 SUBJECT OFFICER on July 31, 2017, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 16, 2016, at approximately 10:00 a.m., the COMPLAINANT and his wife, WITNESS, were driving on a ROAD IN NW, WASHINGTON, DC, near A HOSPITAL IN WASHINGTON, DC.
2. WITNESS was driving the car. She was approximately 36 weeks pregnant and on her way to a pregnancy-related medical appointment at A HOSPITAL IN WASHINGTON, DC. The Complainant was in the passenger seat. The couple planned to drop the Complainant off on the street upon arriving at the hospital so that he could attend to an unrelated errand.
3. SUBJECT OFFICER noticed the Complainant's car and initiated a traffic stop because the Subject Officer believed from visual observation that the car's window tints were in violation of D.C. law.
4. When the Subject Officer initiated the traffic stop, the Complainant was not wearing his seatbelt.
5. As the Complainant and the Subject Officer were contentiously discussing potential traffic violations, the Complainant and WITNESS told the SUBJECT OFFICER that WITNESS was on her way to a pregnancy-related medical appointment at the hospital. The couple asked if WITNESS could drive on to her appointment while the Complainant remained behind to receive the tickets. The Subject Officer replied that WITNESS could get out of the car and walk to her appointment.
6. Because the Subject Officer knew the nature of the appointment and could see that WITNESS was pregnant, the Complainant and WITNESS reasonably perceived the Subject Officer's statement that she could walk to her appointment to be demeaning and offensive.
7. The Subject Officer issued WITNESS a \$1,000 traffic ticket for unlawful window tints and a \$50 ticket for the Complainant not wearing a seatbelt.

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 . . . harassment . . . [or] use of language or conduct that is insulting, demeaning, or humiliating.”

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 (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. \$1000 Notice of Infraction for Window-Tint Violation

MPD Special Order 95.14 provides that the operator of a motor vehicle “shall not be cited for a violation of [tinted window laws] unless a window illumination check has been performed using [a] tint meter.” *Id.* § B.1. Here, the Subject Officer acknowledged to OPC that he did not use a tint meter but rather issued the citation for an unlawful window tint based purely on his own visual observation. (ROI Ex. 7 at 2.) This is exactly what Special Order 95.14 prohibits, and the Subject Officer’s objections to the ROI do not even mention — much less offer any justification or excuse for — his violation of that order. (*See* Obj. of Subject Officer at 2.)

Furthermore, the Subject Officer’s issuance of a ticket in the amount of \$1,000 was plainly unlawful. DC Code § 50-2207.02(c) provides that the penalty for operating a vehicle with excessively tinted windows is a \$50 citation.² The Subject Officer cites DC Mun. Regs. tit.

² Only if the operator fails to remedy the violation within five business days does the fine increase to \$1,000. DC Code § 50-2207.02(d)(2).

18 § 734.15 as giving him the authority to issue a \$1,000 ticket, but that regulation was repealed more than a decade ago. Thus, there was no basis in law for the Subject Officer to issue the \$1,000 ticket.

For the foregoing reasons, the Complaint Examiner finds that the Subject Officer recklessly violated District law and MPD orders by issuing a window-tint notice of infraction without testing the windows as required, and in an amount twenty times higher than the legally authorized fine. The allegation of harassment is sustained.

2. Notice of Infraction for Not Wearing a Seatbelt

The Complainant alleges that the Subject Officer harassed him by issuing a ticket for the Complainant's failure to wear a seatbelt. The Complainant asserts that the only reason he was not wearing a seatbelt was that he was already in the process of getting out of the stopped car when the Subject Officer first contacted the couple. But WITNESS testified to OPC that she drove the car, at least briefly, after the Complainant had already removed his seatbelt in preparation for getting out of the car, and that this was when the Subject Officer stopped her. (Ex. 5 at 1.) The Complainant's testimony on the timing of this sequence is ambiguous. (*See* Ex. 3 at 1.) Accordingly, the preponderance of the evidence indicates that WITNESS did operate the car while the Complainant was not wearing his seatbelt. The Complaint Examiner therefore finds that the Subject Officer did not violate any law, regulation, or MPD order in issuing this notice of infraction.

B. 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."

The Complainant and WITNESS both testified that the Subject Officer — knowing that WITNESS was pregnant and on her way to a medical appointment — told WITNESS that she could get out of the car and walk. The Subject Officer initially testified to OPC that he did not make the alleged statement, but he abandoned that assertion in his objections to the ROI. (*See* Obj. of Subject Officer at 2-3.)

The Complaint Examiner finds that telling WITNESS — a visibly pregnant woman who was actively seeking medical care — that she could get out of her car and walk to a doctor's office was "insulting, demeaning, or humiliating" because it would reasonably cause a person in that situation to feel that the officer was mocking or making light of her medical condition. Walking, of course, is not inherently incompatible with pregnancy, and so there might be

situations in which making a statement along these lines would not be inappropriate.³ But because the Subject Officer has provided no such explanation of his statement, the Complaint Examiner can only assess his words on their face. Given the totality of the circumstances, the most reasonable interpretation of those words is that which the Complainant and WITNESS derived from them: that the Subject Officer was demeaning WITNESS's physical status when he told her to walk to her doctor. The language or conduct allegation is accordingly sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 (Harassment — Window-Tint Infraction):	Sustained
Allegation 2 (Harassment — Seatbelt Infraction):	Exonerated
Allegation 3 (Language or Conduct):	Sustained

Submitted on September 5, 2017.

Adav Noti
Complaint Examiner

³ For example, given that the traffic stop occurred approximately one block from WITNESS's destination, one could imagine the Subject Officer attempting to help her arrive to her appointment on time by walking for a minute or two rather than waiting in her car while he wrote up multiple tickets.