GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	10-0158
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Fourth District
Allegation 1:	Harassment
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	May 28, 2013

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 alleged that on January 15, 2010, she was harassed by SUBJECT OFFICER, Fourth District when he stopped her without a lawful purpose.[1] COMPLAINANT alleged that she encountered SUBJECT OFFICER when she was attempting to make a left turn in front of his unmarked police vehicle. According to her allegations, the two exchanged words though COMPLAINANT did not know SUBJECT OFFICER was a member of the Metropolitan Police Department ("MPD"). She alleged SUBJECT OFFICER spoke in a disrespectful tone. After this exchange, COMPLAINANT alleged that the unmarked car followed her using red lights and a siren. COMPLAINANT alleged that she finally came to a stop at which point SUBJECT OFFICER spoke with her in a hostile, harassing tone and asked for her license and registration. At the end of the stop, COMPLAINANT alleged that SUBJECT OFFICER did not issue her a citation, but pointed out that he had the basis to do so. COMPLAINANT further alleged that SUBJECT OFFICER told her to drive more safely.

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[1] COMPLAINANT also alleged that SUBJECT OFFICER used unnecessary or excessive force against her when he drew his service weapon and pointed it at her. In addition, COMPLAINANT alleged that SUBJECT OFFICER and a second subject officer, WITNESS OFFICER, employed language or engaged in conduct toward her that was insulting, demeaning, or humiliating during a traffic stop. Pursuant to D.C. Code 5-1108(1), on February 22, 2013, the Police Complaints Board dismissed these two allegations, concurring in the determination made by OPC's executive director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on April 11, 2013, and OPC's response to the objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on April 11, 2013, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with the Office of Police Complaints against SUBJECT OFFICER on January 20, 2010.

2. On January 15, 2010, at around 6:45 p.m. COMPLAINANT was traveling east on Calvert Street, N.W. waiting to take a left on Adams Mill Road, N.W. As she started to take the turn, SUBJECT OFFICER was travelling west on Calvert Street, N.W., and approached the intersection where COMPLAINANT was attempting to turn left.

3. SUBJECT OFFICER, who was at the time assigned to the Robbery TAC Unit in the Fourth District, was driving an unmarked police car and was accompanied by WITNESS OFFICER #1 who rode in the passenger seat. Both officers were in plain clothes but wore their badges and black tactical vests with POLICE written across the front and back.

4. At the intersection, SUBJECT OFFICER slowed down as COMPLAINANT began to take the left turn in front of SUBJECT OFFICER'S car. COMPLAINANT had not activated her turn signal. SUBJECT OFFICER blocked her way, stopping in the middle of the intersection.

5. SUBJECT OFFICER rolled down his window and signaled that COMPLAINANT do the same. The two exchanged words related to COMPLAINANT'S attempt to turn left.

6. During this interaction, COMPLAINANT did not know that SUBJECT OFFICER was a police officer.

7. After exchanging words, COMPLAINANT made the left turn onto Adams Mill Rd, N.W. She drove very slowly looking for parking. Shortly thereafter, she noticed that a car with a red light and siren was pursuing her. SUBJECT OFFICER followed her down Adams Mill Rd., N.W., with his red light activated.

8. During this time, WITNESS OFFICER #1 called repeatedly for uniform back up, but there was no response.

9. COMPLAINANT stopped a car travelling in the opposite direction and asked the driver to call 911. She reported that she was being pursued by the sedan behind her. COMPLAINANT was not calm, but not overly hysterical. SUBJECT OFFICER got out of his car at this point and approached COMPLAINANT'S vehicle. COMPLAINANT, however, drove away before he could speak with her. The driver placed a call to 911.

10. COMPLAINANT herself placed a call to 911 to report that she was being pursued by a car with red flashers and that she didn't know who the driver of the car was. Unified Communications advised her to pull over. Two uniformed officers were dispatched to assist with the stop.

11. SUBJECT OFFICER approached COMPLAINANT'S car, ordered her to get out of the car and informed her that he had "hit her with the sirens and light." He further asked her for her license and registration. SUBJECT OFFICER used a loud voice while issuing these commands.

12. During the stop, COMPLAINANT called her friend, WITNESS. He was able to overhear some of the exchange. Also during the stop, WITNESS OFFICER #2 and WITNESS OFFICER #3 arrived on the scene as uniformed presence. WITNESS OFFICER #2 reassured COMPLAINANT that SUBJECT OFFICER was, indeed, a member of the Metropolitan Police Department.

13. SUBJECT OFFICER informed COMPLAINANT that he could have issued a ticket to her for obstructing traffic or for resisting pulling over on command. Further, he told her she should drive more carefully. However, he did not issue any citations.

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; (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.

Traffic enforcement may be implemented to prevent traffic accidents and to promote greater traffic safety awareness by the public and to target enforcement activities against those committing hazardous violations. MPD Gen. Order 303.1, Part I, A1 (Part 1992). In response to each traffic stop, a member is required to either "1) issue a Notice of Infraction; or 2) issue a warning NOI; or 3) under extreme circumstances an oral warning may be given (e.g. receipt of a radio assignment requiring immediate response, or the motorist was enroute to the hospital for emergency treatment of a sick or injured passenger." MPD Gen. Order 303.1, Part I, A2 (1992).

General Order 303.1 specifies that "members who are not in uniform or are in unmarked vehicles may take enforcement action only in the case of a violation that is so grave as to pose an immediate threat to the safety of others." MPD Gen. Order 303.1, Part I, A2 (1992). However, Special Order-00-11 amended that General Order in the following relevant way: "Members who are not in uniform and/or are in unmarked vehicles, without grill lights or portable lights, and/or sirens may take enforcement action only in the case of a violation that is so grave as to pose an immediate threat to the safety of others. When taking actions in these instances, members shall request the assistance of a marked unit as soon as practical…" SO-00-11 (2000).

The central question for the Hearing Examiner is whether SUBJECT OFFICER'S traffic stop of COMPLAINANT was harassment in that it was undertaken in a way that was purposefully, knowingly, or recklessly in violation of internal guidelines of the MPD. And if so, if totality of the circumstances indicate that the behavior amounts to harassment based on the officer's adherence to MPD policies and procedures, the severity of the conduct, and whether it is physically threatening or humiliating.

First, was the traffic stop at issue conducted according to police guidelines? Under General Order 303.1, SUBJECT OFFICER must have had the goal of preventing traffic

accidents, promoting greater awareness of traffic safety, or targeting a specific individual committing a violation when he executed the traffic stop. In this case, COMPLAINANT attempted to take a left turn across traffic in a way that based even on her own statements may have been hazardous. In her initial complaint, COMPLAINANT does not mention using a turn signal when waiting to take her turn. In a later witness statement, she does state that she used her turn signal. Further, in the OPC witness statement of WITNESS, a friend of COMPLAINANT'S who was on the phone with COMPLAINANT during portions of the stop, WITNESS reported that COMPLAINANT told him that she almost hit the unmarked police vehicle when making her turn. SUBJECT OFFICER reported in his OPC witness statement that COMPLAINANT almost caused an accident. Based on COMPLAINANT'S hazardous behavior, SUBJECT OFFICER had a lawful purpose in stopping COMPLAINANT.

However, given that SUBJECT OFFICER was in an unmarked police cruiser and wearing only a tactical vest, did the traffic stop comply with MPD guidelines regarding when an officer may exercise authority over traffic enforcement? Under MPD General Order 303.1 (1992) and Special Order 00-11 (2000) in pertinent part, officers may not initiate traffic enforcement if they are not in uniform or if they are in an unmarked car without sirens and lights. It is uncontested that SUBJECT OFFICER drove an unmarked car. It is further uncontested, however, that SUBJECT OFFICER'S car was equipped with sirens and lights and that he used them in his pursuit of COMPLAINANT. COMPLAINANT consistently affirmed that SUBJECT OFFICER pursued her with a red light and siren. Both SUBJECT OFFICER and his partner, WITNESS OFFICER #1 testified to use of the lights and siren. Finally, the recording of the call for 911 assistance reflects SUBJECT OFFICER stating: "Ma'am, we just hit you with the sirens and the light."

It is further uncontested that SUBJECT OFFICER was not in full MPD uniform. Instead, he was in plain clothes and wearing an MPD tactical vest with POLICE displayed on the front and back and wearing his badge, as asserted by SUBJECT OFFICER and corroborated by several other witnesses including WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3.

Given these facts, the Complaint Examiner cannot conclude that SUBJECT OFFICER'S traffic stop of COMPLAINANT violated MPD policy. MPD General Order 303.1 and Special Order 00-11 do not specify that an officer must be in *full* uniform in order to effectuate a traffic stop absent an immediate threat to the safety of others. The guidance merely requires that an officer be in uniform. Wearing a tactical vest with POLICE displayed on the front and back and a badge conveys to the public that an individual is a member of MPD. SUBJECT OFFICER was not, as in OPC case 03-0243, off duty and in plain clothes. Complainant v. Subject Officer, 03-0243 (2005). This subject officer was on duty and wore MPD-issued clothing and a badge. Because the policy is at best, ambiguous, the Complaint Examiner concludes that SUBJECT OFFICER did not effectuate this traffic stop in violation of MPD policy since he wore clothing and a badge clearly conveying he was a member of MPD, drove an unmarked car that had portable lights and siren, and made efforts to call for uniform back up.

Finally, it must be noted that SUBJECT OFFICER did violate General Order 303.1, Part I A2b when he issued only a verbal warning after stopping COMPLAINANT. Under this policy, during each traffic stop, officers must either issue a Notice of Infraction or a Warning Notice of Infraction. General Order 303.1, Part I A2b. Only under extreme circumstances may an officer issue an oral warning. Id. The policy provides examples of extreme circumstances to include stopping a motorist who is transporting a passenger to the hospital. Id. SUBJECT OFFICER offered no such extreme circumstances as justification for having issued only a verbal warning to COMPLAINANT. Instead, he explained in his OPC Statement that he issued merely a verbal warning because he wanted to "give her the benefit of the doubt," given she seemed lost and had Maryland plates. SUBJECT OFFICER'S failure to issue a written citation to COMPLAINANT amounts to a technical violation of General Order 303.1, Part I A2b.

However, under OPC regulations, harassment is to be assessed based on a totality of the circumstances. D.C. Mun. Regs. Tit. 6A, §2199.1 (2002). Given the totality of the circumstances, this stop was not carried out in way that was purposely, knowingly or recklessly in violation of law or internal policies. SUBJECT OFFICER'S failure to adhere to the citation-issuance policy does not amount to harassment of COMPLAINANT. Instead, SUBJECT OFFICER'S failure to follow the policy benefitted COMPLAINANT.

Though SUBJECT OFFICER exercised his discretion to issue a citation in a way inconsistent with police procedures, he had a lawful reason to execute the traffic stop. SUBJECT OFFICER'S genuine concern with COMPLAINANT'S dangerous driving in seeking to take a turn without a turn signal and nearly causing a collision with his car was borne out in his final words to her as he concluded the traffic stop. Both SUBJECT OFFICER and COMPLAINANT agree that SUBJECT OFFICER advised her to drive more carefully.

Based on the totality of the circumstances, SUBJECT OFFICER'S traffic stop of COMPLAINANT does not amount to harassment under MPD Special Order 01-01 or D.C. Mun. Regs. tit. 6A, § 2199.1. The Complaint Examiner does not find that SUBJECT OFFICER conducted himself in a way that was purposefully, knowingly, or recklessly in violation of the law or internal guidelines when he executed the traffic stop of COMPLAINANT.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER:

Allegation 1: Harassment	Exonerated.

Submitted on May 28, 2013.

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Laurie S. Kohn
Complaint Examiner