

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0696
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Peter W. Tague
Merits Determination Date:	October 24, 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 August 29, 2018. COMPLAINANT alleged that on April 14, 2018, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, harassed him when she mishandled his property, specifically his gold necklace with a diamond cross pendant.

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 SUBJECT OFFICER on August 15, 2019, and OPC's response to the 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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on August 15, 2019, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 14, 2018, COMPLAINANT, the complainant, was arrested in an alley near A STREET IN SE, WASHINGTON, DC.
2. At the time of his arrest, the complainant was wearing a 10-karat gold necklace with a 10-karat gold diamond cross charm attached (hereafter, "necklace"), an apple watch, and a wedding band. He also had a black jacket, an iPhone 10, a battery pack and \$65 in his wallet.
3. During the arrest WITNESS OFFICER #1 searched the complainant. He removed the necklace from around the complainant's neck, and appears to put it into the complainant's black jacket that was held by SUBJECT OFFICER.¹
4. The footage from the BWCs worn by the various officers at the scene do not indicate that anyone assigned SUBJECT OFFICER to be the officer in charge of collecting the items removed from the complainant, and taking them to the police station for processing. However, WITNESS OFFICER told OPC that SUBJECT OFFICER was "the property officer for the arrest." ROI Exh. 7 (WITNESS OFFICER #1 Statement). The footage from SUBJECT OFFICER's BWC does not indicate that she verbally acknowledged having that responsibility. But the footage from various BWCs indicate that she assumed that responsibility, for she was the one to whom the various items were given, and she herself removed one item (complainant's ring).
5. Later, as the officers waited with the complainant for transportation to arrive to take the complainant to the station, the complainant's watch was removed, and given to SUBJECT OFFICER. She then removed the complainant's ring. No BWC footage shows what she did with these items.
6. What SUBJECT OFFICER did with all the items is not altogether clear from the footage from her BWC or that of the other officers at the scene. One other officer is heard asking if there is a property bag. An officer finds a clear plastic bag, with what appears to be a zip-lock, from the trunk of one of the scout cars.
7. From her BWC, SUBJECT OFFICER places items in that bag, but what precisely she inserted is not certain.
8. She places that bag in the backseat of her scout car, closes that door and the door to the driver's seat.

¹ WITNESS OFFICER #1 thinks instead that he "placed the necklace inside the property bag that she [SUBJECT OFFICER] was holding." Report of Investigation (ROI) Exh. 19 (WITNESS OFFICER #1 Statement).

9. Different officers ask SUBJECT OFFICER where the complainant's property is. She answers that the items are in the car (her scout car).
10. No officer other than SUBJECT OFFICER assumed responsibility for any of the items taken from the complainant.
11. After SUBJECT OFFICER receives the complainant's property, no officer other than she is seen touching any item, other than the watch, which was handed to her.
12. A friend of the complainant's, WITNESS, is heard repeatedly asking the officers to give her the complainant's property. The complainant also authorizes them to give her the items taken from him. The officers, including SUBJECT OFFICER, rebuff these requests to transfer control of the items from the officers to WITNESS. SUBJECT OFFICER tells WITNESS that the complainant must authorize the items' release, and that he can do so only after some unidentified point following his processing at the station.
13. WITNESS avers that in asking the officers if she could be given his necklace, the complainant explained that "his chain was expensive." ROI Exh. 5 (WITNESS Statement). The footage from the BWCs do not support that claim. The complainant said nothing about the necklace when WITNESS OFFICER #1 removed it from him and put it into his jacket (or the plastic bag) held by SUBJECT OFFICER. Nor is he heard saying anything at any other time about the necklace (other than to give his property to WITNESS).
14. In her statement WITNESS also avers that WITNESS OFFICER #1, who removed the necklace, said that "you won't be getting this back. I can wear this to the club tonight," as he passed the necklace to SUBJECT OFFICER. The footage from the BWCs do not support that claim, either.
15. No BWC footage shows what happened to the bag after SUBJECT OFFICER placed it in her scout car.
16. SUBJECT OFFICER said that when she left the scene three other officers were in her scout car (WITNESS OFFICER #1, WITNESS OFFICER #2 and a third officer). ROI Exh. 7 (SUBJECT OFFICER Statement). No footage from any BWC shows who was with her.
17. Which officer carried the complainant's items from the scout car into the station is not certain. SUBJECT OFFICER does not remember if she did. ROI Exh. 7 (SUBJECT OFFICER Statement). She nonetheless remained responsible for the items, for, at the station, she listed what had been taken from the complainant. She did not include the necklace on the property book (MPD PD Form 82) or the property receipt (MPD Form PD 58).

18. All the items taken from the complainant have been released other than the necklace. That item has disappeared, and has not been accounted for by MPD. (The jacket has not been retrieved but is available to be released.)

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.”

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 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.”

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.

Complainant was arrested on April 14, 2018. Various personal items, including the missing necklace, were taken from him.

Removing the necklace, and at least some of the other items, was warranted. MPD General Order 601.06 (effective April 30, 1992), Part 1(A)(8), provides that “[a]t the time of arrest, prisoners shall be thoroughly searched and all personal property, including those items (e.g., ties, belts, suspenders, scarfs, etc.) that could be used to inflict injuries upon themselves,

shall be removed.” Like those examples, the necklace was something that the complainant might have used to harm himself.

The officer who removed the necklace from around the complainant’s neck, WITNESS OFFICER #1, interpreted that General Order more expansively, if understandably, to authorize taking “all personal property from prisoners so they will not have anything to hurt the officers.” ROI Exh. 19 (WITNESS OFFICER #1 statement).²

That General Order also provides that officers “shall ensure all property, which comes into their possession, is properly safeguarded until relieved of that responsibility.” *Id.* Part 1(A)(5).

And it adds that “[t]he recovering officer shall turn these items of property over to the station clerk and the procedures set forth in Part II of this order shall be followed.” *Id.* Part 1(A)(8). (Part II pertains to the station clerk’s acquisition and recordation of items taken, and to that person’s responsibility for keeping and disposing of them. Part II is not relevant to this inquiry, for SUBJECT OFFICER did not record the necklace upon completing the property record and delivering the items to the station clerk.)

SUBJECT OFFICER assumed responsibility as the “recovering officer,” in the words of the General Order, for the items taken from the complainant.

She was given the jacket, and held it as WITNESS OFFICER #1 removed the necklace and placed it in the jacket. She obtained a plastic bag, and placed various items taken from the complainant in it. (It matters not whether WITNESS OFFICER #1 placed the necklace into the plastic bag, as he thinks (ROI Exh. 19 (WITNESS OFFICER #1 Statement)), or into the jacket (as footage from the BWC suggests), for in either way SUBJECT OFFICER received the necklace.) She placed that plastic bag in the back seat of her scout car. The footage from the BWCs do not indicate clearly what she did with the jacket. Nor does the footage indicate that she separated the necklace from the jacket, or that she ever touched it after it was placed in the jacket.

SUBJECT OFFICER said that at the station she documented the recovered property on the property receipt and placed everything inside a property bag. See ROI Exh. 19 (SUBJECT OFFICER Statement), and ROI Exh. 21 (MPD Form PD 82, Property Book entries) and ROI Exh. 22 (MPD Form PD 58, Prisoner Property Receipt). Both documents list everything but the necklace that had been taken from the complainant.

² Unclear is whether officers are permitted, let alone required, to release items to a third party (here WITNESS) upon the authorization of the arrestee (here the complainant). That issue is not relevant to this inquiry, however, for the officers, including SUBJECT OFFICER, refused to make that transfer, and instead kept the items.

The necklace is missing. Whether it was stolen or lost is unknown, but the cause does not affect this determination. SUBJECT OFFICER was responsible for the necklace's safe-keeping. Given that she had received it only shortly before recording what had been taken on the forms above, it was reckless for her not to have kept it safely and to have accounted for its whereabouts.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on October 24, 2019.

Peter W. Tague

Complaint Examiner