

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0144
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	November 16, 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, is a District of Columbia parking enforcement officer. While on duty during the early morning hours of December 2, 2019, in A BLOCK IN NW, WASHINGTON, DC, she encountered several illegally parked cars with current parking tickets. COMPLAINANT determined that the tickets had been issued by the Subject Officer, SUBJECT OFFICER. COMPLAINANT approached SUBJECT OFFICER, who was sitting in his MPD cruiser. According to SUBJECT OFFICER, COMPLAINANT asked him “Don’t you have anything better shit to do,” and also told him that she was “fuckin pissed.” On the other hand, COMPLAINANT remembers saying in a joking manner to SUBJECT OFFICER “Hey, you know you are doing my job,” and “don’t you have anything better to do.”

SUBJECT OFFICER thought that COMPLAINANT’s language and actions were disrespectful. He exited his vehicle, directed COMPLAINANT to summon her supervisor to the scene, which she did. COMPLAINANT alleged that SUBJECT OFFICER by his words and actions harassed her by intimidating her and stopping her freedom of movement.

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, OPC's Report of Investigation (ROI), the objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on September 21, 2020, 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, the OPC's ROI, the objections submitted by the FOP on behalf of SUBJECT OFFICER on September 21, 2020, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 2, 2019, the Subject Officer, SUBJECT OFFICER, was on traffic enforcement duty in the A STREET IN NW, WASHINGTON, DC. Around midnight, he had ticketed several illegally parked vehicles on the STREET IN NW, WASHINGTON, DC. After issuing the tickets, he parked his MPD cruiser at one end of the STREET IN NW, WASHINGTON, DC, while waiting inside the vehicle for a tow truck.
2. The Complainant, COMPLAINANT, is a District of Columbia parking enforcement officer.
3. On December 2, 2019, COMPLAINANT was working the overnight shift. Her assignment included parking enforcement in the STREET IN NW, WASHINGTON, DC.
4. COMPLAINANT noticed several illegally parked vehicles on the block, each with a current ticket that had been issued by SUBJECT OFFICER.
5. COMPLAINANT found SUBJECT OFFICER sitting in his MPD cruiser. COMPLAINANT told OPC that, in a joking manner, she asked "Hey, you know you are doing my job," and "don't you have anything better to do."
6. SUBJECT OFFICER told OPC that he told COMPLAINANT "not to worry, I had already issued tickets to the vehicles and was waiting for a tow truck." According to SUBJECT OFFICER, COMPLAINANT responded "Don't you have any other better shit to do? Go do that." She told SUBJECT OFFICER that that she was "fuckin pissed."
7. SUBJECT OFFICER described COMPLAINANT's tone and body language as "upset," "didn't seem happy," and did not appear to be joking.
8. SUBJECT OFFICER believed COMPLAINANT's language and demeanor to be disrespectful.

9. SUBJECT OFFICER exited his vehicle and followed COMPLAINANT, and said: “Ma’am come here. I need your supervisor’s information. We’ll call your supervisor here. You’re being really disrespectful.I want to speak to your supervisor.”
10. When COMPLAINANT walked away, SUBJECT OFFICER said “Okay, so you’re being stopped by law enforcement, ma’am.”
11. COMPLAINANT told OPC that SUBJECT OFFICER held out the palm of his left hand in a manner that indicated to her that she could not leave the scene. According to COMPLAINANT, SUBJECT OFFICER also reached for his handcuffs, which suggested to her that she would be arrested.
12. After calling her supervisor, WITNESS, COMPLAINANT proceeded to walk to and enter her parking enforcement vehicle. SUBJECT OFFICER drove his cruiser up to COMPLAINANT’s vehicle in order to take a picture of the license plate. COMPLAINANT backed out of the space and, thereafter, she and SUBJECT OFFICER had no further contact.
13. SUBJECT OFFICER told OPC that his handcuffs are on the right side of his belt, that he is right-handed, and that he could not reach for his handcuffs because he had a pen in his right hand.
14. The BWC footage confirms that SUBJECT OFFICER held a pen in his right hand during the time he was interacting with COMPLAINANT, and does not indicate that he dropped his right hand to reach for his handcuffs.
15. While the BWC footage shows, for one or two seconds, the fingers of SUBJECT OFFICER’s left hand, there is no evidence that the gesture was meant or can be reasonably interpreted to signal that COMPLAINANT was being stopped
16. In pertinent part, WITNESS told her to leave the scene, which she did by returning to her vehicle and driving to a different location nearby.
17. WITNESS told OPC that COMPLAINANT seemed intimidated, frightened, and upset in their phone call.
18. When WITNESS arrived on the scene, COMPLAINANT appeared to be angry rather than frightened, and that “SUBJECT OFFICER did not seem to be the aggressor.”
19. The interaction between SUBJECT OFFICER and COMPLAINANT took approximately four (4) minutes.
20. SUBJECT OFFICER told OPC that he did not have reasonable suspicion to stop COMPLAINANT.

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.

The ROI determined that SUBJECT OFFICER violated General Order 304.10 because the incident was “clearly a stop based on the officer’s words and actions.” ROI, p. 6. This finding is based upon SUBJECT OFFICER’s demand that COMPLAINANT “come here” when she was walking away, a demand that she call her supervisor, and that she was “being stopped by law enforcement.” *Id.* The ROI’s conclusion is further supported by COMPLAINANT’s claim that SUBJECT OFFICER reached for his handcuffs and held out his left hand in a gesture to stop her. Moreover, COMPLAINANT told OPC that SUBJECT OFFICER tried to arrest her. Accordingly, the ROI concluded that she was not free to leave; therefore, the encounter constituted an unwarranted stop in violation of MPD General Order 304.10.

The sole issue before the Complaint Examiner is whether SUBJECT OFFICER stopped COMPLAINANT within the meaning of General Order 304.10. The touchstone of General

Order 304.10 is “whether under the particular circumstances an individual could reasonably perceive that he or she is not free to leave the officer’s presence.” Exhibit 12, p. 12.

There is no dispute that in the early morning hours of December 2, 2019, SUBJECT OFFICER was authorized and did issue citations to illegally parked vehicles in the STREET IN NW, WASHINGTON, DC. COMPLAINANT, a parking enforcement officer, was assigned to that same block. She was surprised that the illegally parked cars already had been ticketed by SUBJECT OFFICER. She approached SUBJECT OFFICER, who was sitting in his vehicle waiting for a tow truck. What happened at this point is in dispute. COMPLAINANT claims that in a joking manner she asked SUBJECT OFFICER “Don’t you have any other better shit to do? Go do that.” SUBJECT OFFICER, on the other hand, claims that COMPLAINANT said: “Don’t you have any better shit to do? Go do that.” COMPLAINANT also told SUBJECT OFFICER that she was “fuckin pissed.” Exhibit 8, p. 2.

After this interaction, COMPLAINANT walked away. SUBJECT OFFICER exited his cruiser saying to COMPLAINANT “Ma’am, come here. I need your supervisor’s information. We’ll call your supervisor here. You’re really being disrespectful.” SUBJECT OFFICER then said: “ Okay, so you are gonna be stopped by law enforcement, ma’am. Supervisor please.” Exhibit 8, p.1. COMPLAINANT turned around to walk toward SUBJECT OFFICER. It is at this point, COMPLAINANT told OPC that SUBJECT OFFICER displayed the palm of his left in a manner indicating that she was not free to leave. In addition, she told OPC that SUBJECT OFFICER reached or touched his handcuffs in a manner that she interpreted as a threat to arrest her if she left.¹

COMPLAINANT made the call, and her supervisor, WITNESS, arrived shortly thereafter.

COMPLAINANT returned to her parking enforcement vehicle without any interference from SUBJECT OFFICER. While SUBJECT OFFICER turned on flashing lights and drove the cruiser to the COMPLAINANT’s vehicle in order to take a picture of the license plate, COMPLAINANT was able to and in fact did back out of the space and moved her vehicle to another block not visible to SUBJECT OFFICER. Both COMPLAINANT and SUBJECT OFFICER waited until WITNESS arrived on the scene, but there was no further contact between them.

After reviewing the BWC footage, the Complaint Examiner did not find evidence that SUBJECT OFFICER reached for his handcuffs. At all times, SUBJECT OFFICER is seen with a pen in his right hand. He told OPC that he is right-handed and that his handcuffs were on the right side of his belt. The preponderance of the evidence is that SUBJECT OFFICER did not

¹ SUBJECT OFFICER’s objections suggest that COMPLAINANT filed a complaint against SUBJECT OFFICER “in an attempt to mitigate her own misconduct and any possible discipline she may be facing.” Objections, p. 5. COMPLAINANT’s motive, if any, is entirely irrelevant to the Complaint Examiner’s evaluation of this complaint.

make a gesture toward his handcuffs. Likewise, the BWC footage fails to confirm that SUBJECT OFFICER extended his left hand in a manner that could be reasonably interpreted to suggest that COMPLAINANT was being detained and was not free to go. Indeed, the BWC footage momentarily shows a few fingers (not the entire hand or even the palm) of SUBJECT OFFICER's left hand. His fingers are not in a form that would indicate (at least to this Complaint Examiner) a non-verbal instruction for COMPLAINANT to stop or otherwise suggesting that she was not free to leave. What remains is SUBJECT OFFICER's statement "you are gonna be **stopped** by law enforcement, ma'am." (emphasis added). While the meaning of this statement is subject to reasonable interpretation, it is objectively clear to the Complaint Examiner that at all times COMPLAINANT acted as if she was free to leave the scene. Indeed, COMPLAINANT left the scene and SUBJECT OFFICER did not physically seek to stop or pursue her as she walked to her vehicle. Further, SUBJECT OFFICER's cruiser did not block her vehicle and COMPLAINANT left the scene without incident. It is also important to note that the dialogue between COMPLAINANT and SUBJECT OFFICER took place very quickly, perhaps in four minutes or less. COMPLAINANT momentarily had a "reasonable perceptionthat it was a stop and not a contact" (ROI, p.6) that perception was dispelled in a second by the fact that she immediately walked to her car and left the scene.

That said, SUBJECT OFFICER's insistence that COMPLAINANT summon WITNESS to the scene, is somewhat problematic. COMPLAINANT could have reasonably interpreted this request to mean that she was not free to leave until WITNESS arrived.² However, at no time did SUBJECT OFFICER physically confront COMPLAINANT or impede her movements. Importantly, COMPLAINANT did not act in a way that would suggest she was stopped within the meaning of General Order 304.10.

United States v. Mendenhall, 446 U.S. 544 (1980) is instructive. There, the Supreme Court said:

We adhere to the view that a person is [stopped] only when, by means of physical force or show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation for invoking constitutional safeguards. The purpose of the Fourth Amendment [here General Order 304.10] is not to eliminate all contact between the police and citizenry, but "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals...."

Moreover, characterizing every street encounter between a citizen and the police as a [stop], while not enhancing any interest secured by the Fourth Amendment, would

² At various times, SUBJECT OFFICER asserted that he wanted contact information for COMPLAINANT's supervisor as opposed to summoning him to the scene. The BWC footage confirms that SUBJECT OFFICER expected WITNESS to come to the scene, which he did.

impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices. (internal citations omitted). 446 U.S. 553-554.

The Mendenhall court concluded “that a person has been [stopped] within the meaning of the [General Order 304.10] only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” 446 U.S. at 554. Further, in Mendenhall, the Court, on facts not dissimilar to those raised by this complaint, held: “The respondent was not [stopped] simply by reason of the fact that the agents approached her, asked her if she would show them her ticket and identification, and posed her a few questions. Nor was it enough to establish a [stop] that the person asking the questions was a law enforcement official.” 446 U.S. at 555.

The totality of the circumstances demonstrate that that SUBJECT OFFICER did not violate MPD General Order 304.10 and, therefore, did not harass COMPLAINANT in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Exonerated
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Submitted on November 16, 2020.

Richard S. Ugelow
Complaint Examiner