

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	21-0014
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #2 SUBJECT OFFICER #1
Allegation 1:	Failure to Identify (SUBJECT OFFICER #1)
Allegation 2:	Harassment (SUBJECT OFFICER #2)
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER #2)
Complaint Examiner:	ARTHUR D. SIDNEY
Merits Determination Date:	November 21, 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

COMPLAINANT, Complainant, alleged that SUBJECT OFFICER #1, Subject Officer #1, failed to provide his name and badge number when requested by Complainant. Additionally, Complainant further alleged that SUBJECT OFFICER #2, Subject Officer #2, harassed her boyfriend, WITNESS #1, Witness#1, when Subject Officer #2 searched his vehicle and the trunk of the vehicle he was driving without probable cause or consent. During the course of the investigation, OPC added an additional allegation that Subject Officer #2 used language and engaged in conduct that was insulting, demeaning, or humiliating toward the Complainant and Witness#1 when he used profanity, used a disrespectful hand gesture, and was argumentative and unprofessional during his interactions with Complainant and Witness #1.¹

¹ Additionally, Complainant made the following allegations that were dismissed by OPC: (1) that WITNESS OFFICER #1. and SUBJECT OFFICER #1, harassed her when they stopped and arrested her; (2) that Subject Officer #2 sexually harassed her when he handcuffed her; (3) that WITNESS OFFICER #1 and Subject Officer #2 used unnecessary or excessive force when they handcuffed her; (4) that Subject Officer #1 harassed Witness #1 when he stopped and arrested him; and that Subject Officer #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 discriminated against Witness #1 on the basis of his race. Pursuant to D.C. Official Code § 5-1108(1), a

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. Based upon a review of OPC's Report of Investigation, the objections submitted by Subject Officer #1 and Subject Officer #2 on October 13, 2021, 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 upon a review of OPC's Report of Investigation, the objections submitted by Subject Officer #1 and Subject Officer #2 on October 13, 2021, OPC's response to the objections, and where no evidentiary hearing was conducted, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 7, 2020, Witness #1 was arrested by Subject Officer #2 for fleeing from the police and for possession of an open container of alcohol. The arrest occurred in an alley behind a residence that Complainant was inside.
2. During the arrest, Witness #1 yelled for Complainant to come outside, which she did. Witness #1 was also the boyfriend of Complainant. Also during the arrest of Witness #1, Subject Officer #2 and Witness #1 engaged in a back and forth conversation wherein Witness #1 questioned why he was being detained and stated that Subject Officer #2's arrest of Witness #1 was because of his race. Subject Officer #2 responded that he hears such accusations often and responded with a hand gesture mimicking talking.
3. When Complainant came out of the residence, she learned that Witness #1 was under arrest for possessing an open container of alcohol. Shortly thereafter, Complainant tried to approach the vehicle to take a picture of the open container of alcohol using her cellular phone because she believed the seal was not broken on the alcohol container and that Witness #1 should not have been charged for the offense.
4. After Witness#1 was arrested, Subject Officer #2 removed the open container of alcohol from the vehicle. Additionally, Subject Officer #2 searched the interior front and back passenger area of the vehicle and also conducted a search of the vehicle's trunk without receiving consent from Witness #1 or Complainant. The vehicle was registered to a car dealership and Complainant was lawfully in possession of the vehicle. Complainant

member of the Complaints Board dismissed these allegations and concurred with the determination made by OPC's executive director. The Complainant Examiner concurs with OPC and its reasons for the dismissal of these allegations. Accordingly, the Complaint Examiner finds that these issues are not appropriately before the Complaint Examiner and thus are not subject to review.

repeatedly tried to approach the vehicle and the area where Witness #1 was being arrested.

5. Subject Officer #2 ordered Complainant to not interfere and to get back; however, she persisted and tried to get to the vehicle. During her interactions with Subject Officer #2, he yelled at her and pushed Complainant away from the scene of Witness #1's arrest. When Subject Officer #2 pushed her, Complainant claimed that Subject Officer #2 "sexually harassed" her. In response, Subject Officer #2 exclaimed "bullshit" and "you lie" insinuating that Complainant's accusation was untrue. Subject Officer #2 also said something to the effect that he was the police and that he was the law.
6. Complainant became more agitated and engaged in a confrontation with Subject Officer #1. Thereafter, Subject Officer #1 put Complainant in handcuffs and placed Complainant under arrest. While Complainant was handcuffed, she asked in the general direction of Subject Officer #1 for his name and badge number, but she misidentified his gender.
7. Subject Officer #1 is a male; yet, Complainant kept asking "Ma'am, Ma'am, what's your name and badge number?". When Subject Officer #1 did not reply, Complainant then called him a "sir" or "whatever." Two other nearby female MPD officers complied with Complainant's request for the MPD officers to identify themselves. Despite repeated requests directed at Subject Officer #1 by Complainant, Subject Officer #1 did not provide his name and badge number to Complainant as requested.
8. On October 8, 2020, Complainant filed a complaint with OPC.

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

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.

Subject Officer #2 arrested Witness #1 for possessing an open container of alcohol in the vehicle he was driving. Subsequent to the arrest, Subject Officer #2 conducted a search of the vehicle’s interior and also conducted a search of the vehicle’s trunk without consent.

Subject Officer #2 came into contact with Witness #1 because Subject Officer #2 initiated a traffic stop because he, along with his fellow MPD officers, noticed Witness #1’s vehicle had excessively dark tint and Witness#1’s vehicle only possessed a rear MD license plate which was registered to a dealership. MPD Officers turned on their lights and sirens and used the PA system ordering Witness #1 to stop but he continued to drive at least a block away to Complainant’s house. When Witness #1 stopped his vehicle, Subject Officer #2 placed him under arrest. While placing Witness #1 under arrest, Subject Officer #2 approached the vehicle. Subject Officer #2 saw an open container of alcohol in the center console of the vehicle, and proceeded to search the interior of the vehicle and it’s trunk without consent by either Witness #1 or Complainant, as it was Complainant’s loaner car from the dealership.

BWC footage did not show whether the seal on the container of alcohol was broken but Subject Officer #2 proceeded to twist the cap. No other contraband was retrieved from the vehicle.

Because there was no consent to search the vehicle or it’s trunk, and there was no reasonable articulable suspicion to search the vehicle for additional evidence after retrieving the container of alcohol and placing Witness #1 under arrest, the search incident to arrest of the passenger cabinet and the search of the trunk was unlawful, consistent with established case law. There were no exigent circumstances or reasonable suspicion of additional crimes, weapons, or other contraband to justify additional searches of the vehicle. As a result, Complaint Examiner finds that Subject Officer #2’s search of the vehicle and its trunk without a search warrant and

without consent was an unlawful search. Thus, Subject Officer #2 harassed Witness #1 in violation of D.C. Code § 5-1107 and MPD General Order 20.25.

Language or Conduct

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.”

During the arrest of Witness #1, Complainant was summoned by Witness #1 yelling for her to come to the scene. Complainant tried to record the occurrence on her mobile device and get close to the open container in the vehicle, but Subject Officer #2 ordered her to get back. Complainant did not adhere to Subject Officer #2's commands and attempted to go forward until he pushed Complainant.

BWC shows Complainant attempting to walk past Subject Officer #2 and him stopping her with his hands. Complainant accused Subject Officer #2 of “sexually” harassing her to which Subject Officer #2 responded “bullshit, you lying.” Subject Officer #2 can also be heard stating that he is the police and that he is the law.

BWC footage also shows Subject Officer #2 making hand gestures mimicking talking to Witness #1. BWC footage also shows Subject Officer #2 yelling and in a loud tone to Witness #1 and Complainant.

During his interview with OPC, Subject Officer #2 stated that he used profane language and that it was permissible for MPD officers to use profane language to get control over a situation. Additionally, Subject Officer #2, admitted he used a hand gesture mimicking talking in reference to Witness #1 because he did not feel Witness #1 was speaking to him appropriately.

Subject Officer #2 exclaimed “bullshit” in response to Complainant's accusation that Subject Officer #1 “sexually” harassed her. Given the back and forth between the Complainant and Subject Officer #2 and her accusation of sexual harassment, Complaint Examiner finds Subject Officer #2's response to be offensive and demeaning. Subject Officer #2 also engaged in loud talking and yelled at Complainant. At various points, throughout his conversation with Complainant, Subject Officer #2 made statements to the effect that “he was the police” or that he was “the law” as an attempt to justify his behavior. Subject Officer #2's demeanor, tone, and behavior was unprofessional and dismissive of Complainant. Moreover, pursuant to the MPD General Orders, MPD officers are to remain calm despite provocation and are required to treat the public with dignity and respect. Additionally, Subject Officer #2 made hand gestures

suggesting that Witness #1 was talking too much. Complaint Examiner finds that Subject Officer #2's language and conduct was unprofessional, demeaning, and insulting. Pursuant to the MPD General Orders, MPD officers are held to high to higher standard, and are supposed to be courteous and respectful toward civilians. Complaint Examiner concludes that Subject Officer #2 use of the word "bullshit," hand gesture indicating "talking," along with the loud talking and yelling constitute language or conduct that was insulting, demeaning or humiliating and; thus, violated D.C. Code § 5-1107 and MPD General Order 201.26.

Failure to Identify

MPD General Order 201.26 requires MPD officers to "give their first and last name and badge numbers in a respectful and polite manner" when requested to do so by a member of the public. MPD officers are also required to identify themselves by displaying their badge or identification folder before taking police action, "except when impractical, unfeasible, or where their identity is obvious."

Complainant requested Subject Officer #1's name and badge number. There were several officers within ear shot. Complainant made her request several times, initially she misgendered Subject Officer #1, saying something to the effect of "Ma'am, Ma'am" and asked for the name and badge number. Later, she said "sir" or "whatever," referring to the gender. Other MPD officers close by to the Complainant asked her if she was referring to them and Complainant replied in the negative. Complainant said she was addressing Subject Officer #1, however, he did not provide his name and badge number, as shown by the BWC.

Subject Officer #1 recalled hearing Complainant make a request of MPD officers to furnish their name and badge number.

The general order makes clear that an MPD officer shall give their first and last name and badge number when requested by a civilian. See MPD General Order 201.26. Complainant made her request many times, and loudly, even though she initially misgendered Subject Officer #1. If Subject Officer #1 had any question as to who Complainant was referring, he should have asked her for clarification as other MPD officers did on the scene. Later, Complainant addressed her question regarding name and badge number to "Sir" rather than "Ma'am." At that point, because Subject Officer #1 was a male in proximity to Complainant, if there were any question, he could have asked for clarification or furnished the information as requested. Thus, Complaint Examiner concludes that Subject Officer #1 failed to provide his identification in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Failure to Identify	Sustained
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SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained

Submitted on November 21, 2021.



ARTHUR D. SIDNEY
Complaint Examiner