

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0463
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, First District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	Discriminatory Treatment
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	November 30, 2007

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the 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 that section. 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

The Complainant alleged on August 7, 2005, at approximately 2:00 a.m., that the Subject Officer harassed her, used language or engaged in conduct toward her that was insulting, demeaning or humiliating, and discriminated against her based upon her race. The Complainant alleged that she received a telephone call from an MPD officer informing her that her husband had been arrested and that she needed to retrieve her husband's car from the scene. The Complainant was accompanied to the scene by her father, Witness #1. Upon arriving, Subject Officer, who is white, used the words "those people" and "they" in reference to Complainant's husband and threatened to lock her up if she did not move her "damn hand" from the trunk to allow him to search the car. The Subject Officer also requested that the Complainant assist him in opening the trunk or he would do it himself or tow the vehicle and open it. Despite the Complainant's protests, Subject Officer opened the trunk and found a .44 Magnum revolver. Complainant alleged that she was offended by the Subject Officer's comments, and requested that he call a supervisor. The Subject Officer responded with an obscenity and pointed his finger at the Complainant and threatened that she could not handle him if he was angry. The Complainant alleged that the Subject Officer ordered her to leave the scene and threatened her with imprisonment if she refused.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on October 30, 2007. The Complaint Examiner heard the testimony of Complainant, Witness, MPD WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, and Subject Officer.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by Subject Officer, the supplemental memoranda submitted by Complainant, and an evidentiary hearing conducted on October 30, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On August 7, 2005, at approximately 2:00 am, WITNESS OFFICER #4 telephoned Complainant to inform her that her husband was arrested and that she should retrieve his black 1998 Mercedes Benz. Before her husband's arrest, he bailed out of his car and threw his keys so that they could not be located. There were approximately six other MPD officers at the scene at varying times throughout the morning.
2. At approximately, 2:20 am, Complainant and Witness arrived at the scene. Complainant approached her husband's vehicle, identified herself to MPD WITNESS OFFICER #1 and Subject Officer, who were on the scene, and placed her hand on the lid of the trunk. Shortly after Complainant's arrival, WITNESS OFFICER #1 located the keys to the vehicle.
3. Both WITNESS OFFICER #1 and Subject Officer tried unsuccessfully to open the trunk of the car. Subject Officer uttered words to WITNESS OFFICER #1 to the effect that when people run they are usually trying to hide something. Additionally, Subject Officer ordered Complainant to remove her "damn" hands from the lid of the trunk so that he could perform a search. The Subject Officer ordered the Complainant to help him open the trunk and that if the Complainant did not help, he threatened to imprison her, and open the car himself.
4. The Complainant told the Subject Officer several times that he did not have the authority to search the trunk. In response, the Subject Officer ordered the complainant to stand back and said "You haven't seen my rough side yet," and advised her to leave the scene.
5. Once Complainant removed her hand, the Subject Officer opened the trunk. Thereafter, various MPD officers performed a search and found Complainant's husband's loaded .44 Magnum revolver inside a closed gym bag in the trunk. The Subject Officer told

WITNESS OFFICER #1, "I told you there was a reason why he ran. They're always running from something. Those people don't just run for nothing."

6. Complainant again indicated that the MPD officers did not have the right to search her husband's car and demanded that the Sixth District Commander be called to the scene. Subject Officer told the Complainant that the Commander was not on duty and that she would have to leave the area because it was now a crime scene. Complainant refused.
7. Subject Officer indicated that Complainant needed to leave the scene and indicated that he could take the situation to the next level by issuing her a ticket for disorderly conduct and arresting her. Complainant and Witness complied and filed this complaint.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and 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; or (5) retaliation against a person for filing a complaint pursuant to [the Act]."

A. Harassment

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes "acts that are intended to bother, annoy, or otherwise interfere with a citizen's ability to go about lawful business normally, in the absence of a specific law enforcement purpose."

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., title 6A, § 2199.1.

The complaint alleges that Subject Officer harassed Complainant by interfering with her retrieval of her husband's car, which the Complainant understood was to be released to her, and by searching the car without her consent. Witness #1 corroborated the Complainant's account.

Subject Officer's search of the trunk of the Mercedes was not lawful because it was in violation of MPD General Order 602, which makes clear the process for conducting a search incident to a lawful arrest. As discussed further below, because the Subject Officer did not have a legitimate law enforcement purpose in searching the trunk of the car, his actions constituted harassment. MPD General Order 602 provides that officers may search "only those areas within the immediate control of the defendant." The MPD General Order states:

If a full custody arrest is made of a subject in a motor vehicle and the officer does not have probable cause to believe that the vehicle contains fruits, instrumentalities, contraband, or evidence of the crime for which he has been arrested, only those areas which are within the immediate control of the defendant (the area from which the arrested person might gain possession of weapons or destructible evidence) at the time of his arrest may be searched incident to that arrest.

See MPD General Order 602.1, Part A.1.

There was some speculation at the hearing that the Subject Officer may have been conducting an inventory search when he searched the trunk of the Mercedes. Hearing Transcript (Transcript) at 154, lines 13-14.; *id.* at 192 lines 1-2. However, there is no clear evidence that the Subject Officer was conducting an inventory search. Even if the Subject Officer was conducting an inventory search, it was not properly executed in accordance with the MPD General Order because the MPD General Order makes clear that such searches occur after a defendant's vehicle has been taken into custody by MPD officers and moved to an impoundment location. See MPD General Order 602.1, Part I, Section B.5. In sum, whether the Subject Officer was conducting a search incident to arrest or an inventory search, his search of the Mercedes was unlawful.

The Complaint Examiner finds that because the Subject Officer searched Complainant's husband's car in violation of MPD General Orders, the Subject Officer was not acting with a reasonable law enforcement purpose. The Examiner further finds that the Subject Officer's search of the car interfered with Complainant's ability to take her husband's car from the scene. According to Subject Officer's testimony, he was endeavoring to conduct an inventory search of the vehicle to safeguard property with a value of greater than \$25.00. Transcript at 235, lines 17-18. The MPD General Order, however, makes clear that an inventory search occurs only after the vehicle is moved to an impoundment location. MPD General Order 602.1, Part I, Section B.5. Thus, Subject Officer did violate the MPD General Order. To be sure, it is troubling that a nine year veteran of the police force would not know what is required in conducting routine inventory searches and searches incident to arrest. Transcript at 230, lines 7-12.

MPD Special Order 01-01 requires that culpable police conduct lack a "specific law enforcement purpose." The OPC definition requires that culpable conduct be "purposefully, knowingly or recklessly in violation of the law or internal guidelines of the MPD." Because the Subject Officer's conduct, here the search of the car, did not have a legitimate law enforcement purpose, the Complaint Examiner finds that Subject Officer has harassed Complainant. The

Complaint Examiner does not find in the Subject Officer's testimony that he was mistaken or unaware of the MPD General Orders requirements regarding searches. Subject Officer was a nine year veteran of the MPD at the time of this incident and likely had conducted numerous searches involving arrests and moving violations. Transcript at 230, lines 7-12. Thus, the Subject Officer should have known about the requirements for a lawful search of a vehicle. Nowhere in any of the testimony was there a reasonable basis articulated for Subject Officer's search of the car. Thus, the Complaint Examiner finds that because there was no reasonable basis articulated for Subject Officer's conduct, the Subject Officer recklessly disregarded the MPD General Order. Moreover, the Complaint Examiner finds that in accordance with the OPC regulations that the Complainant was prevented from retrieving her husband's car. The Complainant had an interest in the car because WITNESS OFFICER #4 called Complainant in the early morning hours on August 7, 2005, and requested that she retrieve her husband's car. It appears that MPD officers would have released the car to Complainant even though she was not the registered owner. Transcript at 137, lines 1-6. The MPD only determined not to release the car to Complainant after they searched the car and found the unregistered firearm. Because Subject Officer's search of Complainant's husband's Mercedes was not in accordance with the General Order, the search was not conducted with a reasonable law enforcement purpose, and, thus, amounted to harassment.

B. Language or Conduct

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H "includes, but is not limited to acts, words, phrases, slang, slurs, epithets, 'street' talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual."

MPD General Order 201.26, Part I, Section C provides that "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."

The Complainant alleges that Subject Officer was rude to her and used inappropriate language when Complainant questioned his search of the trunk of her husband's car. Because Complainant had placed her hand on the trunk of the car when she first arrived, the Subject Officer remarked, "Move your damn hand, or I'll lock you up." Complainant further stated that when she did not respond to Subject Officer's request to assist him in opening the trunk of the car, the Subject Officer told her, "You can tell me how to open it, or I will get a crowbar and do it myself, or I will tow the car to impound and open it there." The Complainant further alleged that when she requested that Subject Officer call a supervisor to the scene because she was offended by his demeanor and the comments he made, he replied, "I'm not calling shit. You have to go to 6D and do whatever." The Subject Officer then became irate and said, "You don't want to take me to my next level, because you can't handle it." Finally, the Complainant stated

that the subject officer took out his handcuffs and threatened to arrest her if she did not immediately leave the scene.

Witness #1 stated that Subject Officer said to WITNESS OFFICER #1, "Give me those damn keys," after running through the alley to where Complainant's husband's car was located. Witness #1 stated that Subject Officer then engaged the complainant in a verbal argument regarding the Subject Officer's authority to search the trunk, using a loud and abusive tone. Witness #1 said that the Subject Officer threatened to open the trunk with a bar if the complainant continued to refuse to show him how to open the trunk. Witness #1 also confirmed that the Subject Officer took his handcuffs off his belt and told the complainant that he was going to "lock her up" if she did not leave the scene.

According to Subject Officer, the Complainant instigated the exchange when she placed her hand on the trunk and refused to tell him how to open it. Subject Officer stated that he told the complainant "approximately four times in an authoritative tone" to "remove her hand from the trunk because [the officers] were going to search it," and stated that the complainant "refused . . . each time." Subject Officer stated that he then told the complainant that if she did not remove her hand, he would arrest her for impeding a police officer. Subject Officer denied telling the complainant that he would take a crowbar and open the trunk if she continued to refuse. However, he acknowledged that he told the complainant that she could either open the trunk or the car would be impounded and the trunk would be opened and searched later.

According to Subject Officer, after he found a handgun in the trunk, the Complainant started "yelling and screaming" that the officers did not have a right to search the car and "demanded" that the officers call the Sixth District Commander to the scene. Subject Officer stated that he told the Complainant that the district commander was not working that night and further explained that the Complainant had to leave the area because it was a "crime scene." Subject Officer acknowledged that he told the complainant that she had to move her car and leave the scene, and stated to her that he "could take the situation to the next level" by issuing her a ticket and arresting her. Subject Officer told the Complainant that she could drive around the corner and wait for an official, whom he would call for her, or she could go to the Sixth District police station and speak with an official. Subject Officer denied that he "used demeaning, disrespectful, profane, or racist language" while on the scene. WITNESS OFFICER #1 corroborated Subject Officer's denial that he did not use profanity.

In accordance with MPD Special Order 01-01 and MPD General Order 201.26, MPD officers should be courteous and orderly and refrain from harsh and profane language. In addition, MPD officers are to refrain from using demeaning language which includes language that creates disrespect for law enforcement. After hearing testimony, this Complaint Examiner finds that the Subject Officer did not use language or engage in conduct toward the Complainant that was insulting, demeaning or humiliating, in violation of MPD General Order 201.26. The events in question all occurred in the early morning hours of August 7, 2005. Complainant was awakened and was tired when she arrived at the scene. The Complaint Examiner finds credible

the testimony indicating that Complainant was tired and agitated. While it is true that the Subject Officer may have said the word “damn,” and may have suggested that Complainant did not want to make him go to the next level, the Complaint Examiner finds that under the circumstances that Subject Officer was attempting to remain calm. Subject Officer did not arrest Complainant and he did not issue her any citation. Subject Officer indicated that he had ordered Complainant several times to move her hand from the trunk of her husband’s car and later to leave the scene. Complainant did not promptly respond to these orders. Therefore, the Complaint Examiner finds it reasonable for the Subject Officer to warn Complainant that he could lock her up for defying his direct orders. The Complaint Examiner also finds it reasonable that the Subject Officer state that Complainant did not want to see him take matters to the next level. Thus, while Subject Officer’s demeanor may have been unpleasant, it does not appear that he was rude, disrespectful, loud, or discourteous to Complainant. Given the testimony presented, the Complaint Examiner is not convinced that Subject Officer indicated in response to a request for him to call his supervisor that Subject Officer said he was not calling “shit.” Therefore, the Complaint Examiner finds that Complainant did not engage in language or conduct that was insulting, demeaning, or humiliating.

C. Discrimination

Discrimination, as defined by MPD Special Order 01-01, Part III, Section D includes “failure to provide proper police service, 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, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business.”

MPD General Order 201.26, Part I, Section A provides that “In accordance with the District of Columbia Human Rights Law, 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, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or 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., title 6A, § 2199.1

This Complaint Examiner agrees with the conclusions contained within the ROI. It is well established that unlawful discrimination may be proved by presenting evidence of discriminatory remarks. See, e.g., Hollins v. Federal National Mortgage Association, 760 A.2d 574, 575 (D.C. 2005) (language which reflects a discriminatory attitude can serve as evidence of unlawful discrimination). Here, the context of the alleged remarks suggest that the Subject

Officer made the above-mentioned comments not in reference to the Complainant's race, by in reference to her husband's suspected status as a person who has violated the law. Thus, the Complaint Examiner finds that Subject Officer did not subject Complainant to unlawful discrimination based upon her race.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Exonerated
Allegation 3: Discrimination	Unfounded

Submitted on November 30, 2007.

Arthur D. Sidney
Complaint Examiner