

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0081
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1:	Harassment by Unlawful Arrest (SUBJECT OFFICERS #1 and #3)
Allegation 2:	Harassment by Unlawful Search of Vehicle (SUBJECT OFFICERS #1 and #3)
Allegation 3:	Language or Conduct (SUBJECT OFFICERS #1 and #2)
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	June 10, 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 (OPC) on November 6, 2017 alleging that, on November 3, 2017, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #3, harassed him by arresting him for disorderly conduct, or failure to obey a legal order, and unlawfully searching his vehicle. COMPLAINANT also alleged that SUBJECT OFFICER #2, and SUBJECT OFFICER #1 each used language or engaged in conduct that was insulting, demeaning, or humiliating towards him. Specifically, COMPLAINANT alleged that SUBJECT OFFICER #1 told him to “shut up,” and that

SUBJECT OFFICER #2 continuously provoked him and commented sarcastically on his ability to read.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and exhibits thereto 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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the exhibits thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 3, 2017 SUBJECT OFFICER #1, WITNESS OFFICER #1 and SUBJECT OFFICER #2 initiated a traffic stop of COMPLAINANT near AN INTERSECTION IN NE, WASHINGTON, DC. Complainant continued to drive his vehicle about 100 to 150 feet down the street before bringing it to a stop near AN ADDRESS IN NE, WASHINGTON, DC, directly across the street from his mother's house.
2. Immediately after bringing the vehicle to a stop, complainant exited the vehicle. SUBJECT OFFICER #1 then exited his police vehicle and approached complainant on foot. Complainant stated to SUBJECT OFFICER #1, "I did a rolling stop at the stop sign. When the officer got here I was going to explain to him...sir, can I please use the bathroom?" Complainant further explained that his mother's house was across the street and he had not come to a complete stop at the prior intersection due to his urgent need to use the bathroom.
3. SUBJECT OFFICER #1 instructed COMPLAINANT to get back in his vehicle and complainant readily complied.

¹ Complainant also alleged: first, that SUBJECT OFFICER #2, SUBJECT OFFICER #1, and WITNESS OFFICER #1 harassed him by stopping him for a traffic violation. Second, that SUBJECT OFFICER #1 failed to provide his name and badge number when requested by complainant. Third, that SUBJECT OFFICER #3 used excessive or unnecessary force by placing complainant in handcuffs that were purposely too tight. Fourth and finally, complainant alleged that SUBJECT OFFICER #2 harassed him by issuing "fictitious" traffic tickets. Pursuant to D.C. Code § 5-1108(1), on March 29, 2019 a member of the Police Complaints Board dismissed these allegations, concurring with the decision made by the OPC's Executive Director.

4. SUBJECT OFFICER #1 asked COMPLAINANT for his license, registration and proof of insurance, which he provided. SUBJECT OFFICER #1 took these items back to his police car to run them through the police records system.
5. WITNESS OFFICER #1, standing on the driver's side of complainant's vehicle, asked COMPLAINANT to roll down his passenger side window so that SUBJECT OFFICER #2, standing on the passenger side, could have a better view of the interaction.
6. In response, complainant asked WITNESS OFFICER #1, "why, sir?" WITNESS OFFICER #1 replied, "Roll that window down for my partner please." Complainant asked twice more why he had to roll the window down, seeking clarification as to whether he was legally required to do so at the officer's request. WITNESS OFFICER #1 never answered complainant's question, instead stating "Because she needs the window down on that side."
7. When complainant again asked, "why?" WITNESS OFFICER #1 responded in a threatening manner, "Do you want to roll? I'll tell you what, step out for me sir." COMPLAINANT followed the instructions to step out of his vehicle and sit on the curb, reiterating to the subject officers that he just wanted to "know the law."
8. Based on a review of the body worn camera footage ("BWC footage"), the windows of COMPLAINANT's vehicle were not tinted, but clear, and would not have obstructed SUBJECT OFFICER #2's plain view of the interaction inside the vehicle.
9. SUBJECT OFFICER #1 stated that he did not observe the "failure to obey" infraction, but that WITNESS OFFICER #1 later informed him of the events and indicated that it was the "demeanor" of the complainant that led the officers to have him step out of his vehicle. SUBJECT OFFICER #1 also stated that, while it was very rare for a motorist to refuse to roll down a window during a traffic stop, when an individual refused to roll down the window, there was "nothing" an officer could do.
10. Complainant, seated on the curb near his vehicle, took out his cell phone and began to record his interaction with the police. Complainant's mother, who had left her house across the street and was witness to the events, can be heard in the background attempting to alert complainant to the fact that his vehicle was being searched. Complainant loudly stated, "No they do not have permission to search my ca-truck, that's why I didn't roll down the passenger windows for these officers." Throughout his detainment complainant repeatedly stated that the officers did not have consent to search his truck.

11. Complainant again asked the officers for an explanation as to why he was being detained and why he was asked to step out of his vehicle. SUBJECT OFFICER #1 told complainant twice to “shut up.” SUBJECT OFFICER #2 behaved in an antagonistic manner toward complainant, continuously provoking him. After complainant read her name tag out loud, SUBJECT OFFICER #2 sarcastically stated, “[T]hat is my name. Glad you can read. That’s my name.”
12. SUBJECT OFFICER #2 informed the complainant that she and SUBJECT OFFICER #1 had wanted COMPLAINANT to roll down the vehicle because she could not see inside. The complainant responded that the window was clear and that she could see inside of the vehicle. Complainant further stated that there was no law that required him to roll down the window which is why the window was “still up.” SUBJECT OFFICER #2 replied, “But you’re out here” and giggled, or laughed at complainant.
13. Several additional officers arrived on the scene including SUBJECT OFFICER #3. After hearing a brief recap of the events from WITNESS OFFICER #1 and SUBJECT OFFICER #2, SUBJECT OFFICER #3 stated, “[s]omebody gave him an order to roll the window down and he refused? He is good to go for failure to obey a lawful order.” SUBJECT OFFICER #3 then offered to the other officers, “if y’all don’t want to do it, I’ll happily take care of it,” referring to her willingness to arrest COMPLAINANT. SUBJECT OFFICER #1, who was present at the time of the stop, agreed with SUBJECT OFFICER #3 that the arrest was proper.
14. SUBJECT OFFICER #3 arrested COMPLAINANT, placing him in handcuffs and informing him that he was being arrested for “failure to obey a lawful order.” Complainant asked, “what was the lawful order?” to which SUBJECT OFFICER #3 responded, “to roll down the window during the duration of the traffic stop.” At this time, SUBJECT OFFICER #1 locked complainant’s vehicle and placed his keys in a property bag inside his police cruiser.
15. Complainant again refuted that he had failed to obey any order, stating, “[t]hat’s not what happened. He asked me to roll the window down for his partner. I asked him why did I need to roll the window down...I asked him what was the law? I said was it necessary?”
16. In her interview with OPC, SUBJECT OFFICER #3 stated that she believed that SUBJECT OFFICER #1, SUBJECT OFFICER #2 and WITNESS OFFICER #1 had made the decision to arrest complainant, and that she merely provided some guidance as to what the charge should be. SUBJECT OFFICER #3 also stated that she contacted

another more knowledgeable officer to “clarify that [her] understanding was correct,” as to the validity of the arrest.

17. BWC footage from the events shows a conversation between SUBJECT OFFICER #2 and WITNESS OFFICER #1 discussing that it was in fact SUBJECT OFFICER #3’s decision to make the arrest, and also acknowledging her attempt to confirm with another officer that the arrest was proper:

SUBJECT OFFICER #2 (to WITNESS OFFICER #1): “What is she confirming?”

WITNESS OFFICER #1 (to SUBJECT OFFICER #2): “Hmm?” Then shrugs.

SUBJECT OFFICER #2 (to WITNESS OFFICER #1): “Who decided to?”

WITNESS OFFICER #1 (to SUBJECT OFFICER #2): “Hmm?”

SUBJECT OFFICER #2 (to WITNESS OFFICER #1): “Who decided to ... “
(Makes an “X” with her hands.)

WITNESS OFFICER #1 (to SUBJECT OFFICER #2): “She did.” (Referring to SUBJECT OFFICER #3. SUBJECT OFFICER #2 laughs and WITNESS OFFICER #1 walks away to the complainant.)

18. At this point, COMPLAINANT again tried to relay to SUBJECT OFFICER #2 his version of the events as they unfolded. SUBJECT OFFICER #2 replies that “[t]he problem is that you have the three calmest officers that you are probably ever going to get and you managed to piss us all off.”

19. Complainant then attempted to clarify what he had done to anger the officers. The subsequent exchange between COMPLAINANT and SUBJECT OFFICER #2, was captured by SUBJECT OFFICER #2’s BWC camera:

SUBJECT OFFICER #2 (to Complainant): “We could have used discretion. We could have used discretion and let you go. That's what you are not getting. You are not getting it.”

Complainant (to SUBJECT OFFICER #2): “I never told him that I was not going to roll down the window.”

SUBJECT OFFICER #2 (to Complainant): “Sir he asked you four times.”

Complainant (to SUBJECT OFFICER #2): “And what did I say?”

SUBJECT OFFICER #2 (to Complainant): “Why? And he told you that his partner could not see through the window. “

Complainant (to SUBJECT OFFICER #2): “And what did I say after that?”

SUBJECT OFFICER #2 (to Complainant): “Why do I have to roll it down?”

Complainant (to SUBJECT OFFICER #2): “No, no, no ma'am. I said is it a law?”

SUBJECT OFFICER #2 (to Complainant): “So you made all this stuff unnecessary. You blew it up. Sir we could have used our discretion but you blew it up. The problem is that you want to be in control and you are not in control on a traffic stop”

20. Approximately 17 minutes after complainant was arrested and placed in handcuffs, SUBJECT OFFICER #1 told SUBJECT OFFICER #3 that he was going to conduct a “wingspan” search of complainant’s vehicle. SUBJECT OFFICER #1 retrieved complainant’s keys from the property bag in his cruiser.
21. SUBJECT OFFICER #3 agreed with SUBJECT OFFICER #1 that the search was appropriate due to complainant’s initial “refusal to stop” and the fact that he immediately “distance[d] himself” from the vehicle which she deemed “extremely suspicious behavior,” leading her to believe COMPLAINANT was attempting to conceal something inside the vehicle, despite the fact that SUBJECT OFFICER #3 did not observe any of these actions or behaviors first hand.
22. SUBJECT OFFICER #1 entered the vehicle and searched the driver’s side, in the door pockets, around the seat and in the console area. SUBJECT OFFICER #1 attempted to get behind the seat, during which time SUBJECT OFFICER #3 stated, that they could only search where the complainant could reach and “that’s it.”
23. SUBJECT OFFICER #1 then first attempted to climb through the driver's side to the passenger side, then walked around to the passenger side, opened the door, and

searched that side of the vehicle, including around the seat, under the seat, and in the glovebox.

24. SUBJECT OFFICER #1 then asked SUBJECT OFFICER #3 to search the driver's side another time. SUBJECT OFFICER #3 searched the driver's side of the truck, including under the seat and around the floor boards.

25. Complainant stated numerous times that he never gave the officers permission to search his vehicle.

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.”

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 . . . 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. *SUBJECT OFFICER #1 and SUBJECT OFFICER #3 Harassed
COMPLAINANT by Unlawfully Arresting Him.***

The District of Columbia's Municipal Regulations (DCMR) regarding obedience to traffic regulations, Title 18 § 2000.2, provides, in pertinent part: “No person shall fail or refuse to comply with any lawful order or direction of any police officer...invested by law with authority to direct, control, or regulate traffic. This section shall apply to pedestrians and to the operators of vehicles.” While “lawful order” is not specifically defined within the DCMR, relevant case law suggests that such orders require immediate compliance only in specific situations where the intention is to protect the greater public, such as protests, emergency situations, and other instances where the police might give orders to disperse for purposes of crowd control. D.C. Municipal Regulations Title 24 § 2100.1 and 2100.2 states that citizens are required to comply with the orders or instructions of police officers: “When fires, accidents, wrecks, explosions, parades, or other occasions cause or may cause persons to collect on the public streets, alleys, highways, or parking.”

MPD Special Order 96.10, however, provides specific guidance to MPD officers regarding arrests for failure to obey when enforcing traffic violations. “In most circumstances, officers shall not summarily arrest a person who has violated the “failure to comply” provision. Only in a situation where the continued refusal creates a flagrant and immediate danger to the violator, other persons or the motoring public, or interferes with ongoing traffic enforcement activities of the police ... If it is determined that the circumstances are serious enough to warrant arrest, members shall 1) caution the person that continued refusal to comply with the officer's orders could result in the violator's arrest and 2) issue an appropriately complete NOI for ‘Failure to Comply,’ and a Superior Court charge if arrest becomes necessary.”

First, none of the Officers, in their interviews with the OPC, were able to point to any specific law or regulation requiring motorists to lower their windows during a routine traffic stop. In his interview with OPC, SUBJECT OFFICER #1 admitted that there is “nothing” an officer can do when a motorist refuses to roll down a passenger side window. Further, the subject officers requested the complainant roll down the passenger side window, despite the fact that there was no passenger in the vehicle, and the window could clearly be seen through. SUBJECT OFFICER #2, standing on the driver’s side of the vehicle, did not have any issues with visibility, or being able to hear the complainant.

Second, none of the subject officers was able to articulate how COMPLAINANT's actions otherwise constituted a "continued refusal" which created "a flagrant and immediate danger to the violator, other persons or the motoring public, or interfere[d] with ongoing traffic enforcement activities of the police." In fact, as complainant repeatedly articulated, and as seen on both the officer's BWC footage and complainant's cell phone recording of events, COMPLAINANT *never* refused to roll down his truck window; he merely asked the officers, over and over again, whether he was legally required to do so. In conversation with complainant after he had been removed from his vehicle, SUBJECT OFFICER #2 admitted that complainant had never actually refused to roll down the window but asked whether the law required it.

Further, even if COMPLAINANT had blatantly and repeatedly refused to roll down the window, none of the subject officers could point to any "flagrant and immediate danger," resulting from his failure to do so, nor even that it hindered their ability to conduct the stop. Based on a review of the BWC footage from the incident, SUBJECT OFFICER #2 should have been able to look through the clear window to observe the interaction, as well as hear the conversation between WITNESS OFFICER #2 and complainant through the open door of the truck. Moreover, complainant was asked to exit his truck and sit on the curb, which he willingly did, and was not arrested or handcuffed for several minutes. The officers' failure to restrain complainant suggests they did not believe he himself posed any "immediate danger." Moreover, SUBJECT OFFICER #1 initially locked complainant's vehicle and put the keys in a property bag in his cruiser, only to retrieve them almost 20 minutes later to conduct a wingspan search. Such actions belie any suggestion that there was something in COMPLAINANT's truck that posed any 'immediate danger.'

Third, several facts suggest that complainant's arrest was retaliatory in nature, including that complainant willingly complied with the subject officers' *other* orders to exit the car and wait on the curb. In her response to complainant's statement that there was no law that required him to roll down the window, which is why the window was "still up," SUBJECT OFFICER #2 did not refute his understanding of the law but instead replied, "But you're out here" and giggled, as though his removal from his truck was some form of payback. Later, SUBJECT OFFICER #2 told complainant, "[t]he problem is that you have the three calmest officers that you are probably ever going to get and you managed to piss us all off" and "[w]e could have used discretion. We could have used discretion and let you go. That's what you are not getting. You are not getting it." She further told COMPLAINANT "[y]ou blew it up. ... The problem is that you want to be in control and you are not in control on a traffic stop." SUBJECT OFFICER #2's explanations as to why complainant was arrested point more towards the officers' taking out their frustrations on complainant than to his failure to comply with a legitimate lawful order.

Fourth, the subject officers failed to comply with regulations in conducting the arrest. Specifically, the subject officers were required to give the complainant a warning that he could be arrested for failure to follow their command prior to any actual arrest. When WITNESS OFFICER #1 told complainant to step out of the car, complainant did so willingly and sat on the curb for several minutes. At no point during that time was complainant warned that he could be arrested for failure to roll down his window. In fact, there was no discussion between the officers at the scene regarding a potential arrest until SUBJECT OFFICER #3—who was not even present for the initial stop or the order to roll the window down—who initially suggested that complainant be arrested for failure to comply with an order. SUBJECT OFFICER #3 later made the arrest herself.

Based on the totality of the circumstances, subject officers SUBJECT OFFICER #1 and SUBJECT OFFICER #3 did not have probable cause to arrest COMPLAINANT for failure to obey a lawful order, and thereby harassed the complainant in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25.

2. SUBJECT OFFICER #1 and SUBJECT OFFICER #3 Harassed COMPLAINANT by Unlawfully Searching His Vehicle.

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.*

One such exception is that 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)). Pursuant to a lawful stop, police officers may then conduct a “plain view” search of a vehicle, if the officer is able to see contraband in plain view from outside the vehicle. Further, under the “automobile exception,” police may conduct a warrantless search of the interior of a vehicle where there is probable cause to believe that the “vehicle contains that which by law is subject to seizure and destruction.” *Carroll v. United States*, 267 U.S. 132, 149 (1925). Such a search could include “every part of the vehicle and its contents that may conceal the object of the search.” *United States v. Ross*, 456 U.S. 132, 149 (1925). Another exception exists to allow for a warrantless search of a vehicle incident to an arrest. However, an officer may search the

passenger compartment of a vehicle only where he or she has reason to believe that: (1) the arrestee is unsecured and is within reaching distance of the passenger compartment at the time of the search; or (2) the vehicle contains evidence of the offense of the arrest. *Arizona v. Gant*, 556 U.S. 332 (2009).

Here, it is uncontested that the subject officers stopped COMPLAINANT's vehicle because they believed a traffic violation had occurred. Specifically, that COMPLAINANT had not come to a complete stop at a stop sign. However, BWC footage revealed that at least SUBJECT OFFICER #2, SUBJECT OFFICER #3 and WITNESS OFFICER #3 conducted plain view searches of complainant's vehicle and none were able to point to any "contraband," or evidence of any kind in COMPLAINANT's vehicle.

Absent evidence in plain view, the subject officers could nonetheless have conducted a warrantless search of the interior of the vehicle if they had "probable cause" that the vehicle contained "that which by law is subject to seizure and destruction." *Carroll* at 149. 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." *Perkins v. United States*, 936 A.2d 303, 306 (D.C. 2007) (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003)). The only probable causes for the search cited by SUBJECT OFFICER #3 and SUBJECT OFFICER #1 were complainant's initial "refusal to stop" and that he immediately "distance[d] himself" from the vehicle. Complainant readily and repeatedly explained to this officer that he drove the additional 100-150 yards before bringing his vehicle to a stop because he wanted to stop in front of his mother's house, and that he exited the vehicle upon stopping because he had an urgent need to use her restroom.

SUBJECT OFFICER #3—who did not even witness the stop or COMPLAINANT's behavior at the time--nonetheless argued that this was "extremely suspicious behavior." SUBJECT OFFICER #3's reasoning falls squarely within the category of a "mere suspicion" of wrongdoing that the Supreme Court has held does *not* constitute probable cause. Thereby, the subject officers lacked probable cause to conduct a full search of the vehicle.

Finally, the subject officers might have conducted a reasonable search of complainant's vehicle incident to a lawful arrest. At the time of the search, however, COMPLAINANT had been arrested on charges of "failure to obey a lawful order," namely, to roll down his passenger side window. The subject officers failed to articulate how there would be any evidence relating

to this crime within the vehicle. Additional charges were later brought against complainant for fleeing from the police and reckless driving. Again, it defies reason that evidence of either of these alleged crimes would have been in the vehicle.

Further, the subject officers could only search the *passenger compartment* of his vehicle where the officers had reason to believe that complainant was “unsecured and is within reaching distance of the passenger compartment at the time of the search;” or where “the vehicle contain[ed] evidence of the offense of the arrest.” *Arizona* at 332. At the time that complainant’s vehicle was searched, COMPLAINANT was in handcuffs and had been placed in the back seat of a police car, parked several yards away and, thereby, was not in any position to access his vehicle. As above, there is no rational argument to be made that the subject officers expected the vehicle to contain “evidence of the offense of the arrest,” for failure to obey an order, fleeing from the police, or reckless driving.

BWC footage nonetheless reveals that both SUBJECT OFFICER #1 and SUBJECT OFFICER #3 entered and searched COMPLAINANT’s vehicle, including both the driver’s and passenger’s sides; in and around the door pockets; in, around and under the seats; around the floorboards; and in the glovebox. No contraband or other evidence was discovered.

Based on the totality of the circumstances, SUBJECT OFFICER #1 and SUBJECT OFFICER #3 searched complainant’s vehicle without consent, probable cause, or any exigent circumstances that might have justified a warrantless search. The subject officers thereby harassed complainant in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

B. Insulting, Demeaning, or Humiliating Language or Conduct

1. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 Used Insulting, Demeaning and Humiliating Language and Conduct in Their Interactions with Complainant.

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.”

COMPLAINANT alleged that SUBJECT OFFICER #1 spoke to him in an insulting, demeaning manner by telling him to “shut up.” In his interview with OPC, SUBJECT OFFICER #1 did not recall using this language with complainant but stated that he “hope[d] not,” because it would have been “poor people skills” and “out of character” for him. BWC footage of the incident, as well as complainant’s own cell phone footage show that SUBJECT OFFICER #1 told complainant twice to “shut up” when COMPLAINANT was sitting on the curb, after being removed from his vehicle. In her interview with OPC, SUBJECT OFFICER #2 stated that “of course” a police officer’s use of the phrase “shut up” towards a civilian would be classified as demeaning, insulting or offensive.

COMPLAINANT also alleged that SUBJECT OFFICER #2 used insulting and demeaning manner, and that she behaved unprofessionally by repeatedly provoking him. A review of the BWC footage shows that SUBJECT OFFICER #2 behaved in a clearly antagonistic manner toward complainant. After complainant read her name tag out loud, SUBJECT OFFICER #2 sarcastically stated, “[T]hat is my name. Glad you can read. That’s my name,” her tone clearly intended to insult COMPLAINANT’s intelligence. In her interview with OPC, when asked if she thought her statements could be classified as demeaning, insulting or offensive, SUBJECT OFFICER #2 responded, “sure, depending on how you want to take it, of course.”

Moments later, after complainant repeatedly asked SUBJECT OFFICER #2 to explain why he was being detained and whether he was legally required to roll down his passenger side window, SUBJECT OFFICER #2 refused to respond, instead goading COMPLAINANT. Her language and conduct communicated that, even if complainant hadn’t broken the law, “you’re out here,” or under police detention and control. SUBJECT OFFICER #2 then openly laughed at complainant in a show of power. Several minutes later, SUBJECT OFFICER #2 also told complainant that he had “managed to piss us all off.”

Based on the totality of the circumstances, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 used or engaged in conduct toward the complainant that was insulting, demeaning or humiliating when they used profanity and acted in an unprofessional manner, thereby violating § 5-1107(a) and MPD General Order 201.26.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1:	Harassment by Unlawful Arrest	Sustained
Allegation 2:	Harassment by Unlawful Search of Vehicle	Sustained
Allegation 3:	Language or Conduct	Sustained

SUBJECT OFFICER #2

Allegation 3:	Language or Conduct	Sustained
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SUBJECT OFFICER #3

Allegation 1:	Harassment by Unlawful Arrest	Sustained
Allegation 2:	Harassment by Unlawful Search of Vehicle	Sustained

Submitted on June 10, 2019.

Meaghan Hannan Davant
Complaint Examiner