

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0388
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation:	Language and Conduct
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	January 4, 2021

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, was stopped for a traffic violation by an MPD Officer on the evening of January 25, 2020. SUBJECT OFFICER arrived on the scene to assist. COMPLAINANT refused to exit his vehicle voluntarily after being asked to do so several times. The responding officers then broke the driver's side window and forcibly removed him. When COMPLAINANT asked why that was done, SUBJECT OFFICER responded with rude, inappropriate and demeaning language.¹

¹ COMPLAINANT also alleged that SUBJECT OFFICER used unnecessary or excessive force against him when he forcefully removed him from his vehicle, that WITNESS OFFICER #1 used unnecessary or excessive force against him when he forcefully handcuffed him, and that WITNESS OFFICER #2 used unnecessary or excessive force against him when he pushed him against a patrol vehicle. He further alleged that WITNESS OFFICER #3 harassed him by illegally searching his vehicle and that WITNESS OFFICER #1 harassed him by mishandling his property and unlawfully arresting him. Pursuant to D.C. Code §5-1108(1), on November 25, 2020, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made 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 and WITNESS OFFICER #3, OPC's Report of Investigation (ROI), the objections submitted by SUBJECT OFFICER's attorneys on his behalf December 17, 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 and WITNESS OFFICER #3, the ROI and accompanying exhibits, the objections submitted on behalf of SUBJECT OFFICER and accompanying exhibits, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 25, 2020 at approximately 9:40 pm, the complainant, COMPLAINANT, was stopped for a traffic violation by WITNESS OFFICER #3.
2. Several officers, including the SUBJECT OFFICER, arrived on the scene to assist WITNESS OFFICER #3. All of the Officers were wearing MPD uniforms.
3. The responding officers requested COMPLAINANT to exit his car, but he refused. After several requests – perhaps ten or more – COMPLAINANT was told that his car window would be smashed in unless he voluntarily exited the car. COMPLAINANT continued to refuse.
4. An officer smashed in the driver's side window and COMPLAINANT was pulled from the car and handcuffed.
5. SUBJECT OFFICER was one of the officers who subdued COMPLAINANT.
6. When he was out of the vehicle, COMPLAINANT asked the officers "Man, did y'all really just do all that?"
7. SUBJECT OFFICER responded, "Yep. Sure did. Because you're being dumb. You're being stupid. You're an idiot. You're running your mouth like a dumb guy, that's why. Any other questions? Yea? Yea, why don't you keep them to yourself, how about that? Yea, okay, that's good. Call your mother. She would probably be ashamed of you 'cause you're being a dumb ass."
8. The other officers are not heard to have responded and there is no indication that they did respond to COMPLAINANT's question.

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.”

The regulations governing OPC define insulting, demeaning or humiliating language or conduct as “Language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension.”” D.C. Mun. Regs. tit. 6A, § 2199.1.

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.”

The facts are not in dispute. SUBJECT OFFICER, after reviewing the BWC, admitted that the language he used was not in accordance with MPD general orders. Exhibit 6, p.2. SUBJECT OFFICER told OPC that he used the language out of frustration because COMPLAINANT refused to exit his vehicle. Id. General Order 201.26 requires officers to remain calm and professional at all times. SUBJECT OFFICER’s objections acknowledge that his statements “unquestionably can be interpreted as rude and unprofessional. “ Objections, p. 4. SUBJECT OFFICER’s objections argue, however, that the statements should be viewed in the context of the circumstances of the event – particularly COMPLAINANT’s repeated refusal to cooperate and exit his vehicle.

The Complaint Examiner agrees that context is important and can understand why SUBJECT OFFICER’s patience (and that of the other responding officers) was pushed to the limits. But SUBJECT OFFICER is a professional and is bound by the General Orders. The words he spoke to COMPLAINANT indisputably (and admittedly) violated General Order 201.26. Moreover, the Complaint Examiner observes that no other responding officer used similar language during the encounter.

The objections raised by SUBJECT OFFICER are more appropriately made to the Chief of Police who will decide what, if any, sanction is appropriate.

The totality of the circumstances demonstrate that that SUBJECT OFFICER violated MPD General Order 201.26 (Language and Conduct) when he called the complainant demeaning names and acted in a rude and unprofessional manner, in violation of D.C. Code § 5-1107.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Language and Conduct	Sustained
---	-----------

Submitted on January 4, 2021

Richard S. Ugelow
Complaint Examiner