

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	19-0732
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1</b>	Harassment (Search) – SUBJECT OFFICER #1
<b>Allegation 2</b>	Harassment (Prolonged detention in handcuffs) – SUBJECT OFFICER #1 and SUBJECT OFFICER #2
<b>Allegation 3</b>	Harassment (Failure to Identify) – SUBJECT OFFICER #1 and SUBJECT OFFICER #2
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	March 1, 2021

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the 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 that section. 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, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on August 27, 2020. Complainant alleged that on June 6, 2019, Metropolitan Police Department Officer SUBJECT OFFICER #1, harassed him by unlawfully searching him and that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by unlawfully detaining him in handcuffs for a prolonged period. In addition, Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 failed to provide their names and badge numbers when requested to do so by the complainant.<sup>1</sup>

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<sup>1</sup> Complainant also alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 used unnecessary or excessive force against him when SUBJECT OFFICER #1 pointed his gun at him and when SUBJECT OFFICER #2 forcibly pulled him from the vehicle and placed a knee on his shoulder. In addition, Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 and WITNESS OFFICER #1 harassed him by unlawfully stopping him and unlawfully searching his vehicle. Pursuant to D.C. Code § 5-1108(1) on December 18, 2020, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

Specifically, Complainant stated that on June 6, 2019, at approximately 5:12 p.m., he was on A STREET IN SW, WASHINGTON, DC sitting inside his car when multiple MPD officers responded to the location. SUBJECT OFFICER #1 approached the complainant and requested that he get out of the car without explanation. Complainant responded by saying, "For what?" SUBJECT OFFICER #1 asked COMPLAINANT two or three times to get out of the car and he did not comply. He was then pulled out of the vehicle and placed in handcuffs. Complainant alleged that he was searched without his consent. He requested the names and badge numbers of Subject Officers, but they refused to provide their information. Complainant further alleged that he was detained in handcuffs for a long period of time even though he did not do anything wrong and was not arrested.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded on June 6, 2019 by Subject Officers, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, and WITNESS OFFICER #1, the objections submitted by the Subject Officers on January 22, 2021 (Subject Officers' Objections), and OPC's response to the objections dated January 26, 2021, 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.

Subject Officer's representative raises a number of allegations in the Objections as to lack of investigative integrity relating to the OPC's ROI. Except that the details of the incident are clearly on display in the BWC footage of the officers and thus interviews of additional officers or searching for additional evidence or witnesses is unnecessary to determine the facts at issue here (the argument is also counter to the argument made by the union representative accompanying WITNESS OFFICER #1 to his interview with OPC where he kept questioning the need for the interview at all given that all the facts are visible in the BWC). Thus, no hearing or negative inference to determine the material facts is necessary.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded on June 6, 2019, by Subject Officers, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4 and WITNESS OFFICER #1, the Subject Officers Objections, and OPC's response to the objections dated January 26, 2021, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 5:17 p.m. on June 6, 2019, WITNESS OFFICER #1 was approached by a female driving a black SUV who informed him that some people were shooting dice and other activities in front of her residence at AN ADDRESS IN SW, WASHINGTON, DC.
2. WITNESS OFFICER #1 radioed for a MPD UNIT to respond to the location for subjects shooting dice.

3. As WITNESS OFFICER #1 left for the site, he stated, "There can always be a gun at a dice game." Into his radio he said, "meet up there in case we get a runner" and "watch if he grips his waist band."
4. At approximately 5:20 p.m., SUBJECT OFFICER #1 approached Complainant's vehicle on A STREET IN SW, WASHINGTON, DC in which sat Complainant and a passenger. As he walked toward the vehicle, SUBJECT OFFICER #1 asked, "What's goin on fellas?" immediately followed by his beginning to open the car door with the statement, "do me a favor and step out of the car for a minute."
5. The driver asked why, but SUBJECT OFFICER #1 yelled a couple more times to get out of the car.
6. Driver's right arm was resting on the middle console and his other hand was on the steering wheel and in sight the entire time. As he turned his head toward Subject Officer, his right arm slid slightly forward and his left arm slid slightly down the steering wheel, but the movements were slow and it looked as if Complainant might be moving to get out of the car.
7. At that moment, SUBJECT OFFICER #1 yelled, "Don't you fucking do anything stupid, get out of the car right now" and pointed his gun at Complainant. At the same time, SUBJECT OFFICER #2 who had approached during the interaction, pulled Complainant from the vehicle onto the ground and handcuffed him.
8. From SUBJECT OFFICER #1's approach of the vehicle to the time Complainant was pulled out of the vehicle approximately twenty seconds passed. SUBJECT OFFICER #2 handcuffed him approximately 20 seconds after that.
9. Upon Complainant being handcuffed, SUBJECT OFFICER #1 told SUBJECT OFFICER #2 and another officer to "see if he's got anything on him" and explained that Complainant was reaching. SUBJECT OFFICER #2 and the other officer responded affirmatively and did not, thereafter, report finding anything suspicious.
10. Meanwhile, SUBJECT OFFICER #1 searched the front seat of the vehicle.
11. Complainant stated "you guys broke my jaw . . . I gotta get y'all names now." The officers did not provide their names.
12. When SUBJECT OFFICER #1 finished he search of the driver's side of the vehicle, he turned to Complainant and asked what was in the car.
13. Complainant then asked SUBJECT OFFICER #1 "Can I get your name, Sir?" SUBJECT OFFICER #1 responded, "No. We're not... right now you're not in a position to ask me questions, I'm asking you questions. When we get done, you can ask as many questions as you want. Right now, I want you to follow orders, which you didn't before."
14. SUBJECT OFFICER #1 then reached into Complainant's front pants pockets and removed his cell phone and U.S. currency. SUBJECT OFFICER #1 did not ask for consent.

15. As SUBJECT OFFICER #1 reached into Complainant's pockets, Complainant stated, "I do not consent to searches."
16. In response, SUBJECT OFFICER #1 told Complainant, "you don't have that right. You're in handcuffs. Stop looking for answers. Tell me or you're going to jail. Give me your info or you're going to jail." When Complainant asked why he would be taken to jail, SUBJECT OFFICER #1 stated, "for not obeying a lawful order."
17. Again, Complainant stated, I don't consent to searches." SUBJECT OFFICER #1 again stated, "You don't have any right to refuse."
18. SUBJECT OFFICER #1 stated, "right now. I need your info." Complainant responded, "My ID is right there" and nodded toward the front seat of the vehicle.
19. SUBJECT OFFICER #1 responded, "No. I need you to give it to me verbally." Complainant then verbally gave it to him and spelled it out. SUBJECT OFFICER #1 then asked Complainant for his social security number, but Complainant said he didn't know it by heart.
20. SUBJECT OFFICER #1 then engaged in a conversation in which SUBJECT OFFICER #1 accused Complainant of reaching and Complainant denying it saying he was only reaching for the door. SUBJECT OFFICER #1 ended the conversation by saying, "I gave you a lawful order" and accused Complainant of having reached "down by your waist."
21. SUBJECT OFFICER #1 then retrieved Complainant's wallet from the vehicle and pulled his identification from the wallet.
22. Approximately 7 minutes from the beginning of the stop, the officers moved Complainant, still handcuffed, from next to the car to the sidewalk. SUBJECT OFFICER #2 stood behind Complainant. Approximately thirteen officers were on scene at this point, a few standing near a small gathering of bystanders, and others seemingly doing nothing except watching what was happening. SUBJECT OFFICER #1 was standing with the passenger who was also still handcuffed and on the sidewalk. In addition, throughout the incident, other officers appeared and left, often on bikes or segways.
23. Complainant told the bystanders to get the officers' names. SUBJECT OFFICER #1 responded, "We'll give you all that!" SUBJECT OFFICER #2 also said to Complainant, "You'll get all that, the board is on the way to treat you."
24. SUBJECT OFFICER #1 said to SUBJECT OFFICER #2, "whole lotta movement" and WITNESS OFFICER #5 replied, "I didn't see it."
25. SUBJECT OFFICER #1 asked Complainant why he would go through all of this. He said that he had given him multiple orders to step out of the car and he didn't do it.
26. Complainant asked SUBJECT OFFICER #2, "why did you slam me like that?" SUBJECT OFFICER #2 replied, "I did not know what you were grabbing for, we're not playing around here and getting shot. You were digging in the seat and did not get out of the car when ordered. The law requires you to get out of the car."

27. Complainant again asked the people standing at a distance to get the officers names and SUBJECT OFFICER #2 said, "he's in handcuffs, he's not getting anybody's name." When Complainant again asked SUBJECT OFFICER #2 for his name, SUBJECT OFFICER #2 responded, "you'll get it in the report."
28. At this point, SUBJECT OFFICER #1 was speaking some distance away to WITNESS OFFICER #1 who showed him the dice and told him that a woman was complaining about guys playing dice in front of her car.
29. A couple minutes later, WITNESS OFFICER #4 tells SUBJECT OFFICER #1 about a shooting incident from 2016 in which Complainant had been the driver of the vehicle, but not the shooter. SUBJECT OFFICER #1 told her, "I'm good now. Not that I wasn't before because he was doing a reaching motion."
30. When SUBJECT OFFICER #1 returned to speak with Complainant, Complainant asked him how long he would be there and subject Officer responded that they were waiting for the K-9. By this point, less than 12 minutes into the stop, the investigation of Complainant had completed, but for the K-9 sniff.
31. Approximately four minutes later, SUBJECT OFFICER #2 told Complainant that EMS was coming to the scene to provide treatment.
32. SUBJECT OFFICER #1 then spoke to WITNESS OFFICER #1 and told him about the previous shooting incident from 2016. He then stated, "I feel fully justified in what I did."
33. Approximately 19 minutes into the stop, Complainant continued to be in handcuffs when a K-9 arrived on scene, conducted a sweep and made a positive hit. Officers then conducted a thorough search of every part of the vehicle, including the engine, and did not find anything.
34. Approximately 24 minutes into the stop, SUBJECT OFFICER #1 told WITNESS OFFICER #3 that the passenger could be released from handcuffs. The passenger was released, but Complainant was not.
35. Approximately 26 minutes into the stop, Complainant was still handcuffed and complained again of injury. SUBJECT OFFICER #1 told him that they had called an ambulance.
36. Approximately 36 minutes into the stop, with Complainant still handcuffed, an EMS truck arrived and advised that an ambulance was coming to do the transport. When the EMS began treating Complainant, SUBJECT OFFICER #2 removed his handcuffs. After treating the laceration on his face, EMS left and Complainant waited for the ambulance to transport him to the hospital. During the interaction with the EMS, SUBJECT OFFICER #2 twice told members of the EMS that Complainant was not under arrest.
37. When the ambulance arrived, WITNESS OFFICER #1 told Complainant he was good to go. Complainant declined WITNESS OFFICER #1's request to give a statement, but asked for the officers' names. WITNESS OFFICER #1 provided him with his card.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and 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. . . .”

##### **A. Harassment**

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 and in the regulations governing OPC 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.”

“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. Search**

The search of Complainant’s pockets here was in violation of the law and internal guidelines of the MPD. The act of reaching into a suspect’s pockets constitutes a search under the Fourth Amendment. *Sibron v. New York*, 392 U.S. 40, 65 (1968). Such a search requires a warrant or an exception to the warrant requirement. *See Katz v. United States*, 389 U.S. 347 (1967); *U.S. v. Scott*, 987 A.2d 1180 (D.C. 2010). Such exceptions include probable cause to believe that contraband or evidence of a crime will be found, consent, and search incident to arrest. *Katz*, 389 U.S. 347.

MPD General Order 304.10 also prohibits an officer during a protective “frisk” from reaching “inside the person’s clothing or pockets unless the officer feels something that may reasonably constitute a weapon or dangerous instrument.” Part III.C.4.(c)(3). A frisk is limited to a “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.” *Id.*

Probable cause to conduct a search requires “facts and circumstances within the officers’ knowledge, and of which they have reasonably trustworthy information, [that] are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed.” *Brinegar v. United States*, 338 U.S. 160 (1949). Here, SUBJECT OFFICER #1 had reasonable suspicion for his instruction to SUBJECT OFFICER #2 to frisk Complainant for weapons on the basis of Complainant’s movements while in the vehicle. He did not, however, provide an

explanation of probable cause to justify escalating the frisk into a search of Complainant's pockets. Nor did SUBJECT OFFICER #2 report feeling anything during the frisk that could reasonably have constituted a weapon or dangerous instrument that would have complied with the "plain-feel" exception as elucidated in MPD General Order. 304.10.

Search incident to arrest does not apply here because Subject Officer did not arrest Complainant and, at the time of reaching into Complainant's pockets he had already told Complainant he was being detained, not arrested, although he threatened Complainant with arrest if Complainant didn't tell him his name. BWC footage of SUBJECT OFFICER #1 dated June 6, 2019 (SUBJECT OFFICER #1 BWC) at 5:48. SUBJECT OFFICER #1's representative claims in the Objections that the search was justified because SUBJECT OFFICER #1 had probable cause to arrest for No Permit and/or Failure to Exhibit a Driver's License. This argument is incorrect and demonstrates a lack of understanding of the law. First, the exception for search subject to arrest, requires that Complainant be put under arrest. *See Katz*, 389 U.S. 347. As already discussed, Complainant was not under arrest here. Second, SUBJECT OFFICER #1 had no probable cause for arresting Complainant for No Permit or Failure to Exhibit a Driver's License because SUBJECT OFFICER #1 never asked for Complainant's driver's license. SUBJECT OFFICER #1 BWC. In fact, SUBJECT OFFICER #1 states during his interview that Complainant was not stopped for a traffic violation, but for a "contact" and was thus not required to have his driver's license with him. Exh. 5 at 15:00. Moreover, if he had been, when Complainant tried to direct SUBJECT OFFICER #1 to his driver's license, SUBJECT OFFICER #1 said he didn't want it and that Complainant needed to verbally provide his identification. SUBJECT OFFICER #1 BWC 6:19. Finally, Subject Officer never, throughout the entire incident nor in his interview with OPC said that he had probable cause to arrest Complainant for No Permit or Failure to Exhibit a Driver's License. SUBJECT OFFICER #1 BWC; Exh. 5.

Subject Officer also did not request or receive consent from Complainant for the search. SUBJECT OFFICER #1 BWC 5:29. Rather, Complainant specifically said multiple times that he did not consent to be searched. SUBJECT OFFICER #1 BWC 5:29, 6:06. Thus, Subject Officer had no warrant, no probable cause, no search incident to arrest, no consent and no other exception to the warrant requirement when he searched Complainant's pants pockets.

Based on SUBJECT OFFICER #1's interaction with Complainant, he seems unfamiliar with the law relating to searches, requiring citizens to identify themselves, and arrest for failure to obey. When Complainant said that he did not consent to be searched, SUBJECT OFFICER #1 told him that he did not have the right to refuse a search because he is in handcuffs. SUBJECT OFFICER #1 BWC 5:29. That statement is incorrect. Simply being in handcuffs does not give Subject Officer the right to search Complainant; only being put under arrest would have. *See Katz v. United States*, 389 U.S. 347 (1967). When Complainant directed Subject Officer to his wallet with his identification in it on the front seat of the vehicle, SUBJECT OFFICER #1 then insisted that Complainant's identification was not sufficient, but that Complainant must tell him his name verbally. SUBJECT OFFICER #1 BWC 6:19. This statement is also false since a detained person is not compelled to answer questions nor produce identification during a stop. MPD General Order 304.10 III.B.4.c.(2). Nonetheless, after Complainant verbally gave Subject Officer his name and spelled it for him, Subject Officer then asked him for his social security number, which is also beyond the scope of information a Subject Officer may request during a

stop. MPD 304.10 III.B.4.c(1) (provides that officers may inquire as to name, address and an explanation concerning their presence or conduct). That this request seems designed to try to determine Complainant's citizenship status, is also prohibited under MPD policy; evidence of citizenship status is not only not something Complainant must provide, but Subject Officer was not even allowed to ask for it. MPD G.O. 201.26 V.A.11.

Moreover, SUBJECT OFFICER #1 repeatedly threatened Complainant with arrest for failure to obey if he did not verbally provide his identification. SUBJECT OFFICER #1 BWC 5:29. His threat was without basis, however. The "failure to obey" law in 18 DCMR § 2000., provides that "[n]o person shall fail or refuse to comply with any lawful order or direction of any police officer . . . invested by law with authority to direct, control, or regulate traffic." (emphasis added). The title of the regulation, "Obedience to Traffic Regulations." combined with the authorized duties of the officers whose orders must be obeyed indicates that the regulation applies only to "lawful orders" as to the direction, control or regulation of traffic. Moreover, MPD Special Order 96.10 states that "only in a situation where the continued refusal creates a flagrant and immediate danger to the violator, others persons or the motoring public, or interferes with ongoing traffic enforcement activities of the police, may an officer consider summary arrest." Here Complainant was not being stopped for a traffic violation nor was he engaging in a continued refusal that would justify arrest under MPD policy. Rather the stop was in relation solely to the report of a dice game. Thus, his refusal to exit the vehicle (of which he was given only seconds to comply) was not an arrestable offense of failure to obey.

Here, SUBJECT OFFICER #1 searched Complainant's pockets in violation of the law and MPD policy. That he not only violated the law in searching Complainant's pockets, but then told him that he did not have the right to not consent, threatened him with arrest if he didn't tell him his name verbally, and asked for his social security number added to the egregiousness of the violation and indicates either an intentional violation of law and MPD policy or an egregiously reckless lack of knowledge of it since he is required under MPD General Order 201.26 to be familiar with the laws and regulations he enforces. Part V.B.1.

Because SUBJECT OFFICER #1 searched Complainant's pockets intentionally, knowingly or recklessly in violation of the law and MPD policy the allegation of harassment is sustained.

#### **b. Prolonged detention in handcuffs**

The Fourth Amendment requires that an investigative seizure "last no longer than is necessary to effectuate the purpose of the stop." *Florida v Royer*, 460 U.S. 491, 500 (1983). Further, "[t]he scope of the detention must be carefully tailored to its underlying justification." *Id.* The detention of a stopped person may continue beyond the normal time for that sort of stop if the officer encounters additional facts that give rise to a reasonable and articulable suspicion that "criminal activity is afoot" beyond the initial reasoning for the stop. *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015).

Here, Subject Officer stopped Complainant because of a neighbor's complaint about dice playing.<sup>2</sup> SUBJECT OFFICER #1 BWC 10:15; BWC footage of WITNESS OFFICER #1 dated June 6, 2019 (WITNESS OFFICER #1 BWC) at 2:19, 6:49, 12:35; BWC footage of WITNESS OFFICER #2 dated June 6, 2019 (WITNESS OFFICER #2 BWC) at 2:43, 4:09. Because Complainant moved in such a way as to possibly suggest he was reaching for a weapon when Subject Officer told him to step out of the vehicle, the Police Complaints Board has already determined that the K-9 sniff and search of his vehicle was legally justified. Exh. 2. Thus, Complainant's detention up to the completion of that search between 19 and 24 minutes into the stop was justified. Complainant continued to be detained, however, in handcuffs for an additional 11 minutes while they waited for the ambulance to arrive to treat Complainant for injuries of which he complained after being physically removed from his vehicle. BWC footage of

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<sup>2</sup> SUBJECT OFFICER #1 claimed in his interview with OPC that the basis for stopping complainant was also a Be On The Lookout (BOLO) for a vehicle similar to Complainant's involved in shootings in the neighborhood. Exh. 5 at 4:14. The evidence does not support this claim, however. During the incident, multiple officers, including SUBJECT OFFICER #1 told Complainant and others on the scene that the basis for the stop was a report of a dice game. SUBJECT OFFICER #1 BWC 10:15; WITNESS OFFICER #1 BWC 2:19, 6:49, 12:35; WITNESS OFFICER #2 BWC 2:43, 4:09. The officers on the scene also spotted dice on the sidewalk. WITNESS OFFICER #2 BWC 4:03. At no time did any officer during the incident mention a BOLO. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #2 BWC; WITNESS OFFICER #1 BWC; WITNESS OFFICER #2 BWC. Nor did SUBJECT OFFICER #2 or WITNESS OFFICER #1 in their interviews with OPC mention a BOLO as a basis for the stop, but they claimed it was for dice. Exh. 9 at 3:35; Exh. 13 at 7:40. Moreover, the Incident Report states the basis for the stop was a report of gambling. Exh. 16. In the dismissal of Complainants' other claims, OPC gave credence to the BOLO on the basis of two officers looking at a photograph, evidently to see if Complainant matched the photograph. It is unclear from the BWC, however, who the boy in the photographs is except Complainant did not match the photo and there is thus no reason that the photo should have been the basis for Complainant's stop or his treatment after noting that he did not match. SUBJECT OFFICER #1 BWC 4:37; WITNESS OFFICER #1 BWC 8:34.

Moreover, although the issue of the basis for the stop and the use of force to remove Complainant has already been dismissed by OPC, Complaint Examiner notes that SUBJECT OFFICER #1's repeated description of Complainant's movements within the vehicle that precipitated his pointing his gun at him and SUBJECT OFFICER #2 removing him from the car are exaggerated compared to Complainant's actions in the vehicle. Complainant's hands are visibly seen throughout Subject Officer's interaction with Complainant while he is in the car and his slight hand movements along the center console and along the steering wheel appear to be those of a person about to get out of a car, consistent with Complainant's claim. SUBJECT OFFICER #1 BWC 2:14-3:30, 7:00; Exh. 3 at 3:08. While Complaint Examiner is not here second guessing SUBJECT OFFICER #1's assessment of the situation in terms of dangerousness, the descriptions SUBJECT OFFICER #1 makes of the actions later during the incident "you reached down by your waist," "whole lotta movement," "he did all those motions" and then later in his interview with OPC, "COMPLAINANT did not show his hands," and "COMPLAINANT was doing movements in the car distinctive with hiding either narcotics or a firearm" call into question the credibility of his testimony as to his recollection of the incident. SUBJECT OFFICER #1 BWC 7:00, 8:16, 9:38, 27:00; Exh. 5 at 6:10. In addition, his statement after learning of Complainant's role as a driver in a shooting in 2016, "I'm good now," suggests that he himself had been wondering if he had overreacted. SUBJECT OFFICER #1 BWC 12:40.

Watching the BWC there is a strong sense that as officers assigned to the MPD UNIT that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 went in assuming they would find a gun. WITNESS OFFICER #1 may have primed the pump when, only moments after he left the woman who had complained about the dice game, he stated, "There can always be a gun at a dice game." He then radioed to his MPD UNIT officers to be on the lookout for motions that would indicate a gun. Approaching a dice game with that mindset, however, conjures the phrase, "when you're a hammer, everything looks like a nail." This level of intensity from the outset and lack of de-escalation when the threat had passed begs the question asked by one of the bystanders, "all this over a dice game?" WITNESS OFFICER #2 BWC 4:13.

SUBJECT OFFICER #2 dated June 6, 2019 (SUBJECT OFFICER #2 BWC) at 23:00-38:17. Such a wait was not investigative, and, therefore, he should no longer have been detained. That additional 11 minutes of detention then was a fourth amendment violation under *Florida v. Royer* and it was made all the more egregious by keeping him in handcuffs.

Moreover, the keeping of Complainant in handcuffs once the safety threat had passed, even during the lawful portion of the detention was a violation of MPD Policy. General Order 304.10 provides that “[An] Officer shall use the least coercive means necessary to effect a stop. The least coercive means, depending on the circumstances, may be a verbal request, an order, or the use of physical force.” Handcuffing in the course of an investigatory stop is permissible “where it [is] 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) (citations omitted).

Given SUBJECT OFFICER #1’ alleged fear of Complainant having a weapon, the initial handcuffing of Complainant while SUBJECT OFFICER #2 frisked Complainant and SUBJECT OFFICER #1 searched the passenger compartment was justified and lawful under *Womack* and MPD General order 304.10. Once the threat was passed, however, the basis for his handcuffing dissipated. While Subject Officers could continue to detain him while officers completed their investigation, such handcuffing was no longer the least coercive means needed to effect the stop per GO 304.10. Seven minutes into the stop Complainant and his passenger were on the sidewalk, each with an officer immediately next to them and there were at least thirteen officers on the scene. SUBJECT OFFICER #1 BWC 9:22; SUBJECT OFFICER #2 BWC 9:17. It is hard to imagine how Complainant could have at that point been a threat to officers’ safety or been a flight risk. Moreover, Complainant was completely calm during the entire detention. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #2 BWC. He never raised his voice, made any threats, or acted in a threatening way. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #2 BWC. In fact, SUBJECT OFFICER #2 stated in his interview with OPC that Complainant did not resist when pulled from the car, but cooperated in his removal and handcuffing. Exh. 9 at 17:30. Moreover, approximately ten minutes into the stop, the officers had run Complainants’ identification through police databases and determined that he did not have any warrants and there was no subsequent discussion as to his arrest for failure to obey or any other charge. SUBJECT OFFICER #1 BWC 12:35; BWC footage of WITNESS OFFICER #4 dated June 6, 2019 (WITNESS OFFICER #4 BWC) at 13:48. The only investigative matter that remained was waiting for the dog sniff. SUBJECT OFFICER #1 BWC 14:31; SUBJECT OFFICER #2 BWC 14:31. As already noted, however, even after the dog sniff and car search was completed, Complainant remained handcuffed.

Although the officers learned during their investigation that Complainant had been involved in a shooting in 2016, they knew that he had been the driver and not the shooter and he had no outstanding issues in relation to that case and no issues since that time. SUBJECT OFFICER #1 BWC 12:35; WITNESS OFFICER #4 BWC 13:48. Moreover, they did not learn this information until at least ten minutes into this stop. This information did not, therefore, provide any basis for a fear of Complainant as a safety threat or a flight risk in the existing circumstances. Thus, based on MPD General Order 304.10 and *Womack*, the detention of Complainant in handcuffs for approximately 25 minutes past any perceived threat from Complainant was unlawful and a violation of MPD policy.

Subject Officers' in their interviews with OPC and in their Objections claim that they are not responsible for Complainant's prolonged detention because they were under the supervision of WITNESS OFFICER #1. Exh. 7 at 6:25; Exh. 9 at 3:27. Except the Subject Officers never engaged in any conversation with WITNESS OFFICER #1 regarding Complainant's continued detention. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #2 BWC; WITNESS OFFICER #1 BWC. And SUBJECT OFFICER #1 told WITNESS OFFICER #3 that he could release the passenger without consulting with WITNESS OFFICER #1 first. SUBJECT OFFICER #1 BWC 23:00. Moreover, when SUBJECT OFFICER #2 finally released Complainant from the handcuffs at the time EMS began to treat him, he also did not ask WITNESS OFFICER #1 first. SUBJECT OFFICER #2 BWC 38:17. Thus, the Subject Officers clearly had their own discretion whether to release Complainant from the handcuffs.

SUBJECT OFFICER #2 in his Objections also claims that if WITNESS OFFICER #1 was not responsible, then he was still subject to SUBJECT OFFICER #1 as to releasing Complainant. Here again, however, SUBJECT OFFICER #2 was the one who had handcuffed Complainant, held the keys, and continued to exercise control over Complainant. SUBJECT OFFICER #2 BWC. He did not check with SUBJECT OFFICER #1 prior to releasing Complainant after the EMS started treating him. SUBJECT OFFICER #2 BWC 38:17. And even if that is not enough to suggest his independent control over Complainant's detention in handcuffs, he should have asked SUBJECT OFFICER #1 if Complainant could be released, especially after seeing the passenger released. SUBJECT OFFICER #1 BWC 23:00; SUBJECT OFFICER #2 BWC 23:00. SUBJECT OFFICER #2 was aware Complainant was not under arrest because SUBJECT OFFICER #1 stated only a few seconds later that the WITNESS OFFICER #1 would complete a 313 for Complainant even though "he's not going." SUBJECT OFFICER #2 BWC 23:11, SUBJECT OFFICER #1 BWC 23:18. SUBJECT OFFICER #2 articulated this knowledge when he twice told the EMS personnel that Complainant was not in custody. SUBJECT OFFICER #2 BWC 45:34. Nonetheless, even though the investigation was complete and SUBJECT OFFICER #2 at that point knew they were not arresting Complainant, he neither released him from handcuffs nor asked if he could do so until EMS arrived and began to treat Complainant. SUBJECT OFFICER #2 BWC 38:17. Thus, SUBJECT OFFICER #2 had sufficient independence to be equally responsible for the unlawfully prolonged detention of Complainant in handcuffs.

Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 should have known that they no longer had a basis to detain Complainant in handcuffs once the alleged threat to safety had passed. At the very least, they should have known that they no longer had a right to keep him detained in handcuffs once their investigation was completed following the search of Complainant's car solely to wait for an ambulance to arrive to treat his injuries. They clearly did know this because SUBJECT OFFICER #1 directed WITNESS OFFICER #3 to release the passenger. SUBJECT OFFICER #1 BWC 23:00. Complainant, at that point, also should have been free to leave if he chose. Because the officers should have and clearly did know better, their action was reckless, if not knowing or intentional.

Thus, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed Complainant by continuing to detain Complainant in handcuffs for over an additional 25 minutes after he had

been frisked, the driver's side compartment of the vehicle was searched, and Complainant had been moved away from the vehicle and kept under observation. Not only that, but the continued forced detention of Complainant for at least eleven minutes after his vehicle had been searched and all investigatory measures related to the stop of Complainant had been completed was a violation regardless of the handcuffs. Complainant's allegation for harassment based on the prolonged detention in handcuffs is therefore sustained.

### **Failure to Identify**

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, No. 1(e) states, "When requested to do so, members shall give their first and last name and badge numbers in a respectful and polite manner."

In the BWC footage Complainant is heard asking for SUBJECT OFFICER #1 and SUBJECT OFFICER #2's names multiple times during the incident and neither officer ever provides them. Complainant's first expression of wanting their names was immediately after being handcuffed and he received no response. SUBJECT OFFICER #1 BWC 3:24; SUBJECT OFFICER #2 BWC 3:19. Subject Officer's representative claims that the situation was "very hectic" and it cannot be credited. The situation was not hectic – both Complainant and his passenger had been handcuffed by this point and bystanders were standing well away and observed by other officers. SUBJECT OFFICER #1 BWC 3:15; SUBJECT OFFICER #2 BWC 3:15. Nonetheless, this first question came in the midst of SUBJECT OFFICER #1 searching Complainant's driver's seat area and he may have been distracted. SUBJECT OFFICER #1 BWC 3:15; SUBJECT OFFICER #2 BWC 3:15. SUBJECT OFFICER #2 had no such excuse. Regardless, even if it is warranted to contend they could not provide their names and badge numbers immediately after Complainant had been handcuffed, they had many more opportunities and still never provided that information.

Complainant again asked SUBJECT OFFICER #1 for his name after SUBJECT OFFICER #1 asked for Complainant's name. SUBJECT OFFICER #1 BWC 4:50. Subject Officer responded, "No. We're not... right now you're not in a position to ask me questions, I'm asking you questions. When we get done, you can ask as many questions as you want. Right now, I want you to follow orders, which you didn't before." *Id.* General Order 201.26 does not provide that an officer must only identify himself when the Officer is amenable it or after a subject has provided his own identification. But even assuming arguendo that it was not an appropriate time for SUBJECT OFFICER #1 to respond, Subject Officer didn't provide the information later, either. SUBJECT OFFICER #1 BWC. In fact, later, when Complainant is standing on the sidewalk away from the car and the officers are just waiting for the K-9, Complainant tells the people watching to get their names, and SUBJECT OFFICER #1 says, "we'll give you all that." SUBJECT OFFICER #1 BWC 8:23. But he never does. SUBJECT OFFICER #1 BWC.

Similarly, in response to this last request to bystanders to get their names, SUBJECT OFFICER #2 also did not provide his name and badge number even though he was doing nothing, but standing and watching Complainant says, "You'll get all that, the board is on the

way to treat you.” SUBJECT OFFICER #2 BWC 8:20. Except again, he never provided the information to Complainant. SUBJECT OFFICER #2 BWC. Two more times Complainant asked SUBJECT OFFICER #2 for his identification: once through asking the crowd to gather it, to which SUBJECT OFFICER #2 responded, “he’s in handcuffs, he’s not getting anybody’s name.” SUBJECT OFFICER #2 BWC 10:26; and in a second direct request, SUBJECT OFFICER #2 answered with, “you’ll get it in the report.” SUBJECT OFFICER #2 BWC 10:31.

MPD General Order 201.26, requiring officers to provide their name and badge number, does not provide exceptions for when a subject is in handcuffs, for saying that it will be provided later in a report, or because they are waiting for an ambulance. It has no requirement that the requestor be able to write it down or somehow retain the information. *Id.* It does not say they do not have to provide it if they think their WITNESS OFFICER #1 will provide it later or because it will be included in some later report that the requestor can obtain if they jump through hoops. *Id.* They are simply required to provide that information when it is requested. *Id.* It is not that hard and would take under five seconds. Nonetheless, in almost forty minutes of detaining Complainant Subject Officers never provided their name and badge number to Complainant as requested. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #2 BWC.

MPD General Order states that officers will provide their name and badge numbers in a respectful manner when requested to do so. They did not do so here, and, in fact, were disrespectful in their manner of refusal. Thus, Complainant’s allegation as to SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s Failure to Identify is sustained.

**V. SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER #1**

<b>Allegation 1</b>	Harassment (Search)	Sustained
<b>Allegation 2</b>	Harassment (Prolonged detention in handcuffs)	Sustained
<b>Allegation 3</b>	Failure to Identify	Sustained

**SUBJECT OFFICER #2**

<b>Allegation 2</b>	Harassment (Prolonged detention in handcuffs)	Sustained
<b>Allegation 3</b>	Failure to Identify	Sustained

Submitted on March 1, 2021.

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Complaint Examiner