

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	19-0261
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment by Unlawful Handcuffing
<b>Allegation 2:</b>	Harassment by Unlawful Search of Complainant's Person
<b>Complaint Examiner:</b>	Meaghan Hannan Davant
<b>Merits Determination Date:</b>	February 7, 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 February 1, 2019 alleging that, on January 31, 2019, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #2, harassed him by unlawfully placing him in handcuffs. COMPLAINANT further alleged that SUBJECT OFFICER #1 harassed him by unlawfully searching him.<sup>1</sup>

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<sup>1</sup> COMPLAINANT further alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by unlawfully stopping him; that SUBJECT OFFICER #2 used unnecessary or excessive force against him by applying his handcuffs too tight; and that SUBJECT OFFICER #1 failed to provide his badge number when so requested. Pursuant to D.C. Code§ 5-1108 (I), on December 2, 2019, a member of the Police Complaints Board dismissed these allegations, concurring with the determination of 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, the objections submitted by the subject officers on December 19, 2019, 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 on December 19, 2019, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 31, 2019 at approximately 5:30 p.m., COMPLAINANT was walking home from a bar where he had two drinks after work. As he passed A DISTRICT POLICE STATION, he saw two officers exiting their vehicle. COMPLAINANT continued to walk at the same pace and in the same direction.
2. The officers approached the complainant and stopped him at or around the BLOCK OF A STREET IN NW, WASHINGTON, DC. SUBJECT OFFICER #2 called, "Hey, come here." COMPLAINANT immediately held up his hands in a gesture of surrender, palms facing the subject officers at chest height. COMPLAINANT took a step backwards but, realizing there was one officer on either side of him, instead took a step forward toward SUBJECT OFFICER #2. Complainant's demeanor was relatively calm. COMPLAINANT seemed annoyed at being stopped and cautiously afraid of the officers but did not appear intoxicated and nothing in his demeanor or physical movements suggested he was violent or likely to flee the scene.
3. Within seconds of his taking a step towards SUBJECT OFFICER #2, the officer grabbed complainant by his left arm. Complainant responded with surprise at the sudden motion and tried to jerk his arm away. "First of all, don't touch me," complainant said, in a tone that was somewhat angry but, again, not threatening. COMPLAINANT continued, that he was "not doing nothing."
4. SUBJECT OFFICER #1 then grabbed complainant's right arm and stated angrily, "We said stop."

5. COMPLAINANT recognized SUBJECT OFFICER #1 from a prior encounter and turned to him, stating, "Hold on bro. I know who you are," to which the officer replied, "I don't know who you are."
6. The two officers then forcibly escorted COMPLAINANT to their patrol car, parked along the sidewalk. During this process, SUBJECT OFFICER #2 repeatedly stated, "come here, come here," and to "step over to the car," to which complainant responded, "I have rights."
7. The subject officers told complainant to put his hands on the patrol car. COMPLAINANT refused, asking why he was being stopped. The officers reiterated their request, without answering COMPLAINANT's questions as to the purpose of the stop.
8. SUBJECT OFFICER #1 told complainant that the subject officers would be forced to handcuff him if he didn't comply. COMPLAINANT responded that the officers could not handcuff him if he had done nothing wrong.
9. Complainant asked again why he was being stopped, to which SUBJECT OFFICER #1 responded that he matched the description of "their lookout." COMPLAINANT immediately asked, "what's the description?" He received no response.
10. SUBJECT OFFICER #1 next asked complainant for identification. Complainant responded, "First of all, you're that gay ass cop that searched my dick." In his interview with OPC, COMPLAINANT later explained that SUBJECT OFFICER #1 had stopped complainant and accused him of selling crack when he was 18. Complainant further stated that the stop had traumatized him because SUBJECT OFFICER #1 handcuffed him and shined a flashlight on his penis while searching him, and because complainant believed that SUBJECT OFFICER #1 was gay. Complainant also stated that he knew SUBJECT OFFICER #1 from the neighborhood and believed that the officer often stopped or harassed people for no reason.
11. Without acknowledging complainant's comments, SUBJECT OFFICER #1 again asked COMPLAINANT to pull out his ID. Complainant responded, "If you get the fuck off me I can. Like, are you gonna let me go in my pocket?"
12. SUBJECT OFFICER #2 then asked where complainant's wallet was located, to which complainant responded, "Can you please let me go in my back pocket?" SUBJECT

OFFICER #2 refused, telling complainant, “put your hands on the car. I’ll grab your wallet out.”

13. COMPLAINANT again began to argue, but SUBJECT OFFICER #2 yelled over to him to put his hands on the patrol car. Complainant called out to bystanders asking them to record the incident.
14. SUBJECT OFFICER #1 then held COMPLAINANT’s right arm while SUBJECT OFFICER #2 placed complainant in handcuffs. This occurred approximately 1 minute into the stop, based on a review of the body worn camera (BWC) footage of the incident.
15. After COMPLAINANT was placed in handcuffs, and without asking or receiving permission, SUBJECT OFFICER #1 removed complainant’s wallet from his pocket.
16. Over the next minute, complainant repeatedly struggled against the officers, swearing and arguing that the officers couldn’t “do this” and that he hadn’t done anything wrong. On the BWC footage, complainant can be heard saying, that he “never said I wouldn’t show you ID.”
17. SUBJECT OFFICER #2 stayed with complainant while SUBJECT OFFICER #1 returned to the patrol car to run complainant’s information through the system. During this process, complainant repeatedly asked SUBJECT OFFICER #2 for a description of the “lookout.” SUBJECT OFFICER #2 repeatedly refused to provide any description, only stating that complainant “fit” said description of a man with an outstanding warrant.
18. SUBJECT OFFICER #2 and complainant continued to argue back and forth. SUBJECT OFFICER #2 stated that COMPLAINANT did not immediately stop when the officers initially approached him, to which complainant responded he was “not trying to go anywhere.” SUBJECT OFFICER #2 then said that COMPLAINANT did not comply with the subject officer’s orders when they brought him to the police vehicle, to which complainant again demanded a physical description of the man they were looking for, asking “what is he, a black man with a beard...in a hoodie?”
19. SUBJECT OFFICER #2 replied that complainant had nothing to worry about if had done nothing wrong. To this, COMPLAINANT responded with incredulity, stating “you...got me in some tight-ass handcuffs like I’m a run.”

20. SUBJECT OFFICER #1 rejoined complainant and the other officer and COMPLAINANT immediately began questioning him about the status of the stop, asking “What’s up? What I got? I got a warrant?” And then, “What I gonna get, a fine? A Ticket? ...Can you please let me out so I can go home and rest?” At this point, it had been more than five minutes since COMPLAINANT had been stopped, according to the timestamp on the BWC footage, and he had yet to be given any further explanation as to why he was the subject of the stop.
21. SUBJECT OFFICER #2 stepped away to call the subject officers’ Lieutenant, who advised the subject officers to take a report for the stop.
22. Several minutes later, without apology or explanation, SUBJECT OFFICER #2 removed COMPLAINANT’s handcuffs and complainant walked away.

#### **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 Placing Him in Handcuffs.***

Under D.C. law, “officers with minimal information are permitted to approach people to investigate their hunches ... [b]ut approached individuals are free to refuse to speak with officers or avoid them altogether.” Posey v. United States, 201 A.3d 1198, 1202 (D.C. 2019) (internal citations omitted) citing Brown v. United States, 590 A.2d 1019, 1018 (D.C. 1991) (“Citizens have no legal obligation to talk to police.”). “Officers must then continue to establish facts... and build on their hunches by other means.” Id.

During the course of an investigatory, or Terry (Terry v. Ohio, 392 U.S. 1 (1968)) stop, “the measure of the scope of permissible police action ... 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, 682 (1985). Police use of handcuffs or other restraints is one consideration “in weighing whether a detention for investigation crossed the line into the realm of arrest.” Id. at 1128. “Courts have routinely held the use of handcuffs in the Terry context to be reasonable in situations where suspects attempted to resist police, made furtive gestures, ignored police commands, attempted to flee, or otherwise frustrated police inquiry.” Womack v. United States, 673 A.2d 603, 610 (D.C. 1996) (emphasis added) citing United States v. Taylor, 716 F.2d 701, 709 (9th Cir. 1983); United States v. Purry, 178 U.S.App.D.C. 139, 141-42 (1976). “Other courts have likewise held that the use of handcuffs was justified where... the crime of which the defendant was suspected was a violent one and the defendant was reported to have been armed,” (emphasis added) or “where it was reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee.” Id.

MPD General Order 304.10, Field Contacts, Stops, and Protective Pat Downs, further provides that MPD “Officers shall use the least coercive means necessary to conduct a stop.” Here, the subject officers approached COMPLAINANT based on their determination that complainant fit the physical description of their “lookout,” or a man subject to an outstanding warrant for arrest. COMPLAINANT had no reason to believe he was about to be stopped by the police and was thereby justifiably surprised when the subject officers suddenly exited their

vehicle and SUBJECT OFFICER #2 called out, “Hey, come here.” COMPLAINANT was in fact, well within his rights to “refuse to speak with officers or avoid them altogether.” Posey, 201 A.3d at 1202, particularly where he had been given no information as to why he was being stopped. COMPLAINANT nonetheless stopped briefly and immediately held up his hands in a gesture of surrender, hands away from his body, palms facing the subject officers, as if to show that he meant no harm and was not about to reach for a weapon.

COMPLAINANT then took a single step backwards but, realizing there was one officer on either side of him, instead took a step forward toward SUBJECT OFFICER #2, who had made the initial command to “come here.” Although he appeared annoyed and frustrated at being stopped, and seemed cautious in the officers’ presence, nothing in complainant’s demeanor suggested that he was intoxicated or likely to act in an unpredictable manner. As clearly seen in the BWC footage of the interaction, prior to SUBJECT OFFICER #2 grabbing his right arm, COMPLAINANT never “attempted to resist police, made furtive gestures, ignored police commands, attempted to flee, or otherwise frustrated police inquiry,” nor did his demeanor warrant any force or restraint “reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee.” See Womack, *supra*. Moreover, the warrant in the WALES system clearly showed that suspect individual was wanted for destruction of property—not any violent crime—and was *not* known to carry any weapons.

Absent any of these grounds that might warrant physical restraint, without any further verbal commands or explanation and within *seconds* of their initial approach –SUBJECT OFFICER #2 nonetheless grabbed COMPLAINANT by his left arm, at the very least violating the General Order 304.10 mandate that “Officers shall use the least coercive means necessary to conduct a stop.”

Only *after* being grabbed by the officer, complainant reasonably responded with surprise and tried to jerk his arm away. “First of all, don’t touch me,” complainant said, in a tone that was somewhat angry but, again, not threatening. COMPLAINANT continued, that he was “not doing nothing.” Seconds later, SUBJECT OFFICER #1 grabbed complainant’s other arm and roughly stated, “We said stop.” The subject officers then forcibly led COMPLAINANT to their patrol car. Complainant, still completely in the dark, stated, “I have rights.” The officers continued to physically restrain Complainant, ignoring his multiple requests for more information as to why he was being stopped and his reiteration of his rights. Complainant repeatedly asked the subject officers for a physical description of “their lookout,” but received no response.

SUBJECT OFFICER #1 next asked complainant to show his identification, to which COMPLAINANT responded, “First of all, you’re that gay ass cop that searched my dick.” In his

interview with OPC, COMPLAINANT later explained that SUBJECT OFFICER #1 had stopped complainant and accused him of selling crack when he was 18. Complainant further stated that the stop had traumatized him because SUBJECT OFFICER #1 handcuffed him and shined a flashlight on his penis while searching him. Complainant also stated that he knew SUBJECT OFFICER #1 from the neighborhood and believed that the officer often stopped or harassed people for no reason. Whether or not COMPLAINANT's information was accurate, his initial hesitation was, at the very least, understandable.

Moreover, General Order 304.10, Part II, B, 4. c., *Rights of Stopped Individuals* clearly states that a "stopped individual shall not be compelled to answer questions or produce identification for examination by the member." Nonetheless, complainant never refused to produce identification, as the subject officers claimed. As the BWC footage shows, when SUBJECT OFFICER #1 asked COMPLAINANT to pull out his ID for a second time, complainant responded, "If you get the fuck off me I can. Like, are you gonna let me go in my pocket?" SUBJECT OFFICER #2 then asked where complainant's wallet was located, to which complainant responded, "Can you please let me go in my back pocket?" SUBJECT OFFICER #2 refused, telling complainant, "put your hands on the car. I'll grab your wallet out." Complainant, feeling that his rights were being violated, called out to bystanders to ask them to record the incident – hardly the conduct of someone about to commit an act of violence or aggression, requiring restraint—nor that of someone about to attempt to flee.

Approximately one minute into the stop, as confirmed by BWC footage—and before complainant was given any information as to why he had been stopped in the first place—SUBJECT OFFICER #1 held COMPLAINANT's arms and SUBJECT OFFICER #2 placed him in handcuffs. In his interview with OPC, SUBJECT OFFICER #1 stated that complainant was handcuffed because he was not, "complying with their commands" and for "everyone's safety." SUBJECT OFFICER #2 similar stated that COMPLAINANT was not compliant and could have potentially fled. Both of these grounds—COMPLAINANT's failure to comply with police orders, and the likelihood that he might flee the scene—are directly refuted by the BWC footage.

Based on the totality of the circumstances, the subject officers unlawfully and unreasonably placed COMPLAINANT in handcuffs, , 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 Conducting an Unlawful Search.***

MPD General Order 304.10 (III)(B)(4)(c) states, in relevant part, that an officer may direct questions to a detained person to obtain their name, address, and an explanation

concerning their presence and conduct, however, the detained person shall not be compelled to answer questions or provide identification for examination by the officer (emphasis added). Section (III)(B)(4)(d) of the General Order further states that, “[n]either refusal to answer questions *nor to produce identification by itself* establishes probable cause to arrest.”

In his interview with OPC, SUBJECT OFFICER #1 admitted that he removed COMPLAINANT’s wallet from his pocket in order to access his identification. The subject officer never asked for consent, nor did complainant voluntarily give it. In fact, complainant clearly offered to remove his wallet from his own pocket and present his ID to the subject officers, and later stated that he had never refused to show ID. Asked why he removed the wallet, SUBJECT OFFICER #1 stated that COMPLAINANT was not providing his identification. “He was not compliant, and he was refusing to give his ID.” SUBJECT OFFICER #1 further added, “he was already handcuffed at that point, so I had to retrieve it from his pocket. At no point did SUBJECT OFFICER #1 ask complainant to provide his name and address, as specifically required by the General Order. Instead, the subject officer physically removed COMPLAINANT’s identification from his pocket, in direct violation of 304.10 (III)(B)(4)(c).

SUBJECT OFFICER #1’s actions further constituted a search of complainant’s person, without a warrant, consent or probable cause that might otherwise justify such action. The Fourth Amendment prohibits law enforcement from conducting “unreasonable searches and seizures,” and “this protection extends to a brief investigatory stop of persons.” *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.*

Complainant was never required by law to show the subject officers his identification and thereby, even if he *had* refused to do so, it would not have constituted probable cause for a search. Nor did SUBJECT OFFICER #1 have any reason to expect that COMPLAINANT was armed or dangerous. In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court found that “[w]here a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a *reasonable search* for weapons of the person *believed by him to be armed and dangerous* regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed.” *Id.* at 20-27 (emphasis added). From the beginning of his interactions with the subject officers, as clearly shown by the BWC footage, complainant never exhibited any behavior, nor made any verbal comments, that might suggest he was armed or dangerous. In fact, when he was first approached, he held up his hands in a gesture of surrender. Moreover, the suspect of interest for whom the warrant was issued was not believed to be armed.

Based on the totality of the circumstances, SUBJECT OFFICER #1's search 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.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:</b> Harassment by Unlawful Handcuffing	Sustained
<b>Allegation 2:</b> Harassment by Unlawful Search of Complainant's Person	Sustained

SUBJECT OFFICER #2

<b>Allegation 1:</b> Harassment by Unlawful Handcuffing	Sustained
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Submitted on February 7, 2020

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Meaghan Hannan Davant  
Complaint Examiner