

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 16-0429 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER # 1 SUBJECT OFFICER # 2 |
| Allegation 1: | Harassment- Handcuffing (SUBJECT OFFICER # 1 and # 2) |
| Allegation 2: | Harassment- Search (SUBJECT OFFICER # 1) |
| Complaint Examiner: | Arthur D. Sidney |
| Merits Determination Date: | May 1, 2017 |

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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 OPC on September 26, 2016, alleging that he was with two acquaintances near the entrance of the parking lot at AN APARTMENT IN S.E., D.C. when SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 harassed him by placing him in handcuffs. Complainant also alleged that SUBJECT OFFICER # 1 harassed him by unlawfully searching him.¹

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 # 1 and SUBJECT OFFICER # 2 on March 19, 2017, and OPC's response to the objections, the

¹ Complainant also alleged that SUBJECT OFFICER #1 harassed him by unlawfully stopping him, threatening to arrest him, if he did not provide identification, mishandling his cell phone and issuing him an unlawful barring notice. Finally, Complainant alleged that SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 used unnecessary or excessive force when they forcibly handcuffed him. Pursuant to D.C. Code § 5-1108(1) on February 24, 2017, a member of the Police Complaints Board dismissed these allegations. The Complaint Examiner concurs with the determination to dismiss the allegations.

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 # 1 and SUBJECT OFFICER # 2 on March 19, 2017, and OPC's response to the objections, and an evidentiary hearing was not conducted. The Complaint Examiner finds the following material facts:

1. On September 21, 2016, at approximately 3:15 p.m., Complainant was sitting on a wall with two acquaintances near the entrance to the parking lot at AN APARTMENT IN S.E., D.C., SUBJECT OFFICER # 1 drove to the location in his private vehicle and SUBJECT OFFICER # 2 arrived in an MPD cruiser. Both Subject Officers approached Complainant.
2. SUBJECT OFFICER # 1 asked Complainant whether he was barred from the property. Complainant said no. SUBJECT OFFICER # 1 said, "Let me see your ID." Complainant responded "For what?" SUBJECT OFFICER # 1 again said, "Let me see your ID." Complainant asked, "For what?"
3. Subsequently, SUBJECT OFFICER # 1 asked, "Don't you have a stay away order?" Complainant replied, "Didn't I tell you? No I do not have a stay away order."
4. SUBJECT OFFICER # 1 stated, "Let me see your ID." Complainant asked "Give you my ID for what? If you call your supervisor, then I'll give you my ID."
5. Complainant did not comply and SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 placed Complainant in handcuffs while he was standing at the top of a staircase. SUBJECT OFFICER # 2 stated that the handcuffing was necessary because Complainant might try to run away. SUBJECT OFFICER # 1 removed Complainant's wallet and retrieved Complainant's identification without Complainant's permission to determine if Complainant was subject to a barring notice preventing him from being on the involved property. Prior to the search, SUBJECT OFFICER # 1 did not ask Complainant for his name and Complainant did not provide it.
6. When SUBJECT OFFICER # 1 learned that Complainant did not have any outstanding warrants, he sent Complainant on his way.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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

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.

A. Handcuffing

Complainant stated that SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 approached him at the parking lot of AN APARTMENT IN S.E., D.C. and asked Complainant if he was barred from the property. Complainant responded no. SUBJECT OFFICER # 1 asked for Complainant's identification. SUBJECT OFFICER #1 said, “Let me see your ID.” Complainant asked, “For what?” SUBJECT OFFICER # 1 asked, “Don't you have a stay away order?” Complainant replied, “Didn't I tell you? No I do not have a stay away order.” SUBJECT OFFICER # 1 stated, “Let me see your ID.” Complainant responded, “Give you my ID for what? If you call your supervisor, then I'll give you my ID.” SUBJECT OFFICER # 1 and SUBJECT

OFFICER # 2 proceeded to handcuff Complainant. SUBJECT OFFICER # 2 indicated that the handcuffing was necessary because Complainant might run away.

During investigatory stops, handcuffing is permissible under limited circumstances. 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). The circumstances that would justify the use of handcuffs during an investigative stop should 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.”

Complainant was not engaged in any violent behavior or crimes, was not armed, and did not attempt to flee. SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 also did not indicate that they were in fear of harm from Complainant. Based upon the content in the video recorded by the by-stander, Complainant was at the top of the stairs and SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 stood on the steps below Complainant blocking his passage. Both Subject Officers’ handcuffing of Complainant was unnecessary and unlawful and constituted an unlawful arrest. Thus, SUBJECT OFFICER # 1 and SUBJECT OFFICER # 2 harassed Complainant when he was handcuffed in violation of D.C. Code § 5-1107, MPD General Orders 304.10 and 120.25.

B. Search

Complainant alleged that after he was handcuffed, SUBJECT OFFICER # 1 removed Complainant’s wallet from his pocket and searched the wallet for his identification. Prior to this time, SUBJECT OFFICER # 1 did not ask Complainant for his name and Complainant did not provide it. SUBJECT OFFICER # 1 found Complainant’s identification, and provided Complainant’s name to the dispatcher to determine if Complainant had any outstanding warrants. SUBJECT OFFICER # 1 allowed Complainant to leave after SUBJECT OFFICER # 1 determined there were no outstanding warrants.

It is undisputed that SUBJECT OFFICER # 1 removed Complainant’s wallet from his pocket and retrieved his identification. SUBJECT OFFICER # 1 removal of Complainant’s wallet from his pocket and retrieval of Complainant’s identification constituted a search. SUBJECT OFFICER # 1 stated that Complainant was never placed under arrest and SUBJECT OFFICER # 1 did not frisk Complainant because Complainant was not wearing baggy clothing to the point where SUBJECT OFFICER # 1 could not determine if Complainant had a weapon. Because there was no arrest, there was no lawful search incident to an arrest of Complainant. See MPD General Order 304.10 (prohibiting searches without probable cause). Additionally,

there was no other lawful purpose for Subject Officer to request or retrieve Complainant's identification, as SUBJECT OFFICER # 1 had not previously asked for the Complainant's name, nor had one been provided. See MPD Circular 4-10 (pedestrians are not required to produce or display evidence of their identity unless an officer reasonably believes the pedestrian has provided a fictitious name or address and the officer plans to issue a Notice of Infraction). Thus, SUBJECT OFFICER # 1 harassed Complainant when he removed Complainant's wallet from his pocket and searched the wallet for Complainant's identification absent probable cause in violation of D.C. Code § 5-1107, MPD General Orders 304.10 and 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER # 1

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| Allegation 1: Harassment – Handcuffing | Sustained |
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SUBJECT OFFICER # 2

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|---|-----------|
| Allegation 1: Harassment – Handcuffing | Sustained |
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SUBJECT OFFICER # 1

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| Allegation 2: Harassment – Search | Sustained |
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Submitted on May 1, 2017

ARTHUR D. SIDNEY
Complaint Examiner