

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	21-0631
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officers, Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment – Improper Stop
<b>Allegation 2:</b>	Harassment – Unlawful Arrest
<b>Allegation 3:</b>	Harassment – Improper Ticketing
<b>Allegation 4:</b>	Discrimination
<b>Complaint Examiner:</b>	Richard S. Ugelow
<b>Merits Determination Date:</b>	February 17, 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 June 22, 2021, MPD officers SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were on traffic patrol in a marked MPD cruiser in the general vicinity of the A BLOCK IN SE, WASHINGTON, DC. The officers told OPC that they had received intelligence of illegal drug trafficking in the area. In response, the officers were looking for cars with temporary license plates. The officers came upon a car with temporary North Carolina license plates that was operated by the complainant, COMPLAINANT.<sup>1</sup> Using the mobile database in the cruiser and the AN MPD DISTRICT dispatcher, the officers determined that the temporary tag was not registered in the available databases. Thereafter, the officers stopped COMPLAINANT. As requested, COMPLAINANT produced his driver's license, proof of insurance and vehicle

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<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when they laughed and smiled sarcastically. Pursuant to D.C. Code § 5-1108(1), on December 23, 2021, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's executive director. *See* Exhibit 3.

registration. The officers used the VIN (Vehicle Identification Number) to determine the status of the vehicle. This inquiry showed that the vehicle was registered in Maryland, not North Carolina. The officers arrested COMPLAINANT. COMPLAINANT and the other three passengers in the vehicle claimed that there was a mistake and that the vehicle had been lawfully purchased and registered. COMPLAINANT's wife, one of the passengers, attempted to show the officers papers she claimed demonstrated ownership of the vehicle, but the officers refused to look at the paperwork. COMPLAINANT was transported to AN MPD DISTRICT STATION. The MPD DISTRICT STATION officers determined that the vehicle was properly registered and released COMPLAINANT after approximately three hours in custody. COMPLAINANT is a Spanish speaker; at no time was he provided language assistance by the MPD.<sup>2</sup>

## 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 #1, SUBJECT OFFICER #2, and WITNESS OFFICER #1; OPC's Report of Investigation (ROI); the objections submitted by the D.C. Police Union on behalf of SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on January 25, 2021 (sic); 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 #1, SUBJECT OFFICER #2, and WITNESS OFFICER #1; the ROI and accompanying exhibits; the objections submitted by the D.C. Police Union on behalf of officers SUBJECT OFFICER #1 and SUBJECT OFFICER #2; and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 2:50 p.m., on June 22, 2021, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were on traffic patrol in a MPD police cruiser in the area of the A BLOCK IN SE, WASHINGTON DC. The cruiser was marked, and the officers were in full uniform.
2. The officers were aware that there was ongoing drug trafficking in the area. Exhibit10, p.1, and fn.1.

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<sup>2</sup> COMPLAINANT further alleged that WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, and WITNESS OFFICER #1 discriminated against him based on his national origin by failing to provide language access services. This allegation for these transport and cell block officers has been referred to MPD so these officers can receive policy training pursuant to D.C. Code § 5-1107(g)(6). *See* Exhibit 4.

3. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 are experienced MPD officers. It was their experience that drug dealers often used vehicles with fake temporary license plates, i.e., non-metal license plates.
4. The officers saw two cars with temporary license plates in the area. The tag on the first car appeared as properly registered in the WALES/NCIC system. The second car belonged to COMPLAINANT with temporary North Carolina license plates.
5. The temporary North Carolina tag was not found in the WALES/NCIC system.
6. At the officers' request, AN MPD DISTRICT dispatcher also ran the temporary NC license number through the WALES/NCIC system, The dispatcher, too, determined that the license number was not in the system.
7. The officers saw COMPLAINANT and three other individuals get into the parked car and drive away.
8. Because they had reason to believe that the car was not properly registered, the officers initiated a traffic stop.
9. COMPLAINANT provided SUBJECT OFFICER #1 with his driver's license and insurance information, which were in good order.
10. When asked by SUBJECT OFFICER #1 where the car was purchased, COMPLAINANT responded "North Carolina."
11. SUBJECT OFFICER #1 told COMPLAINANT that the license tags were not found in the system, and that was the reason he was stopped. SUBJECT OFFICER #1, BWC at 2:50.
12. COMPLAINANT's wife asked if she could call the dealer, which she was allowed to do.
13. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 returned to their cruiser and again ran the tag number through the WALES/NCIC system. The tag number was not found in the system.
14. When the officers also ran the Vehicle Identification Number (VIN) through the system, it showed that the car was registered to a Maryland rental company. In fact, the VIN number came up for two different cars. SUBJECT OFFICER #2 BWC at 15:49; SUBJECT OFFICER #1 BWC at 15:40.
15. While in the cruiser, the officers discussed how to proceed. SUBJECT OFFICER #2 suggested that a traffic ticket be issued. SUBJECT OFFICER #1 stated that it was customary to make an arrest under these circumstances. SUBJECT OFFICER #1 made the decision to arrest COMPLAINANT.

16. SUBJECT OFFICER #1 called dispatch for transport.
17. The officers exited the cruiser and arrested COMPLAINANT.
18. At all times, COMPLAINANT was cooperative.
19. COMPLAINANT asked: "Why am I being arrested?" SUBJECT OFFICER #1, BWC at 19.
20. COMPLAINANT's wife then said: "He does not speak enough English to understand." SUBJECT OFFICER #1, BWC at 20:11.
21. COMPLAINANT's wife had additional papers in her hand that she wanted to show to SUBJECT OFFICER #1 and SUBJECT OFFICER #2, but they refused to look at them.
22. COMPLAINANT's wife and brother-in-law (also a passenger in the car) said that the officers were making a "big mistake."
23. COMPLAINANT was issued a ticket for failing to exhibit a proper registration.
24. COMPLAINANT was transported to MPD DISTRICT STATION by WITNESS OFFICER #1.
25. WITNESS OFFICER #1 asked COMPLAINANT in English whether he had any weapons, to which he responded no. COMPLAINANT then said that he "didn't know what's going on" and that "I am confused."
26. Upon arrival at the MPD DISTRICT STATION, COMPLAINANT said "I don't speak English."
27. COMPLAINANT was then asked, among other requests, in English: "put his hands of the wall," "take off your shoes," and "to hand over his shoes." COMPLAINANT responded properly to these requests.
28. At no time was COMPLAINANT provided any language assistance, even though he clearly was a Spanish speaker.
29. Officers at the MPD DISTRICT STATION determined that COMPLAINANT was the lawful owner of the vehicle. He was released and the ticket was canceled.
30. COMPLAINANT filed a timely 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.”

### **1. Harassment**

OPC determined that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINANT in three different ways: (1) unlawfully stopping him; (2) unlawfully arresting him; and (3) issuing an improper ticket.

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.

#### **A. The Stop**

OPC determined that the officers failed to establish reasonable suspicion and harassed COMPLAINANT by unlawfully stopping him. ROI, p. 11. The Union’s objects to this determination because the “officers identified several red flags, such as the temporary tag was not registered in WALES/NCIC, and the VIN was registered to a Maryland rental company.” Objections, pp.4-5.

After running the temporary tags through the WALES (Washington Area Law Enforcement System) and NCIC (National Criminal Information Center) systems,<sup>3</sup> the officers determined that COMPLAINANT's vehicle was not properly registered. However, neither WALES nor NCIC would have provided reliable information regarding the car's registration based on temporary license plates. This is so because it is unlikely that temporary North Carolina car registrations would appear in WALES, which is a local (not including North Carolina) data base. See ROI, p. 11 and more generally <https://www.ojp.gov/ncjrs/virtual-library/abstracts/washington-dc-area-law-enforcement-system> Further, the NCIC database "contains information about stolen vehicles and license plates, among other things." *Duckett* at 550. In other words, the COMPLAINANT car would have appeared in the NCIC system only if it had been stolen, which it was not.

The officers engaged in a traffic stop, not a field stop. Thus, their actions are akin to the procedures described in MPD General Order 303.1 (traffic enforcement), not MPD General Order 304.10 (field stops). Here, the officers had reason to believe that drug trafficking was taking place around the BLOCK IN SE, WASHINGTON, DC. Further, it is unchallenged that based on their police experience drug traffickers often used cars with out-of-state temporary license plates. Based on that information, the officers would have been justified in making contact with COMPLAINANT to verify the authenticity of the vehicle he was driving. In other words, the officers did not need to rely on WALES/NCIC information to justify the stop.

OPC cites *Duckett v. United States*, 886 A.2d 548 (2005) for the proposition "that a lack of database information alone does not allow an inference that a car is unregistered and, therefore, does not constitute reasonable, articulable justification for a traffic stop." ROI, p.11. This case differs from *Duckett* in at least two significant ways. Most importantly, the license plates involved in *Duckett* were metal, not temporary, license plates. *Duckett* at 551. This is significant because unlike "temporary paper tags, the metal **plates** can't be altered." *Id.* (emphasis in original, internal quotation marks omitted). Ultimately, the *Duckett* court concluded that the lack of WALES/NCIC information, under the circumstances was "too remote a possibility" to justify a stop. *Id.* at 551. In this case, of course, there were temporary, arguably alterable, license plates on COMPLAINANT's car.

Second, in *Duckett* the court acknowledged that the police action could have been justified if there was another "other possible rationale" to imply that the accused was driving an unregistered vehicle. *Id.* at 551. Here, the officers clearly articulated a legitimate rationale, that is, drug activity in the area and the use by drug dealers of vehicles with out-of-state temporary license plates. In fact, the subject officers were specifically targeting cars with temporary license plates based on their personal experience.

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<sup>3</sup> *Duckett* at 548.

Under the totality of the circumstances, the Complaint Examiner finds that the officers did not act “purposefully, knowingly, or recklessly” when they stopped COMPLAINANT.

### **B. The Arrest**

OPC found that that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 “acted, at the very least, in reckless disregard of District law and MPD internal guidelines” harassed COMPLAINANT by arresting him for possessing counterfeit tags. ROI, p. 13. Among other reasons, the Union claims that arrests for counterfeit tags took place several times a week. Objections, p. 5. This fact, according to the Union, taken in conjunction with the other red flags, “such as the temporary tag was not registered in WALES/NCIC, and the VIN was registered to a Maryland rental company” show that the officers arrested COMPLAINANT in good faith and did not purposely or willfully harass him. Objections, pp.4-5.

The officers took COMPLAINANT’s driver’s license and insurance information back to the MPD cruiser. A search of the VIN number indicated that the car was registered in Maryland, not North Carolina. In fact, they learned that a car with the same VIN number was registered in two jurisdictions. While this information turned out to be incorrect, the officers had no cause to challenge it at the time. Moreover, the officers spent approximately ten minutes in the police cruiser discussing possible next steps. SUBJECT OFFICER #2 suggested issuing a traffic citation. SUBJECT OFFICER #1 concluded that others were routinely arrested under similar circumstances. This assertion is unchallenged by OPC. It follows, therefore, that the Officers followed a normal (and arguably approved) practice. Thus, under the totality of the circumstances the Complaint Examiner finds that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not act purposefully, knowingly, or recklessly when they arrested COMPLAINANT.

### **C. Ticket For Falling to Exhibit Registration**

OPC determined that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINANT when they issued a ticket for failing to exhibit a proper registration. In the circumstances present here, that means the officers determined that the vehicle was not properly registered. Further investigation by officers at the MPD DISTRICT STATION determined that the vehicle was properly registered. The Union argues that the numerous red flags justified issuing the ticket. Objections, p. 5.

It follows that if the stop and arrest did not constitute harassment for the reasons discussed above, neither did issuance of the ticket. Here, however, something more needs to be said. After he was arrested, COMPLAINANT’s wife attempted to show the officers additional papers. The officers refused to look at them. The Complaint Examiner believes that they should have looked at the papers, at least as a matter of courtesy even if they did not have an obligation to do so. Presumably, the papers would have been some evidence that the car had been lawfully purchased. It is unknown if this information would have been

persuasive or determinative. That said, the officers, in view of the Complaint Examiner, could rightly have been skeptical of the authenticity of the papers given the fact that officers SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had reason to believe that the car was registered in Maryland.

The Complaint Examiner finds under the totality of the circumstances that the officers did not act purposefully, knowingly, or recklessly when they issued a ticket for failing to exhibit proper registration.

#### **D. Summary**

The Complaint Examiner finds that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not act “purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD” COMPLAINTANT by stopping, arresting and issuing a ticket to him. The Complaint Examiner notes that COMPLAINTANT has every right to be upset by the stop, arrest, and ticket. He did nothing wrong. His car was properly tagged, registered, and insured. He had a valid driver’s license. It does not necessarily follow, however, that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINTANT in violation of MPD General Orders and guidelines. There is an unfortunate disconnect between the information that was reasonably available to them, their past practices, and the true facts.

The Complaint Examiner believes the officers acted reasonably under the totality of the circumstances because, as is uncontested, other persons had been routinely arrested under similar circumstances. COMPLAINTANT’s arrest, therefore, was in accordance with past practice. It is primarily for this reason, the Complaint Examiner concludes that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not act “purposefully, knowingly, or recklessly.” It seems to the Complaint Examiner that the MPD has an obligation to train officers on the proper use of the WALES/NCIC databases, so members of the public are not improperly stopped, arrested, and ticketed in the future.

The allegation of harassment is not sustained

## **2. DISCRIMINATION**

The District of Columbia Human Rights Act provides in pertinent part:

[I]t shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family



responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business. D.C. Code §2-1402.73 (2015).

MPD General Order 201.26 provides that, “[i]n accordance with D. C. Official Code § 2-1401, et. seq. (District of Columbia Human Rights Act), members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity and expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense and place of residence or business.

The regulations governing OPC define discriminatory treatment as “[c]onduct by a member of the MPD ... that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.” D.C. Mun. Regs. tit. 6A, § 2199.1.

It is undisputed that COMPLAINANT’s first language is Spanish and that he has limited ability to communicate in English. That said, the BWC footage for SUBJECT OFFICER #1 and SUBJECT OFFICER #2 show that COMPLAINANT effectively communicated with the officers. That is to say he was able to follow their instructions and he seemed to the Complaint Examiner to comprehend the nature of the proceedings. Nevertheless, the officers were on notice that language was a barrier. Further, COMPLAINANT’s wife specifically told the officers “He does not speak enough English to understand.” SUBJECT OFFICER #1 BWC at 20:11. Under the circumstances SUBJECT OFFICER #1 and SUBJECT OFFICER #2 should have arranged for language assistance.

Moreover, when he was transported to the MPD DISTRICT STATION one of the first things COMPLAINANT said to the officer processing him was “I don’t speak English.” WITNESS OFFICER #1 BWC at 20:35. COMPLAINANT was not provided language assistance at the MPD DISTRICT STATION, even though he had put everyone on notice that his English was limited.

OPC determined that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 discriminated against COMPLAINANT by failing to provide language assistance. On the other hand, OPC found that the other MPD DISTRICT officers (see Exhibit 4) who interacted with COMPLAINANT violated District law and MPD’s general order for language access but, inexplicably, did not find that these officers engaged in discrimination. OPC said these officers should receive policy training pursuant to D.C. Code § 5-1107(g)(6). *See* Exhibit 4.

There is no explanation why SUBJECT OFFICER #1 and SUBJECT OFFICER #2 are being treated differently, when the circumstances for each of the officers that interacted with COMPLAINANT were substantially the same. Either all of the officers discriminated against

COMPLAINANT under District of Columbia law and the MPD General Order or none of them did. Stated differently, if the other officers did not discriminate against COMPLAINANT, under OPC's reasoning, neither did SUBJECT OFFICER #1 and SUBJECT OFFICER #2.

The allegation of discrimination is not sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:</b> Harassment – Improper Stop	Exonerated
<b>Allegation 2:</b> Harassment – unlawful arrest	Exonerated
<b>Allegation 3:</b> Harassment - Improper ticketing	Exonerated
<b>Allegation 4:</b> Discrimination	Exonerated

SUBJECT OFFICER #2

<b>Allegation 1:</b> Harassment – Improper Stop	Exonerated
<b>Allegation 2:</b> Harassment – unlawful arrest	Exonerated
<b>Allegation 3:</b> Harassment - Improper ticketing	Exonerated
<b>Allegation 4:</b> Discrimination	Exonerated

Submitted on February 17, 2022

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Richard S. Ugelow  
Complaint Examiner