

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0040
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Harassment (Handcuffing) – SUBJECT OFFICER #2
Allegation 2:	Harassment (Prolonged Detention) – SUBJECT OFFICER #2 and SUBJECT OFFICER #1
Complaint Examiner:	Adav Noti
Merits Determination Date:	July 2, 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, COMPLAINANT, alleges that on October 10, 2019, Subject Officer SUBJECT OFFICER #2 harassed her by handcuffing her while executing a search warrant at her home, and that Subject Officers SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed her by unlawfully prolonging her detention.¹

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 May 20, 2020, 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.

¹ The Complainant also alleged that the Subject Officers harassed her by unlawfully searching her home. On April 23, 2020, a Member of the Police Complaints Board dismissed these allegations, concurring with the determination of OPC's Executive Director. D.C. Code § 5-1108(1).

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by the Subject Officers on May 20, 2020, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 9, 2019, a D.C. Superior Court Judge approved a search warrant for firearms and firearm-related items at an address on SE, WASHINGTON, DC. The basis for this search warrant was an affidavit from SUBJECT OFFICER #1 alleging that an individual (not the Complainant) had been recorded on video displaying firearms and had used the SE, WASHINGTON, DC address in a variety of contexts. The warrant also authorized searching the address for mail and other identifying material.
2. On October 10, 2019, at approximately 7:00 a.m., the Subject Officers and a number of other MPD officers executed the search warrant at the SE, WASHINGTON, DC address, which was the Complainant's home.
3. The Complainant had been asleep but woke up when the officers entered. SUBJECT OFFICER #2 directed a female officer to give the Complainant a chance to get fully dressed, and he directed the officer to handcuff the Complainant with her hands in front of her body so she would be less uncomfortable than with behind-body handcuffing.
4. Once the Complainant was handcuffed, officers moved her to the living room of the residence and searched the home for firearms and mail. During the search, the Complainant vehemently demanded that officers show her the search warrant. Officers explained to the Complainant that they would record on the warrant any items they seized and provide Complainant a copy when they left.
5. Pursuant to the warrant, SUBJECT OFFICER #1 and other officers searched the residence for firearms and for identifying material. When the search was complete — just under 20 minutes after the Complainant had initially been handcuffed — the handcuffs were removed.² At this point, SUBJECT OFFICER #1 was in the process of filling out the search warrant paperwork to give to the Complainant.
6. With the handcuffs removed, the Complainant stood up to leave the living room, but SUBJECT OFFICER #2 said, "Have a seat for me, though, until we finish up." The Complainant sat back down. Approximately one minute later, the Complainant asked if she could get her phone; SUBJECT OFFICER #2 responded "Not just yet."

² The time from the first application of the handcuffs to their final removal was 19 minutes and 45 seconds. The officers removed the handcuffs for approximately two minutes during this time so the Complainant could use the bathroom.

7. Approximately 30 seconds later, SUBJECT OFFICER #1 provided the Complainant with the search warrant paperwork. He briefly and politely explained it to her, and the officers left the home.

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.

A. Handcuffing

The Complainant alleges SUBJECT OFFICER #2 harassed her by handcuffing her while officers executed a search warrant for guns at her home.

The Supreme Court and the D.C. Court of Appeals have upheld the permissibility of handcuffing an individual while executing a search warrant for weapons at the individual's home. In *Muehler v. Mena*, 544 U.S. 93 (2005), the Supreme Court noted that officers executing

a search warrant at a home have “categorical” authority to detain residents of the home while the search is being conducted. *Id.* at 98 (citing *Michigan v. Summers*, 452 U.S. 692 (1981)). The Court held that “inherent in [the] authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention.” *Id.* at 98-99. And the Court specifically held that when the warrant being executed “authorizes a search for weapons,” the situation is “inherently dangerous,” such that “the use of handcuffs” to detain the residents “minimizes the risk of harm to both officers and occupants.” *Id.* at 100. In reaching this conclusion, the Court rejected the argument that keeping the residents in handcuffs for “2- to 3-hour detention” while the search was being conducted was so prolonged as to become unreasonable. *Id.*

In *Germany v. United States*, 984 A.2d 1217 (D.C. 2009), the D.C. Court of Appeals applied *Mena* and *Summers* to hold that officers executing a search warrant for weapons at a home may detain, handcuff, and search the residents of the home. *See id.* at 1232 (holding that “the thirty-five-to forty-five-minute period while appellant was detained and handcuffed” was not “significantly more intrusive or any less reasonable than the protracted (two-to three-hour) intrusion the Supreme Court held to be lawful in *Mena*”). The Court of Appeals, like the Supreme Court in *Mena*, held that “the strong governmental interest in minimizing the risk of harm to both officers and occupants of the premises being searched . . . approaches its ‘maximum when as here a warrant authorizes a search for weapons.’” *Id.* (quoting *Mena*, 544 U.S. at 99-100 (internal alterations omitted)).

Here, the Subject Officers were executing a search warrant for firearms and related material at the Complainant's home. Upon entering, they found the Complainant asleep in bed, gave her an opportunity to get dressed, and handcuffed her with her hands in front of her body to minimize her discomfort. The officers conducted the search expeditiously, concluding it in less than 20 minutes,³ and removed the handcuffs promptly at the end of their search.

Because the Supreme Court and the D.C. Court of Appeals have expressly affirmed the permissibility of handcuffing residents of a home during a search for weapons — indeed, for periods considerably longer than those at issue here — the officers’ handcuffing of the Complainant was “plainly permissible.” *See Mena*, 544 U.S. at 98.⁴ Accordingly, SUBJECT OFFICER #2 is exonerated.

³ The ROI incorrectly states the Complainant was handcuffed for “about 45 minutes.” ROI at 4.

⁴ The ROI cites MPD General Order 702.03, which directs officers to handcuff individuals they arrest during execution of a search warrant and to ensure other residents are “‘patted-down’ when necessary.” MPD General Order 702.03.VII.F.8.b. Pursuant to this general order, the ROI correctly notes there was no “requirement” that the Complainant be handcuffed. ROI at 9. But simply because the general order did not *require* the Subject Officers to handcuff the Complainant does not mean they acted unlawfully in doing so — a question on which the caselaw noted above is dispositive. The ROI also cites *Dorsey v. Dist. of Columbia*, 234 F. Supp. 3d 1 (D.D.C. 2017), which relied on *Mena* and *rejected* a claim of unlawful handcuffing during a residence search. *Id.* at 11 (“It is very clear

B. Prolonged Detention

The Complainant alleges the Subject Officers harassed her by extending the search (and therefore her detention) longer than necessary, and by continuing to restrain her after removing her handcuffs. Specifically, the ROI states (1) SUBJECT OFFICER #1 “prolong[ed] the search so that he could locate evidence” connecting the Complainant’s address to individual with the firearms, and (2) the Subject Officers told the Complainant to remain in place after they took off her handcuffs so they could provide her with the search warrant paperwork she had demanded.

The assertion that SUBJECT OFFICER #1 unlawfully prolonged the search is not supported by the evidence. In crediting this allegation, the ROI seems to suggest the search warrant was only for firearms, such that any amount of time the officers spent looking for other material served to extend the search without cause. But the search warrant on its face authorized officers to search for mail and other “identifying documents” in the Complainant’s home. Thus, contrary to the ROI’s implication that he acted nefariously, SUBJECT OFFICER #1 was fully within the search warrant’s authorization to spend some of his time searching for material that would connect the armed individual to the Complainant’s home, and helping other officers do the same. There is no evidence in the record showing the Subject Officers prolonged the encounter beyond the time necessary to search the Complainant’s home for the items listed in the search warrant.

As to the 90 seconds between when the Subject Officers removed the Complainant’s handcuffs and when they handed her the search warrant paperwork, the ROI correctly notes the Subject Officers did not have legal authority to restrain the Complainant during this period. But this does not mean the Subject Officers harassed the Complainant.

OPC regulations provide that allegations of harassment are assessed by “the totality of the circumstances surrounding the alleged incident, including . . . the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1. And to constitute misconduct, the subject officers’ action must have been “purposefully, knowingly, or recklessly in violation of the law.” *Id.*

Here, the evidence presented regarding the totality of the circumstances, as defined in OPC’s regulation, is insufficient to establish harassment. The Complainant had demanded to be given the search warrant, and just as SUBJECT OFFICER #1 was filling out the warrant paperwork to give it to her, she started to walk away. SUBJECT OFFICER #2 told her to wait so that they could give her the document she had requested; they then did so promptly, and immediately left her home. The restraint was marginal and brief — 90 seconds tacked onto the end of a 20-minute search. The officers’ conduct in directing the Complainant to remain in the living room was verbal, calm, and polite, not severe or physically threatening. And although the

that *Mena* authorized the detention of Plaintiffs during the entirety of the search . . .”). The District Court in *Dorsey* noted that officers might exceed their authority by handcuffing individuals “for hours,” but that statement is dictum and not relevant to the 20-minute search at issue here.

Complainant understandably felt humiliated by being awoken and placed in handcuffs by a swarm of armed strangers in her home, nothing in the final 90 seconds at issue here appears to have caused or added to that sentiment. *Cf. Summers*, 452 U.S. at 701 (noting that “detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself”).

In sum, given the brief duration of the exchange, the officers’ professional demeanor during it, and the fact that the officers used the time only to comply with the Complainant’s request to receive the search warrant, the Complaint Examiner concludes insufficient facts have been presented as to “the totality of the circumstances surrounding the alleged incident” to establish that the Subject Officers harassed the Complainant by acting “purposefully, knowingly, or recklessly in violation of the law.”

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 2: Harassment (Prolonged Detention)	Insufficient Facts
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SUBJECT OFFICER #2

Allegation 1: Harassment (Handcuffing)	Exonerated
Allegation 2: Harassment (Prolonged Detention)	Insufficient Facts

Submitted on July 2, 2020.

ADAV NOTI
Complaint Examiner