

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

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| <b>Complaint No.:</b>                               | 18-0730  |
| <b>Complainant:</b>                                 | COMPLAINANT  |
| <b>Subject Officer(s),<br/>Badge No., District:</b> | SUBJECT OFFICER  |
| <b>Allegation 1:</b>                                | Insulting, Demeaning, or Humiliating Language or Conduct |
| <b>Complaint Examiner:</b>                          | Richard S. Ugelow  |
| <b>Merits Determination Date:</b>                   | October 15, 2019   |

Pursuant to D.C. 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**

Shortly after midnight on August 31, 2018, SUBJECT OFFICER saw the complainant, and several companions drinking from open cups of alcohol in front of BAR IN NW, WASHINGTON, DC. SUBJECT OFFICER asked the group to stop drinking and to dispose of the alcohol. All complied, except for COMPLAINANT. COMPLAINANT twice refused SUBJECT OFFICER's request to stop drinking. After COMPLAINANT refused the second request, SUBJECT OFFICER arrested him for Possession of an Open Container of Alcohol (POCA) and resisting arrest. At several points during his encounter with COMPLAINANT, SUBJECT OFFICER, among other statements, said: "Welcome to jail man." Hope you had fun." Have a good day." OPC concluded that SUBJECT OFFICER was unprofessional in his interaction with COMPLAINANT and that he spoke and acted in a sarcastic and taunting manner in violation of D.C. Code § 5-1107 and MPD General Order 201.26.<sup>1</sup>

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<sup>1</sup> COMPLAINANT alleged, in part, that SUBJECT OFFICER harassed him when he unlawfully stopped him and arrested him for POCA and resisting arrest. COMPLAINANT further alleged that SUBJECT OFFICER used unnecessary or excessive force against him when he twisted his arm and executed a tactical takedown. Lastly, COMPLAINANT alleged that SUBJECT OFFICER discriminated against him when he singled him out for arrest from among a group of people who were engaged in the same activity. Pursuant to D.C. Code § 5-1108(1), on August 1, 2019, a member of the Police Complaints Board dismissed these allegations, concurring with the determination by OPC's executive director. *See* Exhibit 2.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint. The Complaint Examiner determined that no genuine issues of material facts are in dispute that required a hearing based on a review of the Body Worn Camera (BWC) footage for SUBJECT OFFICER, WITNESS OFFICER #1 and WITNESS OFFICER #2, the OPC's Report of Investigation (ROI), the objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on August 23, 2019, and OPC's response to the objections. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of the BWC footage for SUBJECT OFFICER, WITNESS OFFICER #1 and WITNESS OFFICER #2, the OPC's Report of Investigation, the objections submitted by the FOP on behalf of SUBJECT OFFICER, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 12:30 a.m. on August 31, 2018, the complainant and companions (at least two) were drinking from open containers of alcohol outside the BAR IN NW, WASHINGTON, DC.
2. SUBJECT OFFICER was on routine patrol in NW, WASHINGTON, DC, the morning of August 31, 2018.
3. SUBJECT OFFICER is heard saying "fuck" when he first turned on the BWC. BWC at 2:00.
4. When he saw the group of individuals drinking from open containers, he asked them to stop and to pour out their drinks. All of the individuals complied, except for COMPLAINANT. He continued to drink, despite a second request from SUBJECT OFFICER.
5. SUBJECT OFFICER arrested COMPLAINANT for POCA and placed him in handcuffs.
6. During the encounter, COMPLAINANT's companions said that he was not doing anything, that he was not rude or dismissive. BWC at approximately 3:24.
7. COMPLAINANT appeared to be somewhat intoxicated, although he was lucid and able to interact with SUBJECT OFFICER.
8. SUBJECT OFFICER told COMPLAINANT that he was being arrested for drinking in public and said: "Hope you have fun." He further said, sarcastically, to COMPLAINANT's companions "Gentlemen, thank you very much." SUBJECT OFFICER BWC at approximately 2:53.

9. SUBJECT OFFICER further said to COMPLAINANT: “You are going to jail, man. Have a good day.” BWC at approximately 4:40.
10. Later, SUBJECT OFFICER said to COMPLAINANT words to the effect: “Hope you enjoy being in a cell for four hours.” SUBJECT OFFICER BWC at approximately 7:40
11. After informing COMPLAINANT that he was arrested for POCA and resisting arrest, SUBJECT OFFICER ended the conversation with “have a good day.” BWC at approximately 9:20.
12. Another officer and SUBJECT OFFICER transported COMPLAINANT to AN MPD DISTRICT STATION.

#### 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.”

According to MPD General Order 201.26, Part V, Section C, “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall 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.”

SUBJECT OFFICER’s objections to the ROI correctly note that the facts are not in dispute. Objections at 5. The objections focus on the context of SUBJECT OFFICER’s statements to COMPLAINANT, saying that “his tone was playful, not hostile.” *Id.* The Complaint Examiner disagrees with this characterization. It is possible that SUBJECT OFFICER did not intend his interaction with COMPLAINANT to disintegrate into a mocking, taunting, and sarcastic conversation. That said, the Complaint Examiner’s review of the BWC leads to the conclusion that his words and tone did exactly that. He repeatedly (and unnecessarily without provocation) used language such as “Have fun,” “You are going to jail, man. Have a good day,” and “Hope you enjoy being in a cell for four hours,” --- these statements with the tone used by the officer leads this Complaint Examiner to conclude that

SUBJECT OFFICER's words and tone had the purpose and/or effect of taunting, mocking, disrespecting, and belittling COMPLAINANT in violation of MPD General Order 201.26.

Here, the totality of the circumstances demonstrate that as a result of his interaction with SUBJECT OFFICER, COMPLAINANT "experienced distress, anxiety or apprehension," as would another reasonable person in this situation. This meets the definition of a language or conduct violation from D.C. Code § 5-1107, which is further defined in D.C. Mun. Regs. Tit. 6A, §2199.1.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

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| <b>Allegation:</b> Insulting, Demeaning, or Humiliating Language or Conduct | Sustained |
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Submitted on October 15, 2019

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Richard S. Ugelow  
Complaint Examiner