

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

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| <b>Complaint No.:</b>                             | 16-0207  |
| <b>Complainant:</b>                               | COMPLAINANT  |
| <b>Subject Officers,<br/>Badge No., District:</b> | SUBJECT OFFICER 1<br>SUBJECT OFFICER 2                                       |
| <b>Allegation 1:</b>                              | Harassment (SUBJECT OFFICER 1 and SUBJECT OFFICER 2)                         |
| <b>Allegation 2</b>                               | Harassment - threat to arrest (SUBJECT OFFICER 1)                            |
| <b>Allegation 3:</b>                              | Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER 1) |
| <b>Complaint Examiner:</b>                        | Richard S. Ugelow  |
| <b>Merits Determination Date:</b>                 | April 3, 2017  |

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

COMPLAINANT alleges that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 harassed him when they confronted him on public property in front of 849 19<sup>th</sup> Street, N.E., Washington, DC, and when SUBJECT OFFICER 1 threatened to arrest him if he did not “move along.” COMPLAINANT further alleged that SUBJECT OFFICER 1 used language or engaged in conduct that was insulting, demeaning, or humiliating when SUBJECT OFFICER 1 used a degrading and hostile tone toward him and mocked him.<sup>1</sup>

## II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. The Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing after reviewing the Report of Investigation, viewing the Body Worn Camera (BWC) footage recorded by SUBJECT OFFICER 1 and SUBJECT OFFICER 2 at the time of the interaction, COMPLAINANT’s personal cell-phone video taken at the time of the interaction, the February 12, 2017 objections submitted by the DC Police Union on behalf of SUBJECT OFFICER 1, 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 OPC’s Report of Investigation, viewing the BWC videos recorded by SUBJECT OFFICER 1 and SUBJECT OFFICER 2 at the time of the citizen interaction, COMPLAINANT’s video taken at the time of his interaction with SUBJECT OFFICER 1 and SUBJECT OFFICER 2, the objections submitted by DC Police Union on behalf of SUBJECT OFFICER 1 on February 12, 2017, and OPC’s response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a timely complaint with the Office of Police Complaints on April 29, 2016 for an event that took place on April 27, 2016.
2. On April 27, 2016, COMPLAINANT was talking with WITNESS 1 at the street curb in front of 849 19<sup>th</sup> Street, N.E.

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<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 discriminated against him based on his race, African American. COMPLAINANT further alleged that SUBJECT OFFICER 1 harassed him by mishandling his telephone when he reached for it. COMPLAINANT also alleged that SUBJECT OFFICER 2 used language or engaged in conduct that was insulting, demeaning, or humiliating when he said “Here we go again, the race card.” Pursuant to D.C. Code § 5-1108 (1) on January 18, 2017, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

3. WITNESS 1's vehicle was parked on the curb in front of 849 19<sup>th</sup> Street, N.E.
4. WITNESS 2, a friend of COMPLAINANT, was sitting on the concrete pathway leading to the front door of 849 19<sup>th</sup> Street, N.E.
5. SUBJECT OFFICER 1 and SUBJECT OFFICER 2 parked their MPD cruiser behind WITNESS 1's vehicle and exited their vehicle.
6. SUBJECT OFFICER 1 and SUBJECT OFFICER 2 activated their body worn cameras (BWC) when they parked behind WITNESS 1's vehicle.
7. SUBJECT OFFICER 1 approached COMPLAINANT to ask for his identification.
8. COMPLAINANT used his cell phone to record the interaction.
9. COMPLAINANT asked SUBJECT OFFICER 1 why he needed to produce his identification and questioned whether there was probable cause for SUBJECT OFFICER 1's request.
10. SUBJECT OFFICER 1 explained that COMPLAINANT was standing on private, abandoned, property.
11. COMPLAINANT asserted that the tree box adjacent to the curb was public, not private, property.
12. The property line for 849 19<sup>th</sup> street, N.E. extends to the front of the building structure and not to the lawn, tree box, or curb area.
13. The lawn, sidewalk, tree box, and street at 849 19<sup>th</sup> Street, N.E. are public property, pursuant to D.C. Code § 10-1101.01(5)(6).
14. COMPLAINANT was on public property at the time he was approached by SUBJECT OFFICER 1 and SUBJECT OFFICER 2.
15. At all times relevant to his encounter with SUBJECT OFFICER 1 and SUBJECT OFFICER 2, COMPLAINANT was standing on a sidewalk or tree box area either in front of or near 849 19<sup>th</sup> Street, N.E.
16. At no time either immediately before or during the encounter with SUBJECT OFFICER 1 and SUBJECT OFFICER 2 was COMPLAINANT or WITNESS 1 on private property at or near 849 19<sup>th</sup> Street, N.E.
17. COMPLAINANT provided his identification to SUBJECT OFFICER 2.

18. SUBJECT OFFICER 1 attempted to grab COMPLAINANT's phone, but did not after COMPLAINANT objected.
19. After ascertaining that COMPLAINANT did not live at 849 19<sup>th</sup> Street, N.E., SUBJECT OFFICER 1 asked him "why can't you stand in front of your own property?"
20. COMPLAINANT threatened to file a complaint against SUBJECT OFFICER 1 and SUBJECT OFFICER 2. Because of the stop.
21. COMPLAINANT told SUBJECT OFFICER 1 that he had filed complaints against other officers.
22. SUBJECT OFFICER 1 accused COMPLAINANT of "targeting" police officers because of the other complaints he had filed.
23. SUBJECT OFFICER 1 told COMPLAINANT that he was responding to a call for service at or near 849 19<sup>th</sup> Street, N.E. and that he had to respond to all calls.
24. MPD records do not show a request to respond to any 911 calls or incidents at or near 849 19<sup>th</sup> Street, N.E. on the date and time in question. Exhibit 25.
25. There is no evidence that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 were responding to a call for service at or near 849 19<sup>th</sup> Street, N.E. on the date and time in question.
26. SUBJECT OFFICER 1 told COMPLAINANT that he was giving him a first warning and that he would be back to "take him [in]."
27. SUBJECT OFFICER 1 and SUBJECT OFFICER 2 returned to their MPD cruiser, when SUBJECT OFFICER 1 yelled to him "ten minutes, be right back."
28. The phrase "ten minutes, be right back" was a threat to arrest COMPLAINANT if he was still standing in the tree box in front of 849 19<sup>th</sup> Street, N.E.
29. The Officers did not return to the scene and COMPLAINANT was not arrested.
30. SUBJECT OFFICER 1 told OPC that he did not know where the public and private property lines began and ended for the property located at 849 19<sup>th</sup> Street, N.E.
31. At no point in the encounter were COMPLAINANT, WITNESS 1 or WITNESS 2 blocking the sidewalk or engaged in unlawful or improper activity.

#### 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.

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.”

On April 27, 2016, SUBJECT OFFICER 1 and SUBJECT OFFICER 2 were in their MPD cruiser patrolling in the vicinity of 849 19<sup>th</sup> Street, N.E. SUBJECT OFFICER 1 was driving. The Officers saw COMPLAINANT standing near the curb next to a parked SUV in front of a dwelling located at 849 19<sup>th</sup> Street, N.E. The officers stopped their cruiser behind the

parked SUV. The video footage<sup>2</sup> shows the complainant, standing in the tree box area – between the sidewalk and street curb talking to WITNESS 1, who was sitting in the SUV.

At the time the officers arrived on the scene, WITNESS 2 was sitting on the sidewalk in front of 848 19<sup>th</sup> Street, N.E. The videos also show the front door of the dwelling boarded up, with a “Posted, Keep Out” sign over a boarded-up doorway of 849 19<sup>th</sup> Street, N.E.

The officers exited the cruiser and SUBJECT OFFICER 2 asked COMPLAINANT for identification.<sup>3</sup> COMPLAINANT responded by asking “What’s your probable cause?” SUBJECT OFFICER 1 told him that he was standing on abandoned property and that he ensuring that there was no trespassing. COMPLAINANT explained that he was standing on public property. From the beginning and throughout the encounter, the videos show COMPLAINANT standing on public property, as defined by the DC Code. *See* D.C. Code § 10-1101.01(5)(6). At no time was COMPLAINANT (or WITNESS 1 or WITNESS 2) acting suspiciously or engaged in any activity that reasonably could be deemed to be unusual, inappropriate, or criminal in nature. Among others, COMPLAINANT was not blocking the sidewalk. The videos show unimpeded use by pedestrians.

After COMPLAINANT questioned the probable cause for the encounter, SUBJECT OFFICER 1 provided several reasons, each of which was incorrect. First, SUBJECT OFFICER 1 stated that COMPLAINANT was on private property, which he was not. Second, SUBJECT OFFICER 1 incorrectly told COMPLAINANT that he was violating the law by standing in front of 849 19<sup>th</sup> Street, N.E., when he asked COMPLAINANT “why can’t you stand in front of your own property sir.” Third, SUBJECT OFFICER 1 told COMPLAINANT that he was “in the wrong,” presumably because COMPLAINANT stated that he was on public property. Fourth, SUBJECT OFFICER 1 gratuitously accused COMPLAINANT of not wanting the law (presumably prohibitions against trespassing) enforced. Finally, SUBJECT OFFICER 1 told COMPLAINANT that he and SUBJECT OFFICER 2 were responding to a citizen call. But, there is no evidence of a citizen call relating to the property or, indeed, any official request that the officers visit or inspect the property. Nevertheless, SUBJECT OFFICER 1 threatened COMPLAINANT with arrest if he did not move along in ten minutes.

The DC Police Union, on behalf of SUBJECT OFFICER 1, objected to OPC conclusion that SUBJECT OFFICER 1 harassed COMPLAINANT, but did not object to the conclusion that he engaged in conduct and used language toward COMPLAINANT that was insulting, demeaning or humiliating in violation of D.C. Code § 5-1107 and MPD General Order 201.26. SUBJECT OFFICER 2 did not file objections to OPC’s findings. SUBJECT OFFICER 1 asserts that his motive was to have COMPLAINANT move off of the property located at 849 19<sup>th</sup> Street,

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<sup>2</sup> Both Officers had activated their body worn cameras (BWC) and COMPLAINANT recorded the encounter on his cell phone. The Complaint Examiner viewed all of the footage.

<sup>3</sup> The officers also asked WITNESS 2 for identification. That request is not the subject of this decision.

N.E. SUBJECT OFFICER 1 further stated in his objections that he had patrolled the area for more than seven years and was aware that the area required or special attention to avoid criminal activity. SUBJECT OFFICER 1 provided a list of criminal activity in the vicinity of 849 19<sup>th</sup> Street, N.E. See D.C. Police Union Exhibit 3.

Notwithstanding the motive of SUBJECT OFFICER 1 and, presumably, SUBJECT OFFICER 2, their actions crossed the line from a casual contact to a “stop,” as defined by MPD General Order 304.10.

MPD General Order 304.10 authorizes MPD officers to initiate a contact “when he/she reasonably believes that some investigatory inquiry into a situation is warranted.” Probable cause is not required for a contact because the “citizen is free not to respond and to leave.” Here, SUBJECT OFFICER 1 and SUBJECT OFFICER 2 immediately demanded COMPLAINANT’s identification, accused him of trespassing on abandoned property, challenged his right to stand on public property, and threatened him with arrest if he did not vacate the area. An individual in COMPLAINANT’s circumstances would reasonably believe that he had no choice but to comply with the officers’ demand to produce identification and that he was not free to leave until his identification had been verified.

COMPLAINANT’s interaction with SUBJECT OFFICER 1 and SUBJECT OFFICER 2 falls squarely within the General Order’s definition of a “stop” because he had no reasonable choice other than to comply with SUBJECT OFFICER 1’s demand. The General Order defines a stop as “The temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person.... If a person is not free to leave the officer’s presence, a “stop” has occurred.”

The Complaint Examiner finds that there was no reasonable basis for SUBJECT OFFICER 1 and SUBJECT OFFICER 2 to initiate an investigatory contact with COMPLAINANT. By extension, therefore, there was no justification for these Officers to stop and detain COMPLAINANT.

The Complaint Examiner finds that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 harassed COMPLAINANT in violation of MPD General Order 120.25, Part III, Section B, No. 2 and the applicable regulations when they stopped him without reasonable suspicion or probable cause. Further, SUBJECT OFFICER 1 harassed COMPLAINANT when he threatened him with arrest if he did not “move along.” The Complaint Examiner finds that SUBJECT OFFICER 1 violated MPD General Order 201.26, Part V, Section C, by using sarcastic and mocking language. In particular, SUBJECT OFFICER 1 accused COMPLAINANT of not wanting the law enforced, that he (COMPLAINANT) was targeting police officers, and telling COMPLAINANT that he was “in the wrong” by standing in in front of 849 19<sup>th</sup> Street, N.E. and that he should stand in front of his own home. The totality of the circumstances here suggest that SUBJECT OFFICER 1 disrespected, humiliated and insulted COMPLAINANT.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER 1

SUBJECT OFFICER 2

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|---|-----------|
| <b>Allegation 1: Harassment<br/>– SUBJECT OFFICER 1<br/>and SUBJECT OFFICER<br/>2</b>                             | Sustained |
| <b>Allegation 2: Harassment<br/>(threat to arrest) –<br/>SUBJECT OFFICER 2</b>                                    | Sustained |
| <b>Allegation 3: Insulting,<br/>Demeaning, or<br/>Humiliating Language or<br/>Conduct – SUBJECT<br/>OFFICER 2</b> | Sustained |

Submitted on April 3, 2017.

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Richard S. Ugelow  
Complaint Examiner