

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	21-0072 and 21-0074
Complainant:	COMPLAINANT #1 and COMPLAINANT #2
Subject Officers, Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Failure to identify (SUBJECT OFFICER #1)
Allegation 2:	Unnecessary/Excessive Force (SUBJECT OFFICER #1)
Allegation 3:	Language or Conduct (Insulting, Demeaning, or Humiliating Language or Conduct) (SUBJECT OFFICER #2)
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	December 10, 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 D.C. Code § 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

Complainants COMPLAINANT #1 (COMPLAINANT #1) and COMPLAINANT #2 (COMPLAINANT #2) filed a complaint with the Office of Police Complaints on November 6, 2020 and November 9, 2020 respectively. COMPLAINANT #1 alleges that on November 3, 2020, SUBJECT OFFICER #1¹ failed to properly identify himself when asked to do so by COMPLAINANT #1. COMPLAINANT #1 also alleges that SUBJECT OFFICER #2 used language toward him that was threatening, insulting, demeaning or humiliating.² Additionally,

¹ SUBJECT OFFICER #1 was promoted during the course of the investigation and is therefore referred to as SUBJECT OFFICER #1 throughout this document.

² COMPLAINANT #1 and COMPLAINANT #2 made several other allegations that were ultimately dismissed by the Office of Police Complaints. They alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against their daughter by almost hitting her with his cruiser. Second, the complainants alleged that SUBJECT OFFICER #1, WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #4 used unnecessary or excessive force by pushing them. Third the complainants alleged that WITNESS OFFICER #2 harassed COMPLAINANT #1 by unlawfully arresting him. Fourth, the complainants alleged that WITNESS OFFICER #2, WITNESS OFFICER #5, and WITNESS OFFICER #6 used unnecessary force against COMPLAINANT #1 by forcibly placing him in handcuffs. Fifth, COMPLAINANT #1 alleged that officer

during the course of the investigation, OPC determined that SUBJECT OFFICER #1 used unnecessary or excessive force against an unidentified individual by pushing them. OPC added this allegation pursuant to D.C. Code § 5-1107 (g-1)(1)(A) which allows the Executive Director to initiate a complaint against the subject officer if they discover abuse or misuse of police powers that were not alleged by the civilian complainants.

Specifically, COMPLAINANT #1 stated that on November 3, 2020, he and his family were at A LOCATION IN NW, WASHINGTON, DC. One of his daughters was preparing to perform on a Go-Go truck platform that was parked near the intersection IN NW, WASHINGTON, DC. SUBJECT OFFICER #1 drove his police cruiser through the crowd. COMPLAINANT #1 and COMPLAINANT #2 confronted SUBJECT OFFICER #1 about his driving. During the exchange, COMPLAINANT #1 requested SUBJECT OFFICER #1's name and badge number. However SUBJECT OFFICER #1 did not fully respond to the request. COMPLAINANT #1 was arrested later that evening. While in custody, COMPLAINANT #1 refused to provide his name to SUBJECT OFFICER #2 who used insulting, demeaning language in response.

Separately, OPC further observed in the body-worn camera footage of the evening that SUBJECT OFFICER #1 pushed an unidentified individual who stood dancing near the Go-Go truck out of his way without command or warning.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, various segments of body-worn camera footage, the objections submitted by the officers, and OPC's response to those objections, the Internal Affairs Division memorandum regarding their final investigative report related to the Use of Force by (various officers including) SUBJECT OFFICER #1, 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 body-worn camera footage of SUBJECT OFFICER #1, WITNESS OFFICER #7, SUBJECT OFFICER #2, WITNESS

WITNESS OFFICER #2 used unnecessary or excessive force by applying his handcuffs to tightly. Sixth, COMPLAINANT #1 alleged that WITNESS OFFICER #1 and WITNESS OFFICER #2 used language toward him that insulting, demeaning or humiliating by engaging in trash-talk. Seventh, COMPLAINANT #2 alleged that WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6 retaliated against her for confronting SUBJECT OFFICER #1 about his driving. Pursuant to D.C. Code § 5-1108(1), on September 30, 2021, a member of the Police Complaints Board dismissed these allegations concurring with the determination made by OPC's executive director. *See* Exhibit 3, Dismissal.

OFFICER #1, WITNESS OFFICER #8, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On the evening of the 2020 presidential election, November 3, 2020, COMPLAINANT #1 and his wife, COMPLAINANT #2, and children attended an event at NW, WASHINGTON, DC, in downtown DC. One of their children was to perform at the event featuring Go-Go music. The Go-Go band was playing on the bed of a truck at the location. There were also protests happening at this time and location.
2. SUBJECT OFFICER #1 was working that evening and he was responsible for helping to maintain order on the scene. SUBJECT OFFICER #1 perceived the situation as contentious and sought to move the Go-Go truck from its location. At about 5:15 pm, he drove his police vehicle through the crowd. He did so slowly and with caution however there were people surrounding the vehicle.
3. As SUBJECT OFFICER #1 went through the crowd, COMPLAINANT #1 knocked on the window and said "You almost hit my daughter." He replied, "We're escorting the Go-Go truck." COMPLAINANT #1 said, "No, I said you almost hit my daughter." SUBJECT OFFICER #1 did not address the concern. COMPLAINANT #1 then asked for his name and badge number. SUBJECT OFFICER #1 responded, "SUBJECT OFFICER #1³." SUBJECT OFFICER #1 provided no other identifying information.
4. SUBJECT OFFICER #1 then parked his vehicle and engaged with a woman regarding moving the Go-Go truck. He then walked through the crowd toward the truck. Go-Go music played loudly as people stood and danced in the street. An individual of minimal stature wearing a gray hooded sweatshirt danced calmly near the truck. SUBJECT OFFICER #1 walked directly toward this person and used his arm to push the individual out of the way. SUBJECT OFFICER #1 gave no warning to this person to move. The individual appeared to be slightly lifted off the ground and moved due to the contact with SUBJECT OFFICER #1.
5. Later this same evening, COMPLAINANT was arrested by MPD. COMPLAINANT was put in the police vehicle wagon and awaited transportation off the scene. SUBJECT OFFICER #2 approached indicating that he was responsible for transporting COMPLAINANT.
6. SUBJECT OFFICER #2 approached the wagon and asked WITNESS OFFICER #9 and WITNESS OFFICER #10 if COMPLAINANT was wearing handcuffs or zip ties. They indicated that they did not know. An officer standing there told SUBJECT OFFICER #2 that COMPLAINANT would be aggressive. SUBJECT OFFICER #2 shined his flashlight into the transport vehicle. He said, "You got handcuffs on, dude? Or wire cuffs?" COMPLAINANT did not respond. SUBJECT OFFICER #2 repeated, "You got handcuffs on?" COMPLAINANT did not respond. SUBJECT OFFICER #2 said, "Are you high? Do you understand English?" COMPLAINANT said, "Is your fucking mother high, bitch?"

³ At the time, SUBJECT OFFICER was a LOWER RANK.

SUBJECT OFFICER #2 said, "Are you high?" COMPLAINANT said, "I'm high with your mother, bitch." SUBJECT OFFICER #2 said, "I'm glad you asked. Say hi to her for me." COMPLAINANT #1 continued talking and using profanity. SUBJECT OFFICER #2 said, "Whatever you say, handsome." With a sing-song tone, SUBJECT OFFICER #2 said, "Have a nice day." COMPLAINANT stopped talking. With a sing-song tone, SUBJECT OFFICER #2 said, "Have a nice day." COMPLAINANT continued talking using profanity and racial slurs. SUBJECT OFFICER #2 said, "That's fine." COMPLAINANT briefly stopped talking. He then started rambling again. SUBJECT OFFICER #2 said, "Make sure you say hi to everybody for me." COMPLAINANT #1 kept rambling and using profanity. SUBJECT OFFICER #2 said, "Is that the worst thing you can really come up with? Seriously? Is that the worst thing you can come up with?" COMPLAINANT #1 said, "Shut the fuck up then. Is it bothering you, nigger?" With a laughing tone, SUBJECT OFFICER #2 said, "Nothing's bothering me." COMPLAINANT said, "You fucking nigger. Shut the fuck up, nigger." SUBJECT OFFICER #2 said, "Whatever you say, handsome." COMPLAINANT kept rambling and using racial slurs. SUBJECT OFFICER #2 laughed.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a) (2,3,6), (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 "...unnecessary or excessive use of force," the "use of language or conduct that is insulting, demeaning or humiliating," and "[f]ailure to . . . identify oneself by name and badge number when requested to do so by a member of the public."

The allegations of abuse or misuses of police powers that were not dismissed will be discussed below in chronological order as the events unfolded on the evening of November 3, 2020.

A. FAILURE TO PROVIDE IDENTIFICATION

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, No.1 (e) directs that members of the department in their conduct toward the public, shall "be courteous and orderly in their dealings with the public" specifically "[w]hen requested to do so, members shall give their first and last name and badge numbers in a respectful and polite manner."

SUBJECT OFFICER #1 failed to properly identify himself consistent with the General Order when asked to do so by COMPLAINANT. SUBJECT OFFICER #1 drove slowly through the crowd near NW, WASHINGTON, DC, with the stated goal of getting the Go-Go truck out of the way. COMPLAINANT knocked on the window of the car driven by SUBJECT OFFICER #1 telling SUBJECT OFFICER #1 that he had "almost hit his daughter." SUBJECT OFFICER #1 did not respond to this assertion by COMPLAINANT but said "we're escorting the Go-Go truck." COMPLAINANT then asked SUBJECT OFFICER #1 for his name and badge number.

In response SUBJECT OFFICER #1 said “SUBJECT OFFICER #1” (at the time he was a LOWER RANK) but failed to provide his first name and badge number. SUBJECT OFFICER #1 had a clear objective, his demeanor was calm, and while the circumstances required vigilance there was not an immediate exigency to deviate from expected member conduct.

“Members shall recognize their responsibility as public servants and shall be particularly attentive to citizens seeking assistance, information, and who desire to register complaints, or give evidence.” MPD General Order 201.26, Background. SUBJECT OFFICER #1’s response to COMPLAINANT was dismissive and lacking in respect. It was also squarely inconsistent with MPD General Order 201.26, Part V, Section C, No.1 (e).

B. USE OF FORCE

“The policy of the Metropolitan Police Department (MPD) is to value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. Therefore, MPD members shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring a person or incident under control, while protecting the lives of the member or others. When using force, members shall continuously reassess the perceived threat in order to select the reasonable use of force response, or one that is proportional to the threat faced by him [...] or others.” MPD General Order 901.07 Use of Force, (effective November 3, 2017), Part II.

A few minutes after SUBJECT OFFICER #1 drove his vehicle through the crowd, he parked it and as he exited his vehicle, he engaged with a young woman regarding moving the Go-Go truck. His demeanor was calm and his language assertive. He then proceeded to walk toward the truck. Go-Go music played loudly as people stood and danced in the street. An individual of minimal stature wearing a gray hooded sweatshirt danced calmly near the truck. SUBJECT OFFICER #1 walked directly toward this person and used his arm to push the individual out of the way. This footage shows an individual who appears to come in contact with SUBJECT OFFICER #1 as SUBJECT OFFICER #1 walked steadily. The individual appears to be slightly lifted off the ground and moved due to the contact with SUBJECT OFFICER #1. The individual cannot be described as resistant – they merely were in SUBJECT OFFICER #1’s way and without warning, SUBJECT OFFICER #1 used force to move them.

SUBJECT OFFICER #1 stated in his interview with OPC that he did not recall this contact. He stated that any contact was unintentional. SUBJECT OFFICER #1 could then not have perceived a threat justifying any use of force. It is incumbent on members to be mindful of their surroundings at all times, to continually assess the changing circumstances around them, and to value and preserve the public’s trust and sanctity of human life at all times. SUBJECT OFFICER #1’s disregard for the individual calmly dancing violates the standards of conduct of the MPD. In conclusion, SUBJECT OFFICER #1 used unnecessary, excessive and unreasonable force against this unnamed individual.

C. LANGUAGE OR CONDUCT

MPD “members shall: [b]e courteous and orderly in their dealings with the public.” Specifically, “[m]embers shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.” MPD General Order 201.26 (effective April 5, 2011) Duties, Responsibilities and Conduct of Members of the Department, Part V, Section C Conduct Toward the Public, No. 1. Further, “all members shall [r]efrain 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.” *Id.* at Part V, Section C, 3. These principles are also adopted in the standards used for arrest procedures: “prisoners and suspects shall be treated in a fair and humane manner; they shall not be humiliated, ridiculed, taunted, or embarrassed.” *Id.* at Part V, Section D Conduct in Arrest Procedures, No. 1(a)(1).

Later in the evening of November 3, 2020, COMPLAINANT #1 was arrested. He was placed in a police wagon and remained there for several minutes awaiting transport to the police district. COMPLAINANT #1 remained in the wagon with the outer doors open and inner metal doors closed. Several officers stood nearby talking but not engaging COMPLAINANT #1. SUBJECT OFFICER #2 stated that he was responsible for transporting COMPLAINANT #1 to the station. He approached the wagon and his initial statements demonstrate assessing COMPLAINANT’s status for example whether he was wearing handcuffs, whether he spoke English. Thereafter, COMPLAINANT #1 began using profanity and insulting the officer. SUBJECT OFFICER #2 not only responded to COMPLAINANT #1’s use of profanity and statements about his mother in an unacceptable manner, but he also escalated the engagement with COMPLAINANT by calling him “handsome” and telling him to “have a nice day” in a taunting manner. SUBJECT OFFICER #2 engaged with COMPLAINANT #1 in a manner inconsistent with expected conduct of an MPD officer. Those expectations demand that despite COMPLAINANT #1’s disrespectful language and conduct, SUBJECT OFFICER #2 should have remained professional.⁴ Particularly during this era of heightened tension between the public and law enforcement, officers’ conduct should rise above the conduct of the public.⁵

⁴ Notably multiple officers engaged with COMPLAINANT #1 that evening while he was agitated and he antagonized them. These officers’ body-worn camera recordings (and the summaries of those recordings) demonstrate their professionalism in the face of COMPLAINANT #1’s conduct. For example, WITNESS OFFICER #11 identified that COMPLAINANT #1 was agitated and he stopped engaging with him. At the police station later that evening, WITNESS OFFICER #9 remained professional despite COMPLAINANT #1’s provocation. Likewise, WITNESS OFFICER #8, WITNESS OFFICER #1, and WITNESS OFFICER #12 remained professional despite COMPLAINANT #1’s provocation.

⁵ The defenses offered by SUBJECT OFFICER #2 fall flat. This examiner recognizes the exhaustion members of the MPD must have experienced particularly during the weeks and months surrounding COMPLAINANT #1’s arrest. However, the circumstances do not create an excuse for lack of professionalism. If an officer is unable to carry out their responsibilities with professionalism and respect under stress, alternatives such as relying on fellow officers and excusing themselves from the situation, counseling, de-escalation training or seeking mental health leave may be appropriate.

As the General Order on the Duties and Responsibilities of members of the MPD states, “the personal conduct and attitude of the police officer is of paramount importance” to strengthen the relationship between police and the community. Here, SUBJECT OFFICER #2 abused his position of authority and demonstrated a profound lack of professionalism expected of the MPD. In conclusion, SUBJECT OFFICER #2 engaged in conduct and used language toward COMPLAINANT #1 that was insulting, demeaning or humiliating in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

V. SUMMARY OF THE MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Failure to Identify	Sustained
Allegation 2: Unnecessary/Excessive Force	Sustained

SUBJECT OFFICER #2

Allegation 1: Language or Conduct	Sustained
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Submitted on December 10, 2021

Rebecca Goldfrank
Complaint Examiner