

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	10-0506
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Second District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning or Humiliating Language or Conduct
Complaint Examiner:	Stephen D. Kong
Merits Determination Date:	June 4, 2012

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

COMPLAINANT alleges that on July 20, 2010, SUBJECT OFFICER harassed her when he prevented her from leaving the scene of a completed traffic stop by taking away her car keys. COMPLAINANT further alleged that SUBJECT OFFICER used language or engaged in conduct toward her that was insulting, demeaning, or humiliating during the incident.

II. EVIDENTIARY HEARING

The Complaint Examiner reviewed the following documents: (a) OPC's Report of Investigation ("ROI"), dated December 12, 2011, and attached exhibits; (b) OPC's letters to COMPLAINANT and SUBJECT OFFICER, dated December 12, 2011; (c) Objections submitted by SUBJECT OFFICER on December 27, 2011; and (d) Memorandum submitted by OPC to correct, clarify or respond to the Objections of the SUBJECT OFFICER, dated April 27, 2012, and exhibit addenda.

No evidentiary hearing was conducted regarding this complaint because, based on a review of the information in the record, the Complaint Examiner determined that there were no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of the documents referenced in Section II, infra, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 20, 2010, at approximately 3:30 p.m., COMPLAINANT left work to pick up her daughter from day care. She got into her car at her office's parking garage located at St. Matthew's Court, N.W. As she started to make a left turn out of the garage, she noticed that two trucks were blocking the exit onto N Street, N.W. She then turned right out of the garage into the alley towards Rhode Island Avenue, N.W. In front of the garage was another alleyway that leads into 17th Street, N.W.
2. As COMPLAINANT turned onto Rhode Island Avenue, WITNESS OFFICER, who was on patrol in a marked MPD vehicle, put on her lights and COMPLAINANT immediately pulled over. COMPLAINANT was stopped on the 1700 block of Rhode Island Avenue with traffic moving on her left and parked vehicles on her right.
3. WITNESS OFFICER approached COMPLAINANT's car, identified herself and explained the reason for the traffic stop--going the wrong way down a one-way street (i.e., the alley). After a brief discussion, during which the COMPLAINANT may have been argumentative and "rude," WITNESS OFFICER obtained COMPLAINANT's license, registration and proof of insurance and returned to her patrol car to write the COMPLAINANT a ticket.
4. While waiting for the ticket, COMPLAINANT beeped her horn to get WITNESS OFFICER's attention. COMPLAINANT was concerned that if the stop lasted much longer, she would have to make alternate arrangements for her daughter's care. On the loudspeaker, WITNESS OFFICER asked what she wanted. COMPLAINANT inquired as to how much longer the stop would last, and WITNESS OFFICER responded that "it will take as long as it's going to take." Either before or after this exchange, but while still in her vehicle, WITNESS OFFICER called in for help from another unit because the officer believed that the COMPLAINANT was "kind of irate."
5. SUBJECT OFFICER, a MPD sergeant, responded to WITNESS OFFICER's request for backup and arrived at the scene. He stood between COMPLAINANT's vehicle and WITNESS OFFICER's patrol car.
6. COMPLAINANT saw SUBJECT OFFICER and tried to get his attention by waving her hands and beeping her horn. At first, SUBJECT OFFICER seemed to ignore COMPLAINANT. However, when COMPLAINANT beeped her horn again, WITNESS OFFICER approached the passenger side of COMPLAINANT'S vehicle. COMPLAINANT told him that she had an "urgent" situation—her daughter's daycare--and needed to know how much longer the stop would last. SUBJECT OFFICER replied, "It's going to take how long it's going to take. I can't tell you." SUBJECT OFFICER

then walked back to his original position between COMPLAINANT's car and WITNESS OFFICER's patrol car.

7. COMPLAINANT continued to wait and then again, spoke to SUBJECT OFFICER. She asked him if he knew how much longer the stop would last, and SUBJECT OFFICER said that he did not know. At that point, WITNESS OFFICER returned to COMPLAINANT's vehicle and issued her a Notice of Infraction (NOI) for going down a one-way street in the wrong direction. After handing COMPLAINANT the ticket and the documents provided by COMPLAINANT, WITNESS OFFICER walked away. The traffic stop had lasted at least 10 minutes.
8. COMPLAINANT, eager to leave, shifted her car into drive but with her foot on the brake, looking back at the oncoming traffic. Suddenly, SUBJECT OFFICER, who was standing next to COMPLAINANT's car, shouted at COMPLAINANT to put her vehicle into park. She didn't understand why he was shouting at her, so she replied "What?" SUBJECT OFFICER did not answer but again ordered her to put the car in park. COMPLAINANT asked him why she had to put the car in park, and SUBJECT OFFICER yelled at COMPLAINANT a third time to put the car in park. COMPLAINANT did so.
9. By this time, WITNESS OFFICER had left the scene. SUBJECT OFFICER then told COMPLAINANT that she was "endangering" his life. When COMPLAINANT asked how she was endangering his life, SUBJECT OFFICER did not provide an answer and directed that she give him her car keys. COMPLAINANT questioned why he needed her keys, but SUBJECT OFFICER did not directly respond. Instead, he again demanded that she turn over her keys. There was no indication that COMPLAINANT was in any way impaired or intoxicated. Confused because SUBJECT OFFICER had already been made aware of the time-sensitivity of her daughter's day care, but also scared because she was unsure of what SUBJECT OFFICER would do next, COMPLAINANT complied with his order.
10. SUBJECT OFFICER stood outside of her car holding her car keys. There was no conversation between the two during this time. After approximately 10 minutes had passed, SUBJECT OFFICER returned the keys to COMPLAINANT and told her to "drive safely." As the SUBJECT OFFICER walked away, COMPLAINANT slowly pulled into traffic and drove off. COMPLAINANT attempted to challenge the NOI, but the Department of Motor Vehicles ("DMV") informed her that her paperwork was not submitted in a timely fashion. She eventually paid the ticket, and in her complaint does not raise any issues with respect to the conduct of WITNESS OFFICER, only that of SUBJECT OFFICER.

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; ... [or] (3) use of language or conduct that is insulting, demeaning, or humiliating”

Harassment

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 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: (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 “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 (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.

Here, COMPLAINANT asserts that SUBJECT OFFICER, after a traffic stop had concluded, further detained her without a valid law enforcement purpose. According to COMPLAINANT, as she attempted to drive off after being issued a traffic ticket by another officer, SUBJECT OFFICER yelled at her and forced her to hand over her car keys. SUBJECT OFFICER, who at the time justified his actions on the ground that COMPLAINANT was supposedly “endangering” his life but provided no additional details, stood outside of her car as COMPLAINANT sat and waited for him to return her keys so she could leave. After about 10 minutes, SUBJECT OFFICER handed back her keys with no explanation, only a simple “drive safely.” In the view of COMPLAINANT, SUBJECT OFFICER had confiscated her keys and detained her, not because he had a valid reason, but “just because he could.”

As an initial matter, the Complaint Examiner finds that COMPLAINANT is a credible witness. COMPLAINANT had no motive to falsely accuse the SUBJECT OFFICER of misconduct. Although COMPLAINANT described SUBJECT OFFICER as “rude” when they first interacted, he was not the officer who issued her the ticket. Thus, it makes little sense that COMPLAINANT, merely because of SUBJECT OFFICER’s attitude, would retaliate against

him by blatantly lying and initiating a formal process where she herself would be subjected to scrutiny. Also, while COMPLAINANT identified SUBJECT OFFICER as an African-American male, she could not provide the name of SUBJECT OFFICER in her complaint. So, it seems highly improbable that COMPLAINANT would concoct such an elaborate story, with the attendant legal risks, to harm someone she did not know and had no assurances would ultimately be identified.

SUBJECT OFFICER's response to the merits of the complaint is twofold, but does not directly challenge any of the details of COMPLAINANT's account. First, he states that he "do[es] not recall this incident as described to me by OPC. I have backed up many officers on traffic stops and assignments, but I do not recall this specific traffic stop." Second, he argues that COMPLAINANT, when shown his picture by OPC, misidentified him as the officer who stopped her and took away her keys because there is insufficient evidence to demonstrate that he was present at the scene that day.

Addressing his first argument, SUBJECT OFFICER's inability to remember, one way or another, whether this incident happened is hard to believe given the unusual set of facts alleged. Further, WITNESS OFFICER could have provided dispositive evidence as to SUBJECT OFFICER's role, if any, but in her statement noted that "another officer arrived at the scene, but I do not recall who" and "I do not remember interacting with the other officer." The lack of recollection on the part of both SUBJECT OFFICER and WITNESS OFFICER does nothing to refute COMPLAINANT's account.

With respect to his second defense, SUBJECT OFFICER's arguments are unavailing. To support his assertion that he was not the officer in question, SUBJECT OFFICER relies on fact that: (a) The roll call sheets do not list him as working on June 20, 2010; (b) The Second District PSS book does not list him as working any hours that day; and (c) while SUBJECT OFFICER admits that the Time and Attendance (TACIS) Printout reflects that he worked that day from 3:00 p.m. to 11:30 p.m., he contends that it would have been "difficult," in his words, for him to have checked in, sign out an MPD vehicle, and traveled to the scene "26 minutes" after his 3 p.m. shift began. However, such evidence, on one hand arguably supporting his position then contradicting it on the other, in the view of this Complaint Examiner, is equivocal at best.

Other proof in the record, instead, persuasively demonstrates that SUBJECT OFFICER was the officer who, in fact, responded to WITNESS OFFICER's call for assistance. The recording and transcript for the Second District radio communications for June 20, 2010 shows that an officer using call sign 2080—a sergeant's call sign—responded to WITNESS OFFICER's request made at 3:28 p.m., after SUBJECT OFFICER's shift had begun, and soon thereafter confirmed his arrival at the scene. The Second District PSS Book lists seven officials. Of those officers, five are African American males and only one—SUBJECT OFFICER—is a sergeant assigned to PSA 208 where the incident took place. In addition, after determining to their satisfaction that SUBJECT OFFICER was the officer who had detained COMPLAINANT, OPC showed COMPLAINANT a picture of SUBJECT OFFICER to confirm his identity. COMPLAINANT immediately said, "That's him," and that she was certain that it was

SUBJECT OFFICER who had harassed her. Despite SUBJECT OFFICER's claims to the contrary—namely, that the radio broadcast reflects that another officer acknowledged that he had heard WITNESS OFFICER's call for assistance (but didn't state that he was responding, much less that he had actually made it to the scene) and that any photo identification process without nine pictures is inherently suggestive and defective (simply wrong)—this Complaint Examiner concludes that the evidence outlined above is clear, reliable and more than sufficient to establish that SUBJECT OFFICER was involved in this incident.

But the analysis does not end here. This Complaint Examiner must next, having credited COMPLAINANT's version of what transpired, determine whether the conduct of SUBJECT OFFICER rises to the level of harassment. There is little doubt that it does.

WITNESS OFFICER issued a NOI to COMPLAINANT and walked away. From that moment on, COMPLAINANT was free to go as she pleased. But SUBJECT OFFICER then immediately yelled at her several times to stop her car and subsequently took her keys for a period of about 10 minutes, preventing her from leaving.

As a justification for his detention of COMPLAINANT, SUBJECT OFFICER stated at the time that COMPLAINANT was "endangering" his life. But he never provided her with any further explanation, which she deserved given the seriousness yet generality of his allegation. In fact, his sweeping accusation is belied by the record. There is no evidence that COMPLAINANT was in any way acting recklessly behind the wheel when she prepared to drive off after the traffic stop. In addition, there is absolutely no evidence that COMPLAINANT was intoxicated which would have posed a threat to others and is often the only time, as WITNESS OFFICER stated in her interview, that officers will take away the keys from a driver.

Moreover, although SUBJECT OFFICER does not say so directly, there is the implication that COMPLAINANT's own actions and attitude during the entirety of the incident warranted a response from SUBJECT OFFICER. WITNESS OFFICER described COMPLAINANT as "irate" in her call for assistance and on the NOI, mentions that COMPLAINANT was "rude and disrespectful." COMPLAINANT may have also directed her anger towards SUBJECT OFFICER as well. However, regardless of the level of impatience or rudeness displayed by COMPLAINANT herself, the response—taking her keys and detaining her for 10 minutes with no explanation--was certainly not commensurate with the provocation.

In the end, this Complaint Examiner concludes that under the totality of the circumstances, SUBJECT OFFICER detention of COMPLAINANT by taking away her car keys and preventing her from leaving the scene of the completed traffic stop constitutes harassment in violation of D.C. Official Code § 5-1107(a) and MPD General Order 120.25. SUBJECT OFFICER's actions were unreasonable, unjustified and cannot be tolerated.

Language or Conduct

According to MPD General Order 201.26, Part I, 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.”

First, COMPLAINANT recounts that during the traffic stop, she asked SUBJECT OFFICER how long the stop would take because she had an “urgent situation.” SUBJECT OFFICER replied, in COMPLAINANT’s words, “rudely” and asked, “What’s your urgent situation, ma’am?” COMPLAINANT explained that she needed to pick up her daughter from daycare, to which SUBJECT OFFICER responded: “It’s going to take how long it’s going to take. I can’t tell you.” Soon thereafter, COMPLAINANT asked SUBJECT OFFICER the same question, to which he gave the same answer—he didn’t know. COMPLAINANT believed that SUBJECT OFFICER’s conduct was unacceptable, given the pressing situation with her daughter’s daycare and that she had asked a “fair question” in the context of a routine traffic stop.

This Complaint Examiner does not find that SUBJECT OFFICER’s words and actions before completion of the traffic stop constitute police misconduct. There is no allegation that during this specific interaction SUBJECT OFFICER directed any anger towards COMPLAINANT, raised his voice to COMPLAINANT or used inappropriate language when speaking with her. Although SUBJECT OFFICER’s brusque response to COMPLAINANT’s inquiries, in retrospect, was not ideal, they did accurately and reflect the circumstances at that point: WITNESS OFFICER was awaiting word from the dispatcher regarding the check of the COMPLAINANT’s license and vehicle registration information, and without that information, there was nothing that WITNESS OFFICER, SUBJECT OFFICER and COMPLAINANT could do but wait.

However, the second, and more problematic issue arose after WITNESS OFFICER issued COMPLAINANT the ticket and COMPLAINANT began to leave. At that point, SUBJECT OFFICER shouted at COMPLAINANT several times to stop her car and when she did so, he then demanded that she give him the keys to her car. This Complaint Examiner finds that SUBJECT OFFICER used language and conduct towards COMPLAINANT after the traffic stop that was insulting, humiliating, or demeaning in a violation of D.C. Official Code § 5-1107(a) and MPD General Order 201.26.

SUBJECT OFFICER used words and the harsh tone of his demands to essentially effectuate an improper detention. Yes, it is difficult to remain calm and collected when confronted with someone who may not be, but law enforcement officers, because of their unique positions of authority, are held to a higher standard than the normal, ordinary citizen. And, by forcing COMPLAINANT to submit to an unjustified stop by yelling at COMPLAINANT and

commanding her to turn over her car keys, SUBJECT OFFICER lost control and failed to meet this standard.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning or Humiliating Language or Conduct	Sustained

Submitted on June 4, 2012.

Stephen D. Kong
Complaint Examiner