

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	17-0425
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation:</b>	Harassment
<b>Complaint Examiner:</b>	Richard S. Ugelow
<b>Merits Determination Date:</b>	June 6, 2018

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**

On May 12, 2017 at approximately 7:10 p.m., on A STREET IN SE, WASHINGTON, DC, COMPLAINANT was stopped by MPD officers for speeding and having car windows that were tinted beyond what was permitted by the law of the District of Columbia. The police officers, all members of the SPECIAL UNIT, were on routine patrol. During the stop, COMPLAINANT alleged that his car was searched without his permission and over his objection.<sup>1</sup> The OPC investigation identified SUBJECT OFFICER as the police officer who conducted the search. All of the officers agreed there was not probable cause to search the vehicle without permission.

No evidentiary hearing was conducted regarding this complaint. Based on a review of OPC's Report of Investigation, the objections submitted by the Fraternal Order of Police (FOP)

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<sup>1</sup> COMPLAINANT also alleged that the responding police officers harassed him by unlawfully stopping him, unlawfully handcuffing him and damaging his vehicle during the traffic stop. In addition, COMPLAINANT alleged that the officers used unnecessary and excessive force by having their guns drawn and pointed at him and forcibly pulling him from the vehicle and throwing him to the ground. The complainant further alleged that he was discriminated against based on his age and African-American race. Pursuant to D.C. Code § 5-1108(1), a member of the Police Complaints Board (PCB) dismissed these allegations, concurring with the determination made by OPC's Executive Director. *See* Exhibit 2.

on behalf of SUBJECT OFFICER on April 9, 2018<sup>2</sup>, 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.

## II. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on April 9, 2018, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 12, 2017, at approximately 7:10 p.m., COMPLAINANT was traveling in his personal vehicle, a 2011 black two-door VEHICLE, on A STREET IN SE, WASHINGTON, DC in the direction of EAST.
2. Six members of the SPECIAL UNIT were on routine patrol in two unmarked MPD SUVs and one marked MPD SUV.
3. WITNESS OFFICER 1, WITNESS OFFICER 2, WITNESS OFFICER 3, WITNESS OFFICER 4, and WITNESS OFFICER 5 were in the two unmarked cars. All were wearing plainclothes but had vests with "police" written on the front and back, and had police badges hanging from their necks.
4. SUBJECT OFFICER was driving alone in the MPD cruiser, and was wearing a MPD uniform.
5. COMPLAINANT was interviewed by OPC on May 23, 2017.
6. WITNESS OFFICER 1 was interviewed on November 14, 2017, WITNESS OFFICER 2 was interviewed on October 6, 2017, WITNESS OFFICER 5 was interviewed on October 10, 2017, WITNESS OFFICER 4 was interviewed on October 18, 2017, WITNESS OFFICER 3 was interviewed on October 5, 2017, and SUBJECT OFFICER was interviewed on October 12, 2017.
7. On May 12, 2017, COMPLAINANT was observed speeding.
8. WITNESS OFFICER 4, who was driving one of the unmarked cruisers, initiated the traffic stop of COMPLAINANT's vehicle with flashing police lights.

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<sup>2</sup> SUBJECT OFFICER asks that the Complaint Examiner refer this complaint for mediation. However, only the OPC Executive Director has that authority.

9. WITNESS OFFICER 1 approached the drivers' side window and asked COMPLAINANT to roll it down and to exit the car.
10. After several requests, COMPLAINANT lowered the window and exited his vehicle.
11. WITNESS OFFICER 1 directed COMPLAINANT to the rear of the VEHICLE where other officers were standing.
12. COMPLAINANT claimed to OPC that: he did not recall seeing "police" on the officers' vests; he was forcibly removed from his vehicle; one or more officers pointed a gun at him; an officer said "this car is stolen;" he was thrown to the ground; he was handcuffed; he hurt his lip during the incident; and his car was damaged when WITNESS OFFICER 1 banged on his window with the butt of a night stick. OPC dismissed these claims. *See* note 1. Finally, COMPLAINANT claimed that the vehicle was searched without his permission and over his objection.
13. COMPLAINANT asserted that he was asked if he had any guns. When he denied having a gun, COMPLAINANT claimed that an officer told him that they would get a gun sniffing dog. COMPLAINANT replied, "Do what you gotta do."
14. COMPLAINANT told OPC that two officers searched his car – one in the cabin and one in the trunk – at the same time he was "yanked" from the car. Exhibit 3 at 29 minutes.
15. COMPLAINANT told OPC that his wallet, containing his drivers' license, was in the car and that the officer searching the inside of the cabin retrieved his license from the wallet. COMPLAINANT further said an envelope with \$400-500 in cash was visible on the seat of the car, but that the officers did not touch or ask him about it.
16. COMPLAINANT told OPC that it was "pouring" rain at the time of the incident and that he was standing outside while the officers were validating his drivers' license and searching his vehicle. He further stated that the incident took place from approximately 7:10-7:40 pm, or roughly 30 minutes.
17. The officers gave estimates of the length of the stop that varied from as short as five minutes to up to fifteen minutes.
18. Not one of the officers indicated that they were wearing rain gear.
19. WITNESS OFFICER 1, WITNESS OFFICER 2, WITNESS OFFICER 3, WITNESS OFFICER 5 and SUBJECT OFFICER either specifically denied personally searching COMPLAINANT's vehicle or did not recall if a search was conducted.
20. WITNESS OFFICER 4 told OPC on October 18, 2017 that he believed that SUBJECT OFFICER searched the vehicle. However, in a statement filed with SUBJECT OFFICER's objections, he retracted his statement and indicated that he may have been

- confused with other traffic stops, including an earlier stop of COMPLAINANT. See FOP exhibit 1.
21. Not one of the officers told OPC that they asked to search the vehicle or that they asked COMPLAINANT if had a gun.
  22. Not one of the officers told OPC that a gun dog would be requested, and there is no record that a gun dog was, in fact, requested.
  23. Not one of the officers said they told COMPLAINANT that his car was stolen.
  24. There was no probable cause to search COMPLAINANT's vehicle.
  25. The officers acknowledged they would not have searched COMPLAINANT's vehicle without his explicit consent.
  26. COMPLAINANT did not take pictures of his physical injuries, neither did he seek medical treatment for them.
  27. With regard to COMPLAINANT's claim of damage to his vehicle, OPC found that it was not "plausible that those marks [i.e. the damage] were caused by knocking on the window or otherwise made during the stop of the complainant." Exhibit 2, p.3.
  28. SUBJECT OFFICER completed an incident report on May 13, 2017 at 1:12 a.m., approximately six hours after the incident, which states that the event occurred from 7:22 to 7:26 p.m. on May 12. The public narrative section of the report indicates that COMPLAINANT was asked for and produced his drivers' license. Exhibit 17, p 1-2.
  29. After COMPLAINANT produced his drivers' license, a WALES check was performed. Exhibit 7 at 13:30.
  30. WITNESS OFFICER 1 was well positioned to observe the interior of the vehicle and see if a search was conducted, as he was standing at the drivers' side window. WITNESS OFFICER 1 did not personally search the vehicle or see any other officer conduct a search. Exhibit 7 at 14:00.
  31. COMPLAINANT was known to several of the police officers, including WITNESS OFFICER 1, because he had been stopped for having tinted windows about two weeks earlier. As WITNESS OFFICER 1 told OPC, we "cut him a break" then, too.
  32. COMPLAINANT was known to SUBJECT OFFICER and other officers because there had been a familial relationship with a member of SUBJECT OFFICER's unit.
  33. The stop ended when COMPLAINANT was given a verbal warning.

### III. 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 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.

The sole issue to be decided is whether COMPLAINANT’s vehicle was searched during a routine traffic stop.<sup>3</sup> After carefully examining all of the exhibits, including the audio recordings, and other documentation, the Complaint Examiner finds that is more likely than not that COMPLAINANT’s vehicle was not searched.

There are too many inconsistencies and contradictions in COMPLAINANT’s account of the events to support his version of what took place during the traffic stop. It is telling that there

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<sup>3</sup> As the FOP objections correctly observe, COMPLAINANT’s original OPC complaint did not allege harassment based on the search of his vehicle. Rather, this issue was raised during the course of the OPC investigation. For the reasons set forth by OPC in its response to the objections, the Complaint Examiner believes that the search issue is properly raised.

is no support for COMPLAINANT's account of how the officers obtained his drivers' license. He claimed that it was in his wallet which was inside the vehicle and that the officers seized his wallet during the search. However, WITNESS OFFICER 1 observed COMPLAINANT handing the license to the officers standing at the rear of his car. The license was then used to perform the WALES check. This version of events is supported by the incident report filed by WITNESS OFFICER 2 within six hours of the incident. That report states that COMPLAINANT produced his license. The report supports a conclusion that the license was in COMPLAINANT's wallet, which was on his person and not taken from the car during a search.

In addition, COMPLAINANT stated that there was an envelope with \$400-\$500 in cash visible on the front seat of the car, but that the envelope was not touched. Surely, the officers would have inquired about several hundred dollars if there had been a search. It is counter intuitive to assume that the officers would have (as COMPLAINANT claimed) taken his car cleaning bucket out of his trunk but not looked at envelope containing a substantial amount of money that was in plain view.

The Complaint Examiner believes that the police are entitled to a rebuttable presumption of regularity in the performance of their duties. Here, that presumption applies to the accuracy of the incident report completed by SUBJECT OFFICER. There is no evidence that questions the veracity of the report.

On October 18, 2017, some five months after the incident, WITNESS OFFICER 4 told OPC that the vehicle had been searched by SUBJECT OFFICER. This statement is the sole basis of OPC's determination that COMPLAINANT was harassed.

In an April 4, 2018 written statement, WITNESS OFFICER 4 backtracked and said that he may have been confused by his participation in an earlier traffic stop of COMPLAINANT or some other traffic stop. FOP Exhibit 1. A statement such as WITNESS OFFICER 4's is, of course, suspect. Almost certainly it was procured by the FOP in its effort to assist SUBJECT OFFICER. So, there is reason to be skeptical of WITNESS OFFICER 4's change of position.

Here, the Complaint Examiner gives WITNESS OFFICER 4 the benefit of the doubt. There is reason to believe that he may have been confused when he was interviewed by OPC on October 18, 2017. This is so because COMPLAINANT's account of what transpired on May 12 is wildly inconsistent with the weight of the evidence and recollections of the other officers and, indeed, an earlier determination by OPC.

A brief comparison of COMPLAINANT's description of the May 12 events and the officers' testimony to OPC and the incident report confirm his (COMPLAINANT) faulty recollection.

COMPLAINANT claimed that an officer used a gun, but no officer said that a weapon was drawn. Further, no police officer stated that they asked COMPLAINANT if he had a gun or that a gun dog would be requested. COMPLAINANT also reported that one officer said the car

was stolen. But approximately two weeks earlier, COMPLAINANT had been stopped in the same car by some of the same officers for having tinted windows. Thus, it was already known to some of these officers that the car belonged to him and was not stolen. It is thus unlikely a police officer would have had cause to state the car was stolen. It is also unlikely that a statement along those lines would have gone unchallenged by one of the other officers who knew COMPLAINANT. COMPLAINANT told OPC that it was “pouring” rain at the time of the stop, yet none of the police officers indicated that they were wearing rain gear. His estimate of the length of the stop (30 minutes) is also at variance with the official incident report and the statements of the officers (5-15 minutes). Importantly, OPC determined that COMPLAINANT’s claim of car damage claim was not “plausible,” calling his credibility into question. Further, there is no support for the claim that he was injured or thrown to the ground by the police officers like a “sack of potatoes.” The totality of the circumstances, especially the evidence discussed earlier that COMPLAINANT handed his drivers’ license to a police officer and the officers’ failure to mention the visible \$400-\$500, cast serious doubt on the veracity of COMPLAINANT’s claim that his car was searched.

For the foregoing reasons, the Complaint Examiner finds it more likely than not that COMPLAINANT’s vehicle was not searched by SUBJECT OFFICER or any other police officer on May 12, 2017.

**IV. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation: Harassment</b>	Unfounded
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Submitted on June 6, 2018.

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Richard S. Ugelow  
Complaint Examiner