

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	19-0550
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment (Entry into Car)
Allegation 2:	Harassment (Prolonged Detention and Resulting Search)
Complaint Examiner:	Adav Noti
Merits Determination Date:	February 10, 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

COMPLAINANT alleges that on June 8, 2019, SUBJECT OFFICER harassed the Complainant by unlawfully entering and searching his car and by detaining him for extended period of time without cause.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, 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.

¹ The Complainant also alleged the Subject Officer harassed him when he stopped his vehicle, and discriminated against him based on the appearance of his vehicle. On November 22, 2019, a member of the Police Complaints Board dismissed these allegations pursuant to D.C. Code § 5-1108(1), concurring with the determination made by OPC's Executive Director.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and exhibits (including body-worn camera videos), the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 8, 2019, the Subject Officer and his partner pulled over the car the Complainant was driving in Northeast DC on suspicion of a window-tint violation.
2. The Subject Officer and his partner got out of their car and approached the Complainant's car on foot, with the Subject Officer on the driver's side and his partner on the passenger side.
3. The Subject Officer asked for the Complainant's driver's license, registration, and insurance, which the Complainant promptly provided. The Subject Officer asked the Complainant to step out of the car, which he did.
4. The Subject Officer asked for consent to search the car. The Complainant refused. With the car door still open from the Complainant having stepped out, the Subject Officer leaned into the car through the open door and shined his flashlight around the interior.
5. The Subject Officer returned the Complainant's registration and insurance to him but retained his driver's license, stating that the traffic stop was not yet concluded. The Subject Officer then returned to his own car and, for roughly 20 minutes, wrote notes in his notebook and ticket book and looked through various documents.
6. The Subject Officer stated to another officer during this time that he thought the Complainant was not the person pictured on the driver's license, but rather a different person with the same last name whom the Subject Officer had encountered previously. The Subject Officer pulled up a picture of the other person on his computer during this time to compare his picture with the Complainant's driver's license, but the Subject Officer did not conduct a computer search of the Complainant's driver's license or license plates.
7. The Subject Officer stated to another officer that a K-9 unit was on its way to the scene.
8. Roughly 25 minutes into the traffic stop, the K-9 unit arrived. The dog's handler walked the dog around the Complainant's car. According to the handler, the dog gave a positive alert at the rear driver's side door of the Complainant's car.²
9. Officers searched the interior of the car and found nothing unlawful.

² The record evidence is inconsistent as to whether the dog was trained to detect guns or drugs.

10. About 20 minutes later, roughly 45 minutes into the traffic stop, the Subject Officer and other officer — at a sergeant’s urging — for the first time ran the Complainant’s license plates and driver’s license through a computer search to determine whether the Complainant had provided a false identity. Both searches came back consistent with the Complainant being who he said he was.
11. About 50 minutes into the stop, after looking more closely at the driver’s license search results, the other officer noted that the person with the Complainant’s last name — the person whom the Subject Officer had suspected was the Complainant’s true identity — was listed in the database as a known associate of the Complainant with a distinct police department identification number, and therefore was clearly a different person.
12. Officers asked the Complainant for permission to search the car’s trunk, which was locked. The Complainant refused. Officers told the Complainant the result of the dog sniff was enough to impound the Complainant’s car for a full search, and they threatened to do so if the Complainant did not provide the trunk key. The Complainant grudgingly provided that key to avoid having his car impounded. The Subject Officer extensively searched the trunk, finding nothing unlawful.
13. Approximately 10 minutes later, roughly one hour and five minutes after initiating the traffic stop, the Subject Officer returned the Complainant’s driver’s license and allowed him to drive away.
14. At no time did the Subject Officer test the window tints of the Complainant’s car.

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 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.

The Complaint Examiner concludes the Subject Officer harassed the Complainant by unlawfully entering his car at the beginning of the traffic stop to search it, as well as by unlawfully prolonging the traffic stop to wait for a K-9 unit.

First, the Complainant explicitly refused to consent to the Subject Officer’s search of the car. Nonetheless, the Subject Officer leaned inside the car while its door was open and shined his flashlight around the interior. It is axiomatic that a police officer cannot perform a warrantless consent search in the absence of “unequivocal and specific” consent. *See Judd v. United States*, 190 F. 2d 649 (D.C. Cir. 1951) (citing *Karwicki v. United States*, 55 F.2d 225 (4th Cir. 1932)). The Subject Officer has not suggested he had probable cause to search the car without consent at this stage of the traffic stop. Nor did he have any safety-based reason to do so, given that the Complainant — at the Subject Officer’s request — had already stepped outside the car. Thus, by entering the Complainant’s car without consent or cause, the Subject Officer recklessly infringed on the Complainant’s rights, which constitutes harassment under the statutes and regulations noted above.

Second, the Subject Officer unlawfully prolonged the Complainant’s traffic stop and detention. Because a traffic stop is a seizure that requires reasonable, articulable suspicion of lawbreaking, the stop may last only as long as necessary to investigate or address the suspicion of illegal activity. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015); *West v. United States*, 100 A.3d 1076, 1084 (D.C. 2014) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). An officer may not try to bootstrap reasonable, articulable suspicion by extending the stop to await the arrival of a detection dog to provide such suspicion. *Rodriguez*, 135 S. Ct. at 1614-16.

Here, the basis for the traffic stop was a potential window-tint violation, but the Subject Officer took no timely steps to investigate that violation. Indeed, he never tested the window tints at all. Instead, the Subject Officer admitted he prolonged the detention until the dog arrived. *See West*, 100 A.3d at 1084 (“A seizure that is justified solely by the interest in issuing a . . . ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.”) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

This was impermissible. *See id.* (noting that police actions that “measurably extend the duration of the stop” serve to “convert the encounter into something other than a lawful seizure”) (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)); *Rodriguez*, 135 S. Ct. at 1616 (“The critical question . . . [is] whether conducting the sniff prolongs — i.e., adds time to — the stop.”) (internal quotation marks omitted).

The Subject Officer suggested during his OPC interview that he had reasonable, articulable suspicion to prolong the investigative traffic stop because of his belief that the Complainant was not who he claimed to be. Even assuming for the sake of argument that this could have been grounds for extending the Complainant’s detention,³ the Subject Officer’s actions were still improper because he did very little to investigate his suspicion for forty minutes, most of which he spent sitting in his car, waiting for the K-9 unit to arrive. *See West*, 100 A.3d at 1084 (“To assess whether a detention is too long in duration to be justified as an investigative stop, it is appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.”) (citing *United States v. Sharpe*, 470 U.S. 675, 686 (1985)) (internal quotation marks omitted). It was only after being prompted by a sergeant to run the Complainant’s driver’s license and license plates that the Subject Officer began to seriously investigate his false-identity suspicion, at which point it was disproved almost immediately. *See id.* (“In the context of traffic stops, police diligence generally involves requesting a driver's license and vehicle registration, running a computer check, and issuing a ticket.”) (internal quotation marks and alterations omitted). And yet, even after dispelling the underlying concern, the Subject Officer *still* continued the detention for another 15 minutes to investigate the (apparently incorrect) dog alert — an alert from a dog sniff that was the product of the unlawfully extended detention and therefore led to a search that never should have happened in the first place.

For these reasons, the Complaint Examiner concludes that the Subject Officer harassed the Complainant by unlawfully detaining him far beyond the time needed to investigate any of the Subject Officer’s suspicions about the car’s window tints and the Complainant’s driver’s license.

³ It is doubtful the Subject Officer’s suspicions about the Complainant’s identity could have justified the Subject Officer’s actions here. “[T]he scope of the detention must be carefully tailored to its underlying justification,” *West*, 100 A.3d at 1084 (quoting *Royer*), and no matter how well-trained the search dog was, it was not going to be able to determine whether the Complainant was the person pictured on his driver’s license.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER:

Allegation 1: Harassment (Entry into Car)	Sustained
Allegation 2: Harassment (Prolonged Detention and Resulting Search)	Sustained

Submitted on February 10, 2020.

ADAV NOTI
Complaint Examiner