

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

**DECISION BY FINAL REVIEW PANEL**

<b>Complaint No.:</b>	17-0276 & 17-0359
<b>Complainant:</b>	17-0276 – COMPLAINANT #1 17-0359 – COMPLAINANT #2
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 SUBJECT OFFICER #4
<b>Allegation 3:</b>	Harassment by Unlawful Entry of Home (SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, SUBJECT OFFICER 3)
<b>Allegation 4:</b>	Harassment by Unlawful Search of Home (SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, SUBJECT OFFICER #3)
<b>Allegation 5:</b>	Harassment by Unlawful Search of Vehicle (SUBJECT OFFICER #4)
<b>Final Review Panel Members:</b>	Jennifer Fischer, Laurie S. Kohn, Richard Ugelow
<b>Decision Date:</b>	July 11, 2018

Pursuant to D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2123.1, the Chief of Police of the Metropolitan Police Department (MPD) has returned the Merits Determination issued in this matter for review by a Final Review Panel. This appeal was referred to the Final Review Panel for disposition on June 18, 2018.

This Final Review Panel (FRP) was convened by the Office of Police Complaints (OPC), to review the Complaint Examiner’s Decision sustaining allegations that 1) MPD Officers SUBJECT OFFICER #2, SUBJECT OFFICER #3, and SUBJECT OFFICER #4 harassed the complainant, COMPLAINANT #1, when they entered and searched his home, 2) SUBJECT OFFICER #1, harassed COMPLAINANT #1, through the unlawful entry and search of COMPLAINANT #1’s home, and 3) SUBJECT OFFICER #4 harassed COMPLAINANT #2 by unlawfully searching his vehicle. The Final Review Panel issues this decision in accordance with D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2123.3.

**I. SUMMARY OF COMPLAINT EXAMINER DECISION**

On April 2, 2018, the Complaint Examiner who reviewed these complaints issued Findings of Fact and a Merits Determination sustaining the following allegations in the two complaints that are under review as requested by the Chief of Police:<sup>1</sup>

<b>Allegation 3:</b>	Harassment by Unlawful Entry of Home (SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, SUBJECT OFFICER #3)
<b>Allegation 4:</b>	Harassment by Unlawful Search of Home (SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, SUBJECT OFFICER #3)
<b>Allegation 5:</b>	Harassment by Unlawful Search of Vehicle (SUBJECT OFFICER #4)

**II. STANDARD OF REVIEW**

Under District law, a final review panel is charged with reviewing the record regarding a complaint, and without taking any additional evidence, issuing a written decision, with supporting reasons, regarding the correctness of the merits determination issued for the complaint to the extent that the Chief of Police has concluded that it erroneously sustained one or more allegations. D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2123.3. The final review panel “shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record.” D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2123.4.

**III. ANALYSIS AND DISCUSSION**

The FRP reviewed the December 27, 2017, OPC Report of Investigation (ROI) and attached exhibits, the un-dated Objections to the ROI submitted by Jordan M. Katz, D.C. Police Union representative, the February 16, 2018, Response to the Objections from OPC, the April 2, 2018, Findings of Fact and Merits Determination of the Complaint Examiner, and the June 8,

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<sup>1</sup> Additional allegations against these and other officers were also sustained by the original complaint examiner, but are not before the FRP. Per the letter sent to OPC on June 8, 2018, the Police Chief sought a review of the noted allegations against only the officers identified in the text. All other findings by the original complaint examiner are unchanged by this FRP Decision.

2018 letter from Chief of Police, Peter Newsham requesting a review of the above specified determinations by an FRP.

1. Determination that SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 harassed COMPLAINANT #1 by entering and searching his home.

The Complaint Examiner determined that SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 harassed COMPLAINANT #1 by entering and searching his apartment without consent. (Allegations 3 and 4). In reaching her determination, the Complaint Examiner examined the totality of the circumstances, citing to *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) and *Miranda v. Arizona*, 384 U.S. 436 (1966), to conclude that the officers obtained consent from COMPLAINANT #1 that was not voluntary. She specified the following circumstances leading to her conclusion that COMPLAINANT #1's consent was coerced: when he told the officers they could enter his apartment to retrieve a gun, COMPLAINANT #1 was in handcuffs, he had been forced to the ground depriving him of freedom of movement, he was being watched over by multiple officers, and he was under the influence of marijuana. Further, she found that SUBJECT OFFICER #1 and WITNESS OFFICER had made coercive statements to COMPLAINANT #1 by threatening the destruction of his home and a potential gun charge. She also found that the BWC footage confirmed the likelihood that COMPLAINANT #1 overheard the threat to the safety of his four-month old child.

The Police Chief objected to the Complaint Examiner's determinations that SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 harassed COMPLAINANT #1 by entering and searching his home because although the Complaint Examiner concluded that COMPLAINANT #1's consent to enter his home had been coerced, SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 were not privy to the conversation in which WITNESS OFFICER #1 allegedly obtained consent. He asserted that the subject officers at issue could, therefore, have reasonably relied on WITNESS OFFICER #1's statement that consent had been obtained. The Final Review Panel agrees and overturns the Complaint Examiner's determination as to the allegation of harassment for the entry and search of COMPLAINANT #1's home by SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3.

BWC footage of WITNESS OFFICER #1 and SUBJECT OFFICER #4 and SUBJECT OFFICER #2 shows WITNESS OFFICER #1 talking to the mother of COMPLAINANT #1's child, WITNESS, who explains the relationship between herself and COMPLAINANT #1 and COMPLAINANT #2. SUBJECT OFFICER #4, and shortly thereafter SUBJECT OFFICER #2, join the conversation between WITNESS and WITNESS OFFICER #1. WITNESS OFFICER #1 BWC 7:12. WITNESS tells them that they have to get consent to enter the house from COMPLAINANT #1 because he's the leaseholder. WITNESS OFFICER #1 BWC 7:33. SUBJECT OFFICER #2 then walks over to talk to COMPLAINANT #1 who is handcuffed on the ground. WITNESS OFFICER #1 BWC at 7:00. Soon thereafter, WITNESS OFFICER #1

walks over to join the conversation between SUBJECT OFFICER #2, SUBJECT OFFICER #1, another officer, and COMPLAINANT #1. SUBJECT OFFICER #4 meanwhile continues to talk with WITNESS. WITNESS OFFICER #1 BWC 7:45, SUBJECT OFFICER #2 BWC 8:02. WITNESS OFFICER #1 tells SUBJECT OFFICER #1, in the presence of SUBJECT OFFICER #2, that "the gun is in here and he [COMPLAINANT #2] doesn't live here." SUBJECT OFFICER #1 responds, "take it for safekeeping, at a minimum." *Id.* WITNESS OFFICER #1 and SUBJECT OFFICER #2 then return to WITNESS and SUBJECT OFFICER #4 at which point WITNESS OFFICER #1 tells WITNESS that she won't be able to go back inside for the baby if they have to wait for an emergency search warrant. WITNESS OFFICER #1 BWC 8:15, SUBJECT OFFICER #2 BWC 8:15. SUBJECT OFFICER #2 also tries to convince her to give consent. WITNESS again says that they'll have to ask COMPLAINANT #1 because it's not her home. SUBJECT OFFICER #4 BWC 9:53, SUBJECT OFFICER #2 BWC 9:27. WITNESS OFFICER #1 tells her, in the presence of SUBJECT OFFICER #4 and SUBJECT OFFICER #2, that he can't get consent from COMPLAINANT #1 because he's in handcuffs. WITNESS OFFICER #1 BWC 9:31, SUBJECT OFFICER #4 BWC 10:00, SUBJECT OFFICER #2 BWC 9:33. WITNESS continues to insist she can't give consent.

WITNESS OFFICER #1 then returns to COMPLAINANT #1, who is surrounded by SUBJECT OFFICER #1 and another armed officer and asks him for consent using various coercive statements. WITNESS OFFICER #1 BWC 9:40. Nothing in Subject SUBJECT OFFICER #4's or SUBJECT OFFICER #2's BWC footage suggests that they could overhear WITNESS OFFICER #1's conversation with COMPLAINANT #1. Moreover, SUBJECT OFFICER #3 was standing at a distance with COMPLAINANT #2 during WITNESS OFFICER #1's conversation with COMPLAINANT #1. On SUBJECT OFFICER #2's BWC footage, some of WITNESS OFFICER #1's conversation with WITNESS is audible, but none of his conversation with COMPLAINANT #1 is audible. Because she's engaged with COMPLAINANT #2 at this time, however, it is not evident that she would have been aware of either conversation even if she could have heard them. Following WITNESS OFFICER #1's conversation with COMPLAINANT #1 and SUBJECT OFFICER #1, he returns to WITNESS and tells her "He said we can go. You and I can go in. Come on." SUBJECT OFFICER #4 BWC 11:57, SUBJECT OFFICER #2 BWC 11:37. He then turns to SUBJECT OFFICER #4 and SUBJECT OFFICER #2 and says, "one of you guys come with me." SUBJECT OFFICER #2 BWC 11:40. Both SUBJECT OFFICER #4 and SUBJECT OFFICER #2 then follow WITNESS OFFICER #1 into the house. SUBJECT OFFICER #4 BWC 12:10, SUBJECT OFFICER #2 BWC 11:39. A few minutes later, SUBJECT OFFICER #3 enters the house, speaks to the other officers and WITNESS, but does not join the search. SUBJECT OFFICER #3 BWC 12:13.

The BWC footage supports that SUBJECT OFFICER #4, SUBJECT OFFICER #2 and SUBJECT OFFICER #3 were aware of COMPLAINANT #1 being high on marijuana, being handcuffed and having a lack of freedom of movement, and being surrounded by armed officers. SUBJECT OFFICER #4 BWC 1:08 and 4:10, SUBJECT OFFICER #2 BWC 1:13, SUBJECT OFFICER #3 BWC 1:08. As contended by the Police Chief, however, the evidence does not support that they were aware of the coercive statements used by SUBJECT OFFICER #1 and

WITNESS OFFICER #1. In reaching her determination as to these three officers, the Complaint Examiner attributed knowledge of the full panoply of factors as to whether COMPLAINANT #1 gave voluntary consent to SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3. The question then is whether what the evidence shows SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 did know – that COMPLAINANT #1 was high, in handcuffs, and surrounded by armed police at the time he gave consent - was sufficient to make their unlawful entry and search of COMPLAINANT #1's house purposeful, knowing or reckless.

Critical to this determination is whether the factors known by SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 were sufficient for them to determine that COMPLAINANT #1's ability to give voluntary consent "ha[d] been overborne and his capacity for self-determination critically impaired" such that his consent to the search ... was involuntary." *United States v. Watson*, 423 U.S. 411, 424 (1976) citing *Schneckloth v. Bustamonte*, 412 U. S. 218 (1973). The factors found here, COMPLAINANT #1 being high on marijuana, handcuffed, and surrounded by armed officers are among factors to be considered, but, without more evidence, are insufficient to conclude that SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 should have known that COMPLAINANT #1 was not capable of giving consent.

In *United States v. Willie*, the Eighth Circuit summarized that "[o]ur case law offers a catalogue of factors to consider in judging the voluntariness of a defendant's consent to search. Some relate to the characteristics and behaviors of the defendant, such as the defendant's age, intelligence and education, knowledge of his constitutional rights . . . [and] whether he was *under the influence of drugs or alcohol* . . ." 462 F.3d 892, 896 (8th Cir. 2006) (emphasis added). In reviewing the lower court's decision as to Willie's consent, the court found that the "evidence does not suggest that he was so intoxicated that he was not 'competent to understand the nature of his acts.' He generally cooperated with police, responded to their questioning, and knew the number of the motel room where he was registered. We cannot presume (as Willie would have us do) that his inability to offer the police a convincing explanation of his activities that morning is proof positive that he lacked the mental capacity to consent to the search." *Id.* (citations omitted).

In *United States v. Koshnevis*, the Ninth Circuit reviewed the factual finding of the lower court that the defendant had given valid consent, despite the defendant's objections that he had been "so intoxicated at the time of the stop, a reasonable officer would conclude that his consent to the search was not the product of a rational intellect and a free will." 979 F.2d 691, 694 (9th Cir. 1992). The court explained that a police officer's conduct is reviewed through an objective standard and thus the defendant needed to produce sufficient evidence that a reasonable officer would have believed him to be under the influence at the time he gave consent. The Ninth Circuit went on to find that evidence in the record supported the lower court's decision that the defendant's consent was voluntary because the defendant had not provided evidence that he was intoxicated at the time of the stop, that the officer found the defendant to be alert and

cooperative, and that the defendant had been clear minded enough to construct lies to prevent the officer from inspecting the trunk of the car.

Here, WITNESS OFFICER #1's statement to WITNESS regarding COMPLAINANT #1's inability to give consent because he was in handcuffs could have put SUBJECT OFFICER #4 and SUBJECT OFFICER #2 on notice regarding whether he actually had valid consent from COMPLAINANT #1 when he returned and told WITNESS that he had consent. These officers had limited interaction with COMPLAINANT #1, however, and were unlikely to be in a position fully to evaluate his ability to consent as discussed in the above cases. When WITNESS OFFICER #1 told WITNESS that COMPLAINANT #1 had consented, he had just come from a conversation that included SUBJECT OFFICER #1, their superior officer, suggesting that they may have relied upon his more experienced judgment as to whether COMPLAINANT #1 was able to give consent. Moreover, WITNESS OFFICER #1, upon SUBJECT OFFICER #1's directive to him to obtain the gun, took the lead, and his authoritative order to them, "one of you come with me," might have been difficult to oppose, even if they had doubts. Thus, no evidence in the record suggests that SUBJECT OFFICER #4's and SUBJECT OFFICER #2's reliance on the judgment of their superiors, and thus their entry and search of COMPLAINANT #1's home rose even to the level of recklessness.

As to SUBJECT OFFICER #3, the evidence does not show that she was aware that WITNESS had told the officers that she could not give them consent to search the home. SUBJECT OFFICER #3 stated during her interview with OPC a belief that WITNESS had provided the consent. Exh. 20 at 8:45 and 12:10. Because she saw the officers follow WITNESS into the home, she would have had a reasonable belief that WITNESS had provided consent. Even if she had not believed WITNESS provided consent, however, as with SUBJECT OFFICER #4 and SUBJECT OFFICER #2, no evidence in the record suggests that SUBJECT OFFICER #3's reliance on the judgment of her superiors, and thus her entry into COMPLAINANT #1's home rose even to the level of recklessness. Moreover, the officers' BWC footage shows that SUBJECT OFFICER #3 entered the home, but did not participate in the search. SUBJECT OFFICER #3 BWC 12:15. Thus, there is no evidence to support sustaining an allegation of harassment for the search.

Accordingly, the Complaint Examiner's determination (as to Allegations 3 and 4) that SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 harassed COMPLAINANT #1 by unlawfully entering and searching his apartment is not supported by substantial, reliable and probative evidence and is reversed.

2. Determination that SUBJECT OFFICER #1 harassed COMPLAINANT #1 by entering and searching his apartment.

The Complaint Examiner determined that SUBJECT OFFICER #1 harassed COMPLAINANT #1 by entering and searching his apartment. Her analysis as to SUBJECT

OFFICER #1 was consistent with her analysis pertaining to SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 as described above.

The Police Chief challenges the Complaint Examiner's determination as to SUBJECT OFFICER #1's entry and search of COMPLAINANT #1's house because no evidence shows that SUBJECT OFFICER #1 entered or searched the home. Thus, the Chief asserts that SUBJECT OFFICER #1 could not be responsible for an unlawful entry and search. The Final Review Panel holds otherwise and upholds the Complaint Examiner's determination regarding SUBJECT OFFICER #1 as to harassment for the unlawful entry and search.

The evidence in the record illustrates that SUBJECT OFFICER #1 was responsible along with WITNESS OFFICER #1 for obtaining unlawful consent from COMPLAINANT #1 through threats to search the apartment. The Complaint Examiner sustained those allegations of harassment by threat and intimidation against SUBJECT OFFICER #1 and the determinations were not challenged by the Chief. As such, since SUBJECT OFFICER #1 was fully aware of the facts that led to the infirmity of the consent, was in charge of the investigation scene, and had directed the officers to obtain the gun from the apartment, the Complaint Examiner's decision did not clearly misapprehend the record when she held him responsible for the search itself regardless of whether he entered or searched the apartment himself.

First, the findings on the record illustrate that SUBJECT OFFICER #1 was fully aware of the facts related to the consent, which has been held to be harassment. SUBJECT OFFICER #1 and WITNESS OFFICER #1 stood over COMPLAINANT #1 who was lying on the ground handcuffed. WITNESS OFFICER #1 BWC 9:45, SUBJECT OFFICER #1 BWC 7:35. He was aware COMPLAINANT #1 had been using marijuana and noted his demeanor was "weird." *Id.* He and WITNESS tried together to obtain consent for the search from COMPLAINANT#1. WITNESS OFFICER #1 stated that if he didn't give consent, "I'm kicking in your door." *Id.* SUBJECT OFFICER #1 stated that if COMPLAINANT #1 insisted that the officers wait for a search warrant, "we're going to tear the whole house to pieces." *Id.* Further, SUBJECT OFFICER #1 was present when WITNESS OFFICER #1 pointed out that COMPLAINANT #1 risked taking a gun charge if he failed to give consent for the search. *Id.*

Second, despite being aware of the coercive elements of this discussion and COMPLAINANT #1's diminished capacity, he stood by as his officers entered the apartment and conducted the search. As the highest-ranking officer at the investigation scene, he can be held responsible for the conduct of his officers, which is especially true if they cannot be held responsible (as with SUBJECT OFFICER #4, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 above) due to a reasonable reliance on his determination that valid consent for the search had been given. Metropolitan Police Department directives clearly underscore a sergeant's supervisory role at a crime-scene investigation. General Order is 304.01, Operation and Management of Criminal Investigations, specifies that field sergeants during a criminal investigation are responsible for the supervision of the following investigative tasks: "1. Ensuring that a complete and thorough investigation has been conducted . . . and 2. Responding

to the scene of major/serious offenses and supervising the activities of the initial investigative tasks, and determining the need for additional or specialized resources to respond and assist in accomplishing all possible and necessary tasks at the crime scene." General Order 304.01(III)(C).

Further, General Order 101.09 sets forth the duties of sergeants, specifying that they should: "provide appropriate supervision and guidance to all assigned members." General Order 101.09 (I)(1). As such, according to MPD policy, SUBJECT OFFICER #1 was in charge of the scene and of the conduct of his officers to the extent he was aware of what they were doing. Here he was fully aware that they were searching COMPLAINANT #1's home based on the consent he, along with WITNESS OFFICER #1, unlawfully obtained. In fact, the search of COMPLAINANT #1's home was based on his directive to WITNESS OFFICER #1 that they take the gun from COMPLAINANT #1's home for safekeeping. WITNESS OFFICER #1 BWC 8:00.

Further, under D.C. case law, an officer can be held responsible for a search even if he does not directly take part in the search. In *Fernandors v. D.C.*, an officer conducted a strip search of the plaintiff in public. Three other officers surrounded the plaintiff to serve as a privacy and safety barrier so the search could occur. The D.C. Circuit found that the three officers could be considered participants in the unlawful search, and not be subject to qualified immunity, because their activity was "integral to the search." *Fernandors v. District of Columbia*, 382 F. Supp. 2d 63, 75 (D.D.C. 2005). The court specified that an officer can be held liable through the theory of bystander liability if he: (1) knows that a fellow officer is violating an individual's constitutional right; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. *Fernandors v. District of Columbia*, 382 F. Supp. 2d 63, 72 (D.D.C. 2005). Based on the findings of the Complaint Examiner, SUBJECT OFFICER #1 knew that the apartment search was based on unlawful consent which violated COMPLAINANT #1's constitutional rights. Although he had every opportunity to intervene, call off the search, and seek a warrant, he did not. Instead, he chose not to act.

As such, the finding that SUBJECT OFFICER #1 harassed COMPLAINANT #1 by entering and searching his apartment does not clearly misapprehend the record. Instead, it is supported by substantial, reliable, and probative evidence.

3. Determination that SUBJECT OFFICER #4 harassed COMPLAINANT #2 by searching his car.

The Complaint Examiner determined that SUBJECT OFFICER #4 harassed COMPLAINANT #2 by searching his vehicle without consent. She reached this conclusion because the BWC footage of the conversation with COMPLAINANT #2 leading up to the search did not illustrate that COMPLAINANT #2 provided consent, but only agreed with WITNESS OFFICER #2' statement that he's "an honest dude."



The Police Chief challenged the determination that SUBJECT OFFICER #4 harassed COMPLAINANT #2 by searching his vehicle without consent. The Chief contends that, contrary to the Complaint Examiner's findings, SUBJECT OFFICER #4 was not privy to the conversation between COMPLAINANT #2 and WITNESS OFFICER #2 and thus was unaware that WITNESS OFFICER #2 had not attained proper consent from COMPLAINANT #2 before searching his car. Rather, the Chief asserts that the evidence shows that SUBJECT OFFICER #4 reasonably relied upon a belief that her fellow officers had received consent while she was not present and that the search was, therefore, lawful. The Final Review Panel agrees and overturns the Complaint Examiner's determination of harassment by SUBJECT OFFICER #4 for her search of COMPLAINANT #2's vehicle.

SUBJECT OFFICER #4's BWC footage shows that she is able to hear WITNESS OFFICER #2 asking COMPLAINANT #2 a series of questions about the car and if there are any other guns. During this conversation, COMPLAINANT #2 seems to remain silent. WITNESS OFFICER #2 tells COMPLAINANT #2 that they are going to search his car and WITNESS OFFICER #2 then asks Complainant, "Tell me you're an honest man, dude." COMPLAINANT #2 responds, "yes. I am." SUBJECT OFFICER #4 BWC at 18:35. WITNESS OFFICER #2 then asks where the keys are to the car and SUBJECT OFFICER #2 points to the keys on top of WITNESS's car. SUBJECT OFFICER #4 witnesses WITNESS OFFICER #2 grab the keys from the roof of WITNESS's car. SUBJECT OFFICER #4 BWC 19:23. At this point, SUBJECT OFFICER #4 should have been aware that valid consent for the search of COMPLAINANT #2's car had not been given.

However, before SUBJECT OFFICER #4 sees any search begin, the footage shows that she walks away from COMPLAINANT #2 and asks another officer, "where's SUBJECT OFFICER #3 at?" The officer points out SUBJECT OFFICER #3's location. SUBJECT OFFICER #4 then walks over to SUBJECT OFFICER #3 who is standing near COMPLAINANT #1 and WITNESS's car and obtains keys to the patrol vehicle from SUBJECT OFFICER #3. SUBJECT OFFICER #4 then walks across the street, away from the scene, gets in the police car and types something on the computer. She then walks back to SUBJECT OFFICER #3, who is standing behind WITNESS's car, and returns her keys. Approximately two minutes later, while she is returning SUBJECT OFFICER #3's keys, SUBJECT OFFICER #4's BWC captures footage showing COMPLAINANT #2's driver side door open (SUBJECT OFFICER #4 BWC 21:31) and roughly twenty seconds later it shows WITNESS OFFICER #2 looking into and coming out of the driver's side door of COMPLAINANT #2's car while trying with another officer to open the trunk of COMPLAINANT #2's car. WITNESS OFFICER #2 and the other officer eventually manage to open the trunk by turning on the ignition. SUBJECT OFFICER #4 BWC 21:55. At this point, SUBJECT OFFICER #4 joins the officer searching the trunk, takes a box from him and begins shining a flashlight on the trunk while the other officer rummages through the items in the trunk.

The evidence clearly shows that SUBJECT OFFICER #4 should have known that the officers did not obtain valid consent during the conversation between WITNESS OFFICER #2 and COMPLAINANT #2 for which she was present. While it seems likely that the search started without any consent from COMPLAINANT #2 since WITNESS OFFICER #2 had already said he was going to do the search and was grabbing for COMPLAINANT #2's keys in SUBJECT OFFICER #4's presence, there is no evidence to confirm that SUBJECT OFFICER #4 could have or should have known what did or did not take place during her two-minute absence, including whether COMPLAINANT #2 gave voluntary consent.

For these reasons, the determination regarding the allegation against SUBJECT OFFICER #4 for harassment for searching COMPLAINANT #2's car is found to be unsupported by substantial, reliable, and probative evidence in the record and the determination is reversed.

#### IV. SUMMARY OF FINAL REVIEW PANEL DECISION

Final Review Panel Decision issued on July 11, 2018.

SUBJECT OFFICER #4

<b>FRP Decision Regarding Allegation 3: Harassment by Unlawful Entry of Home</b>	Reversed
<b>FRP Decision Regarding Allegation 4: Harassment by Unlawful Search of Home</b>	Reversed
<b>FRP Decision Regarding Allegation 5: Harassment by Unlawful Search of Vehicle</b>	Reversed

SUBJECT OFFICER #2

<b>FRP Decision Regarding Allegation 3: Harassment by Unlawful Entry of Home</b>	Reversed
<b>FRP Decision Regarding</b>	Reversed

<b>Allegation 4: Harassment by Unlawful Search of Home</b>	
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SUBJECT OFFICER #3

<b>FRP Decision Regarding Allegation 3: Harassment by Unlawful Entry of Home</b>	Reversed
<b>FRP Decision Regarding Allegation 4: Harassment by Unlawful Search of Home</b>	Reversed

SUBJECT OFFICER #1

<b>FRP Decision Regarding Allegation 3: Harassment by Unlawful Entry of Home</b>	Upheld
<b>FRP Decision Regarding Allegation 4: Harassment by Unlawful Search of Home</b>	Upheld

Submitted on July 11, 2018

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Jennifer A. Fischer  
Complaint Examiner

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Laurie S. Kohn  
Complaint Examiner

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Complaint Examiner