

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	14-0267
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	May 16, 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 alleged that on April 21, 2014, SUBJECT OFFICER, harassed her son, WITNESS #1, by unlawfully stopping, frisking, and handcuffing him, and used unnecessary or excessive force against WITNESS #1 by pointing a gun at him and pushing him against a car.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on April 1, 2016, 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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on April 1, 2016, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 21, 2014, COMPLAINANT was inside her apartment building when her neighbor telephoned the MPD. COMPLAINANT's neighbor requested assistance after he was struck with a gun by an unknown assailant. SUBJECT OFFICER responded to the scene along with other MPD officers.
2. After the MPD officers responded, COMPLAINANT's son, WITNESS #1, left the apartment building to retrieve a set of keys from a vehicle that belonged to his brother, WITNESS #2. The vehicle was parked on the side of the apartment building.
3. COMPLAINANT, along with her daughter, WITNESS #3, and WITNESS #2 went outside to see what was occurring. COMPLAINANT observed SUBJECT OFFICER follow WITNESS #1 after WITNESS #1 entered the vehicle. SUBJECT OFFICER approached the vehicle.
4. SUBJECT OFFICER twice told WITNESS #1 not to enter the vehicle but WITNESS #1 continued to enter the vehicle. WITNESS #1 told SUBJECT OFFICER that he did not hear him. SUBJECT OFFICER drew his gun, approached the vehicle, and ordered WITNESS #1 to exit the vehicle.
5. As WITNESS #1 exited the vehicle, SUBJECT OFFICER pointed his gun in WITNESS #1's face. SUBJECT OFFICER then proceeded to push WITNESS #1 forcefully onto the vehicle which resulted in WITNESS #1's chest colliding with the vehicle. SUBJECT OFFICER searched and placed WITNESS #1 in handcuffs and detained him for about thirty minutes. Based upon a video taken by WITNESS #3 with her cellular phone, WITNESS #1 can be heard stating that the officers "pointed their guns in [his] face and threw him up against the car."
6. WITNESS #1 did not resist arrest and remained calm while interacting with the MPD officers.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and to dismiss, conciliate, mediate, or 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..."

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.

COMPLAINANT alleged that SUBJECT OFFICER harassed WITNESS #1 by unlawfully stopping, frisking, and handcuffing him. COMPLAINANT alleged that after several MPD officers arrived at her apartment building to investigate an assault against one of her neighbors, WITNESS #1 went to his brother’s vehicle to look for keys. COMPLAINANT saw SUBJECT OFFICER follow WITNESS #1 to the side of the building. WITNESS #1 entered the vehicle despite being ordered not to do so by SUBJECT OFFICER because WITNESS #1 did not hear SUBJECT OFFICER speaking to him. SUBJECT OFFICER ordered WITNESS #1 to exit the vehicle and WITNESS #1 was stopped, frisked and handcuffed upon exiting the vehicle. WITNESS #1 was detained for twenty to thirty minutes.

SUBJECT OFFICER did not have any recollection of the encounter with WITNESS #1. WITNESS OFFICER #1 was on the scene. WITNESS OFFICER #1 told OPC that he observed SUBJECT OFFICER with a male juvenile later identified as WITNESS #1. WITNESS OFFICER #1 said that he heard SUBJECT OFFICER tell WITNESS #1 to get out of the car and WITNESS OFFICER #1 observed WITNESS #1 leave the car and believed that SUBJECT OFFICER handcuffed WITNESS #1. A review of the video taken by WITNESS #3 on her cellular phone, illustrates that WITNESS #1 was standing in handcuffs at the back of vehicle. WITNESS OFFICER #1 stated that SUBJECT OFFICER explained that WITNESS #1 was being stopped because the officers received a call or had information about a man with a gun. WITNESS OFFICER #2, who was also on the scene, told OPC that he heard WITNESS OFFICER #1 tell COMPLAINANT, WITNESS #2, and WITNESS #3, that WITNESS #1 was detained as part of the investigation. MPD officers that were in the vicinity of WITNESS #1

were communicating with him and WITNESS #1 was orderly and complied with the MPD officers' requests.

MPD General Order 304.10 requires that MPD officers have reasonable suspicion to perform a stop or a pat down for weapons. Reasonable suspicion to conduct a stop must be "more than a hunch or mere speculation...a combination of specific facts and circumstances which would justify a reasonable officer to believe that the person stopped had committed, was committing, or was about to commit a criminal act." The General Order defines reasonable suspicion to support a frisk as "more than a vague hunch...under the circumstances, a reasonably prudent law enforcement officer would be warranted in believing his/her safety or that of other persons is in danger because the individual may be carrying a weapon or dangerous instrument." The order further states, "Every officer conducting a stop [and frisk] must be prepared to cite the particular factors which supported the determination that 'reasonable suspicion' was present. The record of the stop [and/or frisk] (PD Form 251 or PD Form 76) shall contain all factors relied on." In determining the reasonableness of an officer's suspicion, the District of Columbia Courts of Appeals has identified such factors as "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 or gunshots, and the viewing of an object or bulge indicating a weapon." *Anderson v. U.S.*, 658 A.2d 1036, 1038 (D.C. 1995). According to *Terry v. Ohio*, 392 U.S. 1 (1968), officers may pat down an individual for weapons or frisk the individual for contraband if there is a reasonable, articulable suspicion that the person that is stopped is armed and dangerous.

In conducting investigatory stops, handcuffing is permissible under certain circumstances. Specifically, when "arrest-like measures (such as handcuffing) are employed, they must be reasonable in light of the circumstances that prompted the stop or that developed during its course." *See People v. Arnold*, 394 Ill. App.3d 63 (Ill. App. Ct. 2009) (internal citations omitted). The use of restraints, if deemed not reasonably necessary, indicates that the interaction should be considered not just an investigatory stop, but an arrest. *See People v. Calderon*, 336 Ill.App.3d 182, 192 (Ill. App. Ct. 2002). In considering the circumstances that would justify the use of handcuffs during an investigatory stop, the court asserted that a detention may be "reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee." *See Reynolds v. State*, 592 So.2d 1082, 1084 (Fla. 1992). Moreover, MPD General Order 304.10 provides that "Officers shall act with as much restraint and courtesy as possible [...] Officers shall use the least coercive means necessary to effect a stop."

WITNESS #1 was inside of his brother's vehicle attempting to retrieve keys that he thought were left within the vehicle. SUBJECT OFFICER ordered WITNESS #1 to exit the vehicle, he was stopped, frisked, handcuffed, and detained by SUBJECT OFFICER. WITNESS #1 was not engaged in any criminal activity or other activity that would warrant a stop. WITNESS #1 was not armed, did not pose a danger, and did not flee. Thus, there was no permissible basis for WITNESS #1 to be stopped, frisked, or handcuffed. Moreover, SUBJECT OFFICER did not provide the reason for the stop, frisk, and handcuff of WITNESS #1 in any

report or other record as required by General Order 304.10. Even if WITNESS #1 was part of the investigation into the assault of WITNESS #1's neighbor, there was no explanation as to why WITNESS #1 was stopped, frisked, handcuffed, and detained for approximately thirty minutes. The stop, frisk, handcuff and detention of WITNESS #1 were not based upon a reasonable articulable suspicion. Thus, the Complaint Examiner determines that SUBJECT OFFICER harassed WITNESS #1 when he stopped, frisked, handcuffed, and detained him without a reasonable suspicion in violation of D.C Code § 5-1107(a) and MPD General Order 120.25.

UNNECESSARY/EXCESSIVE FORCE

MPD General Order 901.07, Part II, states, "The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others."

The regulations governing OPC define excessive or unnecessary force as "[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the 'reasonableness' of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective." D.C. Mun. Regs. tit. 6A, § 2199.1.

a. SUBJECT OFFICER Used Unnecessary Force When He Pointed His Gun in WITNESS #1's Face

COMPLAINANT alleged that SUBJECT OFFICER used unnecessary force against WITNESS #1 when he pointed his gun at WITNESS #1's face. WITNESS #1, WITNESS #2, and WITNESS #3 also indicated in their statements to OPC that SUBJECT OFFICER pointed a gun at WITNESS #1. WITNESS #1 can be heard on the video taken by WITNESS #3 with her cellular phone stating, "I don't even know, [the officers] just pulled their pistols out and threw me against the car."

None of the MPD officers recalled whether any guns were drawn. MPD General Order 901.07 (IV, B) states, "No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted." Neither SUBJECT OFFICER nor any other MPD officer articulated dangerous or resistive actions by WITNESS #1. Complaint Examiner finds credible the statements of the COMPLAINANT, WITNESS #1, WITNESS #2, and WITNESS #3 that SUBJECT OFFICER drew and pointed his gun at WITNESS #1's face. All

of these statements were corroborated by the cellular phone video where WITNESS #1 can be clearly heard stating that an officer, later identified as SUBJECT OFFICER, pulled his gun on WITNESS #1. WITNESS #1 was not armed or committing any crime. There was no lawful purpose for SUBJECT OFFICER to point his gun at WITNESS #1 under the circumstances. Thus, the Complaint Examiner determines that SUBJECT OFFICER used unnecessary force against WITNESS #1 when he pointed his gun at WITNESS #1 in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

b. SUBJECT OFFICER Used Unnecessary Force When he Forcefully Pushed WITNESS #1 Against the Vehicle

COMPLAINANT alleged that SUBJECT OFFICER used unnecessary force when he threw WITNESS #1 against the Vehicle. WITNESS #1 stated that SUBJECT OFFICER “slammed” him and “grabbed [him] with both arms” and pushed him on the car. WITNESS #2 and WITNESS #3 also indicated in their statements to OPC that SUBJECT OFFICER pushed WITNESS #1 into the car. Moreover, WITNESS #1 can be heard on the video taken by WITNESS #3 with her cellular phone stating that an officer, later identified as SUBJECT OFFICER, “threw [him] against the car.”

SUBJECT OFFICER did not recall the incident. WITNESS OFFICER #2 stated that he did not observe WITNESS #1 being pushed onto a vehicle but he did observe MPD officers using “hand controls” to keep WITNESS #1 calm and to prevent him from moving. WITNESS OFFICER #1 stated that he did not observe WITNESS #1 resisting arrest. Based upon the video taken by WITNESS #3 with her cellular phone, WITNESS #1 appeared calm and was cooperating with the MPD officers and did not resist arrest. Indeed, in the video he can be heard telling his brother that he is cooperating with police and that the police threw him against the car. The Complaint Examiner finds the statements of COMPLAINANT, WITNESS #1, WITNESS #2, and WITNESS #3 to be credible. Moreover, the video supports these statements that SUBJECT OFFICER forcefully pushed WITNESS #1 against the vehicle. Thus, the Complaint Examiner determines that SUBJECT OFFICER used unnecessary force against WITNESS #1 when he slammed him against the back of the vehicle in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Unnecessary/Excessive Force	Sustained

Submitted on May 16, 2016

Arthur Dennis Sidney
Complaint Examiner