

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	14-0379
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Meaghan H. Davant
<b>Merits Determination Date:</b>	January 18, 2016

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC) 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, filed a complaint with the OPC on September 18, 2014, alleging that the subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #2, and SUBJECT OFFICER #1, harassed him when they conducted an unlawful traffic stop and unlawfully handcuffed him. COMPLAINANT also alleged that, during the traffic stop, SUBJECT OFFICER #1 unlawfully frisked him. COMPLAINANT further alleged that SUBJECT OFFICER #3, harassed him by unlawfully searching his vehicle.<sup>1</sup>

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<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER #2 and SUBJECT OFFICER #1 used unnecessary or excessive force against him when he was pulled out of his vehicle, and when SUBJECT OFFICER #1 pulled him by his handcuffs, pushed him in to the back of the police vehicle and drew, but did not point his weapon. COMPLAINANT also alleged that the subject officers retaliated against him for filing a past OPC complaint against another MPD officer, and discriminated against him on the basis of his race, African-American. Pursuant to D.C. Code § 5-1108(1), on September 20, 2015, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. *See* Report of Investigation, Exhibit 2.

## **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 #1 on December 14, 2015, the objections submitted by SUBJECT OFFICER #3 on December 14, 2015, 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 #1 on December 14, 2015, the objections submitted by SUBJECT OFFICER #3 on December 14, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On September 6, 2014 around 7 p.m., SUBJECT OFFICER #2 and SUBJECT OFFICER #1 stopped COMPLAINANT in his vehicle near AN INTERSECTION IN NORTHEAST, WASHINGTON, D.C.
2. COMPLAINANT consistently asserted that he was wearing his seatbelt at the time of the traffic stop.
3. The windows of COMPLAINANT'S vehicle, including the driver side window, were tinted. The time of the stop, shortly before sunset, would have contributed to the opaqueness of the windows, making it more difficult for the subject officers to see inside the vehicle.
4. An investigation by OPC of COMPLAINANT'S vehicle, conducted at the site where the traffic stop occurred, found that "one can see inside the vehicle from a distance of several feet," and "it would make sense that SUBJECT OFFICER #2 was able to see the COMPLAINANT reaching for his registration" as SUBJECT OFFICER #2 approached the vehicle on foot. However, the report concluded, "from a farther distance," the window tint was very dark and far more opaque." Ex. 16.
5. Neither SUBJECT OFFICER #2, nor Officer SUBJECT OFFICER #1, could recall the reason for the traffic stop at the time the OPC took their statements in April 2015. SUBJECT OFFICER #2 did not document the reason for the traffic stop in the completed Incidence-Based Event Report.
6. SUBJECT OFFICER #2 and SUBJECT OFFICER #1 instructed COMPLAINANT to turn his vehicle off and put his keys on the hood or roof of the vehicle.

7. COMPLAINANT turned off his vehicle but did not place his keys on the hood or roof of the vehicle.
8. As the subject officers approached COMPLAINANT'S vehicle, they observed a movement by COMPLAINANT. SUBJECT OFFICER #2 described this movement as a "reach with his right arm toward the glove compartment on the passenger side of [COMPLAINANT'S] vehicle. SUBJECT OFFICER #1 described this movement as a "left shoulder dip." COMPLAINANT stated that he "reached over to my glove compartment on the passenger side to get my registration."
9. When SUBJECT OFFICER #2 reached COMPLAINANT'S vehicle, he asked COMPLAINANT for his license and registration. COMPLAINANT did not immediately comply. Instead, COMPLAINANT asked SUBJECT OFFICER #2 the reason for the traffic stop.
10. SUBJECT OFFICER #2 asked COMPLAINANT to step out of the vehicle and COMPLAINANT did not immediately comply.
11. SUBJECT OFFICER #1 assisted COMPLAINANT out of the vehicle.
12. SUBJECT OFFICER #3 and WITNESS OFFICER #1, arrived on the scene in separate police vehicles, responding to SUBJECT OFFICER #1 and SUBJECT OFFICER #2'S radio request for additional police units on the traffic stop.
13. COMPLAINANT was "upset and agitated" and loudly protested the traffic stop, using coarse and/or derogatory language with the subject officers. COMPLAINANT'S protestations drew a crowd of 15-20 bystanders who congregated near the scene.
14. None of the Subject Officers stated that COMPLAINANT used bodily force of any kind, otherwise posed a physical risk to himself or others, or posed a flight risk.
15. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 placed COMPLAINANT in handcuffs.
16. SUBJECT OFFICER #1 "quickly frisked the outer layers of COMPLAINANT'S clothing to make sure that he did not have any weapons."
17. The incident report stated that a "protective pat down was conducted," but no explicit reason was given for the pat down.
18. SUBJECT OFFICER #3 conducted a search of COMPLAINANT'S vehicle, which included reaching inside the passenger side, placing at least his head and arms inside the vehicle.

#### IV. DISCUSSION

Pursuant to D.C. 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.

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.

#### **SUBJECT OFFICER #1 and SUBJECT OFFICER #2’S Probable Cause for the Traffic Stop**

The Fourth Amendment prohibits law enforcement from conducting “unreasonable searches and seizures,” and “this protection extends to a brief investigatory stop of persons or vehicles.” *U.S. v. Williams*, 878 F. Supp. 2d 190, 196-197 (D.D.C. 2012) (quoting *U.S. v. Bailey*, 622 F.3d 1, 5, 393 U.S. App. D.C. 131 (D.C. Cir. 2010)). Searches that are conducted without prior approval by a judge are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Id.*

Police officers may stop a vehicle and its occupants without a warrant when they have probable cause to believe a traffic violation has occurred. *Watson v. United States*, 43 A.3d 276, 282 (D.C. 2012) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)). Police officers may also briefly detain a person without a warrant in a *Terry* stop if they have a “reasonable, articulable suspicion that ‘criminal activity may be afoot.’” *United States v. Edmonds*, 240 F.3d 55, 59 (D.C. Cir. 2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (U.S. 1968)).

However, probable cause exists only where “the facts and circumstances within the officers’ knowledge of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Id.* (citing *Perkins v. United States*, 936 A.2d 303, 306 (D.C. 2007) (internal citations omitted)). In *Watson*, the court added that probable cause required that an officer have a reasonable, articulable suspicion that he was witnessing a traffic violation before he may stop a vehicle.” *Id.* (emphasis added). Probable cause is measured by the totality of the circumstances and “must be supported by more than mere suspicion.” *Id.* (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003).

Pursuant to D.C. Code §50-1802, “the driver and all passengers in a motor vehicle shall wear a properly adjusted and fastened safety belt while the driver is in control of the vehicle” and failure to do so constitutes a traffic violation. *See also Watson, supra.* However, neither SUBJECT OFFICER #2 nor SUBJECT OFFICER #1 have put forth “reasonably trustworthy information” or even “articulable suspicions” that COMPLAINANT was not wearing his seatbelt at the time of the traffic stop, or that a seatbelt violation was the reason for the traffic stop. At the time of their respective OPC interviews, neither SUBJECT OFFICER #2, nor SUBJECT OFFICER #1, could recall the reason for stopping COMPLAINANT’S vehicle. Nor did SUBJECT OFFICER #2 document the reason for the traffic stop in the completed Incidence-Based Event Report.

To the contrary, COMPLAINANT consistently stated that he was wearing a seatbelt at the time of the traffic stop. Moreover, the windows of COMPLAINANT’S vehicle, including the driver side window, were tinted. At the time of the traffic stop, shortly before sunset, it would have been difficult for the subject officers to see into COMPLAINANT’S vehicle to determine if he was wearing a seatbelt. In fact, an investigation by OPC of COMPLAINANT’S vehicle, conducted at the site where the traffic stop occurred, found that “one can see inside the vehicle from a distance of several feet,” and “it would make sense that SUBJECT OFFICER #2 was able to see the COMPLAINANT reaching for his registration” as SUBJECT OFFICER #2 approached the vehicle on foot. However, the report concluded, “from a farther distance,” the window tint was very dark and far more opaque.” Given that both the subject officers and COMPLAINANT were seated in vehicles at the time that the officers saw COMPLAINANT pass in his car, it is unlikely that the subject officers were in close enough proximity to have a clear view of COMPLAINANT, sufficient to create probable cause of a seatbelt violation.

Absent a legal basis for the traffic stop, there is reasonable cause to find that SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed COMPLAINANT in violation of § 5-1107(a) and MPD General Order 120.25.

### **SUBJECT OFFICER #1 and SUBJECT OFFICER #2’S Handcuffing of Complainant**

Under D.C. law, a person may be handcuffed during a traffic stop when it is “reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee,” *In re M.E.B.*, 638 A.2d 1123, 1128 (D.C. 1993). In determining whether handcuffing is lawful, one must consider the “totality of the circumstances” and objectively evaluate whether a “reasonably prudent officer would have been justified in using handcuffs to neutralize potential threats to his or her safety or to inhibit any attempt by the suspect to escape.” *Womack v. United States*, 673 A.2d at 603, 609 (D.C. 1996). Courts have repeatedly found the use of handcuffs justified where suspects have attempted to resist police, made furtive gestures, ignored police commands, attempted to flee, or otherwise frustrated police inquiry. *See Womack*, 673 A.2d at 609-10.

According to the statements of the subject officers and COMPLAINANT, COMPLAINANT was “upset and agitated” and loudly protested the traffic stop, using coarse and/or derogatory language with the subject officers. COMPLAINANT’S protestations drew a crowd of 15-20 bystanders who congregated near the scene. However, none of the subject officers stated that COMPLAINANT resisted police, used bodily force of any kind or otherwise posed a physical risk to himself or others, posed a flight risk, or frustrated police inquiry.

The statements of SUBJECT OFFICER #2, SUBJECT OFFICER #1 describe a movement made by plaintiff as they approached his vehicle. SUBJECT OFFICER #2 described this movement as a “reach with [COMPLAINANT’S] right arm toward the glove compartment on the passenger side of [COMPLAINANT’S] vehicle.” SUBJECT OFFICER #1 described this movement as a “left shoulder dip.” While their descriptions vary, they do not appear inconsistent with COMPLAINANT’S statement that he “reached over to my glove compartment on the passenger side to get my registration.”

It is common practice for police officers to first ask for “license and registration” as part of a traffic stop. In fact, SUBJECT OFFICER #1 stated that the first thing SUBJECT OFFICER #2 did when he approached COMPLAINANT’S vehicle was to ask for his license and registration. Thereby, a reaching motion towards the glove compartment of a vehicle, where the registration is usually kept, is one that the subject officers might expect in a traffic stop, and falls far short of a “furtive gesture” requiring the use of handcuffs. *See Watts v. United States*, 297 A.2d 790, 791, 793 (D.C. 1972) (“gestures have not tended to engender reasonable suspicion when a driver was ‘bent over’ and ‘making movements’ towards the middle of the car, towards the dashboard). *See also Jackson v. United States*, 56 A.3d 1206, 1210 (D.C. 2012) (“hands moving in the dash area,” and “a lot of movement within the front dash compartment area,” does not constitute reasonable suspicion); *Powell v. United States*, 649 A.2d 1082, 1085 (D.C. 1994) (no reasonable suspicion where an officer observed the driver “bend or duck towards the passenger seat”).

In the Incident Based Event Report, the subject Officers also stated that COMPLAINANT was handcuffed because he “failed to comply with the officers [sic] request for safety precautions.” However, the report does not include *any* specific references to the orders to which COMPLAINANT refused to comply. This complete lack of specific details is in

direct violation of MPD General Order 304.10, which states that “Every officer conducting a stop must be prepared to cite the particular factors which supported the determination that ‘reasonable suspicion’ was present,” and “The records of the stop...shall contain all factors relied on[.]” *See also United States v. Mangum*, 100 F.3d 164, 169 (D.C.Cir.1996) (“The government carries the burden of showing that the measures employed during the [traffic] stop were justified.”). Even if we consider COMPLAINANT’S failure to comply with the subject officers’ request to place his keys on the hood or roof of the vehicle, this factor alone would not justify the subject officers’ decision to handcuff COMPLAINANT.

The subject officers’ statements and records of the incident fail to present a legal basis for handcuffing the COMPLAINANT. As such, SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed the COMPLAINANT by handcuffing him, in violation of § 5-1107(a) and MPD General Order 120.25.

### **SUBJECT OFFICER #1’S Frisking of Complainant**

Under *Terry*, absent a warrant, police officers may conduct a frisk or pat down of an individual for weapons or contraband only where there is a “reasonable, articulable suspicion” that they are armed and dangerous. *Terry*, 392 U.S. at 37. The factors that may warrant a pat down include “The time of day, flight, the high crime nature of the location, furtive hand movements, an informant’s tip, a person’s reaction to questioning, a report of criminal activity, and the viewing of an object or bulge indicating a weapon.” *Anderson v. United States*, 658 A.2d 1036,1038 (D.C. 1995).

When a defendant is subjected to a search without a warrant, the burden shifts to the government to justify the warrantless search. *United States v. Brown*, 334 F.3d 1161, 1182 (D.C. Cir. 2003) (“The government bears the burden of proof, and under *Terry*, the government must present evidence that the police officer was able to articulate the specific facts that caused him to view [the defendant] as a likely suspect....”); *see also United States v. Jones*, 374 F.Supp.2d 143, 147 (D.D.C. 2005). Further, under MPD General Order 304.10, an officer conducting a frisk or pat down must be “prepared to cite the specific factors which supported his/her determination that ‘reasonable suspicion’ to support a frisk was present.”

SUBJECT OFFICER #1 stated that she “quickly frisked the outer layers of COMPLAINANT’S clothing to make sure that he did not have any weapons.”<sup>2</sup> However,

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<sup>2</sup> There is conflicting testimony as to whether SUBJECT OFFICER #1 also reached in to COMPLAINANT’S back pocket to retrieve his license. SUBJECT OFFICER #1 stated that she “reached into [COMPLAINANT’S] back pocket, with his consent, to get his license.” COMPLAINANT, however, stated that he had his identification in his hand from the beginning of the traffic stop, that he never gave consent for SUBJECT OFFICER #1 to reach in to his back pocket, and that the officer never did reach in to his back pocket. Whether SUBJECT OFFICER #1 actually

SUBJECT OFFICER #1 does not cite any specific factors that would support reasonable suspicion that COMPLAINANT was armed or dangerous. SUBJECT OFFICER #2 did not recall whether or not COMPLAINANT was frisked, but offered that the reason for his frisk may have been “for officer safety based on [their] concerns that he might have been trying to conceal a weapon at the start of the stop and his uncooperativeness.” As established *supra*, COMPLAINANT’S action of reaching towards his glove compartment is far from sufficient to establish reasonable suspicion that he was concealing a weapon. Similarly, the fact that COMPLAINANT verbally protested the stop, his being handcuffed and his being frisked does not rise to the level of “uncooperativeness” that would suggest he was armed or dangerous. Finally, the officers failed to cite *any* justification for the frisk in the incident report, writing only that a “protective pat down was conducted.”

The subject officers failed to meet the burden of proof for of a reasonable suspicion that COMPLAINANT was armed and dangerous. Therefore, SUBJECT OFFICER #1 harassed COMPLAINANT by frisking him, in violation of § 5-1107(a) and MPD General Orders 120.25 and 304.10.

### **SUBJECT OFFICER #3’S Search of Complainant’s Vehicle**

SUBJECT OFFICER #3 stated that when he arrived on the scene of the traffic stop, he spoke with SUBJECT OFFICER #2 and SUBJECT OFFICER #1 and that they said “something about the driver reaching or dipping his shoulder as they were coming to a stop.” According to SUBJECT OFFICER #3, on this basis alone he conducted a “plain view search of the interior.” SUBJECT OFFICER #2 witnessed SUBJECT OFFICER #3 “conduct[ing] a search of the passenger side of the vehicle” and “leaning in to the vehicle” as part of this search. SUBJECT OFFICER #1 also stated that SUBJECT OFFICER #3 “conducted a plain view search of the vehicle and that SUBJECT OFFICER #3 “may have leaned in via the open driver’s side door.” WITNESS OFFICER #1, who arrived on the scene in response to a radioed request for back up, stated that he saw “an officer go into the glove compartment box of [COMPLAINANT’S] vehicle.”

COMPLAINANT stated that SUBJECT OFFICER #3 “walked over to the COMPLAINANT’S car, opened the passenger side door and began to look around,” and that “[t]he officer then walked over to the driver’s side and did the same thing.” COMPLAINANT stated that SUBJECT OFFICER #3 never got into his car, but that he could see SUBJECT OFFICER #3 “looking around and reaching into the car.” In support of this version of events, WITNESS #1 stated that the officer “opened the passenger side door, [got] in, opene[ed] the glove box and look[ed] through the center console cup holder.”

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reached in to COMPLAINANT’S back pocket, with or without his consent is immaterial to a determination of whether SUBJECT OFFICER #1 unlawfully frisked COMPLAINANT.



There is substantial evidence that SUBJECT OFFICER #3—at the very least—had his head, arms and part of his body inside the passenger compartment of the vehicle when conducting his search, in violation of the Fourth Amendment. *See Michigan v. Long*, 463 U.S. 1032, 1049-50 (1983) citing *Terry*, 392 U.S. at 21:

[S]earch of the passenger compartment of [the] automobile, limited to those areas in which a weapon may be placed or hidden, is permissible” only where “the police officer possesses a ‘reasonable belief based on specific and articulable’ facts which, taken together with the rational inferences from those facts, reasonably warrant the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.”

Given that COMPLAINANT had already been removed from the car, and placed in handcuffs, there could have been no reasonable belief on the part of SUBJECT OFFICER #3 that COMPLAINANT might “gain immediate control of weapons.” Therefore, SUBJECT OFFICER #3 harassed COMPLAINANT by searching his vehicle without a warrant, and without reasonable suspicion of criminal conduct or immediate access to weapons, in violation of § 5-1107(a) and MPD General Orders 120.25 and 304.1.

**V. SUMMARY OF MERITS DETERMINATION**

1. SUBJECT OFFICER #1

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

<b>Allegation 1: Harassment</b>	Sustained
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3. SUBJECT OFFICER #3

<b>Allegation 1: Harassment</b>	Sustained
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Submitted on January 18, 2016.

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Meaghan Hannan Davant  
Complaint Examiner