

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	22-0218
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 (Subject Officer #1) SUBJECT OFFICER #2 (Subject Officer #2)
Allegation 1:	Harassment Subject Officer #1 and Subject Officer #2
Allegation 2:	Language or Conduct Subject Officer #1 and Subject Officer #2
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	September 5, 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 January 31, 2022, COMPLAINANT (“Complainant”) filed a complaint with OPC alleging that MPD Officer SUBJECT OFFICER #1 (“Subject Officer #1) and MPD Officer SUBJECT OFFICER #2 (Subject Officer #2) harassed her boyfriend, WITNESS #1 (Witness #1), by unlawfully patting him down and used language or engaged in conduct toward her and Witness #1 that was insulting, demeaning, or humiliating by behaving unprofessionally toward them.¹

¹ Complainant also made seven additional allegations concerning Subject Officer #1 and Subject Officer #2. First, Complainant alleged that the subject officers harassed her and Witness #1 by unlawfully stopping them and threatening them with force. Second, Complainant alleged that the subject officers harassed her by unlawfully searching her car. Third, Complainant alleged that the subject officers harassed Witness #1 by unlawfully issuing him two tickets. Fourth, Complainant alleged that Subject Officer #1 harassed two bystanders by intimidation. Fifth, Complainant alleged that subject officers used language or engaged in conduct toward her and Witness #1 that was insulting, demeaning, or humiliating by shining flashlights in their eyes. Sixth, Complainant alleged that Subject Officer #1 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by rolling his eyes. Lastly, Complainant alleged that Subject Officer #1 failed to provide identification when requested. However, on June 16, 2022, pursuant to D.C. Code § 5-1108(1), a member of the Police Complaints Board

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by subject officers on July 21, 2022, and OPC's response to the objections on August 3, 2022, 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 officers on July 21, 2022, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 15, 2022, at approximately 11:00 p.m., Complainant and Witness #1, were in a vehicle being driven by Witness #1 when he pulled over into a bus lane to program the Global Positioning System (GPS).
2. Subject Officer #1 and Subject Officer #2 initiated a traffic stop after observing the vehicle in a bus lane and seeing that the vehicle's rear tag was covered with a plastic cover, which were traffic violations. Subject Officer #1 approached the driver side and Subject Officer #2 approached the passenger side of the vehicle.
3. Witness #1 complied with Subject Officer #1's request for him to lower his window. Subject Officer #1 shined his light into the vehicle and informed the occupants that they were being stopped because the vehicle's tag were covered. Complainant stated that she was the owner of the vehicle. Subject Officer #1 asked Complainant to roll down her window so that Subject Officer #2 could see into the vehicle.
4. Complainant asked Subject Officer #1, "Can you turn the light off?" Subject Officer #1 responded, "I can't. He got tints."
5. Witness #1 said "I can't see shit. What you talking 'bout y'all can't see? We can't see." Subject Officer #1 responded, "You're not supposed to see us." Thereafter, on multiple times, Subject Officer #1 ordered the occupants to exit the vehicle so that he could show them the covered tag. Both continued to refuse to exit. At some point, Witness #1 requested a sergeant.
6. During the interaction, Complainant said, "I'm about to roll the windows up, and get out the car, and lock the car." Subject Officer #1 responded, "You're not gonna roll the windows up." Subject Officer #1 opened Witness #1's door and said, "I dare you to roll

dismissed these allegations, concurring with the determination made by OPC's executive director. This Complaint Examiner concurs with previous dismissal of those allegations.

the windows up.” Complainant then responded, “Ain’t nobody said we’d roll the windows up.”

7. While aiming his flashlight at them, Subject Officer #1 forcefully said, “You’re not rolling the windows up. It’s tinted. I can’t see you in the car.” After which, Complainant asked why Subject Officer #1 was being so aggressive. Subject Officer #1 later responded for Witness #1 and Complainant to exit the vehicle. Witness #1 responded “For what?” Subject Officer #1 responded, “I’m gonna ask you one more time, and I’m gonna take you out.” Witness #1 then stated, “So, you’re gonna put your hands on me?” Subject Officer #1 responded, “Yes. I am.” Witness #1 exited the vehicle.
8. Subject Officer #2 knocked on the passenger side of the vehicle and Complainant partially rolled down her window, stating “You don’t have to knock like that.” Subject Officer #2 responded, “Roll the window down before I pull you out of the car.” Complainant replied, “You won’t pull me out.” Subject Officer #2 answered, “I can.” Complainant then responded, “That’s assault.” Witness #1 said, “Call the lawyer.” Subject Officer #2 responded, “Call a lawyer and ask him if we can take you out of the car.” Complainant then responded, “I said you can’t pull me out ‘cause that’s assault.”
9. Subject Officer #2 reached inside the Complainant’s side of the vehicle, unlocked the vehicle’s door, and then opened the door, stating “Get out the car” several times. Complainant told Subject Officer #2 not to search her and requested a female officer. When a female MPD officer arrived, Complainant agreed to exit the vehicle. Complainant was never searched by MPD officials.
10. Because Complainant provided two registrations, subject officers were trying to figure out which was the correct registration and were conversing with each other. Complainant exclaimed that her registration was not expired. Raising his voice, Subject Officer #2 said, “I’m not talking to you.”
11. While both Complainant and Witness #1 were standing outside of the vehicle, Witness #1 said he was a college graduate. Subject Officer #1 responded that he was, too. Witness #1 then said he had two jobs and again Subject Officer #1 responded that he did, too.
12. Witness #1 then said, “I don’t bother nobody. But the way you came at me like I’m a killer.” Subject Officer responded that he did not; while, Witness #1 then responded “Yes. You did.” Subject Officer #1 stated, “Listen to me.” Witness #1 turned away. Subject Officer #1 responded by saying, “Alright. So you don’t want to understand yourself. There’s no education for y’all. It’s crazy.”
13. Subject Officer #2 inquired on the police radio when a sergeant would arrive. Subject Officer #2 said to Complainant in a mocking tone, shaking his head, “It doesn’t matter.” Copying his tone of voice, Complainant said, “It does matter.” In a mocking tone of voice Subject Officer #2 again said, “It doesn’t matter.”

14. When Complainant said she was getting cold, Subject Officer #1 told her that she'd have to wait outside of her car while the sergeant arrived. Complainant said she did not have to remain outside and Subject Officer #1 said "So try to get back in the car then." Subject Officer #1 would not let Complainant get belongings from the vehicle. There was an additional back and forth between Complainant and Subject Officer #1 about how he should have done his job calmly. Subject Officer #1 responded that she should apply to be sergeant and that she could then "tell him how to do his job."
15. Based upon a review of the BWC footage, after Witness #1 exited the vehicle, Subject Officer #2 told Subject Officer #1, "They wanna lock the car and then get out the car." Subject Officer #1 responded "There's something in the car." Subject Officer #2 also replied, "I think there's something in the car." Subject Officer #1 said, "When I started talking to him, he was moving all over the place." Subject Officer #2 said, "He bent down, right? He bent down. I saw him bend down." Subject Officer #1 said "I'm gonna check his side too, but can you pat him down?" Subject Officer #2 patted down Witness #1 by grabbing his front hoodie pocket, feeling around his waistband, running his hands along each side of his torso, and running his hands along the inside and outside of each leg. Witness #1 stated that he had no weapons and that the subject officers were harassing him. Subject Officer #1 acknowledged to OPC that he did not believe Witness #1 was armed, had a gun, or was dangerous.
16. Two notices of infraction were issued to Witness #1 for standing in a bus zone and for covered tags.
17. Complainant filed her complaint to OPC on January 31, 2022. Subject Officers did not file their incident report regarding the traffic stop until a month later on February 13, 2022. The incident report did not mention Witness #1 and it did not state that there was a pat down.

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.

Complainant alleged that the subject officers conducted a traffic stop with her boyfriend, Witness #1, who was also driving the vehicle, and Complainant after they stopped in a bus zone to program the GPS. During the stop, on several occasions, subject officers ordered them out of the vehicle. After Witness #1 exited the vehicle, subject officers unlawfully patted Witness #1 down, without probable cause because he did not act suspiciously, he did not break any laws, and there were no objects protruding from his clothing.

According to Witness #1, sometime after exiting the vehicle, Subject Officer #2 patted down Witness #1. Witness #1 believed the pat down was unlawful because he did not commit any crimes, there were no bulges in his clothing to indicate that he was carrying a weapon, and that the pocket to his hoodie was empty.

According to Subject Officer #1, the subject officers stopped Witness #1 for a traffic violation, they asked Witness #1 if he had any weapons, and patted him down for their safety and to allow Witness #1 to move around freely without worrying about him touching or going into his pockets.

Subject Officer #2 did not recall conducting the pat down of Witness #1. However, a review of the BWC shows that Subject Officer #1 told Subject Officer #2 to conduct the pat down. Subject Officer #2 told OPC in his interview that he conducted the pat down for his safety and to make sure Witness #1 did not have any weapons. According to Subject Officer #2, he conducted a stop of Witness #1 because of Witness #1 ducked down and made movements at the beginning of the traffic stop.

Complainant examiner reviewed the BWC which shows Subject Officer #2 telling Subject Officer #1, “They wanna lock the car and then get out the car.” Subject Officer #1

responded “There’s something in the car.” Subject Officer #2 also replied, “I think there’s something in the car.” Subject Officer #1 said, “When I started talking to him, he was moving all over the place.” Subject Officer #2 said, “He bent down, right? He bent down. I saw him bend down.” Subject Officer #1 said “I’m gonna check his side too, but can you pat him down?” Subject Officer #2 patted down Witness #1 by grabbing his front hoodie pocket, feeling around his waistband, running his hands along each side of his torso, and running his hands along the inside and outside of each leg.

Subject Officer #2 conducted the pat down without any suspicion that Witness #1 had a weapon. Subject Officer #2 grabbed the front pocket of Witness #1’s hoodie, felt around his waistband, ran his hands along each side of the torso, and ran his hands along the inside and outside of each leg. Witness #1 said that he did not have any weapons.

According to General Order 304.10, II, C, 1, “A member [of the MPD] may pat down a stopped individual if the member has a reasonable suspicion that the individual is carrying a concealed weapon or dangerous instrument and that a pat down is necessary to self-protect or protect others.” Neither Subject Officer #1 nor Subject Officer #2 were able to provide a reasonable, articulable suspicion that Witness #1 was carrying or concealing a weapon, that he was armed and dangerous, or that there was a concern for the safety of MPD officers or the public. Indeed, Subject Officer #1 admitted in his interview with OPC that he did not believe that Witness #1 had a weapon or was otherwise armed and dangerous. Yet Subject Officer #1 asked Subject Officer #2 to pat down Witness #1. Moreover, a review of the BWC shows that the pat down occurred sometime after Witness #1 had exited the vehicle and was standing alongside other members of MPD. Given the lapse of time and the failure of Subject Officer #1 and Subject Officer #2 to articulate a reasonable suspicion that Witness #1 was armed and dangerous, the Complainant Examiner finds that the patdown was unlawful. Thus, Subject Officer #1 and Subject Officer #2 harassed Witness #1 by unlawfully conducting a pat down in violation of D.C. Code §5-1107, MPD General Order 304.10, II, C, 1, and MPD General Order 120.25.

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.”

According to Complainant, she alleged that Subject Officer #1 unlawfully used language or conduct when he was shining a flashlight in her face while asking for Witness #1 and Complainant’s driving documents. Subject Officer #1 responded “You don’t need to see me.” Additionally, Subject Officer #1 and Subject Officer #2, repeatedly requested that Witness #1

and Complainant exit the vehicle. Complainant also said that she did not feel comfortable as the only female in the presence of male MPD officers.

After Complainant exited the vehicle, she told the MPD officers that she wanted to roll up her windows. Subject Officer #1 would not let her do so and responded, "I dare you. I dare you to." Complainant further requested that subject officers call a sergeant. After a lapse of approximately twenty minutes, Complainant inquired when the subject officers called a sergeant. Subject Officer #2 responded in a mocking tone, "It doesn't matter." Complainant described Subject Officer #2 as smart and sarcastic. Additionally, before Complainant exited the vehicle, Subject Officer #2 told her, "Roll the window down before I pull you out of the car" and told Complainant and Witness #1 that he could pull them out of the vehicle. At no point in the interaction between Witness #1, Complainant, and the MPD officers did Subject Officer #1 and Subject Officer #2 allow them to go back into the vehicle despite the freezing weather on that evening.

According to Witness #1, Subject Officer #1 flashed his light in Witness #1's eyes and Witness #1 asked Subject Officer #1 if he could refrain from shining the light in his face and eyes. Subject Officer #1 responded "You don't need to see me, as long as I see you." According to Witness #1 he was afraid and said that Subject Officer #1 acted aggressively toward Witness #1 and Complainant. Witness #1 also indicated that the subject officers acted more professionally toward them after the sergeant arrived on the scene. Before that time, he described subject officers' behavior as disrespectful and aggressive.

According to Subject Officer #1, MPD officers use their flashlights at night for safety and clarified that he was not shining his flashlight at Witness #1 and Complainant. Subject Officer #1 admitted to saying, "I dare you to roll the windows up." Subject Officer #1 also said that Witness #1 was resistive and did not want to listen. Subject Officer #1 also admitted that he said, "Tell me how to do my job. Next time, apply. Become a sergeant."

According to Subject Officer #2, the traffic stop escalated because Complainant and Witness #1 were resistive and that he had to use his police voice to get them to be compliant. Subject Officer #2 said that he was not going to spend 20 minutes begging Witness #1 and Complainant to roll down their windows.

At one point during the traffic stop, Subject Officer #2 said in a harsh tone that he was not talking to Complainant.

Based upon the BWC footage, Complainant and Witness #1 were uncooperative and argumentative during the traffic stop. Subject Officer #1 and Subject Officer #2 did not de-escalate the situation but acted rudely and unprofessionally. Subject Officer #1 and Subject Officer #2 shown their flashlights in Witness #1 and Complainant's faces. Additionally, Subject Officer #2 threatened to remove the Complainant from the vehicle and at some point during the interaction told Complainant in a harsh voice, "I am not talking to you" and mocked her request for a sergeant to be called by saying "It doesn't matter." For his part, Subject Officer #1

threatened Complainant in response to Complainant's statement that she would wind up her window by saying "I dare you." Later in the interaction, while Complainant was outside of the vehicle, Subject Officer #1 taunted Complainant to re-enter the car after she exited by stating "try to get back in the car." This language or conduct by the subject officers is in violation of the MPD General Orders. Even though Complainant and Witness #1 were argumentative and uncooperative, according to the MPD General Orders, MPD officers must remain calm and refrain from being disrespectful and speaking in a harsh, insolent, and unprofessional manner. *See* MPD General Order 201.26, Part V, Section C. Instead of dealing with the public in a manner to engender trust and remain calm, Subject Officer #1 and Subject Officer #2 engaged in a back and forth with Complainant and Witness #1 which exacerbated the interactions. A review of the BWC demonstrates, under the totality of the circumstances, the interactions between the subject officers and the civilians were disrespectful and unprofessional. The Complaint Examiner finds that Subject Officer #1 and Subject Officer #2 spoke in a harsh, condescending, and mocking tone in their interactions with Complainant and Witness #1. Thus, Subject Officer #1 and Subject Officer #2 used language or conduct toward the Complainant and Witness #1 that was insulting, demeaning, or humiliating in violation of D.C. Code §5-1107 and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained

SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained

Submitted on September 5, 2022.

Arthur D. Sidney
Complaint Examiner