

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	21-0259
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment by Unlawful Arrest and Charges
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Meaghan Hannan Davant
<b>Merits Determination Date:</b>	January 13, 2022

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**

On February 9, 2021, COMPLAINANT (“complainant”), filed a complaint with the D.C. Office of Police Complaints (OPC). The complaint alleged that, on February 7, 2021, Metropolitan Police Department (MPD) SUBJECT OFFICER (the “subject officer”), harassed complainant by unlawfully arresting him and charging him with misuse of registration. Complainant further alleged that the subject officer used language or engaged in conduct that was insulting, demeaning or humiliating and behaved in a rude, accusatory, and unprofessional manner throughout their interaction, and used profanity in the course of his duties.<sup>1</sup>

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<sup>1</sup> Complainant also alleged that the subject officer harassed him by, first, unlawfully stopping him for the traffic violation running a stop sign, and second, by mishandling his property during the stop by leaving his vehicle unattended on the side of the road following his arrest. Complainant further alleged that subject officer unnecessary or excessive force by handcuffing him too tightly during the stop. Pursuant to D.C. Code §5-1107, on October 25, 2021, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s Executive Director.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and exhibits thereto and the objections submitted on behalf of the subject officer on December 3, 2021, 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 and exhibits thereto, and the objections submitted on behalf of the subject officer on December 3, 2021, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On February 7, 2021, the subject officer conducted a traffic stop of complainant, in the general vicinity of AN INTERSECTION IN SE, WASHINGTON, DC, for allegedly failing to stop at a stop sign.
2. From the beginning of the stop, as viewed in the body-worn camera ("BWC") footage of the incident, the subject officer used a patronizing tone with the complainant, speaking in a deliberately slow and condescending manner. The subject officer first made several comments about the fact that complainant was sweating, asking "why are you sweating, it's cold outside?" in a badgering manner, without waiting for a response. The subject officer then repeatedly interrupted complainant's attempts to ask questions about the reason for the stop.
3. As his investigation progressed, the subject officer demonstrated an immediate distrust of the complainant. After asking him to provide his license and vehicle registration, the subject officer refused to allow complainant to move to retrieve them without express verbal permission. When complainant complied with this request, the officer responded in a sarcastic and placating tone, "There you go—you're understanding now."
4. As viewed in the BWC footage, the subject officer first conducted a visual inspection of the vehicle while complainant remained inside, seated in the passenger seat. The subject officer asked complainant to move a piece of paper on the dashboard that was partially obscuring the Vehicle Identification Number ("VIN"), stating, "Can you slide this up so I can see the VIN?" Complainant immediately complied and the subject officer attempted to read the VIN through the windshield of the car but appeared to have difficulty.
5. The subject officer then asked complainant to open the driver's side door. Complainant complied and the subject officer stepped into the space created by the open car door. However, instead of inspecting the VIN number mounted to the vehicle dash, to which he now had an unobstructed view, the subject officer instead examined the VIN number on

the inside of the driver's side door and compared it with the VIN on the paper vehicle registration.

6. The subject officer then asked complainant to exit his vehicle, stating that he wanted to talk to him "man to man," and the complainant complied. As soon as he had exited the car, the subject officer informed complainant that he was being detained for operating an unregistered vehicle, stating the vehicle identification number (VIN) on the registration did not match the VIN on the car.
7. The subject officer began walking complainant to his patrol car, during which time complainant explained numerous times that the vehicle was properly registered to his girlfriend, and he was unsure of why the motor vehicle database was coming back stating the registration was not active, or why the VIN on the paper registration did not match the vehicle.
8. In response to complainant's statements that he believed the vehicle was properly registered, the subject officer repeatedly told complainant to "be honest with him" and to "tell him the truth." Complainant repeatedly stated that he was being truthful and attempted to provide further information that might explain any discrepancy in the VIN numbers. As shown in the BWC footage, the subject officer's tone and mannerisms during the interaction were condescending and either implied, or outright stated, that complainant was lying: "I need you to start being honest with me. ... Every time I say something you have an excuse or a lie."
9. The subject officer placed complainant in the back seat of his patrol car, where complainant continued his attempts to explain that the officer was mistaken about the vehicle registration. Complainant noted that the car had been painted, which explained at least the difference in the car's color, as reflected in the registration. The subject officer replied that he would "triple check" the VIN, but never inspected the dashboard plate.
10. After being placed under arrest, the BWC footage showed the subject officer discussing, with other officers who had arrived at the scene, what he was going to do with the complainant's vehicle. When another officer at the scene had issues getting the vehicle to shift into drive to move it to a legal parking spot, complainant attempted to provide instructions on how to handle the car. The subject officer abruptly cut him off, asking "Would you like me to just tow it?" The complainant responded, "No," to which the subject officer then stated, "That wasn't me being an asshole. I was just asking." Shortly after, responding to the other officer's frustration in attempting to put the car in gear, the subject officer yelled sarcastically to her, "Don't talk shit about [complainant's] car."
11. Following his release from the police station, complainant returned to the vehicle and took a photograph of the VIN plate on the dashboard. He then returned to the MPD DISTRICT STATION to confirm it matched the registration, which it did, and he was put in touch with WITNESS OFFICER.

12. WITNESS OFFICER reviewed the evidence and was able to verify that the VIN plate on the actual frame of the vehicle (the dashboard VIN), not the one inside the driver's door, matched the Virginia registration that complainant had provided to the subject officer. WITNESS OFFICER informed complainant that the subject officer had made an error by notchecking the VIN in the vehicle. WITNESS OFFICER directed complainant to return to the MPD DISTRICT STATION, where he returned the complainant's property, specifically the tags and vehicle registration, and advised him that the prosecuting attorney would be contacted and the charge for the misuse of tags would be dropped.
13. In his complaint with OPC, complainant stated that he felt insulted by the subject officer's constant accusations that he was lying and operating an improperly registered vehicle and was embarrassed and humiliated when arrested for a crime he did not commit.
14. Complainant further alleged the subject officer's demeanor toward him was angry, frustrated, and disrespectful throughout their interaction.

#### **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.” 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. The Subject Officer Harassed complainant by Failing to Conduct a Proper Investigation of the Vehicle, Resulting in an Unlawful Arrest and Charge.***

The complainant alleged that the subject officer unlawfully arrested him for misuse or improper vehicle registration. Following his arrest, complainant was able to prove that the paper registration he provided the subject officer at the time of the arrest did, in fact, match the VIN located on the vehicle's dashboard.

In his interview with OPC, the subject officer confirmed that, in investigating the potential charge of misuse or registration, he compared the VIN on the paper registration to the VIN plate mounted on the driver's side door, but not to the VIN mounted to the actual frame of the vehicle (the dashboard VIN). First, the subject officer stated that he could not check the dashboard VIN because there was something obstructing his view of the plate. The BWC footage clearly shows, however, that the subject officer asked complainant to move the object that was blocking the dashboard VIN and complainant readily complied. Then, the subject officer then asked complainant to open the driver's side door of the car, presumably to get an unobstructed view of the dashboard VIN. However, after complainant complied and opened the door, the subject officer chose to examine only the VIN number mounted on the side of the car door, and not the dashboard VIN. Finally, in response to complainant's insistence that the VIN numbers had to match, the subject officer stated he would "triple check" the VIN, yet never did.

In his interview with OPC, WITNESS OFFICER, the subject officer's commanding officer, confirmed that it is common practice to check the VIN on the dashboard and that the subject officer appeared to have had the opportunity to do so, but clearly chose not to. WITNESS OFFICER explained that officers are required to always check the dashboard VIN because it is the most accurate way to identify the vehicle. The VIN located on a door, for example, may not always match that on the frame, or dashboard, as it is common practice for doors to be replaced from similar make and model cars. WITNESS OFFICER concluded that the subject officer failed to conduct a proper investigation of the vehicle by failing to reconcile the dashboard VIN with the paper registration and told OPC that he verbally counselled that officer that, in the future, he needed to "slow down" and "double and triple check" everything during an investigation before taking away someone's freedom.

WITNESS OFFICER further stated that he instructed SUBJECT OFFICER to contact the prosecuting attorney for complainant's case and explain the situation to them so the charge would be dismissed. In his interview, however, the subject officer told OPC he had not contacted the prosecuting attorney's office because he believed it was WITNESS OFFICER's responsibility. WITNESS OFFICER later followed up with OPC to confirm he had again spoken with the subject officer regarding this duty, that the prosecuting attorney's office had been contacted, and confirmed that the charges were dismissed. This did not occur, however, until more than three months after WITNESS OFFICER initially instructed the subject officer to make sure the charges had been dropped.

In defense of his failure to conduct a proper investigation of the vehicle, the subject officer made numerous statements in his interview with OPC to the effect that he did not believe the complainant because he was sweating, and his story was “inconsistent.” There was, however, no evidence from the BWC footage, arrest report, or otherwise to indicate complainant was lying or that he knowingly misused the tags or registration for the vehicle he was driving, an element that must be established to determine probable cause for that charge. In any case, the subject officer’s beliefs as to complainant’s state of mind or behavior have no logical impact on the officer’s ability or obligation to carry out a thorough investigation, including to examine the dashboard VIN.

The evidence clearly shows that the subject officer failed to conduct a proper investigation prior to arresting and charging complainant, including but not limited to his failure to match the vehicle’s dashboard VIN to the paper registration provided. The subject officer failed to complete this crucial step despite multiple demonstrated opportunities, and complainant’s repeated, near pleading, requests. Thereby, the subject officer not only failed to follow MPD policy but did not properly establish the probable cause necessary for the complainant’s arrest. Further, when given the order to follow up with the prosecutor’s office to ensure to correct his error and ensure that the charges had been dropped, the subject officer failed to do so. The subject officer’s actions demonstrate at least a reckless disregard for policy, procedures, and District law that clearly subjected complainant to “arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights.” Therefore, OPC concludes that subject officer harassed the complainant in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

### **B. Insulting, Demeaning, or Humiliating 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.”

In his complaint with OPC, complainant stated that he felt insulted by the subject officer’s constant accusations that he was lying and operating an improperly registered vehicle and was embarrassed and humiliated when arrested for a crime he did not commit. Complainant further alleged the subject officer’s demeanor toward him was angry, frustrated, and disrespectful throughout their interaction.

In his interview with OPC, the subject officer described his own demeanor as professional and calm and stated that he did not feel he engaged in any language or conduct that was insulting, demeaning, or humiliating. However, OPC’s review of the BWC footage clearly

show that the subject officer behaved in a condescending, annoyed and patronizing manner from the first moments of his interaction with complainant.

When first explaining the reason for the stop—that complainant had allegedly failed to stop at a stop sign—the subject officer repeatedly interrupted complainant’s attempts to speak or explain himself. When complainant averred that he had, in fact, made a complete stop, the subject officer laughed derisively and said, “Ha, yeah.” The complainant then attempted to explain that his girlfriend was pregnant and he was trying to get home to her, but the subject officer refused to acknowledge his concerns, instead peppering the complainant with questions about his physical appearance in a taunting manner, asking, “Why are you sweating, it’s like 35 degrees out?” When the complainant attempted to explain that he was wearing a sweatshirt, mask, and had all of the windows rolled up with the heat on, the subject officer continued to interrupt with questions in mocking, sarcastic tone “Are you okay? Do you need medical attention? No?”

As shown in the BWC footage, the complainant maintained a calm, pleasant demeanor throughout the interaction and readily complied with the officer’s requests, despite the subject officer’s repeated interruptions and demonstrated impatience. The subject officer first asked complainant to turn over his license and registration but, as complainant began to gather the items, abruptly instructed him not to move. In a scolding manner the officer stated, “Tell me what you’re going to do before you do it.” The complainant then gestured to the glove compartment to indicate that he was going to retrieve his insurance card, to which the officer condescendingly replied, “There you go, you’re understanding now.”

Following his initial investigation of the vehicle, the subject officer returned to his patrol vehicle where complainant was being held to ask him additional questions about the registration. However, despite complainant’s repeated attempts to provide responses, the officer impatiently interrupted him, refusing to listen and instead insisting that complainant was lying. “I need you to start being honest with me,” the subject officer stated, “Every time I say something, you have an excuse and a lie.”

Later, when a second officer who had arrived at the scene was struggling to put complainant’s vehicle in gear in order to move it to a legal parking spot, complainant spoke up to provide instructions. The subject officer again cut him off abruptly and with an agitated tone, asking complainant, “Would you like me to just tow it?” The complainant responded, “No.” The subject officer then replied, “That wasn’t me being an asshole. I was just asking.” Seconds later, the subject officer called out to the second officer, still struggling to move the car, telling her, “Don’t talk shit about [complainant’s] car.”

The BWC footage of the incident objectively shows that the subject officer’s tone in his interactions with complainant was rude and condescending. Further, the subject officer behaved in a disrespectful and unprofessional manner by displaying immediate distrust of the complainant from the beginning of the stop, repeatedly insisting complainant was lying, and refusing to listen

to complainant's explanations. While the subject officer's tone and conduct may have been limited to a single interaction, this type of behavior by MPD officers can have broader implications. Section V.E. of MPD General Order 201.26, "Citizen-Police Officer Relationships," notes:

[i]t is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for, and confidence in, the MPD and its members. In any effort to strengthen the citizen-police officer relationship, the *personal conduct and attitude of the police officer is of paramount importance*. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public.

*Emphasis added.* Here, the subject officer's behavior did a disservice to the continued relations between MPD officers and the citizens of Washington, D.C.

The General Order also strictly prohibits the use of profanity by on-duty officers. Section V.C., "Conduct Toward the Public" requires all officers to: "refrain from harsh, violent, coarse, profane, sarcastic, or insolent language ... that might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person." While the subject officer's statements that he was not trying to be "an asshole," and his admonishment to a second officer to not "talk shit" about complainant's car were not directed at complainant himself, they nonetheless violate the letter of the Order. The use of profanity by any MPD Officer is a *per se* violation.

Based on the totality of the circumstances, the subject officer thereby used or engaged in conduct toward the complainant that was insulting, demeaning or humiliating towards the complainant, acted in an unprofessional manner, and used profanity in violation of § 5-1107(a) and MPD General Order 201.26.

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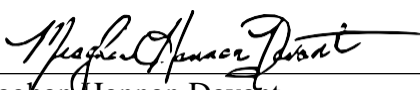


**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b> Harassment by Unlawful Arrest and Charges	Sustained.
<b>Allegation 2:</b> Insulting, Demeaning, or Humiliating Language or Conduct	Sustained.

Submitted on January 13, 2022.

  
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Meaghan Hannan Davant  
Complaint Examiner