

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0551
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment-mishandling property
Allegation 2:	Harassment- property damage
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	June 14 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, was arrested for reckless driving on May 9, 2018. His motorcycle and helmet were impounded as evidence. The subject officer personally rode the motorcycle to AN MPD DISTRICT STATION HOUSE . When he parked the motorcycle in the impoundment lot, SUBJECT OFFICER disconnected the spark plug wires with the specific intent to disable it so it could not be removed from the impoundment lot.. On June 12, 2018, after the charges were dismissed, COMPLAINANT went to the MPD DISTRICT STATION HOUSE to retrieve his motorcycle. Because the spark plug wires were disconnected, (unknown to him), COMPLAINANT was unable to start it. He walked the motorcycle to his home and arranged for its repair. COMPLAINANT alleges that SUBJECT OFFICER's harassed him by removing the sparkplug wires.¹

¹ Additionally, COMPLAINANT alleged that WITNESS OFFICER #1 harassed him by unlawfully arresting him for reckless driving. Furthermore, COMPLAINANT alleged that WITNESS OFFICER #1 and WITNESS OFFICER #2 harassed him by damaging the mirror on his motorcycle. Finally, COMPLAINANT alleged that WITNESS OFFICER #1 and WITNESS OFFICER #2 used unnecessary or excessive force against him when they grabbed his forearms and pulled him in order to detain him. Pursuant to D.C. Code § 5-1108(e), on April 10, 2019, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. Based on a review of the body worn camera (BWC) footage, OPC's Report of Investigation (ROI), the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union, and OPC's response to the objections, 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, § 2118.3.

III. FINDINGS OF FACT

Based on a review of the BWC footage, OPC's ROI, the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 9:00 pm on May 9, 2018, COMPLAINANT was arrested at the GAS STATION IN NE, WASHINGTON, DC, for reckless driving his DUAL SPORT MOTORCYCLE.
2. At the time of his arrest, the motorcycle was parked.
3. COMPLAINANT and several other individuals were observed riding their motorcycles or dirt bikes in a reckless manner by a police helicopter.
4. COMPLAINANT was the only individual arrested.
5. COMPLAINANT' motorcycle did not have any visible license plates.
6. The license plates had been removed and found in COMPLAINANT's bag.
7. The police determined that the motorcycle was properly licensed in the State of Maryland.
8. SUBJECT OFFICER arrived at the GAS STATION IN NE, WASHINGTON, DC, after COMPLAINANT' arrest.
9. The BWC shows several motorists on motorcyclists, dirt bikes, and ATVs performing wheelies and generally acting in a menacing manner on the streets near the gas station.
10. A decision was made to impound the motorcycle and COMPLAINANT' helmet as evidence.

11. SUBJECT OFFICER is heard on the BWC asking that a tow truck be requested to transport the motorcycle. BWC at 0:3:22. It is unclear to whom this request was made.
12. According to the ROI, there is no record that a tow truck request was made by SUBJECT OFFICER or any other MPD officer on the scene to the Unified Communication Center which then would forward the request to the Towing Control Center.
13. An MPD wagon was on the scene, but the motorcycle was too large for it.
14. About 30 minutes after his arrival, SUBJECT OFFICER decided to move the motorcycle himself. (“We are not going to wait any longer,”) and returned to the MPD DISTRICT STATION HOUSE to retrieve his motorcycle helmet. BWC 0:26:28.
15. SUBJECT OFFICER felt, in part, that removing the motorcycle from the gas station might diffuse the situation with the other motorists in the area.
16. SUBJECT OFFICER was qualified to drive the motorcycle.
17. SUBJECT OFFICER understood that his authority to transport the motorcycle himself was questionable when he said, “If anyone is going to get in trouble, it might as well be me.” BWC 0:29
18. SUBJECT OFFICER personally road the motorcycle to the MPD DISTRICT STATION HOUSE, which was about REDACTED NUMBER blocks away from the gas station.
19. SUBJECT OFFICER was harassed and felt threatened by motorists on dirt bikes, motorcycles or ATVs during the short ride from the gas station to the MPD DISTRICT STATION HOUSE.
20. SUBJECT OFFICER parked COMPLAINANT’s motorcycle in the MPD DISTRICT STATION HOUSE impoundment lot, which was secured by a chain link fence.
21. SUBJECT OFFICER proceeded to disconnect one end of the spark plug wires on the motorcycle “because people have tried to steal shit.” BWC at 1:12:47
22. SUBJECT OFFICER did not intend to cause permanent damage to the motorcycle but felt that it was prudent to disconnect the spark plug wires in order to prevent its theft. BWC at 1:09.
23. SUBJECT OFFICER told OPC that he tucked the spark plug wires underneath the motorcycle so they were out of sight.
24. During the month that charges were pending against him, COMPLAINANT went to the MPD DISTRICT STATION HOUSE on several occasions to check on his motorcycle.

On each occasion he was told that this motorcycle and helmet were being held as evidence.

25. On June 12, 2018, the reckless driving charges against COMPLAINANT were dismissed.
26. On June 12, 2018, COMPLAINANT returned to the MPD DISTRICT STATION HOUSE to retrieve his motorcycle. When the motorcycle was released to him, he was unable to start it.
27. COMPLAINANT later determined that the sparkplug wires had been disconnected.
28. COMPLAINANT was unable to locate the disconnected sparkplug wires.
29. COMPLAINANT reported the missing sparkplug wires to the authorities at the MPD DISTRICT STATION HOUSE.
30. COMPLAINANT walked the motorcycle to his home and later had it towed to a repair shop.
31. COMPLAINANT was unable to ride his motorcycle to work and use it for other purposes until it was repaired. As a result, he was inconvenienced.

IV. 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.”

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 (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) 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.

OPC concluded that SUBJECT OFFICER harassed COMPLAINANT in the following three ways (ROI at p.7):

1. By seizing the motorcycle as evidence. (OPC concluded that seizing the motorcycle did not “serve an evidentiary purpose.” OPC argues that a photograph would have sufficed. As a result, COMPLAINANT was denied the use of his motorcycle for one month, which obviously inconvenienced him.
2. By personally driving the motorcycle to the MPD DISTRICT STATION HOUSE impoundment lot and not calling for a tow truck in violation of MPD General Orders.
3. By removing the sparkplug wires, thereby disabling the motorcycle.

OPC’s findings are addressed seriatim.

1. Improper to seize the motorcycle as evidence.

The subject officer argues in his objections to the ROI that the Watch Commander approved seizing the motorcycle as evidence. In essence claiming that the Watch Commander was the final decision maker. As to the use of photograph as a substitute for the motorcycle, the officer’s objections argue “that decision is made by the detectives who are assigned to the case, along with the United States Attorney’s Office...” see officer objections at 6. The ROI did not cite or rely on any regulation or policy to support its findings. The officer objections argue also that SUBJECT OFFICER did not make the final decision to seize the motorcycle as evidence, as approval was given by the Watch Commander, see officer objections at 6. The officer objections further argue that it was not within SUBJECT OFFICER’s discretion to determine if a photograph would have been sufficient, as that decision rests with detectives.

In its May 24, 2019 memorandum to the Complaint Examiner, which responded to the officer objections, OPC does not further address the validity of the officer’s arguments that COMPLAINANT’s motorcycle and helmet were properly taken as evidence beyond the arguments in the ROI. The Complaint Examiner finds that SUBJECT OFFICER did not harass COMPLAINANT when the motorcycle was seized as evidence.

2. Personally driving the motorcycle.

The officer objections argue that there is not a general order or policy that prohibited SUBJECT OFFICER from personally driving the vehicle to the MPD DISTRICT STATION HOUSE impoundment lot. The ROI argues that SUBJECT OFFICER created a dangerous situation by driving the motorcycle and not requesting a tow truck in violation of General Order 303.03, Part IV, Section B which states that “members shall request towing” for two categories, which includes police impoundment (emphasis added) . Clearly, SUBJECT OFFICER understood that he likely was not authorized to drive the motorcycle when he said: “If anyone is going to get in trouble, it might as well be me” See BWC 0:29. The question remains, however, whether SUBJECT OFFICER’s action constitute harassment within the meaning of MPD General Order 120.25, Part III, No. 8. The act that deprived COMPLAINANT of use of his property was the decision to seize the motorcycle as evidence. If that act did not constitute harassment then it is hard to see how the manner in which the motorcycle was transported to the MPD DISTRICT STATION HOUSE was an act of harassment to COMPLAINANT. SUBJECT OFFICER’s actions arguably violated MPD protocol, but it does not necessarily follow that his actions constituted an act of harassment of COMPLAINANT. The MPD may wish to discipline SUBJECT OFFICER if he acted improperly. The Complaint Examiner finds that SUBJECT OFFICER did not harass COMPLAINANT by riding his motorcycle to the MPD DISTRICT STATION HOUSE impoundment lot.

3. Disabling the motorcycle.

SUBJECT OFFICER intentionally disconnected at least one end of the spark plug wires to make it inoperable. The Complaint Examiner accepts his contention that he did not intend to damage the motorcycle. According to the BWC footage, SUBJECT OFFICER states that he hid the wires underneath the motorcycle so that they would not be visible. He said that his actions seemed prudent “because people have tried to steal shit [from the MPD DISTRICT STATION HOUSE impoundment lot]” See BWC at 1:12:47. However, the OPC investigation found no evidence of theft from the impoundment lot and there was no apparent reason that COMPLAINANT would try to “liberate” his motorcycle surreptitiously. Moreover, the BWC footage of the impoundment lot showed dozens of what appeared to be motorcycles and other vehicles. It is not possible to tell from the BWC whether any of them had been disabled to prevent theft. There is no mention in the ROI or the officer objections that it is a routine practice and permitted by MPD General Orders to disable motor vehicles seized as evidence to prevent theft.

COMPLAINANT’s motives may be altruistic, but his motive has no bearing on whether his actions were authorized. In a similar vein, the officer objections argues that the “lack of security for the [MPD DISTRICT STATION HOUSE impoundment lot] is a running joke for 5D personnel” see officer objections at 8. The amorphous possibility of theft from the impoundment lot does not justify SUBJECT OFFICER’s

actions. Simply, the security of the evidence (once it is properly transferred to the MPD property custodian) was not SUBJECT OFFICER's problem or concern.

Finally, the officer objections argue that the estimated repair bill (Exhibit 21) in the amount of \$1,500 makes no mention of spark plug wires. See officer objections at 9. This argument misses the point. The cost or amount of damage is not relevant. What is relevant is SUBJECT OFFICER's decision to tamper with the sparkplug wires on a motorcycle that was the personal property of COMPLAINANT. Here, SUBJECT OFFICER purposefully, without authority, and knowingly rendered COMPLAINANT's personal property inoperable. COMPLAINANT was obviously inconvenienced when he had to walk his motorcycle to his home and then have it towed to a repair shop. Thus, SUBJECT OFFICER's actions fall squarely within the definition of harassment as defined in MPD General Order 120.25, Part III, No. 8.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment-mishandling property	Exonerated
Allegation 2: Harassment-property damage	Sustained

Submitted on June 14, 2019

Richard S. Ugelow
Complaint Examiner