

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0155
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1:	Harassment, Frisk of Person: SUBJECT OFFICER #2
Allegation 2:	Harassment, Search of Person: SUBJECT OFFICER #3
Allegation 3:	Harassment, Intimidation: SUBJECT OFFICER #2
Allegation 4:	Insulting, Demeaning, or Humiliating Language or Conduct: SUBJECT OFFICER #1 and SUBJECT OFFICER #2
Allegation 5:	Use of Excessive or Unnecessary Force: SUBJECT OFFICER #1 and SUBJECT OFFICER #2
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	April 29, 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 December 9, 2017. Complainant alleged that, on December 5, 2017, Metropolitan Police Department (MPD) SUBJECT OFFICER #2 harassed WITNESS #1 when he unlawfully frisked him; and that SUBJECT OFFICER #3 harassed WITNESS #1 when he unlawfully searched him. COMPLAINANT also alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against complainant when he pushed the complainant; and engaged in conduct or used language toward him that was insulting, demeaning, or humiliating when he acted in an unprofessional manner during the interaction. Finally, complainant alleged that SUBJECT OFFICER #2

harassed him by intimidation; engaged in conduct or used language toward him that was insulting, demeaning or humiliating towards him by mocking him, using profane language, calling him names and spitting on him; and used unnecessary or excessive force against him when he thrust his chest into complainant's body several times during the interaction.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 and the objections submitted by the Subject Officers on March 19, 2019, and OPC's responses 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, the objections submitted by the Subject Officers on March 19, 2019, and OPC's response thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 5, 2017 at approximately 12:30 pm, SUBJECT OFFICER #2 and SUBJECT OFFICER #3 entered the outdoor playground area of a CITY FACILITY located SW, WASHINGTON, DC, on bicycles and observed WITNESS #1 and WITNESS #2 in the outdoor playground area of the CITY FACILITY.
2. SUBJECT OFFICER #3 detected the smell of marijuana and both he and SUBJECT OFFICER #2 got off their bicycles, approached the two men, and performed an investigatory stop.
3. SUBJECT OFFICER #3 observed a suspicious bulge in WITNESS #1's jacket pocket and, because WITNESS #1's pocket was open, was given a plain sight view of the bag of marijuana. There was no sign of a weapon in the pocket.
4. SUBJECT OFFICER #2 walked toward WITNESS #1 and patted him down twice in quick succession, first feeling the outside of his jacket and then running his hand over WITNESS #1's chest.
5. SUBJECT OFFICER #3 then reached into WITNESS #1's pocket and removed the bag of marijuana.

¹ The complainant also alleged that SUBJECT OFFICER #2 and SUBJECT OFFICER #3 unlawfully stopped WITNESS #1 and WITNESS #2. Pursuant to D.C. Code § 5-1108(1), on February 26, 2019 a member of the Police Complaints Board dismissed these allegations, concurring with the decision made by the OPC's Executive Director.

6. Only after removing the bag of marijuana, SUBJECT OFFICER #3 asked WITNESS #1 for consent to search him. In an effort to convince WITNESS #1, SUBJECT OFFICER #3 stated, “we don't care about that little weed you have, man. You can have up to two ounces.”
7. After the marijuana was removed, WITNESS #1 removed a small object from his pocket and handed it to the officers. Assuming that the subject officers wished to conduct the search to check for weapons, WITNESS #1 then voluntarily lifted his shirt to expose his waistline, to which SUBJECT OFFICER #3 responded, “see, that's what we care about.”
8. A short time later, SUBJECT OFFICER #3 again told WITNESS #1 that he knew the marijuana they had removed from his pocket was “not two ounces.”
9. SUBJECT OFFICER #2 interjected to ask SUBJECT OFFICER #3 about the small object that WITNESS #1 had turned over. After SUBJECT OFFICER #2 informed SUBJECT OFFICER #2 that the object was a scale, SUBJECT OFFICER #2 said, “Oh, as long as you don't got no weapons.” Although there were no visible bulges on WITNESS #1's chest, SUBJECT OFFICER #2 then proceeded to pat him down for a third time.
10. Shortly thereafter SUBJECT OFFICER #3 placed WITNESS #1's scale on the ground and weighed the bag of marijuana. The bag weighed 41.4 grams, or approximately 1.46 ounces.
11. While the stop was underway, COMPLAINANT entered the outdoor playground area, heading towards the front doors of the PUBLIC FACILITY. Although complainant did not know the nature of the interaction between the subject officers and WITNESS #1, and WITNESS #2 it appeared to complainant that the officers were illegally “IDing” and harassing the two men.
12. As COMPLAINANT continued to walk toward the PUBLIC FACILITY doors, SUBJECT OFFICER #1 stepped directly in front of him, standing face to face with complainant at a short distance, as if to prevent him from approaching any farther.
13. SUBJECT OFFICER #1 reached out with his left hand and brushed or pushed complainant. Complainant loudly responded, “get your hands off me,” and put both his hands in the air above his head, such that his hands were in plain view of the officers.
14. Several of the officers approached complainant and SUBJECT OFFICER #1, including SUBJECT OFFICER #2, as complainant repeatedly stated, in a loud voice, that SUBJECT OFFICER #1 had touched him. Complainant then pointed at SUBJECT OFFICER #1, coming within inches of touching him and SUBJECT OFFICER #1 swatted at complainant's hand, but failed to make contact.

15. Complainant verbally taunted SUBJECT OFFICER #1, stating, "You're a coward. You're a fucking coward," to which SUBJECT OFFICER #1 responded, "you don't intimidate me," and then pushed complainant with both hands, forcing him backwards.
16. SUBJECT OFFICER #1 then stated to complainant, "Get the fuck out of my face. What's up with you nigga?"
17. SUBJECT OFFICER #2 stepped in between complainant and SUBJECT OFFICER #1 and addressed complainant with an aggressive tone and posture, repeatedly asking, "you wanna go to jail?" and told him to "go on down the road." Complainant told SUBJECT OFFICER #2 that his breath stank, and SUBJECT OFFICER #2 responded, "your breath stinks too, ass." Several seconds later SUBJECT OFFICER #2 told complainant, "you smell like ass."
18. Complainant then backed away from SUBJECT OFFICER #2 and ran towards a pavilion located at the other side of the playground. SUBJECT OFFICER #2 chased the complainant to the pavilion, yelling unintelligibly at him. At one point complainant took a step backwards to distance himself from SUBJECT OFFICER #2, exclaiming "don't touch me." SUBJECT OFFICER #2 mocked WITNESS #1 repeating, "don't touch me" in a high, whiny voice. SUBJECT OFFICER #2 then persisted in mimicking WITNESS #1, repeating complainant's words back at him. SUBJECT OFFICER #2 also yelled profanity at complainant, calling him an "ass" and "asshole" multiple times.
19. SUBJECT OFFICER #2 also repeatedly engaged in unprovoked physical contact with complainant, butting him with his chest. SUBJECT OFFICER #2 also entered complainant's personal space again and again in an attempt to provoke complainant to physical violence, and repeatedly taunted complainant to fight, yelling "ooooh you're a bad man," and "come on big guy."
20. Complainant complained loudly to the officers on the scene that SUBJECT OFFICER #2 spat in his face.
21. Complainant then turned and attempted to leave the scene, at which point SUBJECT OFFICER #2 chased him, blocked his path with his body and butted complainant with his chest with enough force to dislodge his body worn camera. SUBJECT OFFICER #2 continued to provoke complainant to fight, repeatedly taunting and yelling, "come on big guy," and "You want some? You gonna get some." Complainant did not engage, instead stepping backwards with his hands raised submissively. At no point did it appear that complainant was physically aggressive towards SUBJECT OFFICER #2, or otherwise appeared dangerous.
22. Again, complainant stated that SUBJECT OFFICER #2 had spat on him and pointed out several white spots on his black jacket that he contended were flecks of SUBJECT OFFICER #2' saliva.

23. After several minutes of these aggressive interactions with SUBJECT OFFICER #2, complainant attempted to leave the scene, heading towards the edge of the PUBLIC FACILITY property. SUBJECT OFFICER #2 retrieved his bicycle, chased after complainant, and then attempted to re-engage complainant, inciting him to fight. Complainant yelled, "I'll knock your bitch ass out," to which SUBJECT OFFICER #2 responded, "Come on and knock me out, punk. You wanna knock me out? Come on, man. Knock me out."
24. Complainant again tried to leave the scene, walking farther and farther away while SUBJECT OFFICER #2 continued to give chase and incite complainant to fight. SUBJECT OFFICER #2 yelled, "Big man, where are you going?" and repeatedly taunted complainant to "knock me out."
25. The subject officers did not complete a PD Form 251 Incident-Based Event Report, a PD Form 76 Stop or Contact Report, or any other forms or paperwork related to the incident.

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 #2 Harassed WITNESS #1 by Unlawfully Frisking Him.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that a “careful exploration of the outer surfaces of a person’s clothing in an attempt to find weapons is a ‘search’” under the Fourth Amendment. The court further found that “[w]here a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a *reasonable search* for weapons of the person *believed by him to be armed and dangerous* regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed.” *Id.* at 20-27 (emphasis added).

MPD General Order 304.10(C)(1-2) similarly states, in relevant part, that an officer may frisk a person whom they have stopped if they reasonably suspect that the person is carrying a concealed weapon or dangerous instrument and that a frisk is necessary to protect themselves or others. “Reasonable suspicion” is further defined in the order as “more than a vague hunch and less than probable cause.” The Order further states that a “frisk authorized under this order shall be *limited to* seeking possible weapons or dangerous instruments,” (emphasis added) and that “[t]he authority to frisk shall not be used to conduct full searches designed to produce evidence or other incriminating material. Full searches of persons conducted without adequate probable cause to arrest are illegal and are specifically prohibited by this order.”

SUBJECT OFFICER #3 credibly stated that he stopped WITNESS #1 because he smelled marijuana and, immediately thereafter, observed a bulge in WITNESS #1’s pocket. On closer examination, SUBJECT OFFICER #3 was afforded a plain sight view into WITNESS #1’s open pocket and confirmed that the bulge was a bag of marijuana.

Other than the bulge in WITNESS #1’s pocket, body worn camera footage shows that there were no other visible bulges or protrusions in WITNESS #1’s coat, or otherwise on his person. Nonetheless, within seconds of approaching WITNESS #1, SUBJECT OFFICER #2 performed two quick frisks, patting down areas of WITNESS #1’s coat and chest that did not include the pocket containing the bulge. SUBJECT OFFICER #3 then removed the marijuana from WITNESS #1’s pocket and WITNESS #1 immediately lifted his shirt to expose his waistline, inferring that the officers were looking for weapons. SUBJECT OFFICER #3’s response, “see, that’s what we care about,” confirms this inference. Moments later, after SUBJECT OFFICER #2 learned that the small item WITNESS #1 handed over was a digital scale, SUBJECT OFFICER #2 further stated, “oh, as long as you don’t got no weapons.” Despite this comment, and absent any reasonable belief that WITNESS #1 had a weapon, SUBJECT OFFICER #2 then proceeded to pat him down for a *third* time.

Finally, MPD General Order 304.10 requires that “[e]very officer conducting a stop must be prepared to cite the particular factors which supported the determination that ‘reasonable suspicion’ was present.” Officers are required to list every factor they relied upon, at least in general terms, in the incident report for the stop. However, neither SUBJECT OFFICER #2 nor SUBJECT OFFICER #3 completed any of the mandated paperwork for the stop and both admitted, in later interviews with OPC, that they should have completed a report.

Based on the totality of the circumstances, SUBJECT OFFICER #2 lacked any “reasonable suspicion” that WITNESS #1 possessed a weapon. Thereby, his three frisks of WITNESS #1 violated § 5-1107(a) and MPD General Orders 120.25 and 304.10.

2. SUBJECT OFFICER #3 Harassed WITNESS #1 by Unlawfully Searching Him.

Relying on the same precedent as the previous section, SUBJECT OFFICER #3 was required to have ‘reasonable suspicion’ that WITNESS #1 possessed a weapon in order to perform a bodily search. At the time that SUBJECT OFFICER #3 reached into WITNESS #1’s open pocket and retrieved the bag of marijuana, SUBJECT OFFICER #2 had already performed *two* frisks for weapons. Moreover, SUBJECT OFFICER #3 admitted in his interviews with OPC that he had a plain sight view into WITNESS #1’s pocket and could see that the “bulge” was a bag of marijuana, and not a weapon.

In his interview, SUBJECT OFFICER #3 also argued that he confiscated the marijuana because he suspected that it was over the legal limit of two ounces. However, General Order 304.10 is clear that a frisk or search for weapons—even *if* reasonable—cannot be used as a pretext for a bodily search for other potentially illegal items. Furthermore, SUBJECT OFFICER #3 made it clear during the interaction that he did not actually believe WITNESS #1 had a large amount of marijuana when he said, “that little weed you have” and “it’s not two ounces.”

Finally, as above, neither SUBJECT OFFICER #2 nor SUBJECT OFFICER #3 filled out an incident report for the stop and search, as specifically required under MPD General Order 304.10.

Based on the totality of the circumstances, SUBJECT OFFICER #3 lacked reasonable suspicion that WITNESS #1 possessed a weapon. Thereby, his search of WITNESS #1’s person violated § 5-1107(a) and MPD General Orders 120.25 and 304.10.

3. SUBJECT OFFICER #2 Harassed Complainant Through Verbal and Physical Intimidation.

MPD General Order 120.25, Part III, Section B, No. 2 includes in its definition of harassment, “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 ...mistreatment.”

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.”

Section E, “Citizen-Police Officer Relationships,” further states:

[i]t is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for, and confidence in, the MPD and its members. 2. In any effort to strengthen the citizen-police officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public.

In his role as a A HIGHER RANKED OFFICER, SUBJECT OFFICER #2 should be expected to lead by example; if anything, his conduct should be held to a higher standard. Yet, in this case, SUBJECT OFFICER #2’s verbal and physical conduct was so unprofessional that it likely harmed future community member-police officer relationships. SUBJECT OFFICER #2’s conduct was, in fact, so egregious that it could have no other effect than to erode respect for and confidence in police officers. Moreover, this damage to the relationship between police officers and community members likely extended not only to the people who interacted with SUBJECT OFFICER #2, but also the near dozen who witnessed the events.

SUBJECT OFFICER #2 verbally intimidated complainant by, among other things: repeatedly stating that complainant was going to “go to jail” despite the fact that complainant had committed no offense; yelling profanity at complainant including calling him an “ass” and “asshole;” and provoking complainant to engage in physical violence. SUBJECT OFFICER #2’s near constant taunts toward complainant, including “oooooh you’re a bad man...come on big guy,” and “come on and knock me out, punk,” were not only unprofessional but frankly childish and unbecoming his profession. Even after complainant made clear that he was leaving the scene, SUBJECT OFFICER #2 literally chased after him to continue his verbal barrage, yelling “Big man, where are you going?” and inciting complainant to “knock [SUBJECT OFFICER #2] out.”

SUBJECT OFFICER #2 also intimidated complainant physically. Body worn camera footage of the incident shows complainant backing away from SUBJECT OFFICER #2 again and again, hands raised in a submissive manner as he requested of SUBJECT OFFICER #2

“don’t touch me,” over and over. SUBJECT OFFICER #2, all the while mocking complainant’s requests, intentionally invading complainant’s personal space in a threatening manner, forcing complainant backward not only by his proximity, but also, on several occasions, butting complainant with his chest to provoke a fight. SUBJECT OFFICER #2 also spat on complainant, a degrading act that, again, could have no outcome but to decrease the public’s esteem of, and trust in, MPD Officers.

Based on the totality of the circumstances, SUBJECT OFFICER #2 harassed complainant through verbal and physical intimidation and thereby violated § 5-1107(a) and MPD General Orders 120.25, 201.26 and 304.10.

B. Insulting, Demeaning, or Humiliating Language or Conduct

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.”

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

SUBJECT OFFICER #1 stepped in front of complainant as complainant entered the outdoor playground area of the PUBLIC FACILITY, to prevent him from approaching the ongoing stop of WITNESS #1. As viewed on the body worn camera footage, SUBJECT OFFICER #1 exhibited admirable self-control during the majority of his interaction with complainant, even as complainant repeatedly attempted to provoke him.

Complainant alleged that SUBJECT OFFICER #1 “touched [him]” within the first few minutes of their interaction. The body worn camera footage clearly shows that SUBJECT OFFICER #1 either brushed or pushed complainant lightly. It was not clear, however, whether this might have been a movement of self-protection on SUBJECT OFFICER #1’s part, as complainant continued to attempt to move closer to the front doors of the PUBLIC FACILITY, where WITNESS #1 was being stopped. Complainant can be heard repeatedly stating “he touched me,” and “get your hands off me.” At one point complainant pointed at SUBJECT OFFICER #1, coming within inches of touching him and SUBJECT OFFICER #1 swatted at complainant’s hand, but failed to make contact.

It is, however, very clear from the body worn camera footage that, after complainant verbally baited SUBJECT OFFICER #1, yelling, “You’re a coward. You’re a fucking coward,” SUBJECT OFFICER #1 lost his temper, shoved complainant backwards with both hands, and

said, “Get the fuck out of my face. What’s up with you nigga?” SUBJECT OFFICER #1’s use of profanity, as well as a derogatory racial epithet, was insulting, demeaning and unprofessional.

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

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

As discussed at great length in Section A.3 *supra*, SUBJECT OFFICER #2’S language and conduct towards complainant was entirely unbecoming an MPD police officer, much less a HIGHER RANKING OFFICER.

During the course of his interactions with complainant, SUBJECT OFFICER #2 taunted, mimicked and berated him. SUBJECT OFFICER #2 used profanity with complainant, yelling that complainant “smell[ed] like ass,” and also called him an “ass” and “asshole” on several occasions. SUBJECT OFFICER #2 also demeaned complainant by mimicking him in a high-pitched voice, baiting him with comments about his sexual preference and activities, and repeatedly baiting him in attempts to incite violence.

SUBJECT OFFICER #2 also repeatedly engaged in unprovoked physical contact with complainant, entering his personal space as if to provoke a fight, spitting on his clothing and butting complainant with his chest. When complainant attempted to retreat, SUBJECT OFFICER #2 gave chase at least twice, attempting to re-engage complainant and incite him to fight

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

C. Use of Excessive or Unnecessary Force

MPD General Order 901.07, Part II, states, “The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.”

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or

others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

MPD General Order 201.26, Duties, Responsibilities and Conduct of Members of the Department, reminds officers to remain calm “regardless of provocation,” and to “be courteous and orderly in their dealings with the public.”

1. SUBJECT OFFICER #1 Used Excessive and Unnecessary Force in His Interactions with Complainant.

As discussed *supra*, review of the body worn camera footage makes it unclear whether SUBJECT OFFICER #1’s first physical contact with complainant was a brush or light push. In either case, it did not appear to rise to the level of “excessive force.” However, SUBJECT OFFICER #1’s later intentional shove of complainant with both hands, forcing him backwards, was both excessive and unnecessary, particularly where complainant posed no imminent threat to SUBJECT OFFICER #1 or others. It is clear from the camera footage that SUBJECT OFFICER #1 shoved complainant in response to complainant’s taunts that he was a “coward.” While SUBJECT OFFICER #1’s reaction might have been understandable in a civilian situation, General Order 201.26 plainly states that MPD officers are held to a higher standard and must remain “calm” and “orderly” when dealing with citizens, “regardless of provocation.”

Based on the totality of the circumstances, SUBJECT OFFICER #1 used excessive and unnecessary force in his interaction with complainant, thereby violating § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1 and MPD General Orders 201.26 and 901.07.

2. SUBJECT OFFICER #2 Used Excessive and Unnecessary Force in His Interactions with Complainant.

There can be no question that SUBJECT OFFICER #2 used excessive—and *entirely unnecessary*—force against complainant on multiple occasions. At no point in SUBJECT OFFICER #2’ interactions with complainant did it appear that complainant posed any kind of danger to anyone at the scene. In fact, it was clear from the body worn camera footage that SUBJECT OFFICER #2 was the aggressor. While complainant did use profanity and engaged in a heated verbal exchange with SUBJECT OFFICER #2, he never appeared physically aggressive and, in fact, could be seen repeatedly backing away from SUBJECT OFFICER #2 with his hands raised in a noncombative posture.

SUBJECT OFFICER #2 used his chest to repeatedly butt complainant. SUBJECT OFFICER #2 butts complainant with enough force to send him stumbling backwards at least once. Further, at one point SUBJECT OFFICER #2 butts complainant with such force that he

dislodged his own body worn camera. SUBJECT OFFICER #2' use of bodily force was excessive, unnecessary and entirely unprofessional.

Based on the totality of the circumstances, SUBJECT OFFICER #2 used excessive and unnecessary force in his interaction with complainant, thereby violating § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1 and MPD General Orders 201.26 and 901.07.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #3

Allegation 2: Harassment, Search of Person	Sustained
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SUBJECT OFFICER #2

Allegation 1: Harassment, Frisk of Person	Sustained
Allegation 3: Harassment, Intimidation	Sustained
Allegation 4: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
Allegation 5: Use of Excessive or Unnecessary Force	Sustained

SUBJECT OFFICER #1

Allegation 4: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
Allegation 5: Use of Excessive or Unnecessary Force	Sustained

Submitted on April 29, 2019.

Meaghan Hannan Davant
Complaint Examiner