

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0615
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1: Harassment (Handcuff of Complainant and Witness #1)	SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3
Allegation 2: Harassment (Search of Witness #2)	SUBJECT OFFICER #1, SUBJECT OFFICER #2
Allegation 3: Harassment (Search of Vehicle and Removal and Frisk of Complainant's backpack)	SUBJECT OFFICER #2
Allegation 4: Harassment (Frisk and Search of Complainant)	SUBJECT OFFICER #3
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	August 13, 2018

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 July 31, 2017, alleging that on July 29, 2017, MPD Officers SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3,¹

¹ Complainant, COMPLAINANT, also alleged that the Metropolitan Police Department (MPD) FORMER OFFICER harassed the Complainant and his friends when FORMER OFFICER handcuffed Complainant and his

all from the Sixth District, harassed Complainant and his friends, WITNESS #1 and WITNESS #2, when the officers handcuffed the men during a traffic stop. Complainant further alleged SUBJECT OFFICER #3 harassed him when frisking and searching Complainant and that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed WITNESS #2 when searching him. Lastly, Complainant alleges SUBJECT OFFICER #2 harassed him and WITNESS #1 when he entered and searched WITNESS #1's vehicle to retrieve WITNESS #1's ID inside of his wallet in the console of the vehicle, retrieved Complainant's backpack from the vehicle, and frisked Complainant and unlawfully retrieved his wallet.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 Officers on July 6, 2018, 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 the Subject Officers, on July 6, 2018, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be the following:

1. On July 29, 2017, Complainant was in the front passenger seat of a vehicle operated by WITNESS #1. Complainant's friend, WITNESS #2, sat in the right, rear passenger seat of the vehicle. The vehicle was parked beside a fire hydrant.

friends at a traffic stop and that FORMER OFFICER further harassed Complainant when FORMER OFFICER searched and frisked Complainant; however, the Complaint Examiner finds that this allegation regarding FORMER OFFICER should not be considered by the Office of Police Complaints (OPC) because FORMER OFFICER is no longer employed by MPD. Pursuant to D.C. Official Code § 5-1107(b-1), OPC has authority to adjudicate citizen complaints against current members of MPD that allege abuse or misuse of police powers by such members. Thus, the allegation regarding FORMER OFFICER is not properly before this Complaint Examiner because FORMER OFFICER is no longer an employee of MPD and allegations pertaining to FORMER OFFICER will not be addressed in this determination.

² Complainant also alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed Complainant and his friends when they unlawfully stopped their vehicle and wrote WITNESS #1 a ticket. Complainant also alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against WITNESS #1 to remove him from the vehicle. Complainant further alleged that SUBJECT OFFICER #3 harassed him when he was "sexually assaulted" and frisked, searched, and subject to inappropriate touching during the frisk. Lastly, Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 used language or conduct toward the three men that was insulting, demeaning, or humiliating when they spoke to them in an aggressive manner. Pursuant to D.C. Code § 5-1108, on June 10, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC Executive Director. Complaint Examiner concurs in the reasoning of the earlier determination and agrees that the determination made by OPC's Executive Director is dispositive.

2. The body-worn camera (BWC) footage shows that the vehicle had tinted windows.
3. MPD Officers approached and accused WITNESS #1 of committing a traffic offense. MPD Officers ordered all three men out of the vehicle and handcuffed them, the MPD Officers made WITNESS #1 and WITNESS #2 sit on the curb near the WITNESS #1's vehicle.
4. BWC footage showed SUBJECT OFFICER #1 and SUBJECT OFFICER #2 handcuffed WITNESS #1. SUBJECT OFFICER #3 handcuffed Complainant after she asked Complainant for his ID several times, even though he was only a passenger.
5. BWC footage showed Complainant told the MPD Officers that he did not have any weapons. SUBJECT OFFICER #3 patted down Complainant's front left pants pocket. Complainant asked several times why the officers were touching him.
6. During the incident, Complainant said that he was being assaulted and that he was being raped by the MPD Officers. SUBJECT OFFICER #3 handcuffed Complainant.
7. After WITNESS #2 started reaching into his pants pockets, he was handcuffed after MPD Officers repeatedly told him not to reach into his pockets.
8. BWC footage showed that while WITNESS #1 was sitting on the curb where the MPD Officers asked him to set. After MPD Officers asked for WITNESS #1's ID, WITNESS #1 said it was in the car.
9. Shortly thereafter, WITNESS #1 witnessed SUBJECT OFFICER #2 search his car without his consent and said, "He has no right to be in my car!" WITNESS #1 sat down and was approached and handcuffed by SUBJECT OFFICER #1 and SUBJECT OFFICER #2.
10. SUBJECT OFFICER #2 retrieved WITNESS #1's ID from within the wallet which was in the console inside the vehicle. SUBJECT OFFICER #2 also retrieves a backpack, owned by Complainant, from the vehicle. Complainant does not consent to the search of his backpack. WITNESS #1 did not consent to a search of vehicle at any time.
11. During the stop, SUBJECT OFFICER #3 frisked and searched Complainant. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 searched WITNESS #2. SUBJECT OFFICER #2 also entered and searched WITNESS #1's vehicle and frisked Complainant's backpack that was inside the vehicle.
12. On July 31, 2018, Complainant filed a complainant with OPC regarding the conduct of the MPD Officers believing that the MPD Officers unlawfully handcuffed and searched the men or their property.

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.

Handcuffing

Complainant stated that he and WITNESS #1 and WITNESS #2 were sitting in WITNESS #1's vehicle when MPD Officers stopped them and ordered them out of the vehicle, and made them sit on the sidewalk. Complainant alleged that the officers handcuffed Complainant, WITNESS #1, and WITNESS #2 for no reason because the vehicle was not operating and no one was threatening the MPD Officers.³

³ This determination does not address the lawfulness of the initial stop because OPC dismissed the allegation. Complainant Examiner agrees with OPC's determination and does not find that the initial stop was unlawful because

BWC footage shows WITNESS #1 was handcuffed by SUBJECT OFFICER #1 and SUBJECT OFFICER #2. SUBJECT OFFICER #3 handcuffed Complainant, and MPD Officers handcuffed WITNESS #2.

In his interview with OPC, SUBJECT OFFICER #2 did not recall handcuffing WITNESS #1. During the interview with OPC, SUBJECT OFFICER #1 stated that the citizens were handcuffed because they were either attempting to flee when they stood up and told OPC that he handcuffed WITNESS #1 because of his combativeness and aggressiveness. During his interview, SUBJECT OFFICER #3 recalled handcuffing Complainant because when SUBJECT OFFICER #3 asked for his ID, Complainant started reaching into his pockets and she was unsure if Complainant had weapons so she handcuffed him and patted him down for her safety.

BWC footage shows WITNESS #1 sitting on the curb where MPD Officers asked him to sit, and when asked for his ID, he said it was in his car. Shortly thereafter, when WITNESS #1 noticed SUBJECT OFFICER #2 search WITNESS #1's vehicle without consent, he stood up and said "He has no right to be in my car!" WITNESS #1 sat back down and immediately thereafter SUBJECT OFFICER #1 and SUBJECT OFFICER #2 handcuffed WITNESS #1. WITNESS #1 did not attempt to walk away or flee and was and was surrounded by MPD Officers.

BWC footage also shows SUBJECT OFFICER #3 asking Complainant for his ID even though Complainant was only a passenger in the vehicle. Complainant was frisked by another MPD Officer. Complainant stated that he did not have any weapons while SUBJECT OFFICER #3 patted down his left front pants pocket. Complainant asked why he was being touched and exclaimed in a loud and agitated manner something to the effect that he was being "assaulted" and "raped" by the MPD Officers. Thereafter, SUBJECT OFFICER #3 handcuffed Complainant.

In the context of an investigatory stop, handcuffing is permissible under certain circumstances. Specifically, "The measure of the scope of permissible police action in any investigative stop depends on whether the police conduct was reasonable under the circumstances." *In Re M.E.B.*, 638 A.2d 1123, 1127 (D.C. 1993), citing *United States v. Sharpe*, 470 U.S. 675, 683. The use of restraints is one thing to consider "in weighing whether a detention for investigation crossed the line into the realm of arrest." *Id.* at 1128. In considering the circumstances that would justify the use of handcuffs during an investigatory stop, the court approved of the use of handcuffs "where it was reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee." *Womack v. United States*, 673 A.2d 603 (D.C. 1996), citing *In re M.E.B.*, 638 A.2d 1123, 1128; *Reynolds v. State*, 592 So2d 1082, 1084 (Fla. 1992). MPD General Order 304.10, Police-Citizen Contacts, Stops, and Frisks (effective August

30, 2013), stipulates that “Officers shall act with as much restraint and courtesy as possible [. . .] Officers shall use the least coercive means necessary to effect a stop.”

SUBJECT OFFICER #1 stated that he handcuffed WITNESS #1 because he was attempting to flee and due to his aggressiveness. SUBJECT OFFICER #2 did not recall handcuffing WITNESS #1. BWC footage shows SUBJECT OFFICER #1 and SUBJECT OFFICER #2 handcuffing WITNESS #1. BWC footage further shows WITNESS #1 was not trying to escape because he was surrounded by MPD Officers. WITNESS #1 did stand up and speak in a loud voice and questioned why the MPD Officers were searching his vehicle. WITNESS #1 was upset and clearly exhibited a more animated demeanor. BWC footage belies SUBJECT OFFICER #1’s statement that WITNESS #1 was attempting to flee and did not show that he was a threat to the safety of any MPD Officers as he was under control of the MPD Officers and surrounded by them. MPD Officers did not warn WITNESS #1 that his actions would result in handcuffs and he was not told to refrain from conducting himself in any manner.

Regarding SUBJECT OFFICER #3 and her handcuffing Complainant, Complainant also spoke in a loud, animated voice. Complainant exclaimed that he did not have any weapons and did not reach into his pockets. Complainant questioned MPD Officers actions but did not pose a threat to them. MPD Officers surrounded Complainant and therefore he did not pose a threat. SUBJECT OFFICER #3 stated that she handcuffed Complainant because he was searching for his pockets and she did not know if he had a weapon. Additionally, Complainant was patted down prior to the handcuffing.

MPD Officers stopped Complainant and WITNESS #1 and WITNESS #2 because of a seatbelt violation. According to BWC footage, WITNESS #2, who Complainant described as having been drinking and who appeared intoxicated, he reached into his pockets even as MPD Officers repeatedly told him not to do so and warned him that he would be handcuffed if he continued. WITNESS #2’s actions warranted the MPD Officer’s reasonable concern for their safety. In contrast, the handcuffing of WITNESS #1 and WITNESS #2 was not lawful.

MPD Officers did not stop the occupants of the vehicle because they were committing a violent crime. Although the scene may have been chaotic, MPD Officer safety was not threatened. Because there is no evidence that either WITNESS #1 or Complainant were involved in a violent crime, were about to flee authorities, or posing a danger to MPD Officers, the handcuffing of WITNESS #1 and Complainant was unlawful. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed WITNESS #1 and SUBJECT OFFICER #3 harassed Complainant in violation of D.C. Code § 5-1107 and MPD General Order 120.25 when handcuffing them.

Frisk and Search of Complainant

Complainant alleged that he was “touched” by the officers during the incident, and that they went through his pockets and personal belongings. BWC footage showed that SUBJECT OFFICER #3 frisked Complainant and searched his pockets. In her interview with OPC, SUBJECT OFFICER #3 told OPC that she frisked Complainant because she asked him for his ID and then he reached into his pocket. She indicated she was unaware if Complainant had any weapons and patted him down for her safety. SUBJECT OFFICER #3 believed that she had probable cause to search Complainant because when she asked for ID, Complainant told her it was in his wallet. SUBJECT OFFICER #3 asked where Complainant’s wallet was and he responded in his pocket. SUBJECT OFFICER #3 took Complainant’s response to be consent to a search of his pocket for the wallet and because he did not protest. In her interview with OPC, SUBJECT OFFICER #3 did not answer when asked whether silence constitutes consent.

BWC footage shows SUBJECT OFFICER #3 asking Complainant for his ID even though he was a passenger and not driving the vehicle. MPD Circular 04-10 states that citizens are not required to possess or carry an ID with them. MPD Circular 04-10. SUBJECT OFFICER #3 patted down his pockets and then reached into his pocket to remove wallet and ID.

Frisks can only lawfully occur in limited circumstances. General Order 304.10, “[a]n officer may frisk a person . . . whom he/she has stopped if he/she reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a frisk is necessary to protect himself/herself or others.” See General Order 304.10. 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 weapon or dangerous instrument.” Reasonableness depends upon 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 unshots, and the viewing of an object or bulge indicating a weapons.” *Anderson v. U.S.* 658 A.2d 1036, 1038 (D.C. 1995). *Terry v. Ohio*, 392 U.S. 1 (1968) provides that officers may pat down an individual for weapons or frisk for contraband if there is reasonable, articulable suspicion that the person stopped is armed and dangerous.

BWC footage shows Complainant was not armed and dangerous and the purpose of the pat down was to locate Complainant’s wallet and ID. SUBJECT OFFICER #3 did not frisk Complainant’s legs or waist just his pockets. Complainant has his hands up and away from his body and indicated that he did not have any weapons. There is no information that Complainant was armed in the PD 251 or based upon a review of BWC. The frisk of Complainant is unlawful

MPD General Order 304.10 defines a frisk as “a limited protective search for concealed weapons or dangerous instruments. Usually, it occurs during a ‘stop’ and consists of a pat down of the individual’s clothing to determine the presence of weapons and other dangerous objects.” According to the General Order, “the officer shall not reach inside the person’s clothing or

pockets during a frisk, unless the officer feels something that may reasonable constitute a weapon or dangerous instrument.”

SUBJECT OFFICER #3 reached in and removed Complainant’s wallet from his pocket to retrieve his ID. Subject Officer did not feel a weapon and therefor the search lacked probable cause. Complainant did not consent to the search. Indeed, Complainant continually asked the MPD Officers why they were touching him and asked why his ID was needed. The search of Complainant’s pocket was unlawful. SUBJECT OFFICER #3 harassed Complainant when he frisked him. SUBJECT OFFICER #3 also harassed Complainant when he searched his pocket because there was no probable cause. SUBJECT OFFICER #3’s frisk and search of Complainant lacked probable cause and therefore was harassment in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

Search of WITNESS #2

Complainant alleged to OPC that during the stop, MPD Officers searched Complainant and his WITNESS #2’s pockets. OPC clarified after a review of BWC footage that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 searched WITNESS #2. According to SUBJECT OFFICER #2, he admitted he frisked WITNESS #2. SUBJECT OFFICER #2 described as a protective pat down where you “search their waistbands, pockets, their outer jacket, you feel the jacket pockets you don’t go into pockets, and its searching for weapons.”

During the interview with OPC, when asked what sort of reasonable suspicion or probable cause was needed for a frisk, SUBJECT OFFICER #2 stated that when an MPD Officer steps someone out of a vehicle or comes in contact with them during a traffic stop, the MPD Officer can frisk the person. SUBJECT OFFICER #2 stated that he saw WITNESS #3 shove things into his pockets or car seats when the vehicle was first stopped. SUBJECT OFFICER #1 did not recall searching anyone but only conducting a frisk due to the high crime area. SUBJECT OFFICER #1 remembered WITNESS #3 making furtive movements by stuffing something into the seat when the MPD Officers approached which caused SUBJECT OFFICER #1 to initiate a frisk. SUBJECT OFFICER #2 told OPC when he frisked WITNESS #2, he felt a razorblade in his pocket so then he searched his pocket for the razorblade.

BWC footage showed that after the three men were pulled out of the vehicle, SUBJECT OFFICER #2 talked to WITNESS #2 by the front of the vehicle. SUBJECT OFFICER #2 put his hand into WITNESS #2’s pocket and emptied the contents of his pocket onto the hood of the vehicle. After SUBJECT OFFICER #2 emptied WITNESS #2’s pocket, SUBJECT OFFICER #1 patted down WITNESS #2’s leg. SUBJECT OFFICER #1 appeared to observe the search. SUBJECT OFFICER #2 returned WITNESS #2’s items except for his ID which the kept. Later, SUBJECT OFFICER #1 watched WITNESS #2 and asked him for his ID. WITNESS #2 appeared to reach into his pocket for his ID which SUBJECT OFFICER #2 had taken and still had his ID in his possession. Later still, after leaving WITNESS #2 with other MPD Officers, SUBJECT OFFICER #1 returned to WITNESS #2 after he was handcuffed and asked him which

pocket WITNESS #2 was reaching when he was making movements. SUBJECT OFFICER #1 then put his hand in WITNESS #2's pockets and emptied the contents onto the hood of the vehicle and patted down Complainant's legs and waist band.

MPD General Order 304.10 defines a frisk as a "limited protective search for concealed weapons or dangerous instruments. Usually, it occurs during a 'stop' and consists of a pat down of the individual's clothing to determine the presence of weapons and other dangerous objects." According to the General Order, "the officer shall not reach inside the person's clothing or pockets during a frisk, unless the officer feels something that may reasonably constitute a weapon or dangerous instrument." MPD General Order 304.10 prohibits searches of persons without probable cause.

BWC footage shows that SUBJECT OFFICER #2 did not frisk WITNESS #2 but searched him as his hands went into WITNESS #2's pockets, emptied and removed its contents, and SUBJECT OFFICER #2 took WITNESS #2's ID. BWC showed that SUBJECT OFFICER #1 witnessed this interaction and then searched WITNESS #2 also and removed contents from his pockets. Although SUBJECT OFFICER #1 told OPC that he felt a razor blade and then searched the pocket, BWC footage shows SUBJECT OFFICER #1 immediately searching WITNESS #2's pocket. No frisk was conducted; thus, it is not credible that SUBJECT OFFICER #1 first felt a razor blade which caused him to search WITNESS #2. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2's search of WITNESS #2 was harassment because it violated the General Order 304.10 when the SUBJECT OFFICER #1 and SUBJECT OFFICER #2 conducted a search of WITNESS #2 without adequate probable cause and/or without consent from WITNESS #2. Because there was no probable cause, consent, or a search incident to arrest, SUBJECT OFFICER #1 and SUBJECT OFFICER #2's search of WITNESS #2 was harassment and violated D.C. Code § 5-1107 and MPD General Order 120.25.

Search of WITNESS #1's car and belongings inside the car

Complainant alleged that the MPD Officers stopped and searched the men and their personal belongings. Upon reviewing BWC footage, OPC confirmed that WITNESS #1's vehicle was searched by SUBJECT OFFICER #2 and that SUBJECT OFFICER #2 removed Complainant's backpack from the WITNESS #1's vehicle and frisked it. SUBJECT OFFICER #1 entered the backseat of the vehicle and searched the area where WITNESS #2 had been sitting.

During the interview with OPC, SUBJECT OFFICER #2 said that he searched the car for the wallet but that he had gotten WITNESS #1's consent. SUBJECT OFFICER #2 did not recall frisking Complainant's backpack. SUBJECT OFFICER #1 told OPC that he looked around the area in the car where he saw WITNESS #2 sitting and stuffing something but did not recover anything

BWC footage showed SUBJECT OFFICER #1 asking WITNESS #1 for his ID multiple times. WITNESS #1 said his ID was in the vehicle. After a few minutes of MPD Officers asking for the ID, SUBJECT OFFICER #2 said, “fuck this,” and entered the driver’s side of the car and searched the center console to retrieve WITNESS #1’s wallet and removed his ID. When he watched SUBJECT OFFICER #2 enter his car, WITNESS #1 yelled “What are you doing in my car!” and stated that MPD Officers should not be in his vehicle and that he did not provide consent to the search. BWC footage showed SUBJECT OFFICER #2 also patted down Complainant’s backpack that was in the car. BWC footage showed SUBJECT OFFICER #2 say that he wanted to get into that backpack and he touched the backpack. SUBJECT OFFICER #2 at one point asks Complainant if he can search the backpack and Complainant said “No.” BWC footage shows that SUBJECT OFFICER #1 entered the rear passenger door of vehicle and searched where WITNESS #2 had been sitting.

BWC footage shows no one was arrested and that none of the men gave consent to search the vehicle. In the absence of consent or a search warrant, probable cause to believe that evidence or contraband is in a vehicle is needed to search a vehicle. *Carroll v. United States*, 267 U.S. 132 (1925). Courts have also permitted officer to search the passenger area of a vehicle, “as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous” and may gain immediate control of weapons. *Michigan v. Long*, U.S. 1032 (1983). MPD General Order 304.15 provides that MPD Officers “shall be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.” Courts have determined that police officers must be able to “articulate more than non-particular suspicion or hunch.” *United States v. Scott*, 987 A.2d 1180, 1184 (D.C. 2010). In the context of a vehicle, D.C. courts have defined “furtive movements or gestures” as those that are geared toward concealment underneath and within a person’s body, not gestures or movement done openly or aimed away from the driver’s side of a vehicle.” *Robinson v. United States*, 76 A.3d 329, 337 (D.C. 2013); *Jackson v. United States*, 56 A.3d 1206, 1210 (D.C. 2012).

SUBJECT OFFICER #1’s rear passenger search of the vehicle was reasonable because SUBJECT OFFICER #2 and SUBJECT OFFICER #1 described that WITNESS #3 appeared to be stuffing something under the rear passenger seat. SUBJECT OFFICER #1 limited his search to the rear passenger seat. In contrast, SUBJECT OFFICER #2 searched the front seat and the console of the vehicle. These places were well beyond the wingspan of WITNESS #2 and there was no reasonable suspicion or probable cause to conduct searches in the front of the car or in its console.

No party consented to the search of the vehicle. SUBJECT OFFICE #2’s search was merely a pretext to get WITNESS #1’s ID. There is no exception to the warrant requirement that allows officers to search a vehicle for identification purposes; therefore, SUBJECT OFFICER #2’s search of the front of the vehicle and the console was unlawful. Additionally, SUBJECT OFFICER #2 claimed not to frisk Complainant’s backpack but BWC footage shows SUBJECT OFFICER #2 taking the backpack out of the car and patting and weighing it. SUBJECT OFFICER #2 was unable to articulate a reasonable suspicion for his frisk of the bag.

Thus, SUBJECT OFFICER #2's frisk of Complainant's bag was unlawful and the initial search was unlawful because it lacked probable cause. Accordingly, SUBJECT OFFICER #2 harassed WITNESS #1 and Complainant when he unlawfully searched the vehicle without probable cause and removed and frisked Complainant's backpack which was in the vehicle in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment (Handcuff of Complainant and Witness #1)	Sustained
Allegation 2: Harassment (Search of Witness #2)	Sustained

SUBJECT OFFICER #2

Allegation 1: Harassment (Handcuff of Complainant and Witness #1)	Sustained
Allegation 2: Harassment (Search of Witness #2)	Sustained
Allegation 3: Harassment (Search of Vehicle and Removal and Frisk of Complainant's backpack)	Sustained

SUBJECT OFFICER #3

Allegation 1: Harassment (Handcuffed Complainant and Witness #1)	Sustained
Allegation 4: Harassment (Frisk and Search of Complainant)	Sustained

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Submitted on August 13, 2018.

ARTHUR D. SIDNEY
Complaint Examiner