

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	19-0494
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment by Unlawful Traffic Stop
Allegation 2:	Harassment by Intimidation
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	September 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

Complainant filed a complaint with the Office of Police Complaints (OPC) on May 23, 2019 alleging that SUBJECT OFFICER harassed her, first, by performing a traffic stop and, second, through his intimidating behavior and language.

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 May 19, 2019, complainant was driving southbound through the 1-395 tunnel in the District towards Arlington, Virginia. Complainant was driving in the left lane of the two-laned southbound section of the tunnel.
2. As COMPLAINANT came to a spot in the road where the two lanes merged into one, she encountered a car in the right lane that was attempting to merge into the single-lane at the same time.
3. SUBJECT OFFICER was driving the other car, SUBJECT OFFICER'S CAR, which was his personal vehicle. SUBJECT OFFICER was also dressed in plain clothes, and not his police uniform.
4. COMPLAINANT thought that the SUBJECT OFFICER'S CAR was going to sideswipe her car and honked her horn. She then braked, allowing the SUBJECT OFFICER'S CAR to pull ahead of her car first, into the single lane.
5. SUBJECT OFFICER suddenly stopped his car, blocking complainant's car and several other cars behind her. Where the road had narrowed to two lanes—one southbound and one northbound—neither complainant nor the other blocked drivers had any means to drive around the subject officer's car, short of driving into oncoming traffic.
6. SUBJECT OFFICER, in plain clothes, then exited his vehicle and approached COMPLAINANT's driver's side window. COMPLAINANT reported feeling scared and unsafe because the subject officer had blocked her car into the lane and because she was a woman, driving alone. Complainant also stated that she felt "stuck and was not able to leave the situation because there was no place she could go.
7. As he exited his car and approached complainant's car, the subject officer briefly flashed his badge but, because the tunnel was dark, complainant could not see it well.
8. SUBJECT OFFICER then leaned over COMPLAINANT's driver's side window, placing his hand on the roof of her car. Complainant described his appearance as

“clearly upset.” In a confrontational tone, the subject officer asked complainant, “Who has the right of way?”

9. COMPLAINANT responded that she did not believe he had the right of way and that they both were required to yield.
10. The subject officer paused for a moment without saying anything and complainant asked to see his badge again. The subject officer showed her his badge, which the complainant identified as representing MPD.
11. During this encounter, the cars in the lane behind complainant’s were unable to move and repeatedly honked their car horns. Traffic remained stopped for 1-2 minutes.
12. The subject officer returned to his car, telling complainant that she “needed to slow down.” Before he drove away, complainant wrote down his license plate number.
13. SUBJECT OFFICER later stated to OPC that he and complainant were merging from different entrances to the tunnel and that complainant’s entrance had a “Yield” sign. The subject officer also told OPC that he did stop his car in front of complainant’s and showed her his police badge, “to get her to pay attention to him” and to alert her of the yield sign that he believed she had likely not seen, resulting in what he believed to be a traffic violation.
14. SUBJECT OFFICER did not issue complainant a citation, call an on-duty officer to the scene or document the stop in any way.
15. Complainant later called MPD with the subject officer’s license plate to confirm that he was actually an MPD officer.

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. Harassment

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.

1. SUBJECT OFFICER Harassed Complainant by Conducting an Unlawful Traffic Stop.

SUBJECT OFFICER argued that his actions did not constitute a stop. However, in his interview with OPC, he admitted that he did stop his personal vehicle in the single-lane of the tunnel in a manner that prevented complainant, and the other cars behind her, from passing, without entering into a lane of oncoming traffic. MPD General Order 304.10, defines a “stop” as a “seizure of an individual’s person and occurs *whenever an officer uses his or her authority to compel a person to halt [or] remain in a certain place[.]* (emphasis added) The definition further delineates that if “a person is under a reasonable impression that he or she is not free to leave the member’s presence, a stop has occurred.” It is clear from both complainant and the subject officer’s description of the scene that COMPLAINANT could neither pull forward nor back up

her car to leave the scene. The subject officer's actions thereby quite literally detained her, as it also would not have been safe for complainant to exit her vehicle in a dark highway tunnel.

Further, although he was driving his personal vehicle at the time and dressed in plain clothes, the subject officer pulled out his official MPD badge not once but twice: first to signal that he was an officer as he approached complainant's car and later upon complainant's request. SUBJECT OFFICER therefore represented himself in his official capacity as an MPD officer. In his interview with OPC, the subject officer further stated that he showed complainant his badge "to get her to pay attention to him," and because he believed she had failed to notice a yield sign, and that this failure had resulted in a traffic violation. In his own words, the subject officer used "his...authority to compel a person to ...stop [and] remain in a certain place." In his interview with OPC, the subject officer failed to respond directly to the question of whether he stopped complainant "under the color of the law."

SUBJECT OFFICER also told OPC that he believed that he was authorized to stop complainant's car, even though he was off-duty, in plain clothes and driving his personal vehicle due to "safety concerns." However, MPD General Order Change 18.02 [General Order 303.01 (Traffic Enforcement)], specifies that "[t]raffic enforcement action may be taken by off-duty members driving their **marked** take-home vehicles," or "when operating a *Department vehicle equipped with emergency lights and sirens* **and** the violation is *so grave that it poses an immediate threat to the member or others.*" (emphasis added). SUBJECT OFFICER's personal car was unmarked and not equipped with lights or a siren. The subject officer further averred that he was not wearing his police uniform and that he was not on-duty at the time. Thereby, even *if* the subject officer believed that complainant's actions posed an "immediate threat," the stop was unlawful.

Finally, even *if* the subject officer had been driving a properly marked or equipped vehicle, General Order Change 18.02 specifically requires that any off-duty officer making a stop under circumstances of an "immediate threat," "shall request the assistance of a marked unit as soon as practicable." SUBJECT OFFICER did not call a marked unit, nor did he even document the stop. Thereby, his statements that complainant posed an immediate or ongoing threat are unsupported by his actions.

For all of these reasons, SUBJECT OFFICER's encounter with COMPLAINANT clearly constituted an unlawful stop and thereby harassed the complainant in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

2. *SUBJECT OFFICER Harassed Complainant Through Intimidation.*

As above, MPD General Order 120.25, Part III, Section B, No. 2 defines harassment 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 ... mistreatment.” The regulations governing OPC further state that, in determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances ... including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and ... whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

In her interview with OPC, COMPLAINANT stated that she felt “unsafe” after the subject officer stopped her because she was a woman alone in a car, in a dark tunnel, and felt “stuck,” or unable to move her car without veering into on-coming traffic. Although the subject officer flashed his badge, the tunnel was dark, and complainant was initially unsure if it was a legitimate police badge as she believed “anyone can get a fake.” Moreover, the subject officer was in an unmarked car, without any of the normal indicia of a police car, such as sirens or lights and was dressed in plain clothes. As SUBJECT OFFICER approached complainant’s vehicle, she believed that he was “ticked off,” or “irritable.” In his statement to OPC, the subject officer admitted to feeling irritated and “ticked off.”

Once SUBJECT OFFICER reached complainant’s driver’s side window, he placed his right hand on the roof of her car and leaned over her, a stance which any reasonable person might find intimidating or aggressive. This is particularly true where complainant remained unsure if he was, in fact, an MPD officer.

Based on the totality of the circumstances, SUBJECT OFFICER’s contacts with COMPLAINANT reasonably caused her to feel intimidated, and thereby harassed the complainant in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

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V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment by Unlawful Traffic Stop	Sustained
Allegation 2: Harassment by Intimidation	Sustained

Submitted on September 24, 2019

Meaghan Hannan Davant
Complaint Examiner