

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	23-0558
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	February 8, 2024

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

At approximately 12:00 a.m. on May 31, 2023, the complainant, COMPLAINANT, was driving in her private vehicle on the BLOCK OF A STREET IN NE, WASHINGTON, DC, with her high beams on. The vehicle in front of her was an MPD police cruiser driven by SUBJECT OFFICER, the subject officer. SUBJECT OFFICER believed that COMPLAINANT was driving too close to him, i.e. tailgating. SUBJECT OFFICER allowed COMPLAINANT's car to get in front his cruiser, at which point he initiated a traffic stop for three reasons: (1) improper use of high beams; (2) following too closely; and (3) expired license plates. COMPLAINANT refused to provide her driver's license, proof of registration, and, proof of insurance, at which point SUBJECT OFFICER called for backup. SUBJECT OFFICER requested that COMPLAINANT exit her vehicle, which she refused to do, in part because a female officer was not present. Ultimately, COMPLAINANT was forcibly removed from her car and handcuffed. SUBJECT OFFICER physically placed his hand in COMPLAINANT's car three separate times. Twice without her permission, a warrant, or probable cause. The first was to retrieve COMPLAINANT's driver's license, registration, and proof of insurance. The second was to take a picture of the car's dashboard showing that the high beams were in use. The third and final

time was, with COMPLAINANT's permission, to leave a paper on which he wrote his identifying information.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation (ROI), the objections submitted on behalf of SUBJECT OFFICER on January 25, 2024, OPC's response to the objections, and the Complaint Examiner's review of the Body Worn Camera (BWC) video taken by SUBJECT OFFICER, 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 objections submitted on behalf of SUBJECT OFFICER, the Complaint Examiner's review of SUBJECT OFFICER's BWC video, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 12:00 a.m. May 31, 2023, the complainant, COMPLAINANT, was driving her private vehicle on the BLOCK OF A STREET IN NE, WASHINGTON, DC. The car in front of her was an MPD police cruiser driven by SUBJECT OFFICER, the subject officer.
2. SUBJECT OFFICER observed that COMPLAINANT was using high-beam headlights on her car and that she was traveling close behind his MPD cruiser.
3. SUBJECT OFFICER allowed COMPLAINANT to pass in front of him, at which time he initiated a traffic stop.
4. SUBJECT OFFICER approached the driver's side of COMPLAINANT's vehicle and explained that she was stopped for three reasons: (1) use of high beams, which are illegal in the District of Columbia; (2) following too closely; and (3) expired license plates.
5. SUBJECT OFFICER asked COMPLAINANT for her driver's license, car registration, and proof of insurance.

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed her when he unlawfully stopped her vehicle, unlawfully handcuffed her, and unlawfully issued her a ticket. COMPLAINANT also alleged that SUBJECT OFFICER used unnecessary or excessive force against her when he slammed her wrist into her car door. COMPLAINANT further alleged that SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning, or humiliating when he behaved aggressively toward her. Lastly, COMPLAINANT alleged that WITNESS OFFICER #1 and WITNESS OFFICER #2 failed to provide identification when requested to do so. Pursuant to D.C. Code § 5-1108 (1), on December 15, 2023, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

6. COMPLAINANT did not provide the documentation and SUBJECT OFFICER asked her to exit the car, which she refused to do.
7. COMPLAINANT told SUBJECT OFFICER that she wanted to speak to a supervisor, a "Commander" or "Chief of Command."
8. SUBJECT OFFICER explained that he was a supervisor and the MPD did not have a position of "Commander" or "Chief of Command." SUBJECT OFFICER interpreted her demand to be requesting a "white shirt," i.e., police supervisor.
9. COMPLAINANT did not accept this explanation and told SUBJECT OFFICER that she was being harassed, that he was "real aggressive," and that she wanted a female police officer present.
10. SUBJECT OFFICER placed a call to a police supervisor to explain the situation and called for back-up assistance.
11. COMPLAINANT, while in her vehicle, placed a 911 call. SUBJECT OFFICER told the 911 operator that he was on the scene and to ignore the call.
12. SUBJECT OFFICER asked COMPLAINANT to exit her car several times, but she refused.
13. When the back-up officers arrived - MPD Officers WITNESS OFFICER #2 and WITNESS OFFICER #3 - COMPLAINANT was removed from her car and handcuffed.
14. SUBJECT OFFICER entered COMPLAINANT's car to retrieve her driver's license and registration because he had seen her move documents that appeared to be a driver's license and registration from her left hand to her right hand and then place them on the seat next to her. Exhibit 8.
15. SUBJECT OFFICER did not see the documents on the seat, and he quickly exited the vehicle without touching anything.
16. Later, SUBJECT OFFICER entered COMPLAINANT's vehicle to take a picture of the dashboard showing that the high-beam indicator was illuminated.
17. SUBJECT OFFICER did not ask for permission to enter COMPLAINANT's vehicle. In fact, COMPLAINANT is heard saying that "I did not give you permission to search my car." Exhibit 10 at approximately 8 minutes.
18. SUBJECT OFFICER told COMPLAINANT that a ticket was being issued for the illegal use of high-beams and a warning for following too closely. He further told her that he had been informed by dispatch that her license plates were current.

19. COMPLAINANT was issued a ticket for the illegal use of the high beams and a warning for following too closely.
20. SUBJECT OFFICER placed a sheet of paper on which he had written his name, badge number, and other contact information in the vehicle with COMPLAINANT's permission.
21. WITNESS OFFICER #1 placed her driver's license, registration, ticket and warning inside COMPLAINANT's vehicle with her permission.
22. The handcuffs were removed from COMPLAINANT, and she entered her car and drove away.
23. The entire incident took approximately 22 minutes.

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 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.

In the early morning hours of May 31, 2023, SUBJECT OFFICER was on patrol in his MPD cruiser traveling south on the BLOCK OF A STREET IN NE, WASHINGTON, DC., when he noticed a car following close behind him with its high-beams headlights on. He moved into the northbound lane so the trailing vehicle, driven by COMPLAINANT, could pass him, which it did. SUBJECT OFFICER ran a computer search of the license plate that indicated an expired registration. SUBJECT OFFICER then initiated a traffic stop.

SUBJECT OFFICER advised COMPLAINANT that she had been stopped for three reasons: (1) illegal use of high beams; (2) following too closely; and (3) expired registration. SUBJECT OFFICER also noticed that COMPLAINANT’s car did not have a registration sticker. COMPLAINANT told SUBJECT OFFICER that she wanted to talk to a “commander” or “chief of command.” SUBJECT OFFICER explained that the MPD did not have a commander or chief of command and that he was a supervisor. SUBJECT OFFICER again asked for the documents and COMPLAINANT continued to refuse to provide them. COMPLAINANT continued to request a supervisor (although she did not use that term) and did not believe that SUBJECT OFFICER was a supervisor.

About five minutes into the stop, SUBJECT OFFICER directed COMPLAINANT to exit the car when she refused to provide the requested documents. COMPLAINANT refused to exit and asserted that SUBJECT OFFICER needed “anger management” and that he was being “real aggressive.”

At this point, SUBJECT OFFICER radioed the police dispatcher to request backup and to check on the status of license plates. Simultaneously, COMPLAINANT called 911. SUBJECT OFFICER advised the 911 dispatcher that he was on the scene.

Soon thereafter, SUBJECT OFFICER advised COMPLAINANT that he had been informed that the car’s tags were current. COMPLAINANT requested a female police officer before she would leave the vehicle.

Upon arrival of backup WITNESS OFFICER #1 and WITNESS OFFICER #2, SUBJECT OFFICER removed COMPLAINANT from the car and placed her in handcuffs. SUBJECT OFFICER then approached COMPLAINANT’s car to find her driver’s license and registration that he believed to be on the front seat. COMPLAINANT shouted, “I did not give you permission to search my car.” SUBJECT OFFICER leaned into the car and looked for the documents but did not touch anything. In fact, COMPLAINANT was holding the documents and gave them to WITNESS OFFICER #2. COMPLAINANT loudly complained that her rights were being violated and that SUBJECT OFFICER wrongly claimed that he was “chief of command” or words to that effect.

SUBJECT OFFICER explained that she would receive a ticket for using her high beams and a warning for following too closely, as he determined that was a “judgment call.” COMPLAINANT loudly argued that it was not illegal to use high beams in the District of Columbia. At this point, SUBJECT OFFICER again entered COMPLAINANT’s vehicle to take a picture of the dashboard showing that the high beams were activated. COMPLAINANT did not give permission to enter the vehicle. COMPLAINANT then accused SUBJECT OFFICER of being “angry” and “out of control.”

A ticket for failure to dim and a warning for following too close were issued to COMPLAINANT. SUBJECT OFFICER wrote his name and badge number on a sheet of paper for COMPLAINANT. With her permission the paper with SUBJECT OFFICER’s contact information was placed in her vehicle. COMPLAINANT insisted that another officer place her license, registration, and ticket in the car, which SUBJECT OFFICER did. The handcuffs were removed, and COMPLAINANT drove away.

It is important to note that despite COMPLAINANT’s characterization of SUBJECT OFFICER as being angry and out of control, her irritation at being stopped, her yelling, and her refusal voluntarily to identify herself and cooperate, the Complaint Examiner’s review of the BWC video shows that SUBJECT OFFICER maintained his composure throughout the entire interaction and treated COMPLAINANT with respect.

The issue before the Complaint Examiner is whether SUBJECT OFFICER conducted an illegal search on two occasions: First, when he leaned into COMPLAINANT’s car looking for her driver’s license and registration, and a second time when he took a picture of her dashboard.

1. Did SUBJECT OFFICER harass COMPLAINANT when he attempted to retrieve her driver’s license and registration?

SUBJECT OFFICER claims that he did not engage in an illegal search because he was looking for an item in plain view, i.e., using his flashlight he could look through the window or open car door for the documents. Without deciding the merits of SUBJECT OFFICER’s position, that’s not what he did in this instance. SUBJECT OFFICER is seen on the BWC leaning into the vehicle and thus violating COMPLAINANT’s private space. There was no apparent exigency that warranted this entry, and SUBJECT OFFICER does not claim any such reason. In particular, there is no claim that he feared for his safety or that contraband or a weapon were in plain view or visible or even suspected. Further, COMPLAINANT specifically yelled that she did not give permission for a search. Thus, SUBJECT OFFICER’s actions fall squarely within the zone of an unlawful search. The courts have consistently held that a police officer crossing the threshold of a vehicle constitutes an intrusion under the Fourth Amendment and must be supported by probable cause or another valid exception to the Fourth Amendment’s warrant requirement. *See e.g., Hicks v. United States*, 705 A.2d 636 (D.C. 1997); *Christmas v. United States*, 314 A.2d 473 (D.C. 1974); *Jackson v. United States*, 404 A.2d 911 (D.C. 1979); *Davis v. United States*, 110 A.3d 590 (D.C. 2015). “The Supreme Court has made it crystal clear that any search or seizure conducted without a warrant is " *per se* unreasonable under the Fourth

Amendment — subject only to a few well delineated exceptions.”” *Christmas v. United States, supra* at 475. The *Christmas* Court continued that the “[Supreme] Court admonished in *Coolidge v. New Hampshire*, 403 U.S. 443, 468 (1971), “that plain view alone is never enough to justify the warrantless seizure of evidence.”

Therefore, it was a constitutional violation for SUBJECT OFFICER to enter COMPLAINANT’s car without a warrant, or being in danger for his safety, or retrieving contraband, and the like. No justification that would warrant a search of COMPLAINANT’s car is present here.

MPD General Order 602.01, Vehicle Searches and Inventories provides in pertinent part:

II. PROCEDURES

A. General Rules

1. Searches and inventories shall be conducted in strict observance of the constitutional rights of the owner and occupants of the motor persons, and property involved.

The Complaint Examiner finds that SUBJECT OFFICER violated MPD Order 602.01 because there was not a constitutional justification for him to enter COMPLAINANT’s car when he sought to retrieve her driver’s license and car registration.

2. Did SUBJECT OFFICER harass COMPLAINANT when he entered COMPLAINANT’s car for the purpose of documenting that her high beam headlights were on?

SUBJECT OFFICER may have been motivated by good intentions when he entered COMPLAINANT’s car without permission to document the high-beam violation. A good motive, however, is insufficient to justify a constitutional violation where, as here, there is not a claim that the officer’s safety was at issue or that suspected contraband – including illegal drugs or a weapon – were present. For the reasons set forth in the section above, SUBJECT OFFICER violated MPD General Order 602.01 and COMPLAINANT’s constitutional right to be free of improper searches when he entered her vehicle without permission to take a picture of the dashboard.

3. Conclusion.

Under the totality of the circumstances, the Complaint Examiner finds that SUBJECT OFFICER searched COMPLAINANT’s car on two occasions in violation of MPD General Order 602.1 and his actions constituted harassment in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on February 8, 2024.

Richard S. Ugelow
Complaint Examiner