

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	18-0505
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Unnecessary/Excessive Force
<b>Allegation 2:</b>	Language or Conduct
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	September 4, 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 May 18, 2018.<sup>1</sup> Complainant alleged that on January 8, 2019, SUBJECT OFFICER used unnecessary or excessive force against him when he punched Complainant in the eye and pulled him out of his car by his hair. Complainant also alleged that Subject Officer used language or engaged in conduct toward him that was insulting, demeaning or humiliating when he used profanity during the interaction.<sup>2</sup>

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<sup>1</sup> OPC's Executive Director waived the 90 day filing requirement. OPC determined the complaint was filed with the MPD in a timely manner, but was not forwarded to OPC until May 18, 2018.

<sup>2</sup> Complainant also alleged that Subject Officer harassed him when he performed a traffic stop and discriminated against him based on his age, personal appearance, and race, African American, when he escalated the incident to a traffic stop rather than asking Complainant to move his vehicle. Complainant further alleged that Subject Officer used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when he interrupted Complainant while he provided his narrative to another MPD officer. Lastly, Complainant alleged that WITNESS OFFICER #1 harassed him when she falsely arrested him for Simple Assault, Assault on a Police Officer (APO), Resisting Arrest, Failure to Obey, and Carrying a Pistol without a License. Pursuant to D.C. Code § 5-1108(1) on June 24, 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 January 8, 2018, while he was sitting in his car Subject Officer approached him with a parking ticket and asked Complainant for his identification. After Complainant refused to provide his identification and refused to exit the vehicle, Subject Officer punched Complainant in the eye, and pulled him from the car while gripping Complainant's dreadlocks. Complainant also stated that Subject Officer used profanity during the interaction, but he could not recall the specific profane words uttered by Subject Officer.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICER, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #4 on January 8, 2018, the objections submitted by Subject Officer on July 12, 2019, and OPC's response to the objections dated July 23, 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 SUBJECT OFFICER and WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #4 on January 8, 2018, the objections submitted by Subject Officer on July 12, 2019, and OPC's response to the objections dated July 23, 2019, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with MPD on January 9, 2018, which was forwarded to OPC on May 18, 2018.
2. At approximately, 8:00 pm on January 8, 2018, Subject Officer was working as a transport unit operating a wagon when he encountered a vehicle stopped in the traffic lane at A STREET IN SE, WASHINGTON, DC. Subject Officer pulled up behind the vehicle, honked his horn and activated his emergency lights, but the vehicle did not move.
3. Subject Officer presumed the vehicle was empty and began writing a ticket for parking abreast.
4. Subject Officer discovered an occupant when a woman approached the vehicle and spoke to the driver through the window. Subject Officer then approached the driver's side of the vehicle.

5. Subject Officer asked Complainant for his driver's license four times in under twenty seconds, which Complainant refused telling Subject Officer that he could write the ticket to the car.
6. Subject Officer then told Complainant to "step out of the car" and "open the door" in rapid succession. Complainant refused.
7. Subject Officer then put his hand through Complainant's window to unlock the car door. Complainant pushed Subject Officer's arm out of the window.
8. Subject Officer then hit Complainant in the face, opened the door, grabbed Complainant by the hair and pulled his head out of the car and onto the ground while Complainant continued to be restrained by his seat belt.
9. Throughout the incident Subject Officer repeatedly shouted for Complainant to step out of the car, and on one occasion "to step out of the fucking car," to stop resisting, and to "put a fucking hand behind your head" even though Complainant repeatedly responded that he couldn't because he was still wearing his seat belt and because of how Subject Officer was holding his hair.
10. The situation continued for approximately a minute until WITNESS OFFICER #2 arrived, released the seat belt, and put Complainant, who did not resist, in handcuffs. Subject Officer continued to hold Complainant by his hair, however, for at least another thirty seconds.
11. Prior to Complainant being put in the transport vehicle, Subject Officer told a bystander, "Do not fucking touch that."
12. The officers then placed Complainant in the transport vehicle, during which time Subject Officer ordered Complainant to "shut the fuck up."

#### **IV. DISCUSSION**

Complainant alleged that Subject Officer used unnecessary or excessive force when Subject Officer punched Complainant in the eye and pulled him from his vehicle by his hair after Complainant refused to provide his driver's license or step out of his car. He also alleged that Subject Officer used language that was insulting, demeaning, or humiliating when he used profanity during their interaction.

Pursuant to D.C. Official Code § 5-1107(a), and (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: (2) unnecessary or excessive use of force; . . . [and] (3) use of language or conduct that is insulting, demeaning, or humiliating."

### **A. Unnecessary or Excessive Force**

D.C. Mun. Regs. Tit. 6A, § 2199.1 defines Excessive or Unnecessary Use of Force for the purposes of OPC as “Unreasonable 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 and physically 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 or DCHAPD, including adherence to the Use of Force Framework; and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.

MPD’s policy as to determining appropriate use of force requires a similar analysis. MPD General Order 901.07 (effective November 3, 2017), Part II states, “The policy of the Metropolitan Police Department (MPD) is to value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. Therefore, MPD members 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. When using force, members shall continuously reassess the perceived threat in order to select the reasonable use of force response, or one that is proportional to the threat faced by him, her or others.”

The Use of Force framework articulated in MPD General Order 901.07 provides that “To ensure the force response is objectively reasonable and proportionate to the perceived threat, members shall: a. Continuously assess the threat and develop strategies, consider their authority and Department policies, identify options and contingencies, take action and review, and gather information. This approach requires members to: (1) Consider the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, the suspect’s mental capacity, his or her access to weapons, agency policies, and available options (e.g., calling upon members with specialized training for assistance). (2) Modify their level of force in relation to the amount of resistance offered by a suspect. As the subject offers less resistance, the member shall lower the amount or type of force used.” MPD General Order 901.07 IV.E.

This entire incident started with Complainant double-parked on a one way street with two lanes, at 8:20 pm, with traffic only sporadically passing. SUBJECT OFFICER BWC footage, January 8, 2018 [SUBJECT OFFICER BWC] at 0:00-2:15. There is no evidence that any cars were held up by Complainant’s violation. *Id.* The minimal impact of Complainant’s “crime” does not excuse it. Nonetheless, the low level severity of a \$50 parking violation, (D.C. Reg. Title 18, Chapter 24.05 and D.C. Reg. Title 18, Chapter 26.01) which could have been resolved without Subject Officer even talking to Complainant, suggests that the ultimate use of force in

this case – Subject Officer hitting Complainant’s face, dragging him from his car by his hair, and shoving his head to the ground all while Complainant’s body was still attached to the car by the seatbelt – was unnecessary and excessive. *See infra*. Worse, even after Complainant was handcuffed, Subject Officer continued to grasp Complainant by the hair for at least thirty seconds, and possibly longer. *Id.*

The severity of Complainant’s violations increased, however, when he refused Subject Officer’s requests for identification and to step from the vehicle. They increased further when Subject Officer stuck his arm through Complainant’s open window and Complainant pushed it away. Throughout this incident, however, from the first approach to Complainant’s car to when Complainant was in handcuffs, Subject Officer was required to “first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques.” MPD General Order 901.07 Part IV.A. Subject Officer did none of this. It took him a mere 26 seconds to move from asking for Complainant’s identification to reaching inside the car to open the door, SUBJECT OFFICER BWC at 2:24-2:50. Instead of attempting to de-escalate the situation, Subject Officer escalated it by moving rapidly from wanting to issue a parking ticket to wanting to arrest this “arrogant” young man for refusing to give him his identification when ordered to do so. Exh. 8 at 2:55, 4:51 and 11:52.

Had Complainant taken action suggesting that Subject Officer’s safety was at risk (factor 2), this quick acting behavior in lieu of attempting de-escalation techniques might have been understandable. Subject Officer never articulates such a threat, however. Subject Officer explained to OPC that he asked Complainant for his identification to fill in the driver’s information on the ticket, to verify that Complainant had a driver’s license and that Complainant was driving a car that he owned. Exh. 8 at 12:41. When Complainant refused Subject Officer’s request for identification and he asked Complainant to step out of the car, he explained to OPC that it was to arrest him for failure to identify himself, failure to obey the request for identification, and driving without a license. Exh. 8 at 13:21. Immediately upon Complainant’s refusal, Subject Officer stuck his hand through Complainant’s open window to unlock the car door, Exh. 8 at 6:00. At no time when discussing this incident with other officers as visible in the BWC footage or when describing the events in his interview with OPC does Subject Officer articulate any concern for his safety.

The only mention Subject Officer makes in relation to safety is in his interview with OPC when he explains that a gun was found close to an hour later within a backpack in Complainant’s vehicle. Exh. 8 at 10:35. He stated that the fear hit him only then, when the gun was found. *Id.* it confirmed for him that his actions were necessary. *Id.* Except that such a conclusion is in hindsight and a determination of inappropriate or excessive force is made based on what the Subject Officer reasonably believed in the moment of the interaction. *Graham v. Connor*, 490 U.S. 386, 396 (1989). Not once, in any explanation of events either immediately after the event or in his interview with OPC when he describes the event and his reasoning for his actions, does he ever suggest any suspicion that Complainant might have had a gun or indicate actions Complainant took that indicated he might be reaching for a gun.

In explaining his use of force to other officers following the interaction and in his interview with OPC, Subject Officer's reason for using physical force was solely due to Complainant shoving his arm to remove it from the car. His repeated words to other officers in response to the push were, "hell no!", SUBJECT OFFICER BWC at 10:35, 16:40, and 54:58. His exclamation suggests not a fear for his safety, but a threat to his authority. Subject Officer explained to OPC that he was allowed to use force at this point, not because he feared for his safety, but because Complainant became "physically assaultive." Exh. 8 at 14:29, 15:42, and 17:15. At this point, Complainant was physically resisting arrest and so factor three supports Subject Officer using some force. As noted in factor four, Subject Officer then had to make a split-second decision regarding the appropriate level of force due to this resistance.

"A member shall use the force response that is reasonably necessary to bring the situation under control. If de-escalation tactics are not effective, the member may use an increasing level of force to overcome the level of resistance, as long as the force response remains proportionate to the perceived threat. As soon as the incident is under control, the member's use of force response shall diminish proportionally." MPD General Order 901.07 Part IV.F.2.

Subject Officer should only have resorted to use of force after attempting de-escalation tactics. He did not. Thus, his level of force used after the moment Complainant pushed his arm away is difficult to assess as necessary or not excessive.

Nonetheless, assuming *arguendo* that Subject Officer could be concluded to have sufficiently attempted de-escalation tactics, to properly analyze Subject Officer's use of force – the contact with the face and the hair pulling – it requires looking at the Use of Force framework.

Complainant began the interaction classified as a "passive resister," a subject who "displays a low level of noncompliant resistance. The noncompliance is passive, and offers no physical or mechanical energy. The subject does not respond to a member's lawful request or commands and may be argumentative," MPD General Order 901.07, Part IV.E.1.a.(2). The appropriate force response to a "passive resister" is "Contact controls." MPD General Order 901.07 Attachment B and IV.E.1.b.(2) "Contact controls" are defined as "low-level mental and physical tactics to gain control and cooperation," which "can be psychologically manipulative (e.g., strong verbal persuasion) as well as physical (e.g., soft empty hand control, firm grip, and escorting), and can include additional verbal persuasion skills or waiting for backup to show strength in numbers in accordance with department training and standards." *Id.*

Here, Subject Officer attempted little verbal persuasion before jumping straight into putting his arm into Complainant's car to attempt to unlock it. Yes, he had to make a quick decisions about how to proceed, but he suggested no indications of a safety threat from Complainant. He spent less than thirty seconds seeking to obtain Complainant's identification and for him to step out of the vehicle. Such a brief interaction is not an attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication or using any other

de-escalation techniques nor is it evidence of sufficient contact controls before sticking his hand in the window to unlock the door.

Nonetheless, once he did, Complainant's level of resistance rose to that of an "Active Resister" when he pushed Subject Officer's arm out of his car. An "Active Resister" is defined as "the subject is uncooperative and will not comply with the member's requests or commands. The subject exhibits physical and mechanical defiance, including evasive movements to defeat the member's attempt at control, including but not limited to, bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested." MPD General Order 901.07 IV.E.1.a.(3).

The level of contact of Complainant's hand with Subject Officer's arm is not visible in the BWC footage. Complainant denied any physical contact with Subject Officer prior to Subject Officer's use of force, but rather says he kept locking the door after Subject Officer unlocked the button at the top of the door. Exh. 5 at 4:30 and 11:25. Subject Officer alleged in his interview with OPC that it was an upper-cut hit with Complainant's fist to his arm. Exh. 8 at 6:14. Subject Officer, during the interaction and in response to Complainant stating Subject Officer had punched him in the eye, said, "Yeah. After you shoved my hand." SUBJECT OFFICER BWC at 4:55. In the BWC footage, Complainant does not respond to Subject Officer's claim. *Id.* Throughout Subject Officer's later explanations of the incident to other officers on the scene, he mostly described Complainant's contact as a "hit." SUBJECT OFFICER BWC at 7:31, 10:35, 16:40, 18:42, 31:00, 54:58. In one instance, however, he described it as a slap. SUBJECT OFFICER BWC at 18:05.

To unlock the car door, Subject Officer merely had to put his hand through the window rather than his entire arm. Thus, it would not have been possible Complainant to hit his arm with an upper cut thrust. Rather, it is more likely that Complainant may have shoved his hand away as Subject Officer attempted to unlock the door as Subject Officer contended when he exclaimed it in response to Complainant's claim that Subject Officer had hit him. In light of Complainant not disagreeing with Subject Officer's statement, Complaint Examiner concludes that Complainant "shoved" Subject Officer's hand.

Regardless of whether it was a shove or a hit, Complainant's contact with Subject Officer's hand, without any further actions to resist, appears to be the "mechanical defiance" of an "Active Resister" to defeat the member's attempt to open the car door rather than "Assaultive." For Complainant's behavior to qualify as "Assaultive" it would require him to have "aggressively resist[ed] the officer's attempt to arrest" and "demonstrated [a] lack of concern for the member's safety," none of which is evident here. *See* MPD General Order 901.07 IV.E.1.a.(4).

The appropriate level of response to an Active Resister is "Compliance techniques," which include actions [e.g., control holds, joint locks, and oleoresin capsaicin (OC) spray, solo or team takedowns] that may induce pain or cause discomfort to the subject who is actively

resisting until control is achieved, but will not generally cause an injury when used in accordance with Department training and standards.” MPD General Order 901.07 Attachment B and IV.E.1.b.(3).

Subject Officer’s first reaction was to strike Complainant’s face in some fashion. Although Subject Officer’s contact with Complainant’s face is not captured clearly on Subject Officer’s BWC footage, Subject Officer describes it in a conversation on the footage as a “slap.” SUBJECT OFFICER BWC at 31:00. When Complainant accuses Subject Officer of punching him in the eye, Subject Officer does not deny it, but says, “Yeah. After you shoved my arm.” SUBJECT OFFICER BWC at 4:55. In addition, WITNESS in her call to 911 describes it as a “punch.” Exh. 13 at 1:06. Finally, in the PD313, Arrestee’s Injury/Illness Report, associated with the incident, it states that the cause of injury to Complainant’s eye as a “punch on [sic] left side of face.” Exh. 12. Subject Officer certified that the cause of Complainant’s injury was true and correct when he signed the attestation found immediately below the explanation for the injury. *Id.*

In his interview with OPC, Subject Officer called his strike to Complainant’s face a “smudge,” which he describes as pushing Complainant’s face real quick to distract him, so that he could open the door. Exh. 8 at 6:58 and 14:16. Given that the later, more tepid description of the contact comes a year after the event, the description corroborated by multiple sources of evidence is the one that deserves greater credibility and the contact with Complainant’s face is concluded to be a punch.

Subsequently, after Subject Officer managed to open the car door, he dragged Complainant from the vehicle by grabbing and pulling on his hair. Exh. 8 at 7:57 and 17:38.

Neither the punch nor the hair grabbing are listed as examples of appropriate actions for “compliance techniques.” Moreover, they seem excessive in light of Complainant only pushing Subject Officer’s hand away. The list does not purport to be exclusive actions, however. Nonetheless, the description of compliance techniques suggests that any used will be in compliance with Department training and standards. Subject Officer never states that the punch and hair pulling were techniques he used in accordance with his training. Rather, he claims that he slapped Complainant, “to distract him.” Exh. 8 at 7:23. In explanation for the hair pull, Subject Officer claims that it was the most efficient means to get him out of the car. Exh. 8 at 17:50. He later explains that in his over ten years of experience, he learned that if you can control the hair, you can control the subject. Exh. 8 at 22:04. Moreover, appropriate compliance techniques “may induce pain or cause discomfort to the subject who is actively resisting until control is achieved, but will not generally cause an injury when used in accordance with Department training and standards” Yet here, Complainant’s diagnosed injury of a muscle strain or possible cervical sprain or strain that he suffered when “his hair was yanked” also indicates disproportional force under the circumstances. *See* Exh. 15. Neither action, therefore, would seem to be in accordance with the appropriate level of response as “compliance techniques.”



Regardless, even if the punch and the hair grabbing could be construed as appropriate levels of force under the circumstance, pulling Complainant from the car and shoving his head to the ground while still tethered by his seat belt is not appropriate or proportional. When asked about Complainant telling Subject Officer that he could not comply with Subject Officer's orders because his seatbelt was fastened, Subject Officer stated that he had given Complainant ample opportunity to remove his seat belt before he began removing him from the car. Exh. 8 at 19:50. Subject Officer's response suggests he either didn't believe Complainant or that he didn't care about the seat belt. It was mere seconds from the moment Subject Officer asked Complainant to step out of the vehicle to when he started the process of trying to physically remove Complainant, which can hardly be called time enough to remove his seat belt. SUBJECT OFFICER BWC at 2:50-2:57. Moreover, had Subject Officer even looked, he would have seen that Complainant's seat belt was still fastened and should have adjusted his technique of control accordingly. SUBJECT OFFICER BWC at 3:23.

Finally, WITNESS OFFICER #2 said on the BWC footage that he is the one who removed Complainant's seat belt and handcuffed Complainant. WITNESS OFFICER #2 BWC footage, January 8, 2018 [WITNESS OFFICER #2 BWC] at 4:45 and 46:55. He also stated that Complainant did not resist him. *Id.* Yet in the BWC footage, it can be seen that Subject Officer continued to hold Complainant's hair throughout the handcuffing and for at least thirty seconds or longer after Complainant was handcuffed and subdued. SUBJECT OFFICER #1 BWC at 5:24; WITNESS OFFICER #2 BWC at 6:25. Continuing to restrain Complainant by his hair after he was handcuffed and subdued was a violation of the order to lower the amount of force used as the subject offers less resistance. MPD General Order 901.07 IV.E. It was also a violation of the order that states that "Members are prohibited from employing any use of force technique or defensive weapon against a subject in handcuffs unless the subject is engaged in assaultive behavior as described in this order or the subject is attempting to escape police custody or resisting members' efforts to maintain custody of the individual (e.g., the subject will not get out of the transport vehicle)." MPD General Order 901.07 IV.N.

Subject Officer said he concluded that Complainant wanted to fight him once Complainant hit his arm. Exh. 8 at 19:50. Everything about Subject Officer's demeanor starting from when Complainant refused to provide his identification suggests that Subject Officer too was looking for a fight, and he found one. In less than one minute Subject Officer rushed to Complainant's window, asked for his identification four times, told him to step from the vehicle once, and reached into Complainant's window. SUBJECT OFFICER BWC at 2:24 – 3:15. When Complainant shoved his hand out of the window, Subject Officer's immediate response was to hit Complainant's face, open the door and grab Complainant's hair to pull him from the vehicle all while shouting – "step out of the car" and once, "step out of the fucking car." *See supra*; SUBJECT OFFICER BWC at 3:15-5:24.

Subject Officer's response of "Hell no!" to Complainant shoving his arm as expressed to other officers in the BWC footage is not the response of a professional Officer who is continually evaluating the circumstances and the appropriate response. That is the response of someone who

is pissed off that his authority has been challenged and is ready to take the person down. While that frustration may be understandable in light of the fact that Subject Officer had the legal right to ask for Complainant's identification and to step out of the car, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the response is not required from a police officer and was excessive. In the current state of heightened distrust of police officers, Subject Officer's behavior served to justify that distrust rather than working to improve it.

Thus, when the combination of factors of the definition of Unnecessary and Excessive Use of Force as defined by D.C. Mun. Regs. Tit. 6A, § 2199.1 and MPD General Order 901.07 (effective November 3, 2017) outlining members use of force are considered, Subject Officer's punching, and grabbing of Complainant's hair to pull him out of the car were unnecessary and excessive.<sup>3</sup> The allegation of Unnecessary and Excessive force is, thus, 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."

Complaint Examiner agrees with OPC's analysis of the Language or Conduct claim and thus, reproduces it here.

Although Complainant could not recall the specific words uttered by SUBJECT OFFICER, he alleged that Subject Officer used profanity during the interaction. When OPC asked SUBJECT OFFICER whether he used profanity during the interaction, he stated that he could not recall, but conceded that it was possible that he used profanity because Complainant was verbally abusive.

BWC footage of the incident corroborated Complainant's account with respect to the Subject Officer's use of profanity. The footage captured several moments when Subject Officer used profanity toward Complainant or a bystander:

- Subject Officer shouted at Complainant to, "Step out of the fucking car." SUBJECT OFFICER BWC at 3:15.
- Subject Officer shouted at Complainant to, "Put a fucking hand behind your head." SUBJECT OFFICER BWC at 3:55

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<sup>3</sup> Complaint Examiner also notes Subject Officer's failure to prepare a use of force incident report as required by General Order 901.07, Part III.13.A. Although it is a violation of Subject Officer's duties, it does not relate to the question of whether his use of force was unnecessary or excessive and is thus not included in the discussion of the violation.

- Subject Officer told a bystander, “Do not fucking touch that.” SUBJECT OFFICER BWC at 5:27
- Subject Officer ordered Complainant to, “Shut the fuck up,” as he placed him in the transport van. SUBJECT OFFICER BWC at 6:50

The general order clearly states that officers shall refrain from using profane language. Based on Complainant’s account and the events depicted in the BWC footage, it is indisputable that Subject Officer directed profanity toward Complainant and a bystander when he used the words “fuck” and “fucking” no less than four times. The language and conduct displayed by Subject Officer was crass, profane, completely unnecessary, and a clear violation of the general order. Consequently, OPC concludes that Subject Officer used language and engaged in conduct toward Complainant that was insulting, demeaning, or humiliating, and in violation of D.C. Code § 5-1107 and MPD General Order 201.26. Complainant’s allegation for violation of language and conduct that is insulting, demeaning or humiliating is, therefore, sustained.

## **V. SUMMARY OF MERITS DETERMINATION**

### **SUBJECT OFFICER**

<b>Allegation 1: Unnecessary/Excessive Force</b>	Sustained
<b>Allegation 2: Language and Conduct</b>	Sustained

Submitted on September 4, 2019.

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Jennifer A. Fischer, Esq.  
Complaint Examiner