

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 18-0336 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER |
| Allegation 1: | Harassment |
| Allegation 2: | Language or Conduct |
| Allegation 3: | Failure to Identify |
| Complaint Examiner: | Jennifer A. Fischer, Esq. |
| Merits Determination Date: | April 2, 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

The complainant filed a complaint with the Office of Police Complaints (OPC) on March 7, 2018.¹ COMPLAINANT alleged that on March 6, 2018, the subject officer used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when SUBJECT OFFICER used profanity and yelled at the complainant. COMPLAINANT further alleged that SUBJECT OFFICER harassed him when the officer unlawfully stopped him, threatened him, and intimidated him. Finally, the complainant alleged that SUBJECT OFFICER failed to provide his name and badge number when requested.²

¹ COMPLAINANT's complaint was forwarded to OPC from MPD on March 7, 2018. He filled out and signed an OPC complaint form on March 28, 2018.

² COMPLAINANT also alleged that WITNESS OFFICER #1 harassed him when he issued a bad ticket. COMPLAINANT further alleged that WITNESS OFFICER #1 failed to provide his name and badge number when requested to do so. He also alleged that SUBJECT OFFICER failed to display his name and badge number. Pursuant to D.C. Code § 5-1108 (1), on January 25, 2019, 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 March 6, 2018, while he was traveling northeast bound on A STREET IN NW, WASHINGTON, DC, after picking up WITNESS from school, the subject officer almost struck COMPLAINANT's vehicle with his unmarked MPD vehicle. SUBJECT OFFICER initiated a traffic stop with COMPLAINANT, approached the complainant and yelled something to the effect of, "I'm going to put your ass in jail, you motherfucker. You ran me off the road. I'm gonna beat the shit out of you and if I don't, other officers are gonna take care of you." COMPLAINANT described the Subject Officer as belligerent and angry. COMPLAINANT further alleged that when other officers arrived on the scene, SUBJECT OFFICER tried to go after COMPLAINANT like a "bar brawl." COMPLAINANT told OPC that he felt threatened and intimidated by this behavior, and by what the officer had said, specifically when he threatened to beat up the complainant and take him to jail. COMPLAINANT further alleged that he asked SUBJECT OFFICER several times for his name and badge number, or for some identification to confirm he was a police officer, but the officer ignored him and never provided the information.

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 WITNESS OFFICER #2, WITNESS OFFICER #1, and WITNESS OFFICER #3 on March 6, 2018, the objections submitted by the Subject Officer on February 19, 2019, and OPC's response to the objections dated March 1, 2019, 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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Body Worn Camera Footage recorded by WITNESS OFFICER #2, WITNESS OFFICER #1, AND WITNESS OFFICER #3 on March 6, 2018, the objections submitted by the Subject Officer on February 19, 2019, and OPC's response to the objections dated March 1, 2019, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with MPD, which was forwarded to OPC on March 7, 2018.
2. On March 6, 2018 at approximately 3:55 p.m., Complainant drove east on A STREET IN NW, WASHINGTON, DC, turned left onto A STREET IN NW, WASHINGTON, DC and drove northeast on A STREET IN NW, WASHINGTON, DC.
3. Some distance later, Subject Officer, driving in an unmarked police vehicle, drove northwest on A STREET IN NW, WASHINGTON, DC and turned right onto A

STREET IN NW, WASHINGTON, DC, failing to obey a yield sign before entering STREET IN NW, WASHINGTON, DC.

4. Upon Subject Officer's vehicle entering THE STREET IN NW, WASHINGTON, DC, he encountered the vehicle of Complainant, causing the vehicles to swerve to avoid each other and Subject Officer's vehicle coming into contact with the curb.
5. Subject Officer, who was an off-duty police officer, initiated his emergency equipment signaling for Complainant to pull over.
6. Due to heavy traffic, Complainant turned right at the next available intersection, and then right again onto a quiet side street before pulling over.
7. Subject Officer exited his vehicle and approached Complainant's vehicle. Complainant rolled down his window and Subject Officer, not wearing a badge, yelled at Complainant in a threatening and intimidating manner and asked for his identification.
8. Complainant told Subject Officer he was scaring his daughter and asked for his identification as an officer.
9. Subject Officer returned to his vehicle to call for support and other officers arrived soon thereafter.

IV. DISCUSSION

Complainant alleges that SUBJECT OFFICER used language and conduct toward him that was insulting, demeaning, or humiliating when he yelled and swore at him during a traffic stop that constituted harassment. He also alleged that Subject Officer harassed him by threatening and intimidating him with jail and beating. Finally, he alleged that Subject Officer failed to provide his identifying information.

Complaint Examiner finds that Subject Officers' traffic stop of, threat of jail to, and intimidation of Complainant constituted harassment, his language and conduct toward Complainant was insulting, demeaning or humiliating, and Subject Officer failed provide his identifying information. These allegations are, therefore, sustained.

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: (1) harassment; ... (3) use of language or conduct that is insulting, demeaning, or humiliating; ... 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 and in the regulations governing OPC 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.”

“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.

i. Traffic Stop

Complainant alleged that Subject Officer unlawfully stopped him. He stated to OPC that he turned left onto northeast bound A STREET IN NW, WASHINGTON, DC from A STREET IN NW, WASHINGTON, DC at a green light. He noticed an unmarked sedan not come to a complete stop at a stop sign coming up STREET IN NW, WASHINGTON, DC as it passed STREET IN NW, WASHINGTON, DC and then failed to stop or slow for a yield sign as it turned right onto A STREET IN NW, WASHINGTON DC from A STREET IN NW, WASHINGTON, DC. At the time the sedan entered STREET IN NW, WASHINGTON, DC, Complainant alleged that he was in the curb lane of STREET IN NW, WASHINGTON DC with a vehicle to the left of him. Complainant alleged that as the sedan entered STREET IN NW, WASHINGTON DC from STREET IN NW, WASHINGTON DC., he had to move to the left to avoid the incoming sedan, but couldn't move far due to the vehicle in the left lane so the sedan had to put on its breaks. Complainant then returned fully to the curbside lane. Approximately 100 feet later, the sedan put on its emergency lights. Complainant stated that he did not immediately pull over because of the heavy traffic on STREET IN NW, WASHINGTON, DC, but made two consecutive rights as soon as he was able onto a side street and parked by the curb. Exh. 3 at 0:10. Complainant's statements during his interview with OPC are consistent with the statements he made to officers in the Body Worn Camera footage. WITNESS OFFICER #2's BWC at 2:02, 29:08; WITNESS OFFICER #1 BWC at 1:03, 34:55.

Complainant's allegations are substantiated by his WITNESS, who stated during her interview with OPC that after Complainant turned left from STREET IN NW, WASHINGTON DC onto STREET IN NW, WASHINGTON, DC, there was a yield sign from a road across the way and the oncoming sedan did not yield to the traffic. Exh. 5 at 0:05.

Subject Officer alleges in his interview with OPC that he was in the curb lane of STREET IN NW, WASHINGTON DC. with Complainant's car to the left of him, driving at a high rate of speed in the inside lane with another car in front of Subject Officer. He said that Complainant's car started to come into his lane, seemingly with the intention of passing the car

in front of him, and Subject Officer tried to swerve as far right as he could and ran up into the curb. He stated that he saw a tree in front of him and the other driver could have slammed him into it. Exh. 7 at 10:40. Subject Officer also stated that in addition to the other driver almost killing him, he noticed the young lady in the car with a look of fear on her face and wondered, given the high rate of speed and reckless driving, if the girl was in trouble and possibly if the driver had kidnapped the young lady. Exh. 7 at 7:10, 11:54.

Subject Officer stated that he then activated his emergency lights and Complainant refused to stop, but finally pulled off after 3 blocks. *Id.* At 15:55.

Subject Officer's statements regarding the incident during his interview with OPC are somewhat different than what he states to the other officers in the Body Worn Camera footage. Initially in explaining what happened to WITNESS OFFICER #2 he couldn't remember the street he had come off of onto STREET IN NW, WASHINGTON, DC, but eventually he concluded that it was A DIFFERENT STREET IN NW, WASHINGTON, DC. He said that the driver was turning left at a light and he was turning right, but that the driver went around the car in front of him into the right lane and he had to run into the curb. WITNESS OFFICER #2 BWC at 4:00, 31:25, 46:59 and WITNESS OFFICER #1 BWC at 4:00, 1:18:00. He states on numerous occasions that because the driver was making a left, the people making a right have the right of way as they enter STREET IN NW, WASHINGTON, DC before the people making a left. WITNESS OFFICER #2 BWC at 13:00, 14:40, 31:25, 36:55; WITNESS OFFICER #1 BWC at 4:00, 10:35. In talking with WITNESS OFFICER #3, Subject Officer's story changed slightly to having stopped at "the light or whatever, traffic is going by, the light changes, I go through onto STREET IN NW, WASHINGTON, DC and he's coming from A STREET IN NW, WASHINGTON, DC, making a left from STREET IN NW, WASHINGTON, DC, I'm already here in the right lane, there's a car in front of him, a white truck, I guess it wasn't going fast enough so he comes over, tries to cut me off to go in front of me and in doing so, he drove me right into the curb." WITNESS OFFICER #3 BWC at 8:42.

Subject Officer also states on numerous occasions that the driver "almost killed me." WITNESS OFFICER #2 BWC at 13:50, 26:50, 33:02; WITNESS OFFICER #1 BWC at 5:33. When speaking to WITNESS OFFICER #3, (and later in his interview with OPC) he escalates his statement to "he just tried to kill me" WITNESS OFFICER #1 BWC at 1:18:00; WITNESS OFFICER #3 BWC at 8:42.

As to the stop, Subject Officer states that "That guy's getting ready to run from me. I was getting nervous. Before I could even pick up my radio he pulled over." WITNESS OFFICER #2 BWC at 8:09. "Then he wouldn't stop when I put my lights on." WITNESS OFFICER #2 BWC at 13:50. "He cut me off to try to go in front of me so I went over and hit the curb and I activated my lights . . . he took off even faster, I finally caught up to him here and pulled him." WITNESS OFFICER #1 BWC at 1:18:00.

Looking at the intersection where THE STREET IN NW, WASHINGTON DC meets THE STREET IN NW, WASHINGTON DC, it is consistent with Complainant's testimony that he stopped at a light, and turned left onto A STREET IN NW, WASHINGTON, DC. After the left turn, there is approximately 100 feet or so before INTERSECTION IN NW, WASHINGTON, DC at a 45 degree angle. At that intersection, there is a yield sign for traffic from STREET IN NW, WASHINGTON DC turning right onto STREET IN NW, WASHINGTON, DC. Exh. 19 and Google Satellite Images.

Thus, contrary to Subject Officer's repeated statement, Complainant had the right of way on STREET IN NW, WASHINGTON, DC, while Subject Officer was required to yield as he entered THE STREET IN NW, WASHINGTON, DC. Subject Officer's testimony during the interview with OPC leaves out that he was entering STREET IN NW, WASHINGTON, DC. Instead his interview statements suggest he was already driving on STREET IN NW WASHINGTON, DC at the time Complainant tried to change lanes. But his repeated statements to the officers in the BWC footage indicate that the incident occurred as he was entering STREET IN NW WASHINGTON DC and he had a mistaken understanding that he had the right of way as he turned right onto STREET IN NW, WASHINGTON, DC. This understanding is consistent with Complainant's statements and those of WITNESS that the incident occurred as Subject Officer was entering STREET IN NW, WASHINGTON, DC. from STREET IN NW, WASHINGTON, DC and that Subject Officer failed to yield at the yield sign.

Thus, Subject Officer's testimony during the interview as to how the incident occurred is not credible and it appears that at worst, Subject Officer was the offending party in causing the incident to occur. Or, at best, the incident was a common case of two drivers trying to enter a lane at the same time. In either case, the evidence does not support the Subject Officer's assertion that Complainant committed any violation, providing no reason for Subject Officer to pull Complainant over. This conclusion is supported by the dismissal of the unsafe lane change ticket issued to Complainant by the Department of Motor Vehicles, Adjudication Services for failure to establish the infraction by clear and convincing evidence. Exh. 17.

Making the traffic stop of Complainant more egregious is that Subject Officer was off-duty at the time and, as he was in an unmarked vehicle, he could only make the stop if "the violation is so grave that it pose[d] an immediate threat to the member or others. When taking action in these instances, members shall request the assistance of a marked unit as soon as practicable." MPD General Order 303.01. A.2.(a)(4).

Here, at the time Subject Officer pulled over Complainant, the incident had passed and other than alleging that Complainant took off at a high rate of speed, there is nothing to indicate in his BWC footage statements anything to the level of a "violation so grave that it poses an immediate threat to the member or others." While Subject Officer repeatedly stated that Complainant "almost killed me" and then "tried to kill me," nothing in the Subject Officer's statements suggests anything more than a run of the mill incident of two cars trying to get into the same lane at the same time. This conclusion matches that of WITNESS OFFICER #3 who

stated, "I don't think he was trying to kill you. . . . I'm sure he didn't see you or who knows. . . . I'm sure it was a misunderstanding of some sort." WITNESS OFFICER #1 BWC at 1:18:00; WITNESS OFFICER #3 BWC at 8:42. Moreover, given that it was Subject Officer who failed to yield at the yield sign, if anyone committed a violation, it was Subject Officer and not Complainant.

Subject Officer adds a new component to his reason for pulling over Complainant, however, during his interview with OPC, by stating that he saw a young girl in the car, that she appeared to be in fear, and he thought she may have been kidnapped. Subject Officer never mentioned this concern during his statements to the other officers at the time of the incident in the BWC footage, however, and is not credible. Given that these statements arise only during the interview with OPC and not at the time of the incident, the statements sound more like an after-the-fact attempt to turn his otherwise unlawful traffic stop into one grave enough to justify it.

Thus, the traffic stop by Subject Officer constituted harassment because it, at a minimum, recklessly, and in violation of internal guidelines of the MPD, subjected Complainant to being detained for over an hour, and having to contest a traffic ticket which constitutes mistreatment or other infringement of his personal rights.

ii. Threats and Intimidation

a. Threats of Jail and Beating

Complainant alleged that SUBJECT OFFICER threatened him when Subject Officer yelled, "I'm going to put your ass in jail, you motherfucker. You ran me off the road. Exh. 3 at 4:50 13:40. "I'm gonna beat the shit out of you and if I don't, other officers are gonna take care of you." *Id.* at 13:40.

Although the interaction between Complainant and Subject Officer are not recorded on any body worn camera footage, Complainant made the same allegations in his call to 911, which he made when Subject Officer returned to his car:

- "I've got a police officer harassing me, yelling at me, threatening to put me in jail, . . . and he's threatening me. He's now saying he's going to get a bunch of police officers and beat me up and put me in jail. . . . He was verbally assaulting me and telling me he was going to put me in a jail and was going to have a bunch of other officers come here and take care of me and put me in jail . . ." Exh. 14.

His allegations are also consistent with his statements to the officers at the time of the incident as recorded on the Body Worn Camera footage:

- When WITNESS OFFICER #2 arrived, Complainant asked if he could have Subject Officer leave since he was "verbally assaulting him" and "He threatened to beat me up." And later he stated that "He started yelling at me telling me I'm going to put your ass in jail." WITNESS OFFICER #2 BWC 2:02

- To WITNESS OFFICER #1 he stated that Subject Officer threatened “your ass is going to jail” and that as Subject Officer walked away he stated, “your ass is going to jail. I’m going to get a bunch of other people.” He continued stating that Subject Officer “threatened me. He was so belligerent.” WITNESS OFFICER #2 29:08; WITNESS OFFICER #1 BWC 1:03.

Complainant’s allegations relating to Subject Officer’s aggressive demeanor and threats about Complainant going to jail are supported by Witness, daughter of Complainant, who stated to OPC that the Subject Officer said “I’m gonna get my buddies and put you in jail” Exh. 5 at 2:15. She also repeated multiple times that she was scared when Subject Officer was yelling at her dad. *Id.* at 5:10, 7:22. However, she did not think that Subject Officer threatened to harm her dad. *Id.* at 5:25.

In his interview with OPC, Subject Officer stated that when he approached Complainant he said something like, “Sir, What’re you doing? Is everything okay? ... Is there a reason you’re driving the way you are. I need to see your driver’s license and registration.” He acknowledged having raised his voice, but he indicated it escalated in response to Complainant’s repeated refusals to provide his documents. Exh. 7 at 16:30. Then Complainant said he was scaring him and his daughter and so he went to call for a back-up and supervisor. *Id.* at 16:50. He acknowledged, however, that “I was nervous. I was shaking. I was scared because I had seen my life flash before my eyes when he ran me off the road. At no point did I threaten him. . . . I raised my voice at him because he refused to comply.” *Id.* at 18:00.

In his interview, Subject Officer denied threatening to beat the shit out of Complainant or insinuating in any way that other officers would beat him up or take care of him. *Id.* Although he denied threatening to throw Complainant in jail, when asked if he may have made comments about Complainant going to jail, he couldn’t recall if he did. *Id.* at 19:01.

Subject Officer’s claim of his calm demeanor when he initially stopped Complainant are belied by his statements to the officers at the time of the incident as recorded in the body worn camera footage.

- He stated to WITNESS OFFICER #2 “I yelled at him. I was pissed.” WITNESS OFFICER #2 BWC at 4:00. “He cut me off . . . Ran me into the fucking curb. He cut me off, . . . look at the damage. He ran me into the fucking curb and then he wouldn’t stop when I put my lights on. That’s why I was pissed. The mother fucker almost killed me.” WITNESS OFFICER #2 BWC at 13:50. In response, WITNESS OFFICER #2 tried to calm him down and said, “Take a couple deep breaths and write the NOI.” WITNESS OFFICER #2 BWC at 14:20.
- Later, Subject Officer stated, “I did raise my voice. I didn’t threaten him in any manner.” WITNESS OFFICER #2 BWC at 25:09. And again he acknowledged, “I yelled at him because I was scared. My hands were shaking. He almost killed me. . . . then he said I threatened him. How did I threaten you?” WITNESS OFFICER #2 BWC at 26:50.

- He later stated to WITNESS OFFICER #3, “I was upset; I mean the guy just tried to kill me. So I said, what are you doing? What’s wrong with you? I need to see your driver’s license and registration.” WITNESS OFFICER #3 acknowledged the exaggeration of Subject Officer’s response to the situation when he stated, “I don’t think he was trying to kill you. . . . I’m sure he didn’t see you or who knows.” WITNESS OFFICER #1 BWC at 1:18:00; WITNESS OFFICER #3 BWC at 8:42.

Once WITNESS OFFICER #1 arrived, Subject Officer told him, “I never said I was going to beat him up, I would never say that to anybody. That is a lie.” WITNESS OFFICER #2 BWC at 33:02; WITNESS OFFICER #1 BWC at 5:33.

The evidence supports the conclusion that Subject Officer threatened that Complainant would be put in jail:

- Complainant’s testimony on this point is consistent throughout his interview with OPC, his call to 911, and in his statements to officers as recorded in body worn camera footage;
- Witness corroborated that Subject Officer threatened Complainant with jail;
- Subject Officer was unable to deny that he may have stated to Complainant that he was going to jail.

While Complainant’s testimony as to Subject Officer threatening to beat him up are also consistent, there is no corroborating support and it is less clear that they were explicitly made rather than possibly derived from other statements Subject Officer made that gave Complainant this impression. During his interview with OPC, Complainant stated that the threat he recalled was not verbatim, “but he threatened me physically” and “that was the impression of what he was saying to me.” Exh. 3 at 16:30. Witness didn’t recall any threats made to beat her up her Dad. Exh. 5 at 5:23. And Subject Officer repeatedly denied threatening to beat up Complainant, unlike his lack of denial regarding any statements about Complainant going to jail. Exh. 7 at 18:40, 19:10; WITNESS OFFICER #2 BWC at 33:02; WITNESS OFFICER #1 BWC 5:33. Thus the evidence does not support explicit threats regarding Subject Officer threatening to beat up Complainant, although it is clear that Subject Officer’s behavior and words left Complainant feeling threatened and his daughter scared. Given that the Subject Officer lacked probable cause for an arrest, and should not even have effectuated a traffic stop of Complainant, the mention of jail to Complainant was harassment.

b. Intimidating Behavior after WITNESS OFFICER #2’s Arrival

Complainant also stated in his interview with OPC that Subject Officer attempted to intimidate him and get at him like a “bar brawl” after other officers arrived on the scene. Exh. 3, 2nd recording at 0:30.

The BWC footage after WITNESS OFFICER #2 arrived shows WITNESS OFFICER #2 at Complainant's window and when Complainant states "you verbally assaulted me," Subject Officer, standing behind WITNESS OFFICER #2 responded in an agitated voice, "I assaulted you?" When Complainant stated "you threatened me," Subject Officer responded "I threatened you?" again in an agitated voice. At this point Subject Officer returned to his vehicle. WITNESS OFFICER #2 BWC at 2:02. Subject Officer appeared angry during the interaction, and as soon as he was able to speak directly to WITNESS OFFICER #2 he stated, "I yelled at him. I was pissed." *Id.* at 5:33.

While Subject Officer's conduct toward Complainant after WITNESS OFFICER #2 arrived was clearly agitated, nothing suggested it rose to the level of trying to get at Complainant as in a bar brawl. That said, his standing over WITNESS OFFICER #2 while WITNESS OFFICER #2 tried to determine what had happened and his retorts to Complainant could have been experienced by Complainant as intimidation, especially as Subject Officer acknowledged later in his statements to the other officers that he had yelled at Complainant, that he was pissed, he referred to Complainant as a "motherfucker," and he alleged that Complainant had tried to kill him, suggesting that his behavior when talking to Complainant prior to WITNESS OFFICER #2's arrival was excited and aggressive and contained threatening statements.

c. Conclusion Regarding Threats and Intimidation

Subject Officer harassed Complainant by threatening that Complainant would be put in jail, for which he had no probable cause, and acted in an intimidating manner when Complainant tried to complain to WITNESS OFFICER #2 about his behavior during the traffic stop. His conduct was at a minimum reckless. The officer's threats of jail were baseless and in violation of the law as he lacked probable cause to arrest Complainant and appeared to be in retaliation for an incident that he may have caused. His unlawful behavior subjected Complainant to mistreatment and was an infringement of his personal rights. and in violation of internal guidelines of the MPD to be courteous and calm regardless of provocation, so as to subject Complainant to mistreatment and an infringement of his personal rights.

iii. Conclusion Regarding the Allegation of Harassment

Because Subject Officer conducted an unlawful traffic stop of Complainant and subsequently threatened and intimidated him, at a minimum recklessly in violation of internal guidelines of the MPD and the law, Complainant's allegation of harassment by Subject Officer is sustained.

B. Language or Conduct

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, Nos. 1(a) and 3 state, "All members shall: (1) 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. (3) 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.”

As previously recounted, Complainant alleged that at the time Subject Officer pulled Complainant over and approached his vehicle, he yelled something to the effect of, “I’m going to put your ass in jail, you motherfucker. You ran me off the road. I’m gonna beat the shit out of you and if I don’t, other officers are gonna take care of you.” Complainant described Subject Officer as belligerent and angry.

Complainant’s allegations as to Subject Officer’s yelling, swearing, and acting angrily are corroborated by his daughter, witness, who told OPC that Subject Officer was yelling during the incident, said, “What the hell were you thinking?” to Complainant, and threatened him with jail. She described the officer’s tone as “mad.” Exh. 5 at 3:20 and 5:00.

Subject Officer denied the allegations relating to his language and conduct in his interview with OPC as already outlined above. He claimed that his tone became louder only in response to Complainant’s repeated refusals to provide his identification documents.

Subject Officer’s denials regarding his demeanor and language, however, are belied by statements he made and his demeanor and language used when speaking to other officers immediately following the initial stop and interaction with Complainant as outlined in the section regarding his intimidating and threatening behavior.

Subject Officer’s continued agitation upon the arrival of other officers when he responded to Complainant’s allegations while standing behind WITNESS OFFICER #2, and then in describing events in an exaggerated manner to WITNESS OFFICER #2, WITNESS OFFICER #1, and finally WITNESS OFFICER #3, using “motherfucker,” and “fucking” multiple times and accusing Complainant of trying to kill him further corroborate Complainant’s allegations. At the very least, Subject Officer was not courteous and orderly, did not perform the stop quietly or calmly regardless of provocation, and did not refrain from harsh, violent, coarse, or insolent language. That Complainant had to ask Subject Officer to stop scaring his daughter, which Subject Officer corroborated during his interview with OPC, is further indication of Subject Officer’s aggressive, loud, and harsh language directed toward Complainant during the traffic stop.

Thus, the allegation that Subject Officer engaged in conduct and used language toward Complainant that was insulting, demeaning or humiliating in violation of D.C. Code § 5-1107 and MPD General Order 201.26 is sustained.

C. Failure to Identify

MPD General Order 201.26 requires MPD officers to “give their first and last name and badge numbers in a respectful and polite manner” when requested to do so by a member of the public.

Complaint Examiner agrees with the ROI in its entirety on the question of Failure to Identify and its analysis is reproduced here with minor modifications.

COMPLAINANT explained to OPC that when Subject Officer approached him, he demanded Complainant’s driving information. Complainant said that Subject Officer was wearing a blue shirt and what appeared to be police issued cargo pants, but did not have any other identification. Complainant believed him to be an officer, but wanted to make sure that Subject Officer was not abusing his position or pretending to be an officer. While Subject Officer was yelling at Complainant, Complainant told Subject Officer that he wanted to see some kind of identification.

By the time other officers were on the scene, Subject Officer had put on an MPD traffic vest. Complainant never received identifying information from Subject Officer, however. Complainant claimed he asked Subject Officer for his name and badge number multiple times throughout the incident but was ignored each time.

Subject Officer explained to OPC that he did not recall whether or not Complainant asked for his name and badge number, but did remember Complainant stating, “How do I know you’re a police officer?” Subject Officer explained that he did not know if he provided that information to Complainant. He acknowledged to OPC that he was not wearing his badge when he initiated the traffic stop since he was off-duty, but was wearing a light blue MPD shirt.

Witness explained to OPC that Complainant asked for Subject Officer’s information but the officer did not respond, ignoring the request.

MPD General Order 201.26 states, “Sworn Members and Reserve Corp Members in addition to Part V.D.1 of this order shall: a. Except when impractical, unfeasible, or where their identity is obvious, members shall identify themselves by displaying their badge or identification folder before taking police action.” As stated above, the general order also requires officers to give their name and badge number when requested.

The Complaint Examiner finds that Subject Officer took police action when he stopped Complainant and demanded his driving information. As a result, Subject Officer was required to provide his identifying information. Moreover, the Complaint Examiner finds that given Subject Officer’s lack of wearing a badge and driving an unmarked vehicle, it was not obvious that he was an MPD officer. Further, the Complaint Examiner finds it reasonable that the Complainant questioned whether Subject Officer was indeed an MPD officer and it was a reasonable request for identifying information. Additionally, Subject Officer did not deny the allegation, and acknowledged that he did not remember whether he provided his information upon Complainant’s request. Based on the evidence gathered, which supports Complainant’s account,

the allegation that Subject Officer failed to provide his name and badge number when requested, in violation of D.C. Code § 5-1107 and MPD General Order 201.26 is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

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| Allegation 1: Harassment | Sustained |
| Allegation 2: Language and Conduct Allegation | Sustained |
| Allegation 3: Failure to Identify | Sustained |

Submitted on April 2, 2019.

Jennifer A. Fischer, Esq.
Complaint Examiner