

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0058
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER 1 SUBJECT OFFICER 2
Allegation:	Language or Conduct
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	August 2, 2018

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), 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, COMPLAINANT (“Complainant”), filed a complaint with the Office of Police Complaints (OPC) on October 23, 2017. Complainant alleged that on October 9, 2017, subject officer, Metropolitan Police Department (“MPD”) SUBJECT OFFICER 1, used language and engaged in conduct toward her that was insulting, demeaning, or humiliating when she was collecting her property. Complainant further alleged that a second subject officer, SUBJECT OFFICER 2, used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by being “nasty” and “angry” toward Complainant when she went along with SUBJECT OFFICER 1’s behavior.¹

¹ The complainant also alleged that on October 9, 2017, WITNESS OFFICER 1 harassed her by arresting her for driving under the influence and possession of open container of alcohol in a vehicle and issuing her citations for open container and collision with a fixed object. COMPLAINANT also alleged that WITNESS OFFICER 1, WITNESS OFFICER 2, SUBJECT OFFICER 2, and SUBJECT OFFICER 1 harassed her by mishandling her jewelry, a key, and money which went missing. COMPLAINANT alleged that subject WITNESS OFFICER 2 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when she rolled her eyes. COMPLAINANT further alleged that on October 10, 2017, WITNESS OFFICER 3 harassed her by involuntarily committing her to a hospital. Finally, COMPLAINANT alleged that on October 16, 2017, WITNESS OFFICER 4 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by being “rude” and talking to her in a “downward” manner. Pursuant to D.C. Code § 5-1108(1) on June 6, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

Specifically, Complainant stated that on October 9, 2017, she was arrested for driving under the influence and possession of an open container in a vehicle. Complainant was released on citation from the Seventh District and retrieving her prisoner property when SUBJECT OFFICER 1 was “curt” and told her, “You listen to me. If you don’t listen to me you don’t get anything.” She alleged that SUBJECT OFFICER 1 was “nasty” and “angry” toward Complainant during the property release. She also alleged that SUBJECT OFFICER 2 was “angry” and “nasty” by going along with SUBJECT OFFICER 1’s conduct toward her.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC’s Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICE 1 dated October 9, 2017, the objections submitted by the Subject Officers on June 26, 2018 (the date on the memo states June 26, 2017, but as that is prior to the Complaint being made, the Complaint Examiner believes the correct year was 2018), and OPC’s response to the objections dated June 29, 2018, the Complaint Examiner determined that the ROI presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

Subject Officers objected to the language and conduct allegation as being improperly before the Complaint Examiner because it was not included in Complainant’s initial complaint, it was not “reduced to writing and signed by the complainant,” nor did it contain a salutation as to the truth and veracity of the statement as required by § 5-1107(f) and OCRB Regulations 2106.1. Here, Complainant made several allegations of misconduct in her initial written complaint including regarding missing property and that “the police became very nasty and overburden from being unkind and got very angry at me when I said I had missing property and locked me up.” This last particular statement sounds like an allegation of inappropriate language or conduct. Although it is unclear which officers specifically she is accusing of becoming nasty, unkind, and angry, she is clear that it was in relation to her stating that she had missing property. This statement was in writing and signed by Complainant with a salutation as to the truth and veracity of the statement. Moreover, she reiterated her language and conduct complaint during her interview with the OPC investigator by referring specifically to both Subject Officers as “nasty” and “angry.” Thus, Subject Officers’ objection that the initial complaint was only about missing property is incorrect.

Even if Complainant had not made such a statement or if her statement could not be construed as a language and conduct allegation, Subject Officers reading of § 5-1107(f) and OCRB Regulations 2106.1 is far narrower than the general level of specificity included in the definition of complaint as found at OCRB Regulations 2199.1, which requires only “an allegation of misconduct . . . during an incident occurring within the District of Columbia.” Subject Officers’ narrow reading is contrary to the purposes of providing “easy access” to a process of review of citizen complaints involving the police, *See* D.C. Code 5-1101(3). To require greater specificity would significantly limit access to the process of review and would

require complainants to know each and every possible allegation that could be made against officers and the correct language to be used at the time they filed initial complaints, which is unreasonable. Thus, the allegation of language and conduct by Subject Officers is properly included in this Determination.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Body Worn Camera Footage recorded by SUBJECT OFFICER 1 dated October 9, 2017, the objections submitted by the Subject Officers on June 26, 2018, and OPC's response to the objections dated June 29, 2018, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on October 23, 2017.
2. On October 10, 2017, at approximately 10:35 p.m., Complainant was being released from jail after having been arrested for an alleged DUI. She went to the property window to retrieve her belongings. She stood on one side of the window while SUBJECT OFFICER 1 stood on the office side. There were bars and a screen, but no glass between Complainant and SUBJECT OFFICER 1.
3. SUBJECT OFFICER 1 retrieved a bag containing Complainant's items, removed cash from the bag and set it to the side and then set each piece of jewelry from the bag out in front of Complainant. Complainant was silent. As SUBJECT OFFICER 1 set out each item, he stated what it was. When finished he stated loudly, "and that is all the jewelry you have. Any questions?" SUBJECT OFFICER 1 BWC(1) 1:55.
4. Complainant stared at the jewelry and did not immediately answer. After a two second pause, SUBJECT OFFICER 1 stated "I'm talkin' here Davis," to which Complainant responded, "I'm COMPLAINANT." SUBJECT OFFICER 1 responded sarcastically, "Anything you want COMPLAINANT, Davis. Tell it to the court." SUBJECT OFFICER 1 BWC(1) 1:57.
5. After SUBJECT OFFICER 1 again asked her if she had any questions and Complainant did not answer, he said, again loudly, but calmly, "I need you to sign right here" and started to move a book toward her. Complainant was picking up and putting on her jewelry and touching it. Most of the jewelry was still on SUBJECT OFFICER 1's side of the window. SUBJECT OFFICER 1 BWC(1) 2:10.
6. After a moment Complainant calmly said, "I'm missing two earrings. No. Two more." SUBJECT OFFICER 1 responded loudly, but less calmly, "I don't have two more earrings. Complaint responded, "oh no." And then he said, seemingly exasperated, "Okay, then put all this stuff back in here," as he started to put the jewelry back in the bag, "and you goin' home." Complainant stated in response, "it's a set." And SUBJECT OFFICER 1 replied loudly, I don't have a set. She repeated her statement and he

- answered, seemingly increasingly annoyed, "this is the only set I got." He continued to place the jewelry in the bag and told Complainant, "give me the rings back." When she did not immediately comply, SUBJECT OFFICER 1 raised his voice even louder and said it again. SUBJECT OFFICER 1 BWC(1) 2:18.
7. Complainant clearly did not understand what was happening and said quietly, but urgently, "give me my stuff. Give me my stuff." SUBJECT OFFICER 1 then asked loudly, but more calmly than his previous statements, "you're fine?" She answered, "Yeah. I want my stuff." To clarify, SUBJECT OFFICER 1 rejoined, "you said you were missing earrings." And Complainant answered, "both those earrings were sets." SUBJECT OFFICER 1's voice became increasingly loud and agitated when he responded, "I ain't got a set. I'm telling you, I ain't got a set." BWC SUBJECT OFFICER 1 2:46.
 8. At this point Complainant stopped responding and SUBJECT OFFICER 1 yelled impatiently, "I'm telling you what I have and I'm showing you what I have. Okay. Either you sign for it or you don't sign for it and you have a dispute. If you have a dispute give everything back to me." SUBJECT OFFICER 1 then slammed his hand loudly on a book as he said "and that'll be the end of the day." SUBJECT OFFICER 1 BWC(1) 3:04.
 9. Complainant did not immediately respond and two seconds later SUBJECT OFFICER 1 yelled, "Hello. I'm talking here. What do you want to do?" Complainant replied, "I'm listening." To which SUBJECT OFFICER 1 yelled, "What you gonna do?" Complainant again said quietly, "I'm listening. Give me my stuff." SUBJECT OFFICER 1 BWC(1) 3:13.
 10. SUBJECT OFFICER 1 then huffed and grabbed the book. More calmly, but loudly, he told her, "I need your signature." He set the book in front of her and showed her the line for her signature while saying, "and if you say you have everything, then you have everything." She said okay and then he pulled the book back and signed. As he signed, he said, still loudly but calmly, "and if you don't have everything then let me know now." SUBJECT OFFICER 1 BWC 3:40.
 11. After placing the book in front of Complainant, SUBJECT OFFICER 1 pointed in the book and said, "sign right here on this line. Right here." As Complainant wrote in the book, SUBJECT OFFICER 1 grabbed it and said loudly and frustratingly, "oh no no no." She said, "you said missing a set." And he said, "no. I said if this is your stuff then take it, but if not your stuff then give your stuff back. SUBJECT OFFICER 1 BWC(1) 3:55.
 12. Complainant asked quietly, but becoming plaintive, what if I'm missing stuff?" SUBJECT OFFICER 1 responded, "if you're missing stuff, then you give it back to me." She said, "okay," and started to give him back the rings, but then wanted to keep two. He reacted, "no no no. You can't keep none of it. Give it all back. Give it all back." SUBJECT OFFICER 1 BWC(1) 4:50.

13. She asked, "are you going to give it back to me?" SUBJECT OFFICER 1 visibly lost his temper and yelled, "yes. Give it all back," at which point she handed him the last two rings. Once SUBJECT OFFICER 1 received all the jewelry, he put it all in the bag and then moved it out of sight. SUBJECT OFFICER 1 BWC(1) 4:55.
14. Complainant against asked, "will you give it all back to me?" To which SUBJECT OFFICER 1 contradicted the answer he had just given her and answered more calmly, "No." Sounding concerned, but still quiet, Complainant said, "but you said you'd give it back to me." He responded extra loudly, "you're finished for the day." You don't have nothin' coming." SUBJECT OFFICER 1 BWC. 5:00.
15. Complainant was clearly confused about what was happening and said, "I signed for it." To which SUBJECT OFFICER 1 responded still extra loudly, "you say you missin' stuff." She continued to insist, "I signed for that." He said, "no you didn't." She responded, "Yes I did," and SUBJECT OFFICER 1 repeated, "no." SUBJECT OFFICER 1 BWC 5:22 (1).
16. SUBJECT OFFICER 1 then walked away from Complainant to the other side of the room and set the book there after which he walked to the desk where SUBJECT OFFICER 2 sat to the right of the window where Complainant stood while Complainant continued to insist that she had signed for it. SUBJECT OFFICER 1 BWC(1) 5:30.
17. SUBJECT OFFICER 1 then told Complainant, "time for you to go. Let's go," while Complainant continued to assert that she followed his instruction to sign for it. SUBJECT OFFICER 1 tried to give Complainant the property receipt and another piece of paper. She then seemed to register that he was not going to give her belongings to her and asked, "I can't sign for that?" To which SUBJECT OFFICER 1 responded, "No ma'am. Here you go." and a second time he responded loudly but calmly, "You say you got stuff missing." She then insisted, "No, I'll sign for it," but SUBJECT OFFICER 1 set the slip down, walked away and waved his hand in the air at her, "no, no. Let's go." She then walked away from the window as he told her to take the papers. SUBJECT OFFICER 1 BWC(1) 5:37.
18. SUBJECT OFFICER 1 then brought Complainant into the office where he and SUBJECT OFFICER 2 were and tried to again hand her the papers. Complainant continued to insist "I signed for my stuff" and asked, "Can I sign for it?" but SUBJECT OFFICER 1 did not respond except to say loudly, "go out that door," "go ahead. Bye Bye" and finally, "Don't make me throw you out." SUBJECT OFFICER 1 BWC(1) 6:09. SUBJECT OFFICER 1's voice became louder and louder with each statement until he yelled "out the door." SUBJECT OFFICER 1 BWC(1) 6:05.
19. Complainant started to move toward the door with a confused and upset look on her face. SUBJECT OFFICER 2 stepped in and said sternly, "if you want to go, the goin' is right

- now.” SUBJECT OFFICER 2 walked toward the door and opened it while Complainant continued moving slowly toward it. SUBJECT OFFICER 1 BWC(1) 6:18.
20. At this point, SUBJECT OFFICER 1 put his hand on Complainant’s back and pushed her toward the door while saying loudly and rudely, “That’s right. Good bye.” SUBJECT OFFICER 1 BWC(1) 6:19.
 21. Although Complainant was walking toward the door with SUBJECT OFFICER 1 pushing her, SUBJECT OFFICER 2 said harshly, “come on,” while holding the door. SUBJECT OFFICER 1 BWC(1) 6:20.
 22. As Complainant walked out the door, she continued to ask whether she could sign for the bag, and SUBJECT OFFICER 1 continued to insist that she couldn’t because she had property missing. SUBJECT OFFICER 1 BWC(1) 6:26.
 23. As the door closed behind her, Complainant turned around, pushed through the crack and said, “no I don’t. I don’t have property missing.” SUBJECT OFFICER 2 yelled angrily, “Get out” while SUBJECT OFFICER 1 shoved Complainant out the door and closed it behind her. The two officers walked away from the door. SUBJECT OFFICER 1 BWC(1) 6:35.
 24. After a minute during which SUBJECT OFFICER 1 spoke to SUBJECT OFFICER 2, he retrieved Complainant’s purse and other items. He pulled the cash out and poured all the items onto the counter in front of the window facing the lobby while Complainant looked in. She asked about her keys and SUBJECT OFFICER 1 said, “No. No. See cuz you’re gonna get locked up again. You’re gonna mess around and gonna get locked up.” SUBJECT OFFICER 1 BWC(1) 7:30.
 25. Complainant didn’t respond, but continued to ask about her keys, and when SUBJECT OFFICER 1 told her that she couldn’t have them, she asked how she was going to get in her door. Finally, SUBJECT OFFICER 1 told her that her keys “are in here.” To which Complainant responded sounding contrite, “I didn’t know that SUBJECT OFFICER 1. I didn’t know that.” SUBJECT OFFICER 1 BWC(1) 7:45.
 26. The conversation after this point continued for another five minutes regarding the keys and cash, which Complainant claimed some of which was missing, at which point SUBJECT OFFICER 1 asked SUBJECT OFFICER 2 if she had radioed for WITNESS OFFICER 1. While waiting to hear from WITNESS OFFICER 1, SUBJECT OFFICER 1 told Complainant to standby. During those last five minutes of the conversation, SUBJECT OFFICER 1’s voice while loud and stern, remained calm in contrast with how he spoke to Complainant earlier.

27. An hour later, SUBJECT OFFICER 1 returned Complainant's items to her. During this interaction, his voice remained loud while behind the glass, but lowered when he joined Complainant at the station counter in the station lobby. Mostly he was stern but calm during the interaction, but twice he yelled at Complainant even though he was in the lobby with her. Once when he asked her to sign her name for the property book, he repeated loudly and more forcefully, "your name." SUBJECT OFFICER 1 BWC 1:45. And again, after SUBJECT OFFICER 1 gave Complainant some jewelry, left and returned with more jewelry, Complainant stood at the opposite end of the counter and SUBJECT OFFICER 1 again raised his voice and seemed angry, "Whatcha signing over there? You don't sign nothin' over there. I didn't tell you to sign nothin' over there, did I?" SUBJECT OFFICER 1 BWC(2) 4:33.
28. Ultimately, SUBJECT OFFICER 1 returned all of Complainant's items and told her to file a complaint for anything she claimed was missing. SUBJECT OFFICER 1 BWC(2) 6:25.

IV. DISCUSSION

Complainant alleges that SUBJECT OFFICER 1 used language or conduct toward her that was insulting, demeaning, or humiliating when he was "nasty," "unkind," and "angry" toward her when she disputed missing jewelry and money at the time he was returning her belongings. Complainant also described SUBJECT OFFICER 1 as "curt" and said that he told her, "You listen to me. If you don't listen to me you don't get anything." SUBJECT OFFICER 2 was also at the station when COMPLAINANT was receiving property and the Complainant alleged that SUBJECT OFFICER 2 was "angry" and "nasty" by going along with SUBJECT OFFICER 1's treatment of her.

Complaint Examiner finds that both Subject Officers' conduct and language was insulting, demeaning, or humiliating to Complainant and the allegations are thus sustained. Both Subject Officers' used language that was insulting and demeaning to Complainant, tones of voice that were demeaning and rude, and bullied Complainant.

Pursuant to D.C. Official 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: . . . (3) use of language or conduct that is insulting, demeaning, or humiliating . . ."

Numerous policies outline the language and conduct expected of officers:

- "All members shall be courteous and orderly in their dealings with the public. a. Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . b. Members shall be attentive to, and take

suitable action on, reports and complaints by a citizen. . . , d. Members shall avoid giving the impression that they are evading the performance of their duty, or that they are not interested in the problems of persons who are referred elsewhere for service, . . .” MPD General Order, Duties, Responsibility, and Conduct of Members of Department, PER-201.26, Part V, § C.1 (emphasis added).

- “[Members] shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties.” *Id.* at § C.2.
- Members shall “[r]efrain 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.” *Id.* at § C.3.
- “In the performance of their duty, Members should develop a disposition that is pleasant and personable in nonrestrictive situations . . .” *Id.* at § E.3.
- All members shall “[i]n a customer-friendly manner, ensure that the information or service requested is provided or is appropriately referred.” MPD General Order, Customer Service Standards and Testing, Topic/Number GO-PER-201.35, March 25, 2001, Part IV, § A.3.
- “Every member, regardless of rank, grade or assignment, is responsible for providing the highest quality of customer service.” The MPD Standard Operating Procedures, Customer Service Standards and Testing, Topic Customer Service, September 12, 2005, Part III. § A.
- “All Metropolitan Police Department employees shall: c. Maintain a cordial demeanor and tone throughout the in-person interaction.” *Id.* At Part IV. § B.1.

SUBJECT OFFICER 1

SUBJECT OFFICER 1’s BWC footage shows that SUBJECT OFFICER 1’s interaction with Complainant started out loud, but calm. His volume and seeming impatience increased significantly and quickly as Complainant did not respond immediately to his questions. His tone then turned rude and sarcastic when Complainant meekly corrected him for calling her the wrong name. His frustration and disrespect of Complainant became worse as she stated that she believed she was missing some items. At the time Complainant stated she thought she was missing items, SUBJECT OFFICER 1 started to become bullying and insolent, yelling at Complainant and never explaining the proper procedure for reporting missing items and then returning what items he had. Instead, he demanded she return all the jewelry she had already started to put on and told her that she was done for the day and wouldn’t receive anything back. He then forcibly shoved her out the door of the room when she insisted that nothing was missing

in the hopes of retrieving her items. Both in the manner in which SUBJECT OFFICER 1 spoke to Complainant and in the lack of information he gave her, which understandably would cause her to panic since it included, not just her jewelry, but her money and keys for her home, SUBJECT OFFICER 1 spoke to and treated Complainant disrespectfully and in violation of the numerous general orders above requiring him to remain quiet, courteous, calm, and patient, despite provocation, and to refrain from sarcastic and insolent language.

Watching the interaction between SUBJECT OFFICER 1 and Complainant was disconcerting. Complainant stood quietly and patiently behind the counter waiting for her belongings. When SUBJECT OFFICER 1 asked her if she had any questions, she did not immediately respond and, in the moment, it is unclear whether she was simply looking over the items before responding or whether she was not fully aware of what was happening. Nonetheless, she clearly heard SUBJECT OFFICER 1 when she corrected his calling her the incorrect name of "Davis." Rather than acknowledging his mistake, SUBJECT OFFICER 1 established his disrespect of her when he sarcastically and disrespectfully responded, "Anything you want COMPLAINANT, Davis. Tell it to the court." SUBJECT OFFICER 1 BWC(1) 1:57.

That SUBJECT OFFICER 1 didn't see Complainant as worthy of respect because he considered her a criminal was again evident later in the interaction when she asked about her keys and SUBJECT OFFICER 1 stated, "No. No. See cuz you're gonna get locked up again. You're gonna mess around and gonna get locked up." SUBJECT OFFICER 1 BWC(1) 7:30.

SUBJECT OFFICER 1's disrespect of Complainant manifested itself not only in insulting statements, but when Complainant alleged, quietly, that items were missing. Instead of calmly explaining the procedure for what is to be done so that she can file a complaint for the missing items and have her items returned, SUBJECT OFFICER 1 began yelling at Complainant, telling her only that if she was going to allege missing items then she could not receive her items and that she must go home. His tone, volume, and language were bullying and disrespectful:

- When Complainant quietly told SUBJECT OFFICER 1 that two of the earrings should have been sets, he yelled at her that he didn't have sets. Complainant became quiet and then SUBJECT OFFICER 1 yelled angrily, "I'm telling you what I have and I'm showing you what I have. Okay. Either you sign for it or you don't sign for it and you have a dispute. If you have a dispute give everything back to me." SUBJECT OFFICER 1 then slammed his hand loudly on a book as he said "and that'll be the end of the day!" SUBJECT OFFICER 1 BWC(1) 3:04.
- In response Complainant asked, "what if I'm missing stuff?" Instead of answering her question by explaining the procedure, he responded loudly and impatiently, "if you're missing stuff, then you give it back to me." She said, "okay," and started to give him back the rings, but then wanted to keep two. He reacted, "no

no no! You can't keep none of it. Give it all back. Give it all back!" SUBJECT OFFICER 1 BWC(1) 4:50.

- She asked, "are you going to give it back to me?" Again, instead of explaining the procedure to Complainant, SUBJECT OFFICER 1 visibly lost his temper and yelled, "yes. Give it all back!" at which point she handed him the last two rings. Once SUBJECT OFFICER 1 received all the jewelry, he put it all in the bag and then moved it out of sight. Complainant again asked, "will you give it all back to me?" To which SUBJECT OFFICER 1 contradicted the answer he had just given her and answered more quietly, "No." Sounding concerned, but still quiet, Complainant said, "but you said you'd give it back to me." He responded, "you're finished for the day." You don't have nothin' coming." SUBJECT OFFICER 1 BWC. 4:55.

Not only did SUBJECT OFFICER 1 not explain the procedure to Complainant for handling allegations of missing property, when she expressed her confusion and sounded scared because SUBJECT OFFICER 1 told her that he was going to keep her belongings, SUBJECT OFFICER 1 yelled and spoke increasingly rudely to Complainant until he finally physically shoved her out the door to the lobby:

- As Complainant walked toward the door while asking if she could sign for her belongings, SUBJECT OFFICER 1 did not respond to her entreaties, but said increasingly loudly, until he was yelling, "go out that door," "go ahead. Bye Bye" and finally, "Don't make me throw you out." SUBJECT OFFICER 1 BWC(1) 6:05. During the entire interaction Complainant was progressively, but slowly, making her way to the door.
- SUBJECT OFFICER 1 then put his hand on Complainant's back and pushed her faster toward the door while saying loudly and rudely, "That's right. Good bye." SUBJECT OFFICER 1 BWC(1) 6:19.
- Complainant continued to ask whether she could sign for the bag as she walked out the door, and SUBJECT OFFICER 1 insisted that she couldn't because she had property missing. SUBJECT OFFICER 1 BWC(1) 6:26. As the door was closing behind her, Complainant turned around and pushed through the crack pleading, "no I don't. I don't have property missing." SUBJECT OFFICER 1 shoved Complainant out the door and closed it behind her. SUBJECT OFFICER 1 BWC(1) 6:35.

During SUBJECT OFFICER 1's interview with OPC he stated that his demeanor toward Complainant was "normal, as usual," but that as a result of his belief about her mental state, that she was still intoxicated and maybe a little mentally unstable, his tone was "maybe loud." Ex. 7

at 10:47. SUBJECT OFFICER 1 explained that his conclusions about her mental state were because she didn't seem to understand some of the things he was saying to her and spoke about property that he didn't have. *Id.* He described that sometimes she would just stare like I wasn't talking to her and that she was staring at him and seemed to get mad because the property wasn't there that she wanted to be there. Ex 7 at 7:24. He also said, however, that he naturally has a loud voice, even when he's trying to speak low. Ex. 7 at 10:47.

Although SUBJECT OFFICER 1 may have a naturally loud voice and may even have raised the volume out of not being sure if Complainant was hearing him, his tone and volume exceeded anything that would be necessary under those circumstances from the time Complainant mentioned missing items until he threw her out of the office.

SUBJECT OFFICER 1's volume and tone with Complainant can be compared to a separate interaction SUBJECT OFFICER 1 had with another woman who came into the lobby looking for someone in the jail. SUBJECT OFFICER 1 BWC(2) 5:12. During that contact, SUBJECT OFFICER 1's voice was loud as he spoke through the bullet proof glass, but it was considerably calmer and more respectful than almost the entirety of his dealings with Complainant. In contrast to that interaction, SUBJECT OFFICER 1's tone and volume with Complainant once she raised an allegation of missing items quickly rose from a merely frustrated and impatient loud voice to angrily yelling at Complainant, slamming his hand on a book, and refusing to reengage with Complainant even when she practically begged to sign for the items.

If SUBJECT OFFICER 1 believed Complainant was still intoxicated or having problems understanding because of mental illness, it would be all the more reason to double down on patience and a calm voice. Raising one's voice and yelling doesn't increase comprehension and is more likely to fluster and provoke a negative reaction. Thus, not only was SUBJECT OFFICER 1's language and conduct here a violation of the policy to remain calm despite provocation, it was not even going to achieve what SUBJECT OFFICER 1 claimed was his reason for raising his voice. Complainant was clearly not deaf and her responses to SUBJECT OFFICER 1 suggested that she did hear and understand him, although she was confused about what was happening with her belongings. That she was confused was understandable because SUBJECT OFFICER 1's yelled explanation of what was happening was confusing and intimidating.

MPD General Order 601.1, effective April 30, 1992 provides the only publicly available policy regarding the return of a prisoner's property. "When a prisoner is being released from custody and all personal property is returned, the prisoner shall affix his/her signature in the appropriate block on the Property Book. The station clerk returning the property shall complete all other necessary entries to indicate that all property was returned to the prisoner. The station clerk shall sign his/her name as a witness to the signature of the prisoner. The prisoner's copy of PD Form 58 and the original property receipt shall then be destroyed." *Id.* at Part II. A. 4.

Nothing in the policy regarding returning a prisoner's belongings says that a property clerk may withhold the prisoner's belongings because she alleges missing items. And frankly, the idea that it could be is inconceivable when those belongings likely include things like a prisoner's identification, money they perhaps need to get home, and keys to enter their house. Such a policy would seem proposed only to ensure that prisoners did not complain about missing items. Yet, SUBJECT OFFICER 1 not only told Complainant repeatedly that if she complained about missing items, she would not receive her belongings, he yelled it at her. And ultimately, as could be predicted, Complainant started to claim that she didn't have missing items. Such treatment is ripe for abuse, corruption and theft.

SUBJECT OFFICER 1 explained during his interview with OPC that if a released prisoner claims items are missing, he can't return the property at that moment, but he has to inform an official who will tell him what to do, including whether he can return the property or not. Ex. 7 at 2:49 and 17:05. In this case, when he spoke to the arresting officer, she told him to return the property to the Complainant and to give her the complaint form. Ex. 7 at 3:28.

Assuming SUBJECT OFFICER 1's understanding of the policy is correct, not once did SUBJECT OFFICER 1 explain this procedure to Complainant. He told her only that if she didn't sign for her belongings, she didn't get to receive them and that she was "done for the day." Complainant's apparent confusion and fear about receiving her items was understandable in the face of SUBJECT OFFICER 1's incomplete and contradictory instructions delivered by yelling at her. She even asked him at one point what she was supposed to do if she was missing items and, rather than answer by explaining the procedure, SUBJECT OFFICER 1 only told her to give everything back. He then told her that she'd get her items back, but seconds later, told her that she wouldn't. Yelling those instructions did not make them clearer.

SUBJECT OFFICER 1's reaction suggests that rather than wanting to help Complainant understand, his alleged reason for having a "loud" voice, he was impatient and didn't want to have to deal with Complainant's allegation. Rather, he wanted her to sign quickly and go away. This impression is reinforced when he frustratingly stated to SUBJECT OFFICER 2, "call whatshisname back up here. She has property missing then, you know. I ain't got time to play these games with her all night."

SUBJECT OFFICER 1's treatment of Complainant throughout much of their contact is not just disrespectful and demeaning, but also bullying. His speaking to her in such an intimidating tone is highly disconcerting if he considers this "normal" or "usual" behavior. Ex. 7 at 10:12.

SUBJECT OFFICER 1 was required to remain calm, regardless of any provocation, be quiet, orderly and attentive, refrain from harsh and sarcastic language and to exercise patience in the performance of his duties. MPD General Order, Duties, Responsibility, and Conduct of Members of Department, PER-201.26. SUBJECT OFFICER 1, here, yelled at Complainant, insulted her, and physically pushed her out of the office, even as she was already leaving. Not

only was his conduct problematic, but most of the confusion and panic on the part of Complainant that he claims caused him to raise his voice, he created and escalated. SUBJECT OFFICER 1 conduct and language failed to be guided by professionalism and the basic principles of good manners and did nothing to further cordial Police/Community relations that are vital to Officers' ability to secure and maintain public respect. Moreover, such intimidating behavior when handling a prisoners' property is abusive and risks providing an avenue to corruption and theft. Such conduct is a violation of numerous police policies noted above.

The allegation of use of language or conduct that is insulting, demeaning, and humiliating by SUBJECT OFFICER 1 toward Complainant is sustained.

SUBJECT OFFICER 2

SUBJECT OFFICER 2 also demeaned Complainant and treated her disrespectfully. SUBJECT OFFICER 2 sat in a desk not ten feet from where SUBJECT OFFICER 1 stood and yelled at Complainant. Yet, instead of deescalating the situation by, for example, explaining calmly to Complainant the proper procedure for her to receive her belongings and filing a Complaint, she joined SUBJECT OFFICER 1 in speaking insolently to Complainant:

- As Complainant is already moving toward the door, seemingly scared and upset because she has been told she will not receive her belongings, and SUBJECT OFFICER 1 is threatening to throw her out, SUBJECT OFFICER 2 joins SUBJECT OFFICER 1 in threatening Complainant by holding the door and telling her sternly, "if you want to go, the goin' is right now." SUBJECT OFFICER 1 BWC 6:18.
- And then, again, even though Complainant is already moving to the door, SUBJECT OFFICER 2 says harshly, "come on," as if Complainant is not leaving fast enough. SUBJECT OFFICER 1 BWC(1) 6:20.
- Finally, when Complainant has walked out and turns, begging to be allowed to retrieve her belongings, SUBJECT OFFICER 2 yelled, "Get out!" SUBJECT OFFICER 1 BWC(1) 6:35.

Not knowing the relationship between SUBJECT OFFICER 1 and SUBJECT OFFICER 2, it can't be concluded that SUBJECT OFFICER 2 had an affirmative duty to intervene and deescalate SUBJECT OFFICER 1's treatment of Complainant, but at the very least she should have refrained from adding to his bullying and insolent treatment of Complainant. Instead she added to it.

Subject Officers object to the allegation against SUBJECT OFFICER 2 as "guilty by association." That might be true if SUBJECT OFFICER 2 had either stayed at her desk or simply held the door. It might even be true had she politely told Complainant that she needed to exit so that they could process her outside. Yet, she exacerbated SUBJECT OFFICER 1's abuse of

Complainant by adding her own threat, “if you want to go home, the goin’ is right now.” As if Complainant would be thrown back in jail if she didn’t leave. As Complainant was already moving toward the door, it was an unnecessary statement, seemingly only intended to cause fear in Complainant. One has the impression from the objections that the only way SUBJECT OFFICER 2 could have been rude to Complainant is if she had sworn. That is not the standard. That is simply one way in which an officer could violate the language and conduct standard.

The allegation of use of language or conduct that is insulting, demeaning, and humiliating by SUBJECT OFFICER 2 toward Complainant is sustained.

SUBJECT OFFICERS’ OBJECTIONS

Subject Officers object to Complainant’s allegations because she was intoxicated and had severe mental health problems. She was, they contend, not a credible witness. The conclusions drawn above, however, are based not solely on Complainant’s statements, but based on viewing the body worn camera footage of the interaction. Thus, Complainant’s credibility on this specific allegation is found credible.

Subject Officers also object to the allegation as “subjective.” That “language and conduct that could come across to one person as curt and aggressive could be polite and courteous to another and made an analogy to language used by Scarlett O’Hara in *Gone with the Wind* and Henry Hill in *Goodfellas*. Perception of tone and language will always be subjective. To not allow an allegation of language and conduct because the perception is subjective would be to eliminate it as a claim altogether. That Complainant may have been intoxicated at the time she spoke to Subject officers (that claim is not established, but was only surmised by SUBJECT OFFICER 1) and angry because she thought her items were missing does not change that she perceived Subject Officers’ conduct and language as angry and nasty. Nor does it change this Complaint Examiner’s perception of Subject Officers’ language and conduct as mean, demeaning, and disrespectful.

MPD has a standard of conduct for officers that includes among many others, “[Members] shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties, . . . remain calm regardless of provocation, . . . and [r]efrain from harsh, sarcastic, or insolent language.” MPD GO 201.26. While it may be necessary at times for an officer to raise her voice to get through to someone who is not listening, as explained above, Subject Officers’ volume and tone went well beyond such a scenario. SUBJECT OFFICER 1 yelled, berated, bullied and created confusion and fear. Twice he insulted Complainant and he physically pushed her out of the office even though she was already walking toward the door. SUBJECT OFFICER 2 joined in the disrespectful treatment of Complainant; her disrespectful and threatening tone and language were unnecessary. It is disconcerting if Subject Officers perceive that their manner of speaking to Complainant exhibited patience and was respectful. It is also disconcerting that Subject Officers believe it is okay to speak to someone who is

intoxicated or has a mental illness this way because they are far more likely to escalate a situation and create danger than solve it.

Subject Officers also state in their objections that Complainant could have posed a danger to herself or anyone around her. Neither officer suggested during their interviews that they feared Complainant was a danger. Neither officer even claimed she was resisting leaving. Nothing in the BWC footage suggests Complainant was a danger – she was already walking slowly toward the door, but begging to be able to sign for her belongings. She never raised her voice or acted in an aggressive manner. If anything, she appeared meek. The only moment she seemed to resist was after she was already out the door and she tried to prevent them from closing the door as she again begged to be able to sign for her belongings. Complainant's fear that she would not be able to retrieve her belongings at that point seems justified, but nothing in her behavior suggested danger.

Subject Officers also state that there is no prohibition in MPD General Order 201.26 that precludes an officer from raising his/her voice when issuing a lawful command to exit a secured police facility. MPD General Order 201.26 provides numerous affirmative duties as to how officers must treat people with whom they come in contact and they are enumerated above. As already explained, Subject Officers' conduct did not comply with MPD General Order 201.26 or with numerous other orders relating to their required conduct.

Subject Officers also object to the allegation because Complainant did not “vocalize[] any objection to the language used or the stern way that SUBJECT OFFICER 1 explained the property situation to her” during the interaction. There is no requirement that Complainant raise her complaint about the Subject Officers' behavior at the moment of the behavior. Given how angry SUBJECT OFFICER 1 seemed to be at Complainant, it wouldn't be surprising if she chose not to express objection out of fear that it would upset him further. If anything, Subject Officers could learn from Complainant about how to stay calm in the face of provocation. Regardless, Subject Officers' objection is irrelevant. Complainant alleged that Subject Officers were angry, curt, and nasty. The BWC footage supports her allegation.

Finally, Subject Officers' allege that a language and conduct “harassment” charge requires specific intent. Subject Officers are conflating a harassment allegation with a language and conduct allegation, which have different requirements. Intent is not part of the definition for a language and conduct allegation as quoted above.

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V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER 1

Language and Conduct Allegation	Sustained
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SUBJECT OFFICER 2

Language and Conduct Allegation	Sustained
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Submitted on August 2, 2018.

Jennifer A. Fischer, Esq.
Complaint Examiner