

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	17-0388
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment by Unlawful Traffic Stop
<b>Complaint Examiner:</b>	Meaghan H. Davant
<b>Merits Determination Date:</b>	April 30, 2018

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**

The complainant filed a complaint with the OPC on May 4, 2017, alleging that the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER harassed him when he conducted an unlawful traffic stop.<sup>1</sup>

**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 on behalf of SUBJECT OFFICER on February 28, 2018 and OPC's March 16, 2018 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.

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<sup>1</sup> COMPLAINANT also alleged that subject officer: unlawfully arrested him for assaulting a police officer ("APO"); discriminated against him based on age and race; used unnecessary or excessive force by swatting food from his hand and slamming him to the ground; and used language or engaged in conduct that was insulting, demeaning or humiliating by using profanity. Pursuant to D.C. Code § 5-1108(1) on February 5, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. ROI at n.1 & Ex. 2.

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, the objections submitted on behalf of Officer Little on February 28, 2018 and OPC's March 16, 2018 response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 8, 2017, at approximately 3:30 p.m. SUBJECT OFFICER was on routine patrol near the BLOCK OF AN AVENUE IN SE, WASHINGTON, DC, when a covert license plate reader (LPR) located near the BLOCK OF AN AVENUE IN SE, WASHINGTON, DC, registered the license plate of a vehicle allegedly stolen in an armed carjacking.
2. SUBJECT OFFICER had been trained and certified in the use of LPRs and his patrol car was equipped with an onboard computer that displayed a photograph of the vehicle and license plate of the allegedly stolen vehicle. The vehicle that registered the hit on the LPR was a silver Honda Accord with D.C. license plate REDACTED PLATE #1 and a unique decorative sticker placed beneath the word "Accord" on the back of the vehicle.
3. At or about the same time, COMPLAINANT was driving his mother's silver Hyundai Accent, with D.C. license plate REDACTED PLATE #2, and was attempting to turn left to exit the parking lot of his mother's home, located near the corner of AN INTERSECTION IN SE, WASHINGTON, DC. There were no decorative stickers on the back of the car COMPLAINANT was driving.
4. As COMPLAINANT turned left onto AN AVENUE IN SE, WASHINGTON, DC, from the parking lot, he looked into the rear-view mirror and observed a silver Honda Accord approaching from behind at high speed. Immediately thereafter, COMPLAINANT observed a marked police cruiser coming from the same direction, apparently in pursuit of the silver Honda Accord.
5. The silver Honda Accord and the police cruiser remained behind COMPLAINANT as he continued to drive, making a left on A STREET IN SE, WASHINGTON, DC. At the next intersection, however, the Honda Accord made a right on A STREET IN SE, WASHINGTON, DC and the police cruiser followed, both at high rates of speed.
6. COMPLAINANT continued driving down A STREET IN SE, WASHINGTON, DC and turned left on A STREET IN SE, WASHINGTON, DC, at which point he again saw the silver Honda Accord in his rearview mirror but did not see the police cruiser in pursuit. COMPLAINANT observed the Honda Accord making a right on A STREET IN SE, WASHINGTON, DC. Shortly thereafter, as COMPLAINANT continued to drive down A STREET IN SE, WASHINGTON, DC, he observed, in his rearview mirror, SUBJECT OFFICER's patrol car cresting the hill behind his own vehicle.

7. SUBJECT OFFICER, who had lost sight of the silver vehicle that he had been pursuing, passed a Metrobus and proceeded over the hill on A STREET IN SE, WASHINGTON, DC, at which point he observed COMPLAINANT's similar-looking silver vehicle.
8. SUBJECT OFFICER pulled his patrol car up alongside COMPLAINANT's vehicle, parallel with COMPLAINANT's driver side window, to see COMPLAINANT, at which time COMPLAINANT pulled his vehicle to the side of the road.
9. SUBJECT OFFICER effected the stop of COMPLAINANT without any further verification that the car COMPLAINANT was driving matched the description and license plate number of the allegedly stolen car registered by the LPR.

#### 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.

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.

#### **SUBJECT OFFICER's Probable Cause for the Traffic Stop**

The Fourth Amendment prohibits law enforcement from conducting "unreasonable searches and seizures," and "this protection extends to a brief investigatory stop of persons or vehicles." *U.S. v. Williams*, 878 F. Supp. 2d 190, 196-197 (D.D.C. 2012) (quoting *U.S. v. Bailey*, 622 F.3d 1, 5, 393 U.S. App. D.C. 131 (D.C. Cir. 2010)). Searches that are conducted without

prior approval by a judge are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Id.*

Police officers may stop a vehicle and its occupants without a warrant when they have probable cause to believe a traffic violation has occurred, *Watson v. United States*, 43 A.3d 276, 282 (D.C. 2012) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)), or in a *Terry* stop if they have a “reasonable, articulable suspicion that ‘criminal activity may be afoot.’” *United States v. Edmonds*, 240 F.3d 55, 59 (D.C. Cir. 2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (U.S. 1968)).

However, probable cause exists only where “the facts and circumstances within the officers’ knowledge of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Id.* (citing *Perkins v. United States*, 936 A.2d 303, 306 (D.C. 2007) (internal citations omitted)). Probable cause is measured by the totality of the circumstances and “must be supported by more than mere suspicion.” *Id.* (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003)).

Moreover, MPD General Order 304.10, Police-Citizen Contacts, Stops, and Frisks (effective August 30, 2013), requires that officers have “reasonable suspicion” to conduct a stop, defined as “more than a hunch or mere speculation...a combination of specific facts and circumstances which justify a reasonable officer to believe that the person stopped had committed, was committing or was about to commit a criminal act.

Finally, MPD General Order 303.09, License Plate Reader Program (effective March 28, 2014) requires that “when a member locates a vehicle related to a positive LPR system hit, the member shall verify the license plate information.”

In this case, SUBJECT OFFICER stated in his OPC interview that he had no cause for the stop of COMPLAINANT other than the belief that the vehicle COMPLAINANT was driving matched the description and license plate information of an allegedly stolen vehicle registered by the LPR.

SUBJECT OFFICER had immediate access to the images on the LPR reader in his patrol car, which showed that the allegedly stolen vehicle was a silver Honda Accord with D.C. license plate REDACTED PLATE #1 and a unique decorative sticker placed beneath the word “Accord” on the back of the vehicle. While the vehicle COMPLAINANT was a driving, a Hyundai Accent, was also silver in color and may have even had a similar body type, the license plate of that vehicle was REDACTED PLATE #2. Further, body worn camera (BWC) footage from the stop clearly showed that there were no decorative stickers on the back of the car COMPLAINANT was driving.

SUBJECT OFFICER stated that the license plate of the vehicle driven by COMPLAINANT nonetheless “appeared to match” that of the allegedly stolen vehicle because the initial and final characters of the two license plates: E and F; and 7 and 9, respectively, were at least similar. The Complaint Examiner finds this argument meritless, particularly where the stop occurred in the middle of the afternoon when the license plate would have been clearly visible, and not rising to the level of “reasonable suspicion” required for pursuant to MPD General Order 304.10, much less probable cause for a warrantless stop.

Moreover, SUBJECT OFFICER gave no credible reason that he lacked further opportunity to verify the make, model and license plate number prior to stopping COMPLAINANT, especially where, unlike the vehicle SUBJECT OFFICER was initially pursuing, COMPLAINANT readily pulled his vehicle over to the side of the road. Thereby, SUBJECT OFFICER failed to comply with the level of diligence required by General Order 303.09.

Based on the totality of the circumstances, SUBJECT OFFICER thereby lacked “reasonably trustworthy information” to support probable cause for a warrantless traffic stop. Absent a legal basis for the traffic stop, SUBJECT OFFICER harassed complainant in violation of § 5-1107(a) and MPD General Order 120.25.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1: Harassment by Unlawful Traffic Stop</b>	Sustained
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Submitted on April 30, 2018.

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Meaghan Hannan Davant  
Complaint Examiner