

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0723
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	January 15, 2019

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 on September 11, 2017. COMPLAINANT alleges that on REDACTED DATE, SUBJECT OFFICER harassed her when she entered the threshold of her apartment without her consent, a warrant, or exigent circumstances.¹

Specifically, COMPLAINANT stated that SUBJECT OFFICER knocked on the door of THE COMPLAINANT'S APARTMENT IN NE, WASHINGTON, DC, asking to speak with COMPLAINANT regarding her adult son and a child reported to be kidnapped. COMPLAINANT opened the door to speak with SUBJECT OFFICER and WITNESS OFFICER. COMPLAINANT stood in front of her door and informed the officers that she did not wish to speak with them, would not help them, and did not have any information about the child. COMPLAINANT then retreated back into her apartment and attempted to shut the door but

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed the complainant when she threatened to use pepper spray and used unnecessary or excessive force against the complainant when she used pepper spray. COMPLAINANT further alleged that a second officer, WITNESS OFFICER, harassed her by entering her apartment to place her under arrest, and using unnecessary or excessive force against her when she struck the complainant with a baton. Pursuant to D.C. Code 5-1108 (1), on November 2, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. Report of Investigation at 1.

SUBJECT OFFICER's foot prevented her from doing so. COMPLAINANT asked the officers if they had a search warrant and repeatedly said "bye" to the officers. SUBJECT OFFICER refused to remove her foot from the threshold of the door. COMPLAINANT and Officer SUBJECT OFFICER's faces were in close proximity to each other and SUBJECT OFFICER accused COMPLAINANT of spitting on her. The situation escalated and SUBJECT OFFICER fully entered COMPLAINANT's apartment, without her consent, to arrest COMPLAINANT. A physical fight ensued between COMPLAINANT and the officers, until eventually COMPLAINANT was subdued and arrested.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the available body-worn camera footage, the objections submitted by the officers on November 26, 2018, and OPC's response to those 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.

I. III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the available body-worn camera footage the Complaint Examiner finds the material facts regarding this complaint to be:

1. On REDACTED DATE, SUBJECT OFFICER and WITNESS OFFICER received information about a kidnapping that took place in WASHINGTON, DC. The officers on the scene of the kidnapping had a license plate number for the suspect. The license plate numbers were run against a Metropolitan Police Department database and revealed a suspect's name.
2. A look out for the suspect was sent out at approximately 3:15 pm. According to the Background Event Chronology (Event Number REDACTED), the suspect was named KIDNAPPING SUSPECT, and was described as a black male, wearing a white and gold shirt and tan shorts, and a "long black wig" and he had a dark complexion. There was information that the suspect may have been an "alleged cross dresser."
3. The dispatcher provided a potential identification of the suspect – KIDNAPPING SUSPECT. SUBJECT OFFICER and WITNESS OFFICER ran the suspect's name in the records management system, COBALT, and came up with two possible prior addresses for him. One of those addresses belonged to COMPLAINANT.
4. After receiving permission to go to another District to investigate, SUBJECT OFFICER and WITNESS OFFICER entered the OTHER DISTRICT and went to COMPLAINANT'S APARTMENT.
5. After being let into the apartment building, SUBJECT OFFICER knocked on the door of COMPLAINANT'S APARTMENT identifying herself as a police officer and talking through the door to an individual. SUBJECT OFFICER explained that MPD was investigating a kidnapping of a young child and asked the individual to open the door.

Eventually, complainant did open the door and stood in front of the door to talk with SUBJECT OFFICER and WITNESS OFFICER.

6. SUBJECT OFFICER told COMPLAINANT that she was looking for her son specifically asking COMPLAINANT, “do you know where your son is?” and “can you give me your son’s information?”
7. COMPLAINANT was not responsive to SUBJECT OFFICER’s questions and then openly refused to answer any questions stating, among other things, that she would not “give her shit.”
8. COMPLAINANT attempted to close her apartment door but was blocked from doing so by SUBJECT OFFICER’s foot. COMPLAINANT repeatedly said “bye” and that she did not care that the officers were investigating the welfare of a child. SUBJECT OFFICER attempted multiple times to persuade COMPLAINANT to talk with them stating that she would not “leave until they got in touch with COMPLAINANT’s son.” In response, COMPLAINANT told the officers that they were interrupting her and that they were intruding. COMPLAINANT stated that she would close her door and SUBJECT OFFICER responded, “no you’re not going to close it.” COMPLAINANT physically attempted to move the officer’s foot from the threshold and hand which was on the door. The situation escalated and COMPLAINANT continued yelling at the officers. SUBJECT OFFICER advised COMPLAINANT to stop yelling and spitting at her.
9. Throughout this exchange, a man with medium brown skin and shoulder length dreadlocks wearing an orange shirt and pants can be seen standing in the apartment several feet behind COMPLAINANT. As COMPLAINANT continued to insist that the officers could not come in her home, the man stated “there ain’t nobody here” and “ain’t no child here.” At no point prior to entering the home did either officer speak directly to the man to ascertain his identity or whether there was a child in the home.
10. SUBJECT OFFICER told COMPLAINANT to turn around. COMPLAINANT refused and asked what she was being arrested for and SUBJECT OFFICER said that COMPLAINANT was spitting on her face.
11. The officers then forced entry into COMPLAINANT’s apartment. COMPLAINANT repeatedly told the officers to leave. The situation escalated. COMPLAINANT resisted arrest and a physical altercation between COMPLAINANT and SUBJECT OFFICER and WITNESS OFFICER ensued inside COMPLAINANT’s apartment for several minutes. The officers used pepper spray and a baton to attempt to subdue COMPLAINANT. Ultimately, COMPLAINANT was arrested and multiple other officers appeared on the scene.
12. The above encounter was recorded on the body-worn camera footage of SUBJECT OFFICER and WITNESS OFFICER.

II. 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.

A. HARASSMENT

MPD General Order 120.25 (effective Oct. 27, 2017), Part III, Section 8 defines harassment as “ words, conduct, gestures, or other actions directed at the 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 (6A DCMR 2199). OPC’s Administrative Rules further instruct: “[i]n 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 (December 15, 2017).

"To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home." *Payton v. New York*, 445 U.S. 573, 589 (1980). Fourth Amendment law presumes that warrantless searches and seizures inside a home are unreasonable absent exigent circumstances. *Id.* at 586, 590. There is a firm line drawn at the entrance to an individual’s home. *Id.* Any intrusion into the home – however slight e.g. even one foot – is an entry into the home. *Silverman v. United States*, 365 U.S. 505, 512 (1995).

SUBJECT OFFICER harassed COMPLAINANT when she violated the Fourth Amendment and entered the threshold² of COMPLAINANT’s apartment without a warrant, COMPLAINANT’s consent, or exigent circumstances. It is undisputed that the officers did not have a warrant to enter COMPLAINANT’s home. The body-worn camera footage captures COMPLAINANT’s vehement objection to the officers’ presence at her doorway, and the physical intrusion into her home. The Supreme Court has stated that when the police knock on a person’s door, the person is under no obligation to open the door or to speak to officers. *Kentucky v. King*, 563, U.S. 452, 470 (2011). The Court states that if the community member should open the door, the community member does not have to allow the officers to enter the home and can refuse to answer any officer questions at any time. *Id.* The evidence also establishes that there were not exigent circumstances to justify entering COMPLAINANT’s home on REDACTED DATE.

² SUBJECT OFFICER’s statements suggest that she did not believe putting her foot in the door was an entry. She indicated that she did so to continue getting information from COMPLAINANT. She later explained that she put her foot in the doorway because she saw a black male with long hair in the apartment whom she believed was the suspect citing exigent circumstances. These explanations are inconsistent and the second explanation as discussed in the body of this determination is not supported by the facts.

A more in-depth discussion of the lack of exigent circumstances is necessary here. Exigent circumstances occur when a compelling situation emerges such that entry cannot be delayed, for example if entry were needed to prevent harm to someone believed to be inside the home. *United States v. Booth*, 455 A.2d 1351, 1354 (D.C. 1983). There are three requirements of this subcategory of exigent circumstances during an emergency:

- 1) First, the officer must have probable cause, based on specific, articulable facts, to believe that immediate entry is necessary to assist someone in danger of bodily harm inside the premises.
- 2) Second, the entry must be tailored carefully to achieve that objective, the officer can do no more than is reasonably necessary to ascertain whether someone is in need of assistance, and then to provide that assistance.
- 3) Finally, the entry must be primarily motivated by an intent to investigate a genuine emergency and to provide help, not by the intent to arrest or to search.

Id. at 1355 – 56. (citations omitted).

While Courts in DC and many other jurisdictions have recognized that kidnapping investigations present unusually compelling circumstances for emergency analysis the same criteria must be considered. *Oliver v. United States*, 656 A.2d 1159, 1167 (D.C. 1995) (citations omitted) (Police officers' warrantless entry into defendant's home justified by exigent circumstances when child suspected to be kidnapped was known to be in the home).

SUBJECT OFFICER and WITNESS OFFICER did not have probable cause based on reasonable articulable suspicion to enter COMPLAINANT's home to prevent harm to someone inside the home. The officers' statements as recorded on body-worn camera footage undermine the assertion that they believed the suspect and child were in COMPLAINANT's home. When they first approached the door, SUBJECT OFFICER asked for COMPLAINANT's son's location and his contact information – suggesting that they did not believe he was in the apartment at the time. Nor did they indicate the the vehicle on the police lookout was at the location. As the exchange continued and the door became slightly ajar, a man can be seen calmly standing several feet behind COMPLAINANT. The man was not wearing the clothes described in the lookout and he appears to be significantly older than in his 20s. At no point while at the doorway did SUBJECT OFFICER or WITNESS OFFICER ask COMPLAINANT who the man was or if anyone else was in the apartment.³ At no point did the officers attempt to speak directly to the man to ask him who he was or if anyone else was in the apartment. As the situation escalated, and WITNESS OFFICER radioed for additional support, she did not say that the suspect or a child was in the home. The officers' failure to ask any questions about or of this man

³ SUBJECT OFFICER stated in her interview at OPC that COMPLAINANT refused to tell her who was inside the apartment (audio recording of interview on April 12, 2018 at approximately 8 minutes, 30 seconds). The body-worn camera footage does not reveal SUBJECT OFFICER or WITNESS OFFICER asking any questions of COMPLAINANT or the man later identified as her uncle, WITNESS, that would have elicited information about who was in the apartment.

or who was in the apartment in addition to the lack of documentation regarding this man in their reports undermines their claim that they were suspicious of him. In sum, the evidence establishes that the officers, led by SUBJECT OFFICER, did not have probable cause to justify entering COMPLAINANT's apartment to prevent harm to someone inside the home.⁴

The initial entry i.e. SUBJECT OFFICER's foot in COMPLAINANT's door threshold was with the stated purpose of gathering more information about the location and contact information for COMPLAINANT's son. (Body-worn camera footage of SUBJECT OFFICER at ~02:45 stating that she would not move until she got information.) The ultimate entry by both officers was unambiguously for the purpose of arresting COMPLAINANT. The officers told COMPLAINANT that she was being arrested and pushed through the door directing her to put her hands behind her back. (Body-worn camera footage of SUBJECT OFFICER at 03:00 – 04:30).

The officers' full entry into COMPLAINANT's apartment had the express purpose of arresting her. The officers stated that they would arrest COMPLAINANT and then entered the apartment directing her to submit to be arrested. Their motivation was clear. Once inside the apartment, the officers did not split up and immediately search the apartment or call out for the suspect or the child in question. Understandably, given the circumstances, it would have been necessary for one of the officers to subdue COMPLAINANT, however were the entry tailored to ascertain whether a small child needed assistance, an officer should have immediately sought to identify the man casually standing in the living room, spoken to the man to ask if a child were in the apartment,⁵ called out for the child by name, or searched the premises for the child. Even if taking these steps were not realistic given COMPLAINANT's resistance, the officers stated motivations undermine any assertion that they entered the apartment to investigate.

In conclusion, SUBJECT OFFICER harassed COMPLAINANT when she put her foot in the threshold of COMPLAINANT's door preventing her from closing it. There were not exigent circumstances to justify this entry into COMPLAINANT's apartment without her consent or a warrant.⁶

V. SUMMARY OF THE MERITS DETERMINATION

⁴ In her objections, SUBJECT OFFICER cites to DC Superior Court Judge's conclusion in the Civil Action that COMPLAINANT filed against the officers and MPD that her entry into the apartment was reasonable and was not trespassing. The Judge applies a reasonableness standard to analyze the entry but does not examine the entry as it relates to the Fourth Amendment and exigent circumstances as is required here.

⁵ WITNESS can be heard on SUBJECT OFFICER's body-worn camera footage just before the officers fully entered the apartment saying: "there ain't nobody here" and "ain't no child here." [~03:50 – 04:00]

⁶ The complaint examiner appreciates that the officers were in a difficult situation, under the stress of investigating a kidnapping, in the face of a hostile and resistant individual, and that the events all transpired within a matter of just a few minutes. Making decisions under these conditions must have been unquestionably difficult. Officers are called upon to exercise good judgment under duress; unfortunately, in this instance, SUBJECT OFFICER's actions do constitute misconduct.

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SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on January 15, 2019

Rebecca Goldfrank
Complaint Examiner