

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 18-0651 |
| Complainant: | COMPLAINAN |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER |
| Allegation 1: | Unnecessary/Excessive Force |
| Allegation 2: | Harassment |
| Allegation 3: | Language or Conduct |
| Complaint Examiner: | Jennifer A. Fischer, Esq. |
| Merits Determination Date: | February 12, 2020 |

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, COMPLAINANT (“Complainant”), filed a complaint with the Office of Police Complaints (OPC) on July 30, 2018. COMPLAINANT alleged that on July 29, 2018, Metropolitan Police Department (MPD) SUBJECT OFFICER, harassed her when he threatened to arrest her, and used unnecessary or excessive force against her by “grab[bing]” her arm and “pull[ing]” her into the street. Complainant further alleged that Subject Officer used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when he yelled at her for no reason and laughed at her as he walked away.

Specifically, Complainant stated that on July 29, 2019, at approximately 2:00 a.m., she and several friends were headed home to Northern Virginia after leaving A NIGHTCLUB IN NW, WASHINGTON, DC. Complainant and her friends called several RIDESHARE VEHICLES since there were multiple people who needed a ride home. Initially, the group stood near THE NIGHTCLUB, but as soon as the RIDESHARES began to arrive the group moved closer to the street so they could look out for their assigned RIDESHARES. When the first RIDESHARE arrived, Complainant made sure the right passengers were inside the car. Complainant and one of her friends, WITNESS #1, stood beside a parked car and waited for the second RIDESHARE to arrive. Complainant stated that in her peripheral vision she saw

WITNESS #1 “flying forward,” and then felt someone grab her arm and pull her toward the street and into a traffic lane. She then realized that it was a police officer who was pulling her. The same officer, who she later identified as SUBJECT OFFICER, yelled at the women and threatened to arrest them if they did not get away from the car. Subject Officer then laughed at Complainant as he walked away. Before leaving the area, Complainant took a picture of the car’s license plate and asked the officer for his name, to which he answered, “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 objections submitted by Subject Officer on December 24, 2019, and OPC’s response to the objections dated January 10, 2020, 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 objections submitted by Subject Officer on December 24, 2019, and OPC’s response to the objections dated January 10, 2020, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on July 30, 2018.
2. On July 29, 2018, at approximately 2:00 a.m., Complainant and several friends left A NIGHTBLUB IN NW, WASHINGTON, DC, to return home in Virginia. They called several RIDESHARES. As the RIDESHARES arrived, Complainant made sure her various friends were in the correct cars. As she waited, her and a friend stood close to, and possibly leaning on, Subject Officer’s personal vehicle, parked in front of the club.
3. After a short time, Complainant felt someone grab her arm and pull her away from the car, then saw that it was Subject Officer.
4. Subject Officer yelled at Complainant and a friend and threatened to arrest them if they didn’t get away from the car.
5. Complainant apologized, but said that he could have simply asked them to move and they would have.
6. Subject Officer responded dismissively.
7. As he walked away, Complainant asked for Subject Officer’s name, which he said was “SUBJECT OFFICER.
8. Complainant also took a picture of the license plate on Subject Officer’s vehicle.

9. Complainant felt stunned and violated by Subject Officer's treatment of her and cried on the way home. She complained because she doesn't want him to treat anyone else this way.

IV. DISCUSSION

Complainant raises three allegations against Subject Officer in her Complaint: 1) Subject Officer used unnecessary or excessive force when he grabbed her arm and pulled her away from his vehicle; 2) he harassed her when he threatened to arrest her if she didn't get away from his car and 3) his language and conduct throughout the incident and when he scoffed at her for her objection to how he treated her was insulting, demeaning, or humiliating.

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: (1) Harassment; (2) Use of unnecessary or excessive force; (3) Use of language or conduct that is insulting, demeaning, or humiliating;"

As discussed below, all three allegations raised by Complainant against Subject Officer are sustained.

A. Subject Officer of This Complaint Has Been Properly Identified as SUBJECT OFFICER

When interviewed by the OPC investigator, Subject Officer did not remember if he had been working the night of the alleged incident, but he acknowledged that he could have been working overtime outside THE NIGHTCLUB IN NW, WASHINGTON, DC, which he did a couple times in 2018. Exh. 6 at 1:57. Normally, he works in REDACTED District. Exh. 6 at 1:50. Subject Officer's time and attendance record (TACIS) confirms that he was working MPD sanctioned overtime in a club zone at the time of the incident. Exh. 11. He said if he was working overtime, he would have been in full MPD uniform and wearing a BWC. Exh. 6 at 2:05.

In his interview, Subject Officer said that he could have been using his personal vehicle while doing overtime since it was just transport to the location. Exh. 6 at 2:30. He said that he didn't remember the incident with Complainant, but while working overtime, he remembered telling five to six people to move away from his personal vehicle, which is why he no longer drives his personal vehicle when working overtime. Exh. 6 at 3:40.

During the incident, Complainant asked the officer his name and he said it was SUBJECT OFFICER. Exh. 1; Exh. 2 at 4:24. She also took a photo of the license plate of the car they had been next to that the officer told her to move away from, which had Maryland license plates with the number REDACTED. Exh. 1; Exh. 2 at 4:12; Exh. 10. When shown the picture, Subject Officer confirmed these were his plates. Exh. 6 at 3:20. Complainant described the subject

officer of her complaint in her interview as REDACTED DESCRIPTION. Exh. 2 at 7:15. She later identified him in a photo array Exh. A (audio recording of photo array identification); Exh. B (photo array memorandum).¹

The evidence concludes that SUBJECT OFFICER is the officer at issue in Complainant's allegations.

B. Unnecessary or Excessive Force

Complainant claimed first in the Complaint filed with OPC and then, approximately, a month later in her interview with OPC, that after leaving THE NIGHTCLUB IN NW, WASHINGTON, DC, her and her friends were waiting for RIDESHARES to pick them up. Exh. 1; Exh. 2 at 0:40. She was helping to make sure they got in the right cars. Exh. 1; Exh. 2 at 1:42. As they waited, she and a friend stood beside a parked car to wait. Exh. 1; Exh. 2 at 1:49. She said that they were just standing next to the car, but it may have looked as if they were leaning on it. Exh. 1; Exh. 2 at 5:05. Complainant saw her friend WITNESS #1 fly forward and then someone grabbed Complainant's arm and pulled her towards the street. Exh. 1; Exh. 2 at 2:20. When she looked to see who it was, she saw it was a police officer who she claims then yelled at them and told them that they would be arrested if they didn't get away from the car. Exh. 1; Exh. 2 at 2:30, 9:10. As already mentioned, after the incident, Complainant asked the officer his name and took a photo of the license plate of the car. Exh. 1; Exh. 2 at 4:12, 4:24.

Witness, WITNESS #2, approximately a month after Complainant's interview, similarly stated to the OPC investigator that she was standing near Complainant and another friend who were leaning against a car to stay out of traffic. Exh. 4 at 1:13. She said that a man grabbed Complainant by the arm "pretty fiercely" and squeezed it – "he really squeezed in to her arm." Exh. 4 at 1:37. She said that he then yelled at Complainant about leaning on the car, and told her that she could be arrested for it. Exh. 4 at 1:50, 2:45.

The Complaint Examiner finds Complainant's allegations regarding Subject Officer grabbing her arm, yelling at her, and threatening to arrest her for leaning on his vehicle credible. First, she is detailed and consistent in her statements regarding the incident: both in her complaint made a day after the incident and in her interview with the OPC investigator a month later. Second, a witness corroborated her statements using similar descriptions of a man grabbing Complainant and yelling at her for leaning on the vehicle and threatening to arrest her for it. Third, the photo of Subject Officer's license plate is perhaps the most significant corroborating evidence. Complainant would have had no reason to take a photo of the license plate of the vehicle if it had not been related to the incident alleged. Nor did she know the vehicle she took a photo of belonged to Subject Officer. Finally, Subject Officer acknowledges that he told multiple people

¹ Exhibits A and B were not included in the original exhibits attached to the Report of Investigation (ROI), but were requested by the Complaint Examiner as the photo identification was referenced in the ROI.

to move away from his vehicle while working in front of THE NIGHTCLUB IN NW, WASHINGTON, DC.

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.”

Perhaps the most important point in Subject Officer’s grabbing Complainant’s arm is that Complainant had committed no crime. Leaning on a car may be bothersome to the owner, but it is not a criminal act – as was acknowledged by Subject Officer in his alleged statements to his representative. *See* SO Objections Dec. 24, 2019. Thus, there was no basis for using any force whatsoever on Complainant when asking her to move away from the vehicle.

That Subject Officer’s use of force in this instance was not in response to a crime is supported by the fact that he did not activate his BWC. Subject Officer claims that he would have activated his BWC if he was performing an “official police action” but not if he was just telling someone to move along. Exh. 6 at 5:25. His understanding of when to activate his BWC is consistent with MPD General Order 302.13, which states, “Members working police related outside employment or Department-sanctioned overtime (e.g., reimbursable details or nightlife deployments) shall wear their BWCs.” *Id.* at IV.K.1. “Members . . . shall start their BWC recordings . . . at the beginning of any self-initiated police action” and in “Use of Force situations.” *Id.* at V.A.3., 4.1.

Even if leaning on Subject Officer’s vehicle had been a crime, 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.

There is no evidence that Complainant's behavior was causing a danger or threat to herself or others nor is there evidence that Complainant showed any resistance to Subject Officer. In fact, it is difficult to assess the situation using the Use of Force Framework because there is no evidence that Complainant even knew Subject Officer wanted her to move prior to his grabbing her arm.

Subject Officer's representative in his objections to the ROI, alleges that most likely Complainant was distracted and not responding to Subject Officer's requests. Her distraction is certainly possible given the described crowds and chaos outside THE NIGHTCLUB IN NW, WASHINGTON, DC, after it let out for the night. Even if true, however, that could be resolved by approaching Complainant and tapping her on the shoulder to get her attention if need be, then calmly and politely asking her to move, which is what Subject Officer claimed in his objections he normally does when someone is not responding in these situations. SO Objections Dec. 24, 2019.

Distraction, however, does not justify escalating the force to those of "contact controls," such as grabbing Complainant's arm, when she is not demonstrating any resistance, even of a passive nature, as would be required by the Use of Force Framework. Regardless, this is all hypothetical since, again, Complainant was not committing any crime and thus, Subject Officer had no basis to use any force on her whatsoever, even if she was intentionally ignoring him.

Subject Officer's representative attempts in his objections to the ROI to raise numerous other hypothetical possibilities. He claims that Complainant and her friends were drunk, even though both Complainant and WITNESS #2 claim that they were not and Subject Officer has no memory of the event. Exh 1; Exh. 2 at 5:12, 9:00; Exh. 4 at 3:00. Regardless, if Complainant had been inebriated, it may explain her being distracted, but it has no relevance to whether Subject Officer's grabbing of Complainant's arm was necessary or appropriate since Complainant was committing no crime.

Subject Officer's representative also surmises that Subject Officer was not yelling at them about leaning on his car, but yelling at them to get out of dangerous traffic and may have grabbed them for safety reasons. Except this supposition ignores that both Complainant and WITNESS #2 specifically state that Subject Officer grabbed Complainant's arm and then yelled

at her to get away from his car, not that he yelled at them for being in traffic. Exh. 1; Exh. 2 at 2:30, 9:10; Exh. 4 at 1:37.

That Subject Officer's grabbing Complainant was due to his belief that Complainant was leaning on his vehicle is corroborated by Complainant's decision to take a picture of the license plate. Had Subject Officer simply been grabbing them to get out of traffic, Complainant would not likely have taken a picture of a license plate and it would have been even more random if the plate happened to be that of Subject Officer. Moreover, Subject Officer confirmed that he asked people to move away from his vehicle while working in front of THE NIGHTCLUB IN NW, WASHINGTON, DC. Exh. 6 at 3:40.

Finally, Subject Officer claimed that if he was conducting an official police action, he would turn on his BWC. Exh. 6 at 5:25. Presumably then, had he been attempting to conduct traffic enforcement by pulling Complainant out of a traffic lane, he would have turned on his BWC. He did not, which further supports that he was simply trying to move Complainant away from his car – not an official police action, but simply a car owner presumably not liking someone leaning on his car. Thus, Subject Officer's representative's claim that Subject Officer's grab of Complainant was an attempt at traffic enforcement and avoiding a dangerous situation has no merit.

Finally, Subject Officer allegedly told his representative that he “would never clench anyone's arm or yank them just to get off a vehicle.” SO Objections Dec. 24, 2019. Yet, when told of the accusation during his interview with OPC, he did not make such a statement. Exh. 6. Moreover, WITNESS #2 corroborates Complainant's consistent allegations and they are thus, more credible.

Because Subject Officer's grabbing of Complainant's arm to move her away from his parked vehicle was not in response to a criminal act or other threat of danger, and did not comply with the Use of Force framework, Complainant's allegation of unnecessary or excessive use of force is sustained.

C. 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.

As discussed above, Complainant’s allegation that Subject Officer threatened to arrest her for leaning on his car is credible.

According to General Order 201.26, “Members shall 1. Be courteous and orderly in their dealings with the public [and] shall perform their duties quietly, remaining clam regardless of provocation to do otherwise.” *Id.* at V.C.1.a. “They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties.” *Id.* at V.C.2. “[Members shall] not willfully depart from the truth . . . in their official duties.” *Id.* at V.C.7. “In the performance of their duty, members should develop a disposition that is pleasant and personable in nonrestrictive situations, and firm and impartial in situations calling for regulation and control. They must observe, uphold, and enforce all laws without bias or prejudice and without regard to individual or individuals involved.” *Id.* at V.E.3.

Subject Officer did not have the authority to threaten Complainant with arrest for leaning on his car because it was not a crime. He even acknowledges this in an alleged statement to his representative. SO Objections Dec. 24, 2019. Making such a threat is a violation of MDP policy in many ways in that it did not evince remaining calm, exercising patience, and was a departure from the truth while Subject Officer was performing his duties. The threat created a situation in which Complainant was mistreated because rather than calmly asking her to move, he escalated the situation into one in which she was threatened and, when combined with his grabbing her arm and pulling her away, caused her to feel violated.

Subject Officer was aware that leaning against a vehicle is not a crime. He should also have been aware that threatening a person with arrest simply because he didn’t want people leaning on his personal vehicle is a violation of policy, and an abuse of his power as a police officer. His behavior compromised the need for public support and cooperation by the public “for members to effectively fulfill their police responsibilities.” *See* General Order 201.26 V.E.1.

Subject Officer’s representative contends that a conclusion of harassment requires that the officer acted in intentional violation of the law or MPD policy. That is not the definition of harassment, however, which requires that the officer’s actions be 1) purposefully, or 2) knowingly, or 3) recklessly in violation of law or MPD policy. Recklessness requires that an officer should have known that his behavior would have constituted a violation of the law or policy and that it would cause harm. Subject Officer’s representative’s reading of the law would erase the knowing or reckless categories of mens rea required to sustain an allegation of harassment.

Subject Officer is required to know the law and he knew the law and policy – it is not a crime to lean on a car nor is it in accordance with MPD policy to threaten arrest for it. His threat

toward Complainant, therefore, was at minimum a reckless violation of MPD policy as he should have known the likely consequences of the threat in these circumstances.

Subject Officer's representative also argues that "informing people that they can be arrested for their behavior is a tried and true policing practice, especially when the officer wants to curtail the behavior, but not put the person through the costs of an arrest." The representative ignores, however, that Complainant was not committing a crime, and so the threat was not truthful.

The representative contends that Complainant's actions constituted a "Failure to Obey" under DCMR 18-2000.2, which states, "No person shall fail or refuse to comply with any lawful order or direction of any police officer, police cadet, or civilian crossing guard invested by law with authority to direct, control or regulate traffic. This section shall apply to pedestrians and to the operators of vehicles." He goes on to say that officers use this statute to gain compliance from drivers, passengers, or pedestrians who are not cooperating with commands. He and Subject Officer claim, here, that Subject Officer's threat probably pertained to telling Complainant to get out of the roadway.

His argument, however, ignores that Subject Officer's threat clearly pertained to Complainant's leaning on his car, not to clearing out the roadway, as discussed above. Leaning on a car is not a traffic issue and thus does not fall under the ambit of DCMR 18-2000.2. Moreover, leaning on a car is not a crime and thus any order to move away was not lawful. Thus, even if an order to move away from the car had been ignored, it would not be an arrestable offense under Subject Officer's representative's argument.

Subject Officer's representative tries to address this issue by saying that if the threat happened, Subject Officer's threat must have been predicated "on the condition that damage could be caused to the vehicle." We do not know the exact language of the threat except that Complainant and WITNESS #2 are clear that they were next to or possibly leaning on the vehicle. Exh. 2 at 5:05, 9:10; Exh. 4 at 1:13. Complainant mentions that the arrest threat for leaning on the car may have been couched on the basis of it being a destruction of property. Exh. 1; Exh. 2 at 9:10.

Yet there is simply no evidence that Complainant was engaging in behavior that would have damaged the vehicle. Simply leaning on a vehicle is not destruction of property. Thus, even if Subject Officer's yelled threat of arrest ostensibly was based on Complainant's proximity to his car causing damage, it was still unlawful. The possibility of damage was entirely hypothetical and when threatened with arrest, it seems understandable that any reasonable person would simply hear the threat and not be parsing it out for whether the officer was being hyperbolic. Threatening arrest when someone is not engaging in a crime, especially in the conditions found here, constituted harassment.

Moreover, had Subject Officer grabbed Complainant and lawfully threatened her with arrest to either 1) move her out of the street and onto the sidewalk or 2) because he believed they were causing damage to his car, he would have been conducting an official police action requiring him to activate his BWC. *See* Exh. 6 at 5:25. He did not activate his BWC, however, which supports that he was not taking an official police action, but simply trying to keep people from leaning on his car, which he, again, acknowledges is not an arrestable offense. *See* SO Objections Dec. 24, 2019.

Finally, Subject Officer told his representative that “I have never threatened to arrest someone for leaning on a car.” SO Objections Dec. 24, 2019. Again, however, he did not say this to the OPC investigator even when told specifically what Complainant was alleging. He said, however, that he had asked five to six people to move away from his car while working the nightclub beat. Exh. 6 at 3:40. He also explained that this is why he no longer drove his personal vehicle to overtime assignments, which suggests, that he was frustrated by people leaning on his car. *Id.*

Subject Officer also told his representative, however, “sometimes telling someone that they could be arrested just so they could remove themselves from harm’s way is a tool we use to keep people safe.” SO Objections Dec. 24, 2019. Using the threat of arrest when someone is not committing any crime is an abuse of police power. That Subject Officer believes it is a valid tool whenever he deems it to be, regardless of whether it is lawful, supports the credibility of Complainant’s allegation.

For these reasons, Subject Officer’s threat of arrest was, if not intentional or knowing (although it seems to be knowing), at the very least reckless in its violation of MPD policy that led to mistreatment of Complainant. Complainant’s allegation of harassment is, therefore, sustained.

D. Language and Conduct

Insulting, demeaning or humiliating language or conduct is defined under D.C. Mun. Regs. Tit. 6A, § 2199.1 as “language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension.”

MPD General Order 201.26 (effective April 5, 2011), Part V. Section C. Nos. 1(a) & 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.”

The general order goes on to state, “(E)(1) It is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to

effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for and confidence in, the MPD and its members. (2) In an effort to strengthen the citizen-police officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public.”

After Subject Officer grabbed Complainant’s arm, pulled her away from his car, and yelled while threatening to arrest her if she didn’t move away from his car, Complainant alleges that she told him that his actions were uncalled for as he could have simply asked the women to step away from the car. Exh. 1; Exh. 2 at 3:28, 8:00. Complainant claims that in response, Subject Officer scoffed at her and laughed as he walked away. Exh. 1; Exh. 2 at 3:45.

Complainant described Subject Officer’s demeanor as cocky and arrogant and said that he was hateful, angry and yelled at them for no reason. Exh. 2 at 3:35, 4:50, 9:20. In a later interview with the OPC investigator in which she identified Subject Officer in the photo array, she also described the incident as violent, yelling, grabbing us, not becoming of an officer, and a traumatic experience. Exh. A (audio recording of photo array identification) at 3:07. She claimed that on her ride home after the incident, she was shaken, cried all the way back home and felt violated by his actions. Exh. 1; Exh. 2 at 4:40, 8:35. She ended the interview with OPC by saying “I don’t want him to treat anyone else the way he treated us. His job is to protect and serve the community, it’s not to treat innocent people like that.” Exh. 2 at 11:08. She started crying while recounting the incident to the OPC investigator and told her how shook she was by the incident. She explained that she loves the police and appreciates them, that her brother-in-law is an officer, and so she couldn’t believe that Subject Officer behaved this way. Exh. 2 at 3:10.

Complainant’s allegations as to Subject Officer’s conduct and demeanor were corroborated by WITNESS #2 who stated that after Subject Officer grabbed and pulled Complainant and yelled at her, Complainant was “very apologetic and upset,” and that she told Subject Officer that he could have asked her nicely to move. Exh. 4 at 2:21. She said Subject Officer was not nice and did not apologize. Exh. 4 at 2:33. She said they were all shocked by his behavior and described his demeanor as “really mean and nasty” and thought that “a police officer should never be doing this.” Exh. 4 at 1:55, 4:45. She stated, “the behavior I witnessed is why police get bad reputations.” Exh. 4 at 5:22.

As already discussed, Subject Officer did not remember the incident, but only remembered telling 5 or 6 people to move away from his vehicle while working overtime. Exh. 6 at 5:25. He did not, during his interview, deny any of Complainant’s allegations or state that he never would behave that way. Exh. 6.

For these reasons, Complainant’s allegations regarding Subject Officer’s demeanor and conduct toward Complainant is deemed credible. Subject Officer here did not remain calm and used language and behavior that was perceived as insolent and disrespectful in violation of MPD policy. His language and conduct distressed Complainant to the point of tears. In so doing, his

language and behavior jeopardized the public's respect for and confidence in the MPD and weakened, rather than strengthened the citizen-police officer relationship.

Subject Officer's representative claims that Subject Officer was not speaking or behaving in an insulting, demeaning or humiliating manner because sometimes when officers are working the club zone, they need to move quickly away. Despite his lack of memory of the evening in question while speaking with the OPC investigator, six months later he allegedly told his representative of events that same night in which he had to chase someone and use strikes to the body, and having to run around the block to respond to a call about twenty people fighting. SO Objections Dec. 24, 2019. He cites these as examples of why he might have to cut a conversation with Complainant short. *Id.* Except Complainant does not claim that he walked away without responding to her complaints, but that he yelled at her, threatened her, and then he scoffed and laughed dismissively when she expressed dismay. Exh. 1; Exh. 2 at 3:45.

Moreover, it is not only Complainant who found Subject Officer's behavior distressing. WITNESS #2 stated, "we were all just kinda shocked," "wow this guy is really mean and nasty and a police officer should never be doing this," and "the behavior I witnessed is why cops get bad reputations." Exh. 4 at 1:57, 4:47, and 5:21. Thus, Subject Officer's language and conduct throughout the interaction caused apprehension not only for Complainant, but bystanders as well.

Subject Officer's words and conduct here were insulting, demeaning, and humiliating in violation of DC Code § 5-1107 and MPD General Order 201.26. Complainant's language or conduct claim is, therefore, sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

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|--|-----------|
| Allegation 1: Unnecessary/Excessive Force | Sustained |
| Allegation 2: Harassment | Sustained |
| Allegation 3: Language or Conduct | Sustained |

Submitted on February 12, 2020.

Jennifer A. Fischer, Esq.
Complaint Examiner