

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	19-0271
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Allegation 2:</b>	Use of Excessive or Unnecessary Force
<b>Complaint Examiner:</b>	Meaghan Hannan Davant
<b>Merits Determination Date:</b>	December 17, 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 (OPC) on February 8, 2019, alleging that, on February 7, 2019, Metropolitan Police Department (MPD) SUBJECT OFFICER, engaged in conduct toward him that was insulting, demeaning, or humiliating by treating COMPLAINANT in an aggressive manner and that SUBJECT OFFICER subjected him to verbal abuse. Complainant further alleged that SUBJECT OFFICER grabbed and pulled him, using unnecessary and excessive force.<sup>1</sup>

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<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER used unnecessary or excessive force by punching or striking him in the chest. Pursuant to D.C. Code § 5-1108 (1), on October 7, 2019, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's Executive Director.

## **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, 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, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On February 6, 2019, just before midnight, SUBJECT OFFICER and his partner received a call over their police radio that an act of shoplifting had occurred at the STORE located at A LOCATION IN NW, WASHINGTON, DC. Specifically, the radio dispatcher reported that two black men were trying to steal dog food from the store. The dispatcher also stated that one of the suspects was wearing a black jacket, and the other a black jacket and black pants.
2. Minutes later, at approximately 12:00 a.m. on February 7, 2019, COMPLAINANT stopped outside the same store to speak with some acquaintances. COMPLAINANT never entered the store.
3. COMPLAINANT then observed an MPD cruiser pulling into the parking lot of the STORE. COMPLAINANT began to walk away, towards a bus stop approximately 100 yards away, as he did not want to be involved in any police situation and saw that there was a "no loitering" sign posted at the store.
4. SUBJECT OFFICER and his partner entered the store and spoke with the manager. SUBJECT OFFICER asked, "Still here?" to which the manager replied inaudibly. The subject officer then asked, "Where are they? Where'd they go?" The manager pointed out the glass front door of the store towards the bus stop, stating "He's in front. Right there." SUBJECT OFFICER attempted to clarify, as the glass was somewhat dirty and the line of visibility to the outside was not clear. "Right where?" SUBJECT OFFICER asked again. The manager again replied, "in front, right there."

5. The subject officer then exited the store while his partner stayed behind and continued to talk with the manager for several moments longer.
6. As SUBJECT OFFICER exited the store, he saw COMPLAINANT and his acquaintance directly in front of the store on the sidewalk. COMPLAINANT was walking towards the bus stop, and speaking with an acquaintance, when he saw first COMPLAINANT approaching them.
7. SUBJECT OFFICER called out to the two men, "Gentlemen! Gentlemen!" COMPLAINANT and his acquaintance did not respond and continued to walk at the same pace. The subject officer then yelled, "Hey! Guy in the ... gray shirt. Hey! Hey!" in an aggressive, angry manner as he drew nearer the men.
8. As seen on the BWC footage, COMPLAINANT briefly looked down at his clothes, a tan jacket and blue jeans, and continued walking. Several moments later, COMPLAINANT looked up and saw that SUBJECT OFFICER was suddenly only a few steps away from him.
9. SUBJECT OFFICER began yelling at COMPLAINANT in an angry tone, "Hey, come here! I want to talk to you!" COMPLAINANT, appearing confused, turned his head towards the subject officer and answered, "Aint' no gray shirt," as if to explain why he hadn't responded to the subject officer.
10. The subject officer replied angrily, "Well whatever it is." COMPLAINANT asked, "Alright. So you yell at human beings?" to which SUBJECT OFFICER replied, "Yeah I do."
11. COMPLAINANT made a dismissive sound and turned and began walking away from the subject officer. SUBJECT OFFICER immediately grabbed the complainant's right arm and jerked it backwards forcefully, spinning complainant around to face him. COMPLAINANT immediately took his arm away and angrily yelled at SUBJECT OFFICER, "Why you just grab me? You don't got no right to put your hands on me like that." SUBJECT OFFICER replied in a threatening tone, "Because you don't walk away from me." COMPLAINANT said, "Alright. Come on." in a disapproving tone, as if to chastise the officer for overreacting. SUBJECT OFFICER then shook his finger in COMPLAINANT's face and yelled, in an even angrier tone, "You don't walk away. Do you understand me?"

12. The subject officer told COMPLAINANT that the manager of the STORE had reported an incident wherein two men had shoplifted dogfood. Complainant replied, "That's what you're stopping me about?" COMPLAINANT further explained that he didn't know what SUBJECT OFFICER was talking about, but nonetheless volunteered to return to the store and speak to the manager to prove his innocence. SUBJECT OFFICER asked COMPLAINANT, "You gonna stand by while I go talk to them real quick?" and COMPLAINANT replied, "I'ma walk over there with you."
13. Complainant again insisted that he had no idea what SUBJECT OFFICER was talking about to which the subject officer responded in an aggressive and disbelieving tone, "Is that your final statement?" COMPLAINANT answered, "Yeah."
14. The subject officer and COMPLAINANT walked to the front of the store, where the manager was now standing outside in the parking lot. COMPLAINANT's acquaintance told the group that COMPLAINANT had not even been inside the store that night. COMPLAINANT asked, "I been inside the store tonight?" SUBJECT OFFICER did not wait for a reply from the manager, instead screaming over COMPLAINANT, "Yes! That's what he's telling you!"
15. COMPLAINANT then looked directly at the store manager and, in a calmer, slower tone, again asked, "I'm asking you a question. Have I been in there tonight?" The manager indicated complainant had not been in the store that evening, stating, "You're good to go. Good. Good. Good." COMPLAINANT said, "Alright. That's what I'm sayin'. I don't know what's wrong with you people."
16. Once the store manager stated that COMPLAINANT was not the suspect, the subject officer abruptly stopped communicating with him. SUBJECT OFFICER did not offer any words or gestures of apology or even address the complainant, instead turning to speak with his partner and the manager as COMPLAINANT walked away.

#### **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.”

***A. SUBJECT OFFICER Used Insulting, Demeaning, or Humiliating Language and Conduct in his Interaction with the Complainant.***

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.” MPD General Order 304.10, Part II, Section B, Nos. I & 4(b )(I), similarly state that, even during a reasonable stop of a potential suspect of a crime, the officer shall act with restraint and courtesy.

SUBJECT OFFICER’s initial actions-- yelling or shouting in order to get the attention of COMPLAINANT and his acquaintance and approaching the men at a heightened pace—were reasonable. The subject officer was investigating a crime which, at that time, he believed to have occurred only moments before. Therefore, time would have been of the essence to stop any suspect before they left the immediate vicinity. Moreover, the store manager had repeatedly pointed his finger in the direction in which the complainant was standing and stated that the suspects were “right there.” While the clothing described by the radio dispatcher did not match complainant’s, it is also within reason that the officer could have forgotten those details in the heat of the moment or considered the description to have been wrong.

However, the BWC footage clearly shows that, once SUBJECT OFFICER was within a few feet of COMPLAINANT, he grew only more agitated, continuing to yell and shout in an aggressive, sometimes threatening, and often insulting or derogatory tone. Further, when COMPLAINANT asked the subject officer if he was in the habit of “yell[ing] at human beings,” the subject officer did not deny yelling, did not cease yelling and did not explain or apologize his behavior. Instead, the subject officer responded in a mocking and unprofessional manner, “Yeah, I do.”

Further, SUBJECT OFFICER’s facial expressions and body language, as observed in the footage, is also alternately aggressive and threatening, and other times disrespectful, such as when he shook his finger in the complainant’s face.

Even absent these clear indicators, the very language the subject officer used was unprofessional, including his contemptuous response when asked if he always yelled at human beings, “Yeah, I do” and his condescending rebuke, “You don’t walk away! Do you understand me?”

Finally, contrary to the subject officer’s statements to OPC that he only initially yelled to get complainant’s attention, and later resumed a normal tone and volume and calmer demeanor, SUBJECT OFFICER continued to shout in an angry, unprofessional manner throughout the entire interaction and even after complainant attempted to deescalate the situation by lowering his voice, neutralizing his voice and body language and volunteering to go speak with the store manager to clear his name.

Just as complainant was within reasonable speaking distance of the manager and began to calmly ask if he was the suspect the manager had described, SUBJECT OFFICER shouted over complainant’s voice in a tone that was explosively angry and visibly shocking to those at the scene. It was complainant who clearly sought to deescalate the situation. by calmly, and with appropriate decorum, asking the store manager to confirm that he had not been in the store that night. The manager readily replied that complainant was “good to go.” Only *then* did the subject officer resume a reasonable, professional tone, which he might have chosen to use to apologize to, or at least explain his actions to, complainant. Instead, the subject officer abruptly and rudely ceased any interaction with complainant, snubbing him in an unprofessional manner.

When asked by OPC if he thought he had behaved “professionally,” with COMPLAINANT, SUBJECT OFFICER replied “yes,” and rejected the suggestion that he could have done anything differently to improve the interaction.

Thereby, based on a totality of the circumstances, SUBJECT OFFICER used language and engaged in conduct toward the complainant that was insulting, demeaning, humiliating and unprofessional, thereby violating § 5-1107(a) and MPD General Order 201.26.

***B. SUBJECT OFFICER Used Excessive and Unnecessary Force in his Interaction with Complainant.***

MPD General Order 901.07, Part II, states, “The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department 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.”

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable 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 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 ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

First, SUBJECT OFFICER had a duty to use “de-escalation techniques” prior to making any physical contact with complainant, even if he was a suspect of a crime. MPD General Order 901.07, Part IV A. clearly states the “[a]ll members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques.”

Here, SUBJECT OFFICER not only failed to use de-escalation techniques, such as calmly telling COMPLAINANT that he would be required to use force to stop him if he continued to walk away, the subject officer only *escalated* the situation, screaming at COMPLAINANT at close range in an angry aggressive tone and using insulting, mocking language. It was complainant who ultimately had to de-escalate the situation by volunteering to speak the store manager and then calmly confirm that he was not the man he was looking for, even as the subject officer shouted explosively over complainant’s words.

Second, SUBJECT OFFICER cannot credibly claim that any of the factors that might justify the use of unreasonable or excessive force under the regulations was present. The crime in question, shoplifting dogfood, was hardly “severe.” COMPLAINANT, an older man, never showed any signs of physical aggression towards the subject officer that might constitute an “immediate threat” to the safety of SUBJECT OFFICER or others. Complainant was not “actively resisting arrest,” simply by turning away from the officer. Nor is there any credible claim that COMPLAINANT was trying to “evade arrest by flight.” Based on a review of the BWC footage, COMPLAINANT turned around fairly slowly and was attempting to walk away at a normal pace when SUBJECT OFFICER suddenly grabbed his arm roughly and jerked him backwards, the force of his pull causing complainant to spin around.

In fact, the subject officer’s own words confirm that he had no justifiable belief that COMPLAINANT was about to run away to evade arrest. When complainant asked, “Why you

just grab me? You don't got no right to put your hands on me like that." SUBJECT OFFICER replied in a threatening tone, "Because you don't walk away from me." His statement not only confirms his belief that COMPLAINANT was going to "walk" and not run, but also that his actions were not premised on fear of flight, but as an act of retaliation again, or show of control over, complainant.

Based on the totality of the circumstances, SUBJECT OFFICER's actions constituted excessive and unnecessary force in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b> Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
<b>Allegation 2:</b> Use of Excessive or Unnecessary Force	Sustained

Submitted on December 17, 2019

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Meaghan Hannan Davant  
Complaint Examiner