

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	19-0100
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment by Unlawfully Entering Home (SUBJECT OFFICERS #1 and #2)
<b>Allegation 2:</b>	Harassment by Unlawful Arrest (SUBJECT OFFICER #1)
<b>Complaint Examiner:</b>	Meaghan Hannan Davant
<b>Merits Determination Date:</b>	April 9, 2020

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**

The complainant filed a complaint with the Office of Police Complaints (OPC) on November 9, 2018 alleging that, on November 1, 2018, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #2 (together the “subject officers”), harassed complainant. Specifically, COMPLAINANT alleged that both subject officers harassed him by entering his apartment without consent, and that SUBJECT OFFICER #1 further harassed him by unlawfully arresting him.<sup>1</sup>

---

<sup>1</sup> COMPLAINANT further alleged that SUBJECT OFFICER #1 used language or engaged in conduct that was insulting, demeaning or humiliating when speaking to complainant. Pursuant to D.C. Code § 5-1108 (1), on January 4, 2020, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's Executive Director.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and all exhibits, the objections submitted by the subject officers, 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 the subject officers, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 1, 2018, shortly after 5:00 a.m., COMPLAINANT, placed a 911 call, requesting police to respond to an aggravated assault in his apartment building, located at AN ADDRESS IN NW, WASHINGTON, DC. On the recorded 911 call, complainant stated that there were two people who "looked like crackheads," in his apartment building, for which he was the property manager. Complainant further stated that the woman had been knocking on all of the apartment doors at 5:00 a.m., making a great deal of noise, and that he had to "put her out of the building."
2. Complainant also stated that this had happened before and that the woman "had a knife, so I grabbed a stick," and that the woman "came at" him.
3. Complainant described the woman as "black, dark skinned, short hair," and "wearing a red coat," with a "whole bunch of bags."
4. At approximately 6:00 a.m., the subject officers arrived on the scene and were met by a woman matching complainant's description, walking away from the apartment building. At the time, according to their interviews with OPC, the subject officers mistakenly believed that the man and woman were the complainants who had called 911 and stopped them for questioning.
5. Once stopped, the woman told the subject officers that she had been assaulted by a tenant of the apartment building; specifically, that the complainant had "pushed her." The man stated that he had witnessed the complainant pushing the woman and that he had also been pushed by complainant. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 questioned the woman several times about the details of the alleged assault, but the

woman was generally inconsistent. SUBJECT OFFICER #1 never questioned the woman as to whether she had a weapon.

6. The subject officers confirmed that neither the man nor the woman lived in the building. While the man argued that he “paid rent” of \$10 per month to keep some of the things in the apartment, he admitted that he did not have keys to the building or apartment.
7. WITNESS OFFICER #1 and WITNESS OFFICER #2 arrived on the scene several minutes later and witnessed the conversation between the subject officers and the man and woman.
8. At approximately 6:00 a.m., the subject officers entered the apartment building and knocked on the door of COMPLAINANT’s apartment, number REDACTED. At or around the same time, WITNESS OFFICER #1 entered the building and spoke to an adult male in the hallway who stated that the man and woman did not live in the building. SUBJECT OFFICER #2 remained downstairs, at the exterior door of the apartment building, with the man and woman.
9. COMPLAINANT opened his front door and stood in the doorway while speaking with the officers. He appeared to have been awoken by the officers and was dressed in pajamas and no shoes. Complainant explained to the officers that he had placed the 911 call, in order to have the two “trespassers” removed from the building. COMPLAINANT also stated that he was the property manager for the apartment building and, as such, knew that neither the man nor the woman was a tenant. Complainant further told the subject officers that the man and woman had been making noise for an hour and “they do this every night.”
10. WITNESS OFFICER #1 asked whether complainant pushed the man and woman, to which complainant responded, that he had, but that there had been, “no physical altercation other than that.” None of the officers at the scene asked complainant whether or not he had used a stick in the altercation, or if either the man or the woman had had a weapon.
11. SUBJECT OFFICER #1 asked complainant for identification. As clearly shown by the BWC footage, when COMPLAINANT turned to reenter his apartment to locate his ID, SUBJECT OFFICER #1s followed him into the apartment. SUBJECT OFFICER #2 then stepped through the doorway. Within seconds, complainant called out in a clear, loud voice, “Sir, you can't come in here! Call the watch commander. I'm not allowing you in

my house.” SUBJECT OFFICER #2 responded, “You don't have to allow us when we are investigating something.”

12. The subject officers retreated from the apartment. When COMPLAINANT returned moments later, he was arrested and placed in handcuffs on the charge of simple assault.
13. After getting the complainant's ID information, SUBJECT OFFICER #2 went back down the stairs to speak again to the woman and man, who were waiting outside the exterior door of the apartment building with WITNESS OFFICER #2. SUBJECT OFFICER #1 asked the man and woman to confirm that complainant pushed them down the steps.
14. SUBJECT OFFICER #1 then returned to the upper hallway. COMPLAINANT was visibly upset and seemed shocked, but at no point did he appear violent. He asked the officers why he was being arrested. SUBJECT OFFICER #1 responded that the complainant had admitted that he pushed the two people. The following exchange was captured by the BWC footage:

Complainant: But why are you locking me up?

SUBJECT OFFICER #1: You assaulted him!

Complainant: No, I did not!

SUBJECT OFFICER #1: You told me you pushed them down the stairs!

Complainant: She got a knife! She came at me with a knife! Ask everybody. I told the dispatcher I'm tired, so I'm asleep! I told the dispatcher she came at me, go call your dispatcher, sir.

15. SUBJECT OFFICER #1 never questioned either the complainant, nor the man and woman, as to whether she in fact had a knife, or whether she “came at” him.
16. No mention of obtaining a warrant was made by any of the officers at the scene.

#### **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."

### **A. 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 "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.

#### ***1. The Subject Officers Harassed Complainant by Unlawfully Entering His Home Without Consent, a Warrant, or Exigent Circumstances.***

The Fourth Amendment prohibits a police officer from entering a citizen's domicile absent consent, or a warrant. *See, e.g., Michigan v. Long*, 463 U.S. 1032, 1049-50 (1983); *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The Supreme Court has, however, identified certain exceptions wherein "exigent circumstances" "make the needs of law enforcement so compelling" that they justify a warrantless entry of a home, *see Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

The Supreme Court has upheld warrantless searches under the “exigent circumstances” exception in a variety of contexts. Examples include: where individual posed an immediate threat to himself, the officer or others, see *Maryland v. Buie*, 494 U.S. 325, 327 (1990); to “render emergency assistance to an injured occupant or to protect an occupant from imminent injury,” *Brigham City* at 403; when police are in “hot pursuit of a fleeing suspect,” *United States v. Santana*, 427 U. S. 38, 42–43 (1976); and “to prevent the imminent destruction of evidence,” *Georgia v. Randolph*, 547 U. S. 103, 116, n. 6, among others. In all such cases, however, the officer was required to demonstrate that he or she possessed a “reasonable belief based on ‘specific and articulable facts,’” that such a need existed. *Michigan v. Long*, 463 U.S. 1032, 1049-50 (emphasis added).

Here, neither of the subject officers, either during the incident or in their later interviews with OPC, made any claim that they had a warrant or COMPLAINANT’s consent to enter his home. However, review of the BWC footage clearly shows that both officers entered the apartment. When complainant retreated into his home to find his ID, SUBJECT OFFICER #1 immediately followed behind him, advancing several yards into the apartment. SUBJECT OFFICER #2 is seen stepping over the threshold into complainant’s home just prior to complainant crying out, “Sir, you can't come in here! Call the watch commander. I'm not allowing you in my house.”

Even where SUBJECT OFFICER #2 took only a step or two over COMPLAINANT’s threshold, his actions established an “entry.” The Supreme Court has expressly held that *any* physical intrusion into a home, however slight, constitutes “entry.” *Payton v. New York*, 445 U.S. 573, 589-590 (1980) (“[a]t the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.”); *Accord, Silverman v. United States*, 365 U.S. 505,512 (1961) (even slight intrusions into the home constitutes entry). The United States Court of Appeals for the Tenth Circuit has interpreted Supreme Court precedent to state that “physical entry of a home, even if only with one foot on the threshold, is an entry of the home for constitutional purposes.” *Dalcour v. City of Lakewood*, 492 Fed. App'x 924, 932-34 (10 Cir. 2012).

Thereby, in order to justify their warrantless search, the subject officers were required to demonstrate they had a “reasonable belief based on ‘specific and articulable facts’” that their compelling need to enter complainant’s apartment outweighed complainant’s Fourth Amendment rights.

In his interview with OPC, SUBJECT OFFICER #1 first stated that he entered COMPLAINANT's to help him gather clothing. This is nonsensical as the BWC footage clearly shows that complainant reentered his apartment to provide ID at the officers' request. COMPLAINANT was not yet under arrest at the time the subject officers entered his home, and thereby had no need to collect clothing or other personal effects. SUBJECT OFFICER #1 then stated that he entered complainant's home to make sure that complainant wouldn't harm him. However, nothing in the BWC footage suggests that complainant—who had called the police in the first instance—was acting in a threatening manner towards the officers at any time. In fact, COMPLAINANT remained calm and collected throughout his interactions with the officers, up until his arrest. Moreover, the footage shows that SUBJECT OFFICER #1 followed complainant into his apartment in the dark, not even bothering to turn on a light until complainant did so, contradicting any claim that he feared for his safety.

In his interview with OPC, SUBJECT OFFICER #2 stated that he believed he was responding to an assault call, and that he thereby entered complainant's apartment because he was "conducting an investigation." In the BWC footage of the incident, immediately after complainant yelled to the officers to "Go out in the hall," SUBJECT OFFICER #2 replied that he didn't need permission to enter because the officers were "investigating." However, in his later interview, SUBJECT OFFICER #2 admitted that he was not looking for any evidence at the time and could not otherwise articulate why he would need to enter complainant's home. Moreover, any "investigation" of the assault for which COMPLAINANT was arrested, would reasonably be limited to the hallway of the building where all three witnesses agreed the "push" occurred.

In summary, neither subject officer was able to provide "specific and articulable facts" supporting a "reasonable belief" that complainant posed a danger to himself or others, or that there was a "compelling need" to enter complainant's apartment as part of an investigation.

Based on the totality of the circumstances, the subject officers unlawfully entered complainant's home, without a warrant, consent, or a reasonable belief in the presence of exigent circumstances, thereby harassing complainant in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25.

***2. SUBJECT OFFICER #1 Harassed Complainant by Unlawfully Arresting Him Without a Warrant, or Exigent Circumstances.***

D.C. Code §23-58 states that, to conduct an arrest for a misdemeanor offense, a police officer must have either witnessed the misdemeanor occurring, or obtain a warrant for arrest. There are, however, certain statutory exceptions that would allow for a warrantless arrest even

where the crime was not witnessed. Pursuant to D.C. Code §22-404, simple assault is a misdemeanor offense, punishable by up to six months in prison, a \$1000 fine, or both. The only statutory exception for a warrantless arrest for simple assault occurs where the officer has probable cause to believe that the individual has committed or is about to commit simple assault *and*, unless immediately arrested, the suspect may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence.

It is clear from the BWC footage, and SUBJECT OFFICER #1's own statements to OPC, that he did not witness COMPLAINANT committing simple assault. The subject officer arrived on the scene only after the man and woman had been allegedly forced out of the building. Nor did SUBJECT OFFICER #1 obtain a warrant for complainant's arrest.

Therefore, in order to conduct a warrantless arrest, SUBJECT OFFICER #1 would need probable cause to show that complainant had, in fact, committed simple assault *and* was likely to flee the scene and not be apprehended, cause immediate injury to others, or tamper or destroy evidence. In his initial statements to SUBJECT OFFICER #1 at his apartment door, COMPLAINANT admitted that he had "pushed" the man and woman out of the apartment building because they were repeat trespassers who were loudly knocking on neighbor's doors in the very early morning hours. The man and woman, who were already outside the building at the time the officers arrived, also alleged that complainant had pushed each of them. Thereby, it may have been reasonable for SUBJECT OFFICER #1 to conclude that a simple assault had occurred.

However, SUBJECT OFFICER #1 was unable to articulate any facts to support probable cause that complainant was a flight risk, posed any danger or had reason to tamper with or destroy evidence. 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." *Perkins v. United States*, 936 A.2d 303, 306 (D.C. 2007). Probable cause is measured by the totality of the circumstances and "must be supported by more than mere suspicion." *Perkins* at 306 (D.C. 2007) (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003).

First, it is patently unreasonable that COMPLAINANT posed a flight risk. Complainant himself placed the 911 call to the police, requesting their assistance. When police arrived at the scene, complainant was asleep in his apartment, having told the dispatcher that he planned to go to bed and that the police should not wake him. Once awoken, complainant was calm and collected in all of his interactions. He arrived at the door shoeless, in his pajamas and told the police that he had lived in the building for more than 40 years with his now-elderly mother, and

was also the property manager. None of these facts support a reasonable belief that COMPLAINANT posed a flight risk from his longtime home, and source of income, simply to avoid an arrest for simple assault.

Second, while SUBJECT OFFICER #1 told OPC that he believed complainant posed some danger to him, nothing in the BWC footage reasonably supports that belief. Again, COMPLAINANT came to the door of his apartment in what appeared to be pajamas, without shoes, obviously haven been awoken by the police. He did not have a weapon, nor did he act in a violent or erratic manner. The idea that complainant posed a risk of bodily harm to three armed MPD officers is nonsensical. Nor is it reasonable to conclude that COMPLAINANT was likely to commit any future assault against the man and woman. When the officers arrived at the scene, both had been leaving the apartment building and gave no indication that they planned to return.

Third, complainant was charged with simple assault based on his, and the man and woman's, statements that he had "pushed" them. It is unclear what "evidence" would have existed of this crime that complainant could have disposed of or destroyed. SUBJECT OFFICER #1 never asked complainant whether any weapons had been involved in the altercation, despite the man and woman's statements that COMPLAINANT had a "stick."

Based on the totality of the circumstances, SUBJECT OFFICER #1's arrest of complainant was unlawful and unreasonable, and thereby harassed the complainant in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

[Remainder of page is intentionally left blank]

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:</b> Harassment by Unlawfully Entering Home	Sustained
<b>Allegation 2:</b> Harassment by Unlawful Arrest	Sustained

SUBJECT OFFICER #2

<b>Allegation 1:</b> Harassment by Unlawfully Entering Home	Sustained
---	-----------

Submitted on April 9, 2020

*f*

---

Meaghan Hannan Davant  
Complaint Examiner