

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0580
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Language or Conduct
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	March 12, 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 on June 28, 2018. COMPLAINANT alleges that on June 27, 2018, SUBJECT OFFICER harassed her when he conducted an illegal traffic stop and used language or engaged in conduct toward her that was insulting, demeaning or humiliating when he berated her and made other inappropriate statements to her.

Specifically, COMPLAINANT stated that on June 27, 2018 at approximately 12:25 pm while travelling southbound on A STREET IN NW, WASHINGTON, DC, to AN ESTABLISHMENT IN NW, WASHINGTON DC she waited in the left lane to make a left turn into the ESTABLISHMENT's driveway. The northbound traffic was heavy and it was raining thus COMPLAINANT waited approximately ninety seconds for the traffic to yield for her to be able to make the left-hand turn. As she waited to make the turn, SUBJECT OFFICER pulled his Metropolitan Police Department (MPD) vehicle behind her, flashing his lights and sirens. He then directed COMPLAINANT by speaking over the megaphone to move forward and make a U-turn. COMPLAINANT turned left into the alley adjacent to the ESTABLISHMENT's driveway; the officer then effected a traffic stop. COMPLAINANT stated that SUBJECT OFFICER positioned his car perpendicular to hers so that she was blocked from opening her doors. She stated that the officer shouted at her, "Are you stupid or just hard of hearing?" and

that he angrily asked her, “Did you see me? Did you hear me?” COMPLAINANT asserts that SUBJECT OFFICER told her, “If I tell you to move, move the car...just go further up the street and make a U-turn.” As COMPLAINANT tried to explain her conduct to the officer, he interjected stating, “I don’t care what the hell you do, you move when I ask you to move.” SUBJECT OFFICER issued COMPLAINANT a ticket for obstructing traffic and then told her, “You don’t know how to follow directions.” COMPLAINANT asserts that the left turn she sought to make is a legal turn.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC’s Report of Investigation, the objections submitted by the officers on January 10, 2018, and OPC’s response to those objections, 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.

I. III. FINDINGS OF FACT

Based on a review of OPC’s Report of Investigation and the photos and illustrations of the scene, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 27, 2018, at approximately 12:25 p.m., COMPLAINANT was travelling southbound on A STREET IN NW, WASHINGTON, DC. She had stopped to turn left into the driveway of the AN ESTABLISHMENT IN NW, WASHINGTON, DC. It was raining and a few cars had backed up behind COMPLAINANT’s car. COMPLAINANT awaited a break in the northbound traffic to make her turn.
2. There are no street signs prohibiting this turn.
3. After waiting approximately 90 seconds to make the turn, SUBJECT OFFICER approached in his Take-Home Metropolitan Police Department vehicle.
4. SUBJECT OFFICER was on-duty going to court but he was not on his tour of duty.
5. SUBJECT OFFICER observed that cars were honking at COMPLAINANT and some vehicles were merging right to get around COMPLAINANT.
6. SUBJECT OFFICER used the vehicle megaphone to direct COMPLAINANT to move forward.
7. COMPLAINANT did not immediately follow SUBJECT OFFICER’s commands.

8. COMPLAINANT did turn left across the northbound lanes into the alley adjacent to the driveway of the ESTABLISHMENT IN NW, WASHINGTON, DC. She did not pull her vehicle into the alley entirely.
9. SUBJECT OFFICER then pulled his vehicle across THE STREET IN NW, WASHINGTON, DC, behind COMPLAINANT's car and effected the stop using his lights and sirens. His police vehicle blocked the northbound traffic on A STREET IN NW, WASHINGTON, DC.
10. The valet staff at the ESTABLISHMENT IN NW, WASHINGTON, DC, specifically WITNESS, observed SUBJECT OFFICER stop COMPLAINANT. WITNESS did not approach SUBJECT OFFICER and COMPLAINANT but observed their interaction from approximately 50 feet away.
11. The stop lasted approximately ten minutes. SUBJECT OFFICER was not wearing a body-worn camera. During this time, SUBJECT OFFICER's vehicle blocked northbound traffic.
12. COMPLAINANT took photos of SUBJECT OFFICER's vehicle from her car. COMPLAINANT was impeded from opening her car door by SUBJECT OFFICER's vehicle.
13. SUBJECT OFFICER issued COMPLAINANT a Notice of Infraction for Obstructing Traffic at 12:29 p.m. for stopping traffic to attempt to make the left turn into the ESTABLISHMENT IN NW, WASHINGTON, DC's driveway.
14. COMPLAINANT was late for an event at the ESTABLISHMENT IN NW, WASHINGTON, DC as a result of SUBJECT OFFICER's stopping her.

II. 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 “harassment and the use of language or conduct that is insulting, demeaning or humiliating.”

A. HARASSMENT

MPD General Order 120.25 (effective Oct. 27, 2017), Part III, Section 8 defines harassment as “ words, conduct, gestures, or other actions directed at the 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 (6A DCMR 2199). OPC's Administrative Rules further instruct: “[i]n 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 (December 15, 2017).

SUBJECT OFFICER did not have a lawful purpose to make the traffic stop in question. COMPLAINANT was not in violation of 18 DCMR §2405.1 as she was stopped in traffic attempting to make a legal left turn. There were no street signs prohibiting this turn. SUBJECT OFFICER did not contend that the turn was illegal – even saying that if “no one was honking...if everyone was sitting behind her” the turn wouldn’t have been problematic. The applicable regulation, 18 DCMR §2405.1, provides an exhaustive list of places where stopping, standing, or parking are prohibited; a traffic lane is not included in this list.¹ COMPLAINANT was in compliance with the law as she waited to safely make a left turn. *See* 18 DCMR §2204.2: “No person shall turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.” Such a turn generally is a common occurrence as is the turn at issue here from the southbound lanes of THE STREET IN NW, WASHINGTON, DC into the driveway of the ESTABLISHMENT IN NW, WASHINGTON, DC. Thus the traffic stop lacked legal justification.

SUBJECT OFFICER’s assertion that there were exigent circumstances to make a stop while he was on court duty and not on his tour of duty are belied by the fact that throughout the traffic stop he allowed his police vehicle to block the flow of traffic on A STREET IN NW, WASHINGTON, DC, for at least several minutes. SUBJECT OFFICER asserted that exigent circumstances allow for the enforcement of traffic offenses while off-duty if there is a safety concern.² His stated concern that COMPLAINANT blocked the flow of traffic by waiting to make a routine, legal turn thereby forcing the cars behind her to merge right is similar to the hazard that his own vehicle created during the stop. SUBJECT OFFICER’s vehicle jutting out into A STREET IN NW, WASHINGTON, DC, as observed in the first photo in Exhibit 11 in the Report of Investigation (ROI), likely created an even greater safety hazard and obstruction of the

¹ Principles of statutory construction emphasize that a non-exhaustive list of terms typically begins with the term including. “[W]hen a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.” *Boudette v. Barnette*, 923 F.2d 754, 756-57 (9th Cir.1991). Thus, 18 DCMR §2405.1 should be read to exclude standing in a traffic lane awaiting a legal turn as a prohibited act.

² In his interview, SUBJECT OFFICER did not recall what shift he was on at the time he stopped COMPLAINANT. He indicated that he was in his take-home vehicle and he thought he was going to court, was wearing his police jacket and court clothing, and did not have on a body-worn camera. Exhibit nine in the Report of Investigation (ROI) is SUBJECT OFFICER’s Time Attendance and Court Information System (TACIS) report for the week including this incident. On Wednesday, June 27, 2018, the TACIS report indicates that SUBJECT OFFICER was working court overtime at the time of this incident. SUBJECT OFFICER stated that he believed he must have been going to court from the police district if he was travelling southbound on A STREET IN NW, WASHINGTON, DC at that hour. However, the TACIS report indicates that he worked from 10 a.m. until 1:07 p.m. and if he were on his way to court at 12:25 p.m., he would have had less than thirty minutes at court before clocking out. The ROI does not clarify this inconsistency. This inconsistency however is not dispositive to this matter.

flow of traffic of at least one lane of traffic – possibly forcing northbound traffic to enter into the southbound lanes to get around his vehicle.

In conclusion, SUBJECT OFFICER harassed COMPLAINANT when he stopped her and issued her a citation for obstructing traffic that was without basis in law. Further, the officer's assertion of exigent circumstances does not hold weight. SUBJECT OFFICER's actions constitute harassment.

A. LANGUAGE OR CONDUCT

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, Nos. 1 and 3 state, "All members shall: (1) Be courteous and orderly in their dealings with the public...(3) Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language."

COMPLAINANT alleged that SUBJECT OFFICER's conduct toward her during the traffic stop was offensive and humiliating. COMPLAINANT asserted that SUBJECT OFFICER said to her "Are you stupid or just hard of hearing?" and that he angrily asked her, "Did you see me? Did you hear me?" COMPLAINANT asserted that SUBJECT OFFICER told her, "If I tell you to move, move the car...just go further up the street and make a U-turn." As COMPLAINANT tried to explain her conduct to the officer, he interjected stating, "I don't care what the hell you do, you move when I ask you to move." She asserts that he further said, "You don't know how to follow directions."

SUBJECT OFFICER explained that he did use his megaphone and directed COMPLAINANT to move forward and make a U-turn. SUBJECT OFFICER denied making the other statements. The ROI concluded that SUBJECT OFFICER became annoyed when COMPLAINANT did not follow his directions and that it was more likely than not that SUBJECT OFFICER did use language or engage in conduct toward COMPLAINANT that was insulting, demeaning, or humiliating. The ROI reached this conclusion because 1) it found COMPLAINANT's account to be "consistent, specific and credible, as well as supported in part by WITNESS, who could not hear what was said but confirmed that she was upset by and complained immediately after the traffic stop" and 2) it concluded that he "was in full uniform and on duty and should have recorded the incident with his BWC". These points will be addressed in turn.

SUBJECT OFFICER indicated that he makes approximately 4,000 traffic stops a year. That he does not remember the details of a particular stop or his tour of duty for this particular stop does not detract from his credibility. Further, SUBJECT OFFICER was interviewed by OPC on August 28, 2018 nearly two months after the incident. COMPLAINANT was interviewed approximately two weeks after this incident that was abnormal for her, caused a "scene", and upset her. It is probable that COMPLAINANT would have a more specific account than SUBJECT OFFICER but this does not necessarily make her statement more accurate or credible.

In fact, COMPLAINANT asserted that SUBJECT OFFICER said to an EMPLOYEE AT THE ESTABLISHMENT IN NW, WASHINGTON, DC who approached her and the officer during the stop “this is a police pullover...don’t...Go over there, mind your business.” There is nothing to corroborate this assertion. SUBJECT OFFICER did not believe there were witnesses to the stop that he had contact with and there was no confirmation that he said this to anyone.

The EMPLOYEE AT THE ESTABLISHMENT IN NW, WASHINGTON, DC at the ESTABLISHMENT IN NW, WASHINGTON, DC at the time of the incident, WITNESS, indicated that he observed the traffic stop from about fifty feet away however he did not hear what was said. WITNESS stated that he did not recall hearing any specific language or gestures used by either party during the traffic stop. He did talk with COMPLAINANT after the incident when she came to the ESTABLISHMENT visibly upset and indicated that she would file a complaint. There are several reasons why COMPLAINANT could have been upset after this traffic stop.

SUBJECT OFFICER confirmed he did tell COMPLAINANT to move her car forward and make a U-turn but denied any using harsh or offensive language. He also acknowledged that using the megaphone can heighten the intensity of a police stop. He indicated that he was direct and professional, although perhaps louder than COMPLAINANT, which was consistent with his demeanor during the OPC interview. Having perceived that COMPLAINANT was not doing what he asked her to do, it would also have been reasonable for SUBJECT OFFICER to ask COMPLAINANT “did you hear me?” as she asserted he did.

The ROI’s conclusion that SUBJECT OFFICER should have been wearing his body-worn camera is misplaced. In contrast to the ROI, SUBJECT OFFICER stated that he was in his court attire – not his full uniform - and wore his bright yellow, reflective police jacket when he got out of his car in the rain.³ His TACIS report confirms that he was working court overtime and was not working his tour of duty and likely would not have been in full uniform. Therefore, he was not required to wear his body-worn camera.⁴ General Order 302-13 Body-Worn Camera Program, Section IV (K).

³ COMPLAINANT stated that SUBJECT OFFICER’s jacket indicated that his last name was DIFFERENT FROM SUBJECT OFFICER’S LAST NAME. This issue is not explored significantly in the ROI but further fact investigation around this issue could have buttressed the credibility of her account. Alternatively, further exploration could have given fuller context to the circumstances and possible mis-remembering of the events due to the surrounding stress.

⁴ The policy of the Body-Worn Camera Program states that officers “use BWCs to further the mission of the Department, promote public trust, and enhance service to the community by accurately documenting events, actions, conditions, and statements made during citizen encounters [and] traffic stops.” General Order 302-13 Body-Worn Camera Program. Use of BWCs has proven effective to reduce complaints against officers. *Id.* Background section. It appears SUBJECT OFFICER was not required to wear a BWC when he encountered COMPLAINANT. However, best practice suggests that he should have been wearing it to promote public trust and avoid a complaint like this one. Further, MPD should explore requiring officers, such as SUBJECT OFFICER, in the Take-Home Vehicle Program to wear BWCs. The purpose of the program is to increase police presence in the community with the expectation that officers engage with the people and serve as a deterrent to criminal activity. It is therefore logical

Absent corroborating evidence there are insufficient facts to conclude that it is more likely than not that SUBJECT OFFICER said the things COMPLAINANT asserted he did. COMPLAINANT was distraught. She had been stopped by a police officer in a public space in front of an establishment that she frequents. According to COMPLAINANT, there was a “scene” and she was late to a luncheon where she was to introduce the keynote speaker. She had good reason to be upset however the allegation that SUBJECT OFFICER used language or conducted himself in an unprofessional manner cannot be sustained.

V. SUMMARY OF THE MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Insufficient Facts

Submitted on March 12, 2019

Rebecca Goldfrank
Complaint Examiner

that officers should be required to wear BWCs consistent with the mission of the BWC policy while operating these vehicles whether on their tour of duty or not.