

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF CITIZEN COMPLAINT REVIEW**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	01-0110
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1, Third District SUBJECT OFFICER #2, Third District
<b>Allegation 1:</b>	SUBJECT OFFICER #1: Harassment SUBJECT OFFICER #2: Harassment
<b>Allegation 2:</b>	SUBJECT OFFICER #1: Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Stacy L. Brustin
<b>Merits Determination Date:</b>	December 1, 2003

Pursuant to D.C. Official Code § 5-1107(a), 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 SUBJECT OFFICER #1 and SUBJECT OFFICER #2 (1) harassed him, and that SUBJECT OFFICER #1 (2) subjected him to language and engaged in conduct that was insulting, demeaning, or humiliating. COMPLAINANT claims that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by initiating a traffic stop without a legitimate purpose, and by taking the keys to his vehicle so as to prevent COMPLAINANT from leaving the scene. In addition, COMPLAINANT claims that SUBJECT OFFICER #1 used profanity toward him and made threatening remarks that were designed to insult, demean, and/or humiliate COMPLAINANT.

**II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint on October 30, 2003. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #1, SUBJECT OFFICER #1, SUBJECT OFFICER #2, WITNESS OFFICER #1, and WITNESS OFFICER #2. The following exhibits were admitted in evidence:

Exhibit 1 – OCCR Formal Complaint, COMPLAINANT, dated March 15, 2001

Exhibit 2 – Memorandum of Interview (MOI), COMPLAINANT, March 19, 2001

Exhibit 3 – MOI, WITNESS #1, May 8, 2001

Exhibit 4 – MOI, SUBJECT OFFICER #1, October 22, 2001

Exhibit 5 – MOI, SUBJECT OFFICER #2, January 17, 2002

Exhibit 6 – MOI, SUBJECT OFFICER #2, July 14, 2003

Exhibit 7 – MOI, WITNESS OFFICER #1, October 4, 2001

Exhibit 8 – MOI, WITNESS OFFICER #2, January 22, 2002

Exhibit 9 – Photographs (2) of COMPLAINANT's car, February 5, 2002

Exhibit 10 – MPD Special Order 01-01

Exhibit 11 – MPD General Order 304.10

Exhibit 12 – MPD General Order 201.26

Exhibit 13 – Insert OCCR 01-0110 – November 15, 2001

Exhibit 14 – Insert OCCR 01-0110 – December 19, 2001

Exhibit 15 – Insert OCCR 01-0110 – December 19, 2001

Exhibit 16 – MOI, WITNESS OFFICER #3, May 23, 2002

Exhibit 17 – Insert OCCR 01-0110 – January 7, 2002

Exhibit 18 – Insert OCCR 01-0110 – January 10, 2002

Exhibit 19 – Third District Roll Call & Deployment Records for March 15, 2001

Exhibit 20 – Findings of Fact & Merits Determination for OCCR Complaint  
No. 01-0309

Exhibit 21 – MPD Public Safety Communications Records Audiotape for  
March 15, 2001

Exhibit 22 – Insert OCCR 01-0110 October 17, 2003

Exhibit 23 – March 8, 2001, Burglary Report

Exhibit 24 – PD 775 for Unit 3042

Exhibit 25 – March 15, 2001, Cellular Phone Record

Exhibit 26 – Complainant's Diagram of Scene of Incident

Exhibit 27 – Notice to SUBJECT OFFICER #1 10-9-01

Exhibit 28 – Notice to SUBJECT OFFICER #1 Re: Interview on 10-22-01

Exhibit 29 – SUBJECT OFFICER #1 Objections, dated August 19, 2003

Exhibit 30 – SUBJECT OFFICER #2 Objections, dated August 17, 2003

### **III. FINDINGS OF FACT**

Based on the evidentiary hearing conducted on October 30, 2003, and based on a review of all exhibits admitted in evidence, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT was traveling west on U Street, N.W., in a 1988 Chevrolet Caprice at approximately 9:20 p.m. on March 15, 2001.
2. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were traveling west on U Street N.W., noticed the Chevrolet Caprice, and initiated a traffic stop on U. Street between 12th and 13th, near the intersection of 13th and U Streets, N.W.
3. COMPLAINANT did not initially realize that the police officers behind him wanted him to pull over. There was little parking available on the block of U Street between 13th and 14th and COMPLAINANT eventually pulled over in a bus stop near the intersection of 14th & U Streets, N.W.
4. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 initially believed that COMPLAINANT was not going to pull over as it had taken COMPLAINANT some time to pull over. Once COMPLAINANT pulled over, his foot remained on the brake of the car and the officers believed that COMPLAINANT was going to pull away once they

stepped out of their vehicle. The police officers requested assistance from other police units after COMPLAINANT had come to a stop. SUBJECT OFFICER #1 gave COMPLAINANT's license plate number to the dispatcher at approximately 9:22 p.m. COMPLAINANT's car had Virginia license plates.

5. One of the officers, over the loudspeaker on the patrol car, told COMPLAINANT to turn off his car and referred to the car as "a piece of trash."
6. Several units responded to the scene. At least one police car pulled directly in front of COMPLAINANT so that he could not leave the scene.
7. The dispatcher asked SUBJECT OFFICER #1 if the driver was out of the car and SUBJECT OFFICER #1 responded that the car was stopped and things were under control.
8. SUBJECT OFFICER #1 and another officer approached the vehicle. SUBJECT OFFICER #1 told COMPLAINANT to "get the fuck out of the car." COMPLAINANT got out of the car and left the keys in the ignition. When COMPLAINANT asked the officer why he was being stopped, SUBJECT OFFICER #1 told him to shut up and go to the back of the car. SUBJECT OFFICER #1 did not provide a reason for the stop.
9. SUBJECT OFFICER #1 told COMPLAINANT to "put his fucking hands on the trunk."
10. At 9:24 p.m., the dispatcher responded to SUBJECT OFFICER #1 that the license plate number he had previously called in was registered to COMPLAINANT.
11. SUBJECT OFFICER #1 asked for COMPLAINANT's driver's license and when COMPLAINANT reached in his jacket pocket to take out his wallet, one of the officers told him to keep his hands on the trunk. COMPLAINANT explained that his license was in his wallet in his pocket and the officer allowed him to retrieve the license. SUBJECT OFFICER #1 called in the license number to the dispatcher.
12. COMPLAINANT informed the officers that his car had been broken into the previous Friday and the radio was stolen.
13. SUBJECT OFFICER #1 saw that COMPLAINANT had Virginia tags and a Michigan driver's license and he told COMPLAINANT he was going to jail. When COMPLAINANT protested, SUBJECT OFFICER #1 told him to say something or make a move and give SUBJECT OFFICER #1 a reason to knock him down.
14. SUBJECT OFFICER #2 searched the glove compartment of COMPLAINANT's car and obtained a registration for the car.

15. At approximately 9:29 p.m., the dispatcher reported back that the Michigan driver's license was issued to COMPLAINANT.
16. COMPLAINANT began to look at the names and badge numbers of the officers. He also began counting the police cars and the number of officers present. He made a statement expressing dismay at the situation and SUBJECT OFFICER #1 dared COMPLAINANT to file a complaint. SUBJECT OFFICER #1 told COMPLAINANT that if he filed a complaint, he would lock him up and impound his car the next time he saw him on the street.
17. Several of the responding officers left the scene. WITNESS OFFICER #1 was one of the responding officers. He had received the call to assist at approximately 9:22 p.m. He arrived on the scene at approximately 9:23 p.m., and left the scene at 9:35 p.m.
18. SUBJECT OFFICER #1 left COMPLAINANT's driver's license on the trunk of COMPLAINANT's car.
19. COMPLAINANT returned to his car. When he went to start the car he noticed that the keys were not in the ignition. In addition, papers were strewn throughout the car and the contents of the glove compartment were on the seat and on the floor.
20. COMPLAINANT got out of the car and began to look for his keys. When SUBJECT OFFICER #2 inquired as to what COMPLAINANT was doing, COMPLAINANT responded that the officers had taken his keys. SUBJECT OFFICER #2 denied having taken the keys. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 left the scene.
21. COMPLAINANT called his cousin, WITNESS #1, at 9:38 p.m. and asked her to come to 14th & U and stay with his car so that he could drive her car to his home and retrieve a spare set of keys.
22. At approximately 9:39 or 9:40 p.m., SUBJECT OFFICER #1 asked the dispatch operator to check on whether a larceny report had been filed by COMPLAINANT.
23. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 drove around the block and returned a few minutes later. COMPLAINANT was still parked in the bus stop. SUBJECT OFFICER #2 got out of the car, approached the passenger side of the car and dropped the set of keys onto the passenger seat. SUBJECT OFFICER #2 then commented that the officers would wait to see if the car started, but the officers quickly left the scene.
24. COMPLAINANT then attempted to call his cousin to tell her not to come, but he could not reach her.

25. Approximately fifteen minutes later, WITNESS #1 arrived at 14th and U Street, N.W. where she encountered COMPLAINANT sitting in his vehicle.

#### IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Citizen Complaint Review] 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 ... and (3) use of language or conduct that is insulting, demeaning, or humiliating...”

**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.”<sup>1</sup>**

At approximately 9:21 p.m. on March 15, 2001, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 initiated a traffic stop against COMPLAINANT. Based on the testimony presented at the hearing as well as a review of the exhibits, COMPLAINANT has proven, by a preponderance of the evidence, that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 took actions that were intended to interfere with COMPLAINANT’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose, and thereby engaged in harassment. The harassment took two different forms.

(1) The evidence demonstrates that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have a reasonable basis for initiating the traffic stop. Neither officer was able to provide a credible explanation as to what offense they suspected COMPLAINANT of having committed. Their action violates General Order 304.10 which states that “[i]f a member reasonably suspects that a person has committed, is committing, or is about to commit any crime, the officer has the authority to stop and detain that person for the purpose of determining whether or not probable cause exists to arrest.”

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 offered inconsistent explanations as to why they initiated a traffic stop. When interviewed by OCCR on October 22, 2001, SUBJECT OFFICER #1 indicated that he noticed a car that was “all messed up” and he turned on the siren and lights to get COMPLAINANT to pull over (exhibit 4). He provided no explanation as to the offense he suspected COMPLAINANT of having committed. When SUBJECT OFFICER #2 was first interviewed on January 17, 2002, he stated that he could not remember why COMPLAINANT was stopped (exhibit 5). Over a year later, on July 14, 2003,

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<sup>1</sup> The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of “harassment” contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

SUBJECT OFFICER #2 was again interviewed by OCCR and he stated that COMPLAINANT was stopped because he had no lights (exhibit 6). SUBJECT OFFICER #1 filed objections to the complaint dated August 19, 2003, in which he fails to articulate a specific reason as to why COMPLAINANT was stopped, but states COMPLAINANT was driving without headlights (exhibit 29). Similarly, SUBJECT OFFICER #2 filed objections dated August 17, 2003, in which he fails to state a reason as to why COMPLAINANT was pulled over but he states that COMPLAINANT was driving without headlights (exhibit 30). During the hearing SUBJECT OFFICER #1 testified that he initiated the stop because COMPLAINANT was driving without rear lights (T. p. 175). SUBJECT OFFICER #2 testified, however, that he remembered seeing a box style car operating without headlights (T. p. 230).

COMPLAINANT credibly testified, consistent with his initial complaint and his statements when interviewed by OCCR, that when he initially asked SUBJECT OFFICER #1 why he was being stopped, SUBJECT OFFICER #1 would not provide an explanation. Had the officers observed the broken vent window when they initially saw COMPLAINANT's car, they might have had a reasonable suspicion that the car was stolen. However, SUBJECT OFFICER #1 testified during the hearing that he did not see the broken vent window until after he had stopped COMPLAINANT (T. p. 148, p. 210). Similarly, SUBJECT OFFICER #2 testified during the hearing that he remembered seeing a broken vent window as he approached the car after COMPLAINANT had been boxed in near the intersection of 14th and U Streets (T. p. 232).

During the hearing, SUBJECT OFFICER #2 testified that both he and SUBJECT OFFICER #1 initiated the traffic stop. He stated, "...I remember being with SUBJECT OFFICER #1 when the traffic stop, when we tried to initiate a traffic stop and the car refused to stop in about two or three blocks." (T. p. 230). SUBJECT OFFICER #2 later added, "...[m]yself and SUBJECT OFFICER #1 attempted to make the traffic stop, like I said, within about two or three blocks, and the car refused to pull over." The testimony makes it clear that both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 initiated the stop.

There is sufficient evidence to establish that there was no reasonable basis for initiating the stop and that the officers violated GO 304.10. As a result, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 engaged in acts that were intended to interfere with COMPLAINANT's ability to go about lawful business normally, in the absence of a specific law enforcement purpose. These acts constitute harassment under MPD Special Order 01-01, Part III, Section G.<sup>2</sup>

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<sup>2</sup> SUBJECT OFFICER #1 raised a concern during the evidentiary hearing that MPD General Order 304.10 had been revised and that the version that was admitted as exhibit 11 was not in effect at the time of the incident leading to the complaint. On the record, the complaint examiner requested that OCCR determine whether GO 304.10 had been revised. The deputy director of OCCR subsequently contacted MPD's Directive Development and Accreditation Office, and was informed that GO 304.10 has not been revised since September 1985, and that the copy provided to parties in this matter and admitted as exhibit 11 was the version in effect at the time of the traffic stop in March 2001.

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 both credibly testified, consistent with the information they provided in interviews with OCCR, that they believed that COMPLAINANT was taking a long time to pull over. This is corroborated by COMPLAINANT's testimony that he was unaware that the officers wanted him to pull over and when he became aware of this fact he was unable to pull over immediately due to the lack of parking spaces. COMPLAINANT's testimony during the hearing suggested that he may not have turned his car off as soon as he pulled over. (T. pp. 82 - 83) The evidence also shows, as confirmed on the audiotape (exhibit 21) that SUBJECT OFFICER #1 saw COMPLAINANT's brake lights, believed that COMPLAINANT was not turning the car off and believed that COMPLAINANT was going to take off as soon as the officers left their vehicle. As a result, the officers requested assistance from other units and later requested that COMPLAINANT get out of the vehicle. These actions were reasonable in light of the officers' concerns and do not constitute harassment.

(2) SUBJECT OFFICER #1 and SUBJECT OFFICER #2 engaged in acts intended to bother, annoy, or otherwise interfere with COMPLAINANT's ability to go about lawful business normally, in the absence of a specific law enforcement purpose, when they took his keys from the ignition of his car without COMPLAINANT's permission, denied having the keys, left the scene, came back to the scene a few minutes later, and returned COMPLAINANT's keys to him. As a result of these actions, the traffic stop lasted more than 10 minutes in duration and, therefore, the stop was not conducted in a reasonable manner in violation of General Order 304.10. In determining whether a stop is reasonable and lawful, the stop must be of limited duration, not to exceed 10 minutes.

The police audiotape (exhibit 21), the cellular telephone record (exhibit 25), the PD 775 for WITNESS OFFICER #1 (exhibit 24), and the testimony of COMPLAINANT confirm that the stop of COMPLAINANT lasted longer than ten minutes. The first reference to COMPLAINANT on the audiotape takes place at approximately 9:22 p.m. WITNESS OFFICER #1's radio run log, confirmed by his testimony at the hearing, indicates that he received the call for assistance (which according to the audiotape occurred after COMPLAINANT's car was stopped at 14th and U) at approximately 9:22 p.m. He arrived at the scene at 9:23 p.m. and he left the scene at 9:35 p.m.

The audiotape demonstrates that at 9:24 p.m., the dispatcher had informed the officers on the scene that the license plates they had previously called in were registered to COMPLAINANT for a 1988 Chevy Caprice. The tags were to expire on 11/2001. However, due to the fact that COMPLAINANT had Virginia tags and a Michigan driver's license, it is reasonable that the officers wanted to check the Michigan license to confirm ownership of the car. At approximately 9:31 the operator indicates that she had not yet received a return on the Michigan license. At approximately 9:33 or 9:34 p.m. the dispatcher informed the officers that the Michigan driver's license was registered to COMPLAINANT. At this point, approximately 11-12 minutes into the stop, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had



confirmation that the vehicle belonged to COMPLAINANT. Yet, the evidence demonstrates that COMPLAINANT was detained for approximately 9-10 more minutes.

COMPLAINANT credibly testified that after the officers finished questioning him, he returned to his car and his keys were gone (T. p. 56). He further testified, consistent with all previous statements and interviews, that SUBJECT OFFICER #2 asked COMPLAINANT whether something was wrong and COMPLAINANT responded that one of the officers had taken his keys. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 drove off (T. p. 57). COMPLAINANT then called his cousin, WITNESS #1, to have her come to the scene to assist him. COMPLAINANT's testimony is corroborated by exhibit 25, a cell phone record that shows that at 9:38 p.m. on March 15, 2001, he called WITNESS #1's telephone number. This call took place approximately 16 minutes after the traffic stop started. COMPLAINANT credibly testified that about 4-5 minutes later SUBJECT OFFICER #1 and SUBJECT OFFICER #2 returned, SUBJECT OFFICER #2 got out of his vehicle, came around to the passenger side, dropped the keys on the passenger seat, and said "you're welcome" (T. p. 59). COMPLAINANT then testified that he called his cousin to tell her not to come but she had already left. COMPLAINANT's testimony is corroborated by exhibit 25 that indicates that COMPLAINANT called WITNESS #1's telephone number at 9:43 p.m. on March 15, 2001, approximately 21 minutes after the traffic stop started.

WITNESS #1 testified, credibly, that she received a telephone call from COMPLAINANT on March 15, 2001. She verified her number as the number listed on the cellular phone record. She testified that COMPLAINANT told her he was pulled over by the police, they took his keys, and he needed her to come down to where he was located. She proceeded to drive to 14th and U St., N.W., where she encountered COMPLAINANT sitting in his vehicle.

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 offer conflicting explanations as to what occurred at the end of the traffic stop on March 15, 2001. SUBJECT OFFICER #1 testified that he gave COMPLAINANT a ticket for having an unsafe motor vehicle, but SUBJECT OFFICER #2 testified he did not recall whether a ticket was issued. OCCR was unable to locate a Notice of Infraction. SUBJECT OFFICER #1 developed an angry demeanor during the hearing as he was cross-examined on the issue of his ticket books.

SUBJECT OFFICER #2, in his first interview with OCCR on January 17, 2002 (exhibit 5), largely corroborates COMPLAINANT's version of events. Although he denied taking the keys, SUBJECT OFFICER #2 stated during his initial interview by OCCR that following the stop, he and SUBJECT OFFICER #1 left COMPLAINANT and drove around the block. He stated that when they returned he and SUBJECT OFFICER #1 stopped and asked COMPLAINANT why he was waiting. SUBJECT OFFICER #2 testified to this in the hearing as well (T. p. 263). According to SUBJECT OFFICER #2, COMPLAINANT responded that he was waiting for his keys. COMPLAINANT claimed that the officers had the keys. SUBJECT OFFICER #2 denied that they had the keys.

On October 22, 2001, SUBJECT OFFICER #1 was interviewed by OCCR and he stated that he and SUBJECT OFFICER #2 received a drug assignment and left the scene. He further stated that approximately 20 minutes later (during the hearing he testified it may have even been longer (T. p. 150)) he and SUBJECT OFFICER #2 returned and as they approached 14th & U Street N.W., they saw COMPLAINANT sitting in his car. SUBJECT OFFICER #1 stated in his interview with OCCR and testified at the hearing that when he and SUBJECT OFFICER #2 returned to the scene they did not stop to speak with COMPLAINANT (T p. 150). SUBJECT OFFICER #1' version of events is inconsistent with SUBJECT OFFICER #2's description. These inconsistencies in the officers' description of events undermine the credibility of their stories.

During the hearing, SUBJECT OFFICER #1 also testified that he asked the dispatch operator to check to see if there was a larceny call for COMPLAINANT's tag number in order to confirm COMPLAINANT's claims that his car had been broken into the week before (T. pp. 199-203). According to the tape, this request was made at approximately 9:40 p.m. There is no indication from the audiotape that the dispatch operator provided a response. SUBJECT OFFICER #1' testimony supports the proposition that the officers took COMPLAINANT's keys in order to try to check whether there was a larceny report before COMPLAINANT could leave the scene.

SUBJECT OFFICER #1' credibility is further undermined by his statements both to OCCR investigators and during the hearing that he observed a screwdriver in the ignition, that COMPLAINANT was drunk and that he had found 6-7 stereos in the trunk of COMPLAINANT's car. Neither SUBJECT OFFICER #2, nor WITNESS OFFICER #2, nor WITNESS OFFICER #1 in their interviews with OCCR investigators or in their testimony during the hearing corroborated SUBJECT OFFICER #1' assertions regarding a screwdriver in the ignition, stereos, or alcohol consumption by COMPLAINANT. In his objections to the complaint, (exhibit 30), SUBJECT OFFICER #2 makes a point of clarifying that to the best of his recollection he did not make a comment alleging that COMPLAINANT had been drinking alcohol. There is no evidence that SUBJECT OFFICER #1 asked COMPLAINANT to walk the line or take a breathalyzer. Further, SUBJECT OFFICER #1 did not indicate during his OCCR interview that he had a justifiable basis for searching the trunk yet during his testimony, on cross examination, he states that COMPLAINANT consented to the search of the trunk (T. pp. 168-69).

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 engaged in acts which were intended to interfere with COMPLAINANT's ability to go about lawful business normally, in the absence of a specific law enforcement purpose, and therefore their actions violated General Order 304.10 and constituted harassment under MPD Special Order 01-01, Part III, Section G.

**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.”**

Based on the testimony presented at the hearing as well as a review of the exhibits, COMPLAINANT has proven, by a preponderance of the evidence, that SUBJECT OFFICER #1 used profanity and other language that was insulting, demeaning, or humiliating.

COMPLAINANT’s version of the events, as detailed in his complaint (transcribed shortly after the incident on March 15, 2001), as relayed to an OCCR investigator on March 19, 2001, and as credibly described at the hearing, demonstrate that during the course of the traffic stop, SUBJECT OFFICER #1 told COMPLAINANT to “get the fuck out of the car” (T. p. 29) and “put your fucking hands on the trunk” (T. p. 29).

SUBJECT OFFICER #1 does not dispute that he told COMPLAINANT to get out of the car. He claims that when he walked up to COMPLAINANT’s car and asked COMPLAINANT why he did not pull over, COMPLAINANT began cursing at SUBJECT OFFICER #1 (T. p. 147). SUBJECT OFFICER #1 then asked COMPLAINANT to get out of the car and, according to SUBJECT OFFICER #1, COMPLAINANT continued to use profanity and would not cooperate. SUBJECT OFFICER #1 testified he told COMPLAINANT to step out or he would be arrested (T. p. 147). COMPLAINANT credibly testified that he asked why he was being stopped but cooperated with the officers’ instructions. It is undisputed that several police cars and numerous police officers arrived on the scene either shortly before or as SUBJECT OFFICER #1 approached COMPLAINANT’s vehicle. COMPLAINANT’s vehicle was boxed in by police cars. In the presence of all of these police officers, it is far more likely that COMPLAINANT cooperated with the officers rather than attempting to incite them.

SUBJECT OFFICER #1 also does not dispute that he walked COMPLAINANT to the back of the car and asked COMPLAINANT to place his hands on the trunk (T. p. 147). SUBJECT OFFICER #1 acknowledges that held COMPLAINANT by the arm as they walked to the back of the car (T. p. 152). He testified that he asked COMPLAINANT to place his hands on the trunk because at that point SUBJECT OFFICER #1 had seen that “the steering column around the car was torn out... [a]nd I saw the screwdriver stuck in the ignition” (T. p. 147). This testimony is not credible. There were numerous officers who were on the scene and not one officer, including SUBJECT OFFICER #2 who acknowledges having gone into the glove compartment of the car (T. p. 253), testified or stated during an OCCR interview that there was a screwdriver in the ignition.

COMPLAINANT testified at the hearing, consistent with all previous statements, that SUBJECT OFFICER #1 informed COMPLAINANT that he was going to jail and COMPLAINANT protested, asking what he had done (T. p. 42). COMPLAINANT stated in his complaint and credibly testified that SUBJECT OFFICER #1 moved closer to COMPLAINANT's face and told him "you're going to jail" and stated that he should say something else or make one move and give SUBJECT OFFICER #1 a reason to knock him down. (T. p. 42) COMPLAINANT also credibly testified, consistent with his previous statements, that when he expressed dismay at the number of officers who had responded and at the possibility he would go to jail, SUBJECT OFFICER #1 dared him to file a complaint and threatened that if COMPLAINANT filed a complaint "the next time I catch you on the street I'll lock your ass up and impound your car" (Exhibit 1, T. p. 53). COMPLAINANT credibly testified that after hearing this statement, he became resolved to file a complaint.

While COMPLAINANT's testimony was consistent and credible, the testimony of WITNESS #1 regarding SUBJECT OFFICER #1's language was not credible and does not substantiate the allegation. When interviewed by an OCCR investigator she stated that COMPLAINANT had told her that officers had said to him "I'll beat you motherfucker." During the hearing, she denied ever making the statement and testified that she did not remember giving a statement to the OCCR interviewer (T. p. 130). These assertions were not credible.

SUBJECT OFFICER #2 and WITNESS OFFICER #2, and particularly WITNESS OFFICER #1 were having a good deal of difficulty remembering details of the traffic stop during the hearing. SUBJECT OFFICER #2 could not remember where he first saw COMPLAINANT's car (T. p. 248), he didn't remember if COMPLAINANT's trunk was opened (T. p. 252), he couldn't remember if they issued a ticket (T. p. 264), and he was equivocal about whether he went on the radio inquiring about lost keys (T. p. 264). Yet when he was asked whether any other officers cursed at COMPLAINANT or made threatening remarks, he immediately said no (T. p. 241).

WITNESS OFFICER #2, in response to a question about what he recalled about the stop, responded "nothing really" (T. p. 269). He couldn't remember whether he asked COMPLAINANT for his license or someone else asked (T. p. 270), he couldn't remember anything about keys (T. p. 271), he couldn't remember who radioed the driver's license in to dispatch (T. p. 271), he couldn't remember whether he left before the other officers (T. p. 272), he couldn't remember if a ticket was issued (T. p. 273), he couldn't remember what shift he was working (T. p. 278) and he couldn't remember who his partner was that night (T. p. 283) ("So, I mean I can't be 100 percent sure, but I might have been with Mordecai, that tour of duty. You know, I can't remember it was so long ago."). Yet, WITNESS OFFICER #2 was able to immediately respond no when asked if anyone threatened or cursed COMPLAINANT (T. p. 271).

WITNESS OFFICER #1 had the most difficulty recalling details of the stop during the hearing. When asked if he recalled a traffic stop involving COMPLAINANT on March 15, 2001, WITNESS OFFICER #1 responded "Not too well" (T. p. 286). When asked what he could

recall, WITNESS OFFICER #1 responded that he remembered there was a traffic stop but he could not recall exactly where the traffic stop took place (T. p. 286). The only reason he remembered the incident was because “there was just a whole bunch of Officers on the scene. I don’t know, ten, 12 Officers, and that’s really all I can tell you” (T. p. 286). Yet, in response to the next two questions regarding whether he recalls any of the officers cussing at or threatening the driver, WITNESS OFFICER #1, without hesitation, responded no (T. pp. 286-87). WITNESS OFFICER #1 then could not recall whether anyone took keys, could not recall any damage to the car, acknowledged that he could not recall anything else about the stop (T. p. 287) and said he did not recognize COMPLAINANT (T. p. 287). Given their difficulty remembering so many of the details of the incident, the complaint examiner gives little weight to the testimony of SUBJECT OFFICER #2, WITNESS OFFICER #2, and WITNESS OFFICER #1 during the hearing regarding whether officers on the scene used profanity or made threatening remarks to COMPLAINANT.

SUBJECT OFFICER #1 contends that he did not use profanity or make any insulting or demeaning remarks to COMPLAINANT. However, SUBJECT OFFICER #1’s credibility was greatly diminished, as discussed above, by his statements to OCCR investigators and during the hearing that he observed a screwdriver in the ignition, that COMPLAINANT was drunk, and that he had found 6-7 stereos in the trunk of COMPLAINANT’s car. There is no evidence to substantiate these claims. Neither SUBJECT OFFICER #2 nor WITNESS OFFICER #2 nor WITNESS OFFICER #1, in their interviews with OCCR investigators in 2001 and early 2002, corroborated SUBJECT OFFICER #1’s assertions regarding a screwdriver in the ignition, stereos, or alcohol consumption by COMPLAINANT. In fact, as to the screwdriver and alcohol issue, SUBJECT OFFICER #2’s statements during the OCCR interview on January 17, 2002, and statements made in his objections (exhibit 30) directly contradict SUBJECT OFFICER #1’s assertions. There is no evidence that SUBJECT OFFICER #1 asked COMPLAINANT to walk the line or take a breathalyzer. Further, SUBJECT OFFICER #1 did not indicate during his OCCR interview that he had a justifiable basis for searching the trunk. Yet during cross-examination he states, for the first time, that COMPLAINANT consented to the search of the trunk (T. pp. 168-69). SUBJECT OFFICER #1’s assertions lack credibility and cast doubt on his entire testimony.

Therefore, the evidence supports a finding that SUBJECT OFFICER #1 violated MPD General Order 201.26 and used language that was insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H.

**V. SUMMARY OF MERITS DETERMINATION**

<b>Allegation 1:</b>	SUBJECT OFFICER #1: Sustained SUBJECT OFFICER #2: Sustained
<b>Allegation 2:</b>	SUBJECT OFFICER #1: Sustained

Submitted on December 1, 2003.

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Stacy L. Brustin  
Complaint Examiner