

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	20-0233
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation:</b>	Unnecessary/Excessive Force
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	January 4, 2021

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 (Complainant), filed a complaint with the Office of Police Complaints (OPC) on January 10, 2020. COMPLAINANT alleged that on January 8, 2020, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, used unnecessary or excessive force against him when Subject Officer pulled Complainant by his hair when removing him from his vehicle.<sup>1</sup>

Specifically, Complainant stated that on January 8, 2020, while he was stopped for a tinted window violation, Subject Officer and WITNESS OFFICER #1 ordered him to lower his window. Complainant acknowledged that he did not comply with their orders. Subject Officer and WITNESS OFFICER #1 then opened the door and pulled him from the vehicle with the

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<sup>1</sup> Complainant also alleged that Subject Officer and WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 used unnecessary or excessive force when they removed him from his vehicle by his arms. Complainant also alleged that the four subject officers harassed him when initiating the traffic stop, placing their hands on their guns, threatening to break his window, searching his car, and damaging his property. Complainant also alleged that the four officers used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when they laughed at him. Finally, Complainant alleged that the four officers discriminated against him based on his race, gender, and personal appearance. Pursuant to D.C. Code Sec. 5-1108 (1) on October 29, 2020, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

assistance of WITNESS OFFICER #2 and WITNESS OFFICER #1. Subject Officer, specifically, pulled Complainant by his hair, which was styled in dreadlocks.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by Subject Officer, WITNESS OFFICER #1, WITNESS OFFICER #3 and WITNESS OFFICER #2 on January 8, 2020, the objections submitted by Subject Officer on November 18, 2020, and OPC's response to the objections dated November 30, 2020, the Complaint Examiner determined that the ROI 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 (ROI), the Body Worn Camera Footage recorded by Subject Officer, WITNESS OFFICER #1, WITNESS OFFICER #3, and WITNESS OFFICER #2 on January 8, 2020, the objections submitted by Subject Officer on November 18, 2020, and OPC's response to the objections dated November 30, 2020, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint on January 9, 2020.
2. At approximately 9:56 pm on January 8, 2020, WITNESS OFFICER #1 approached the driver's side of Complainant's vehicle and instructed Complainant to roll down his window. WITNESS OFFICER #3 approached the passenger side of the vehicle.
3. Complainant rolled all the windows in the vehicle down approximately 4 inches and stated, "I'm not rolling down anything else. You can see in here. There's no other person." WITNESS OFFICER #1 and WITNESS OFFICER #3 peered through the windows into the car. Complainant then rolled up all the windows except his driver's window. WITNESS OFFICER #1, standing at the driver's window, said, "it's cool." WITNESS OFFICER #3 continued observing Complainant through the windshield on the passenger side of the vehicle.
4. WITNESS OFFICER #1 asked Complainant for his license and registration. After Complainant asked the reason, WITNESS OFFICER #1 told him it was because he thought his tints were illegal and because his vehicle did not have a front tag. After a bit more dialogue, Complainant began to record a video on his phone and provided his license.
5. More conversation ensued with WITNESS OFFICER #1 asking Complainant if he owned the vehicle and for how long. Complainant asked why and WITNESS OFFICER

#1 responded that it was to determine if Complainant put the tint on himself or if it came from the dealer that way. Complainant said it came from the dealership with its current window tint. WITNESS OFFICER #1 then asked for his registration and insurance. Complainant provided his registration and WITNESS OFFICER #1 asked where he was coming from. Complainant said he was driving for A RIDE SHARING COMPANY and trying to go home.

6. During this conversation, Subject Officer approached the vehicle on the driver's side and WITNESS OFFICER #2 approached on the passenger side. Both officers flashed their lights into the rear side windows.
7. Complainant then asked WITNESS OFFICER #1 to have the other officers back up because he felt unsafe. WITNESS OFFICER #1 said it would help if Complainant would roll his windows down, but Complainant said no because he didn't feel safe. WITNESS OFFICER #1 said, "that's fine." Complainant repeated that he didn't feel safe, pointed out that WITNESS OFFICER #1 could see his hands and that he was recording with his phone. Again, WITNESS OFFICER #1 said, "Thanks man, I appreciate that. It's just harder for me to see." And again, Complainant reiterated that he didn't feel safe. Complainant and WITNESS OFFICER #1 continued the conversation about Complainant not feeling safe. WITNESS OFFICER #1 then asked him if he had a job, and Complainant said yes.
8. WITNESS OFFICER #1 then told Complainant that he was going to have to measure the tint and he asked Subject Officer if he had a tint measurer. Subject Officer responded that he did. Subject Officer returned to his cruiser to retrieve the tint measurer.
9. WITNESS OFFICER #1 then informed Complainant that he was going to open his door. He pulled on the door handle, but it was locked. Complainant told him not to open his door. WITNESS OFFICER #1 said again that he needed to check the tint. "Do you want me to break the window?" They argued about whether WITNESS OFFICER #1 could legally break his window and Complainant said, "you can check my window tint right here. I seen them do it."
10. WITNESS OFFICER #1 did not explain to Complainant at any time why he could not check the tint in the window's existing position or why he needed Complainant to open his door.
11. Subject Officer, who had approached and was standing at WITNESS OFFICER #1's right side, knocked on Complainant's driver seat window with a stick and stated, "Roll the window down and open up the door. Open up the door!" Complainant lowered his window further and said, "Stop! Man, no! I don't feel safe!"
12. WITNESS OFFICER #1 then stuck his left hand inside the car window, opened it from the inside, removed his arm, and opened the door by its outside handle.

13. WITNESS OFFICER #1 then stated, "There you go."
14. Subject Officer began moving toward Complainant and as he did so, stated, "Get out of the car." WITNESS OFFICER #1 stated the same in quick succession. Complainant refused.
15. While repeating the order and without waiting to see if Complainant would comply, Subject Officer reached into the car, and removed Complainant's seat belt, then began pulling Complainant out of the vehicle by his left arm. During this time, Subject Officer and WITNESS OFFICER #1 stated several times, "get out of the car."
16. As Complainant turned and his feet were on the ground outside of the vehicle, WITNESS OFFICER #1 then began pulling on Complainant's right arm and the officers pulled him out of the car. Throughout this use of force, Complainant kept repeating, "I'm not doing nothing."
17. After he was out of the car, Complainant folded his body forward and one of the officers said, "he's going forward; watch his waistband." WITNESS OFFICER #1 and WITNESS OFFICER #2, while holding Complainant's arms, patted down his waistband and inner thighs.
18. Subject Officer grabbed Complainant's hair as if holding a ponytail and pulled it up. Complainant's head rose. Complainant repeatedly screamed for approximately eleven seconds, "You got my hair. Cuz, you got my hair!"
19. After handcuffing Complainant, the officers walked him to the back of his vehicle.
20. Subject Officer then moved toward the windshield on the driver's side of the car and shined his flashlight on the lower corner of the windshield from the outside. He then walked past the driver's side door, which had remained open, and placed a tint meter, a small rectangle box, which appeared no more than four inches tall, with a slit the thickness of a window going over the top of the window. It registered a 14% VLT.
21. Subject Officer returned to his vehicle and he and WITNESS OFFICER #1 discussed what to do with Complainant. Subject Officer stated that it was not a use of force and WITNESS OFFICER #1 agreed. Subject Officer then asked, "failure to obey?" WITNESS OFFICER #1 replied, "that's what I'm wondering."
22. After a side conversation, the officers returned to discussing whether they could arrest Complainant for failure to obey. Subject Officer noted that "L.T. doesn't necessarily like failure to obeys," particularly when they involve a car. WITNESS OFFICER #1 then asked, "does the guy have a warrant or something." Subject Officer told him that Complainant was clear. WITNESS OFFICER #1 observed, "he's a mental health consumer."

23. Eventually the officers concluded that they had nothing other than the 14% VLT of the front driver's side window. WITNESS OFFICER #1 noted that they had to do at least a stop report and Subject Officer agreed. WITNESS OFFICER #1 continued, "I'll leave it up to you. If you don't want to do the arrest, then we don't have to do it." To which SUBJECT OFFICER stated, "I mean – I'm down! I'll take him."
24. WITNESS OFFICER #1 then turned and yelled to WITNESS OFFICER #3 - "we're just getting stop numbers." WITNESS OFFICER #3 responded that, as soon as they were done, they could send Complainant on his way. Subject Officer then gave the stop number to WITNESS OFFICER #1.
25. While Subject Officer and WITNESS OFFICER #1 discussed what to do with Complainant, Complainant complained to WITNESS OFFICER #3 and WITNESS OFFICER #2 as they held Complainant, handcuffed, by the arms at the rear of the vehicle. "Ya'll just pulled my head, man. I got a headache and everything man. . . Ya'll just pulled my fucking head, dawg. . . Just pulled my head to pull me out of the car. My shoulders feel like they hurt. Like they real live hurt."
26. After Subject Officer and WITNESS OFFICER #1 finished, Subject Officer placed the traffic citation, a warning for a tint violation, on Complainant's windshield. While he did that, WITNESS OFFICER #3 and WITNESS OFFICER #2 removed the handcuffs.
27. Subject Officer then approached Complainant. Complainant accused Subject Officer of excessive force and asked why he did that. Subject Officer responded, "Pennsylvania v. Mimms. I can use a reasonable amount of . . . I can order you outside of the car . . . I can use a reasonable, necessary force in order to remove you from the car. You were not listening to my orders. . . We removed you from the car. . . I suggest you read Pennsylvania v. Mimms."
28. Complainant then returned to his vehicle and departed.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), and (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: (2) unnecessary or excessive use of force."

Complainant alleged that Subject Officer used unnecessary or excessive force when he pulled Complainant's hair. Complaint Examiner sustains this allegation. Subject Officer admitted during his interview with OPC that he pulled Complainant's hair during the interaction to remove him from his vehicle. He claims, however, that he did so inadvertently. As will be discussed, below, however, Subject Officer's claim is not credible. Although Complainant is

found to have been actively resisting during the time Subject Officer pulled his hair, the hair pull was not reasonable under the Use of Force Framework and the force was, therefore, excessive. Moreover, Subject Officer did not use the minimum level of force necessary to accomplish the objective as required by law and MPD policy and was, therefore, unnecessary.

Both D.C. Municipal Regulations Title 6A, § 2199.1 and MPD General Order 901.07 IV.E. define the factors to consider when determining the reasonableness and necessity of any use of force:

**“severity of the crime at issue.”**

Here, Complainant had done nothing more than drive with suspected window tint darker than allowed by law.<sup>2</sup> BWC footage of WITNESS OFFICER #1 dated January 8, 2020 (WITNESS OFFICER #1 BWC) at 2:36; Exh. 14. The officers state on the BWC footage that they had no basis to suspect Complainant of any other crime. WITNESS OFFICER #1 BWC 11:47; BWC footage of SUBJECT OFFICER dated January 8, 2020 (SUBJECT OFFICER BWC) at 11:59.

**“whether the subject was actively and physically resisting arrest or attempting to evade arrest by flight.”**

Complainant was not being put under arrest. WITNESS OFFICER #1 BWC 11:47; SUBJECT OFFICER BWC 11:59. Moreover, although he verbally refused WITNESS OFFICER #1’s request to open his door and subsequently, Subject Officer and WITNESS OFFICER #1’s request to step out of the car, he was not physically resisting at that point. WITNESS OFFICER #1 BWC 5:40; SUBJECT OFFICER BWC 5:55.

Subject Officer claimed during his interview with OPC that Complainant was actively resisting at the time he pulled Complainant’s hair, however. Exh. 5 at 5:30; 8:48. Subject Officer alleged in his interview with OPC that the hair pull occurred after he had begun pulling Complainant from his vehicle. *Id.* He claimed Complainant “clenched his fists, pulled them forward in front of him, and bent forward at the waist in a manner that was ‘actively resistant.’” *Id.*

An “active resister” in the Use of Force Framework is defined as “the subject exhibits physical and mechanical defiance, including evasive movements to defeat the member’s attempt at control, including, but not limited to, bracing, tensing, pushing, or verbally signaling an intention not to be taken into or restrained in custody, provided that the intent to resist has been clearly manifested.” MPD General Order 901.07 IV.E.1.a.(3).

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<sup>2</sup> Although WITNESS OFFICER #1 also mentioned no front tags when he initially explained the reason for the stop to Complainant, it was never mentioned again and the officers only issued a warning for the tint violation. WITNESS OFFICER #1 BWC at 2:39; Exh. 14.

BWC footage is unclear whether Complainant is actively resisting when he is bent forward or whether he was pushed or pulled by the officers into that position. WITNESS OFFICER #1 BWC 6:46; SUBJECT OFFICER BWC 6:59; BWC footage of WITNESS OFFICER #2 dated January 8, 2020 (WITNESS OFFICER #2 BWC) at 6:24; BWC footage of WITNESS OFFICER #3 dated January 8, 2020 (WITNESS OFFICER #3 BWC) at 6:57. WITNESS OFFICER #1 and WITNESS OFFICER #3, however, corroborated the Subject Officer's appraisal that Complainant folded over at the waist, which they claimed was a common tactic to conceal items in the waistband. Exh. 7 at 7:57; Exh. 11 at 6:47. This contention was corroborated in the BWC footage when one of the officers can be heard to say, "he's going forward, watch his waistband." WITNESS OFFICER #1 BWC 6:56; SUBJECT OFFICER BWC 7:10; WITNESS OFFICER #2 BWC 6:29; WITNESS OFFICER #3 BWC 7:09. WITNESS OFFICER #3 and WITNESS OFFICER #1 also stated that they considered Complainant's folding over as active resistance. Exh. 7 at 12:40; Exh. 11 at 15:48. It is thus concluded that Complainant was actively resisting at the time Subject Officer pulled his hair.

**“whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD or DCHAPD, including adherence to the Use of Force Framework.”**

Subject Officer admitted to pulling Complainant's hair in his interview with OPC, but claimed that he did so unintentionally. Exh. 5 at 9:03. He asserted that at the time, he thought he had pulled on Complainant's jacket collar or his shoulder, in the area toward the back of his head, to pull him backward and upright after Complainant began actively resisting by leaning forward while Subject Officer and WITNESS OFFICER #1 were trying to remove him from the vehicle. Exh. 5 at 5:30, 9:10, 18:35. He averred that it was only upon watching the BWC footage that he realized he had inadvertently pulled Complainant's hair. Exh. 5 at 9:03, 17:48.

Subject Officer's claim lacks credibility, however. First, Complainant shouts, repeatedly, for approximately eleven seconds in the BWC footage, "You got my hair, cuz. You got my hair!" WITNESS OFFICER #1 BWC 6:50; SUBJECT OFFICER BWC 7:03; WITNESS OFFICER #2 BWC 6:23; WITNESS OFFICER #3 BWC 7:02. Even if Subject Officer's claim that he unintentionally grabbed Complainant's hair had credibility, it should have been clear to him from Complainant's shouts in the moment that he was pulling Complainant's hair and, given that other officers had hold of Complainant, he should have immediately released it. Instead, he waited at least eleven seconds. WITNESS OFFICER #1 BWC 6:50-7:01; SUBJECT OFFICER BWC 7:03-7:14; WITNESS OFFICER #2 BWC 6:23-6:34; WITNESS OFFICER #3 BWC 7:02-7:13. Thus, Subject Officer was on notice during the incident that he was pulling Complainant's hair.

Second, the BWC footage clearly shows a bare hand wrapped around Complainant's dreadlocks as if holding a ponytail. SUBJECT OFFICER BWC 7:13; WITNESS OFFICER #2 BWC 6:29. It wasn't a grab partially of a collar or a shoulder with some hair in the same hold, it

was a hand wrapped fully around hair and nothing else. *Id.* There is simply no way, Subject Officer could have confused the position of his hand that would be used to grab Complainant's jacket collar or his shoulder with how he was holding Complainant's hair in the video. Moreover, Subject Officer was bare-handed and the texture difference between a fistful of hair and the texture of a collar should have been immediately recognizable. SUBJECT OFFICER BWC 7:13; WITNESS OFFICER #2 BWC 6:29.

Subject Officer watched his BWC footage and saw this same information yet then claimed in his interview with OPC that he hadn't known he had pulled Complainant's hair until he watched the BWC footage. His doing so indicates that it was an after-the-fact attempt to justify behavior that Subject Officer knew was excessive.

As Complainant was an active resister at the point Subject Officer grabbed his hair, the appropriate level of response was "Compliance techniques," which include actions [e.g., control holds, joint locks, and oleoresin capsicum (OC) spray, solo or team takedowns] that may induce pain or cause discomfort to the subject who is actively resisting until control is achieved, but will not generally cause an injury when used in accordance with Department training and standards." MPD General Order 901.07 Attachment B and IV.E.1.b.(3).

Hair pulling is not a compliance technique authorized under the Use of Force Framework. First, it is not specifically noted as an approved compliance technique in the general order. MPD General Order 901.07 Attachment B and IV.E.1.b.(3). Moreover, although the list does not purport to be exclusive, it does specify that it is to be "used in accordance with Department training and standards." *Id.* All of the officers interviewed by OPC, including Subject Officer, admitted that there is no MPD training to employ the use of hair pulls. Exh. 5 at 9:38; Exh. 7 at 14:04; Exh. 9 at 6:24; Exh. 11 at 16:52. Since it cannot be used in accordance with Department training and standards, it cannot be considered a compliance technique allowed under MPD General Order 901.07. Moreover, it seems reasonably obvious that hair pulling, particularly when multiple members are pulling at the same person, possibly in different directions, creates a substantial risk of injury to the head, neck, and scalp.

Thus, here, Subject Officer's pulling of Complainant's hair did not adhere to the general orders, policies, procedures, practices and training of the MPD, including adherence to the Use of Force Framework when he pulled Complainant's hair and constituted excessive violence.

There is a question whether other circumstances may have mitigated the hair pull here such as found under factors (2) a threat to officer safety or (4) the need to make a split-second decision to use such force. Neither is applicable here, however.

**"whether the suspect posed an immediate threat to the safety of officers or others."**

Prior to Complainant folding forward after having been pulled from his vehicle, officers had not expressed anything or behaved in any way that suggested a fear or concern of threat to



their safety. WITNESS OFFICER #1 BWC; SUBJECT OFFICER BWC; WITNESS OFFICER #2 BWC; Exh. 5, Exh. 7, Exh. 9, Exh. 11. At most, they expressed during their interviews with OPC that Complainant was acting agitated, nervous, annoyed, and paranoid. Exh. 5 at 5:52, Exh. 7 at 5:28, Exh. 11 at 9:27. Complainant expressed throughout the interaction that he felt scared of the officers. WITNESS OFFICER #1 BWC 3:44. Complainant sat upright in the driver's seat and his hands were continuously visible to WITNESS OFFICER #1 through the partially open window and to WITNESS OFFICER #3 through the windshield. WITNESS OFFICER #1 BWC 2:11; WITNESS OFFICER #3 BWC 2:13. Most of the time, one hand was on the steering wheel and the other holding his phone. Occasionally, Complainant gestured visibly with his free hand while he was speaking, but nothing suggesting a furtive movement or attempt to grab anything in the vehicle. WITNESS OFFICER #1 BWC 2:11; WITNESS OFFICER #3 BWC 2:13.

Not only did Complainant's behavior prior to being pulled from the car not exhibit any threat to officers, the officers' behavior did nothing to suggest anything other than normal precautions during a traffic stop. WITNESS OFFICER #1 was the contact officer at Complainant's driver's window and WITNESS OFFICER #3 was on the passenger side of the vehicle verifying no other passengers in the vehicle and no weapons. WITNESS OFFICER #1 BWC 2:11; SUBJECT OFFICER BWC 2:46; Exh. 7 at 4:00. SUBJECT OFFICER and WITNESS OFFICER #2 approached after Complainant would not leave all his windows open, but they were able to see in the vehicle by shining their lights through the window. SUBJECT OFFICER BWC 2:48; WITNESS OFFICER #2 2:20; Exh. 7 at 4:00. Complainant had been compliant with WITNESS OFFICER #1's requests, albeit reluctantly and only after argument, and Complainant had been answering his questions, despite not being required to. WITNESS OFFICER #1 BWC 2:00-5:40.

At the moment Complainant folded forward, however, after having been pulled from the car and when both of his arms were held securely by the officers, one of the officers stated "he's going forward, watch his waistband." WITNESS OFFICER #1 BWC 6:56; SUBJECT OFFICER BWC 7:10; WITNESS OFFICER #2 BWC 6:29; WITNESS OFFICER #3 BWC 7:09. In response, WITNESS OFFICER #1 and WITNESS OFFICER #3 patted down Complainant's waistband and inner-leg area to check for a weapon, which they did not find. WITNESS OFFICER #1 BWC 7:05; WITNESS OFFICER #2 BWC 6:41; WITNESS OFFICER #3 BWC 7:22; Exh. 7 at 9:15; Exh. 11 at 7:50, 11:57. WITNESS OFFICER #1 and WITNESS OFFICER #3, during their interviews with OPC, explained that folding over at the waist is a common tactic to conceal items in the waistband. Exh. 7 at 7:57; Exh. 11 at 6:47.

Nonetheless, throughout Complainant's active resistance of bending forward, at least three officers besides Subject Officer were holding him, including his arms, and a pat down occurred instantly. WITNESS OFFICER #1 BWC 6:50; SUBJECT OFFICER BWC 7:05; WITNESS OFFICER #2 BWC 6:22; WITNESS OFFICER #3 BWC 7:04. Thus, while there was a momentary concern about a threat that Complainant may have been armed, Complainant was not in any position to reach such a weapon. Nor did Subject Officer claim that fear that

Complainant posed a threat to officer safety was the basis for pulling Complainant's hair. Thus, the excessive force of the hair pull is not mitigated by a threat to officer safety.

**“the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance.”**

WITNESS OFFICER #1 suggested that hair pulling could be considered a contact control, for example, if it was grabbed in a situation where complainant was running and it was the only thing available to grab. Exh. 11 at 17:15. One could, in such circumstances, possibly understand making such a split-second decision. Here, however, Complainant had already been removed from the car, and his hands and body were under the control of officers. WITNESS OFFICER #1 BWC 6:53; SUBJECT OFFICER BWC 7:05; WITNESS OFFICER #2 BWC 6:41. Subject Officer does not claim that he grabbed Complainant's hair out of an inability to gain control of him in another way. In fact, he claims he intended to grab Complainant's collar or shoulder indicating that he did not need to grab Complainant's hair. Exh. 5 at 9:03. Thus, having to make a split-second decision in this case does not mitigate against the hair pulling being excessive force.

**“the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.”**

“The policy of the Metropolitan Police Department (MPD) is to value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. Therefore, MPD members shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” MPD General Order 901.07 (effective November 3, 2017), Part II. The Use of Force framework requires that officers “(2) Modify their level of force in relation to the amount of resistance offered by a suspect. As the subject offers less resistance, the member shall lower the amount or type of force used.” MPD General Order 901.07 IV. E. Subject Officer here did not attempt to use only the minimum level of force necessary to accomplish the objective when he pulled Complainant from his vehicle and subsequently when he pulled Complainant's hair. The hair pull was, therefore, unnecessary in addition to being excessive.

Up to WITNESS OFFICER #1 asking Complainant to open his car door, Complainant had been compliant with all of WITNESS OFFICER #1's requests, albeit reluctantly. WITNESS OFFICER #1 BWC 1:30-5:40. When WITNESS OFFICER #1 asked him to roll down his windows, Complainant rolled down all of the windows in the vehicle four inches and allowed the officers to peer in with their flashlights to verify that he had no one in the car with him and no weapons. WITNESS OFFICER #1 BWC 2:00. When they finished, Complainant rolled up all the windows except his own, which remained open several inches. WITNESS OFFICER #1

BWC 2:15. WITNESS OFFICER #1 repeatedly told him that it was cool, good, or fine. WITNESS OFFICER #1 BWC 2:19, 3:26, 3:52.

After WITNESS OFFICER #1 explained that he had pulled Complainant over for a window tint violation and for no front tag, Complainant provided his driver's license and registration. WITNESS OFFICER #1 BWC 2:29. He also answered all of WITNESS OFFICER #1's questions regarding ownership of the vehicle, whether the tint had come from the manufacturer, where he was coming from, and his work status. WITNESS OFFICER #1 BWC 3:01. None of which Complainant was required to answer. Throughout the interaction, Complainant told WITNESS OFFICER #1 that he felt unsafe due to so many officers surrounding his vehicle. WITNESS OFFICER #1 BWC 3:44. When WITNESS OFFICER #1 asked him to roll the window down further, he refused, but he said the Officer could see both of his hands throughout the interaction, one of which was using his phone to videotape the incident. WITNESS OFFICER #1 BWC 3:51. WITNESS OFFICER #1 said, "thanks man. I appreciate that. It's just harder for me to see." WITNESS OFFICER #1 BWC 3:58.

Not only had Complainant been compliant in response to persuasion, there was no evidence of threat to officer safety. WITNESS OFFICER #1 had been verbally engaging with Complainant for approximately five minutes. WITNESS OFFICER #1 BWC 1:30-5:40. In WITNESS OFFICER #1's BWC footage, Complainant and his hands are visible throughout the incident and WITNESS OFFICER #1 acknowledged this fact and that officers had been given an opportunity to look through all the windows of the car. WITNESS OFFICER #1 BWC 2:03. WITNESS OFFICER #3 was also able to see Complainant throughout the incident through the windshield of the car. WITNESS OFFICER #3 BWC 2:13; Exh. 7 at 4:00.

When WITNESS OFFICER #1 ordered Complainant to roll his window down further and open his door, Complainant objected. WITNESS OFFICER #1 BWC 5:40. WITNESS OFFICER #1 claimed it was to check the tint, but Complainant argued that WITNESS OFFICER #1 could check the window tint without opening the door because he'd seen it done before. WITNESS OFFICER #1 BWC 6:07. WITNESS OFFICER #1 told him that he could break Complainant's window and Complainant said he didn't think that would be legal. WITNESS OFFICER #1 BWC 5:45. Within a few seconds, Subject Officer approached WITNESS OFFICER #1's side, tapped on Complainant's window with a stick and ordered him to "roll the window down and open up the door." WITNESS OFFICER #1 BWC 6:21. Complainant rolled the window down further and said, again, that he didn't feel safe. WITNESS OFFICER #1 BWC 6:24.

Complainant's resistance at this point was, thus, merely passive as defined under the Use of Force Framework. Thus, the appropriate response was "contact controls," "low-level mental and physical tactics to gain control and cooperation" which can include psychological manipulation "(e.g., strong verbal persuasion) as well as physical (e.g., soft empty hand control,

firm grip, and escorting), and can include additional verbal persuasion skills or waiting for backup to show strength in numbers in accordance with Department training and standards.” The minimum level of force required at this point, given Complainant’s responsiveness to verbal persuasion and the lack of any evidence of threat to officer safety, would have been to continue efforts to try to persuade Complainant to cooperate.

Nonetheless, WITNESS OFFICER #1 did not attempt to explain the reason for needing Complainant to open his door, the legal basis for his request, or explain the consequences of Complainant’s continued refusal to open his door. WITNESS OFFICER #1 BWC 5:45. Instead, WITNESS OFFICER #1 reached in the lowered window and opened Complainant’s car door. WITNESS OFFICER #1 BWC 6:28; SUBJECT OFFICER BWC 6:42. Moreover, immediately upon the opening of the door, Subject Officer began moving into the car and reached to release Complainant’s seat belt. SUBJECT OFFICER BWC 6:50; WITNESS OFFICER #2 BWC 6:09. As he moved toward Complainant, both WITNESS OFFICER #1 and Subject Officer, in quick succession, ordered Complainant to exit the vehicle and he refused. WITNESS OFFICER #1 BWC 6:36; SUBJECT OFFICER BWC 6:48. Subject Officer began pulling Complainant from the vehicle by his left arm, and, after Complainant had turned with his legs outside the vehicle, WITNESS OFFICER #1 began pulling Complainant’s right arm. WITNESS OFFICER #1 BWC 6:36; SUBJECT OFFICER BWC 6:56. As they pulled, they repeated the statement, “get out of the car” several more times. They failed to give him an explanation or even time to act. Their only explanation was that he’d been non-compliant throughout the encounter so their actions were reasonable. SUBJECT OFFICER BWC 6:56; WITNESS OFFICER #2 BWC 6:30; Exh. 5 at 7:46; Exh. 7 at 12:13; Exh. 11 at 12:58. Except, as already discussed, this explanation is contrary to Complainant’s compliance to WITNESS OFFICER #1’s previous requests following verbal persuasion.

Notably, WITNESS OFFICER #1, the contact officer, had been properly using verbal persuasion, tactical communication and other de-escalation techniques to gain Complainant’s compliance throughout the stop. It was not he that initiated a use of force, but Subject Officer, who completely disregarded those measures, despite them being required to be used when possible to defuse a situation. *See* MPD General Order 901.07 (effective November 3, 2017), Part IV.A.

Viewing the footage of how Subject Officer later measured the window tint, there was absolutely no reason that the officers needed Complainant to open his door or to exit his vehicle. SUBJECT OFFICER BWC 8:30. None of the actions taken by Subject Officer to measure the tint required being on the inside of the door. He flashed his light on the outside bottom corner of the driver’s side of the windshield and set a small device on top of the window, which could have easily been done from the outside. SUBJECT OFFICER BWC 8:30. The procedure followed by Subject Officer was evidently what Complainant was used to as it corresponds to

what he expressed as his understanding of a tint check. WITNESS OFFICER #1 BWC 6:07; SUBJECT OFFICER BWC 6:20.

WITNESS OFFICER #1 claimed during his interview that when he conducts a tint check that he needs the window all the way up to look for a manufacturer's marking as to whether it is a factory tint. Exh. 11 at 5:00. For safety reasons associated with the window being closed, he asks the individual to open the door and step out while he looks. Exh. 11 4:40. WITNESS OFFICER #3 confirmed that this is WITNESS OFFICER #1's procedure, but also noted that it is unique to WITNESS OFFICER #1. Exh. 7 at 6:20. Notably, however, despite WITNESS OFFICER #1 having an unusual procedure and Complainant clearly expressing an understanding of how it is usually done, WITNESS OFFICER #1 did not provide this extensive explanation to Complainant. WITNESS OFFICER #1 BWC 6:07. Moreover, SUBJECT OFFICER only issued a warning for the window tint which could have been issued without Complainant stepping out of the car at all. Exh. 14. For that matter, the window tint could have been measured and Complainant issued with an NOI with fine without Complainant stepping out of the car.

All of which raises the point that less forceful options should have been used according to MPD General Order 901.07 before resorting to pulling Complainant from the vehicle and, most especially, pulling his hair. Subject Officers actions here seem more to be about impatience and annoyance than with necessity. Subject Officer did not, thus, use the minimum level of force needed to accomplish his objective.

That a stop for a window tint violation of an individual that is compliant, albeit reluctantly so, escalated to the level of forcibly removing him from his vehicle and pulling his hair in the process, was explained after-the-fact by Subject Officer to Complainant by referring to *Pennsylvania v. Mimms*.<sup>3</sup> SUBJECT OFFICER BWC 13:42. But *Pennsylvania v. Mimms* only

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<sup>3</sup> Subject Officer and WITNESS OFFICER #1's conversation following the Use of Force, while not directly relevant to the allegation of hair pulling is disconcerting and demonstrates a lack of professionalism. First, Subject Officer and WITNESS OFFICER #1 discussed arresting Complainant for failure to obey, but ultimately decided not to because "L.T. doesn't necessarily like failures to obey." SUBJECT OFFICER BWC 10:15; WITNESS OFFICER #1 BWC 10:05. Evidently, the officers need to be made aware that Special Order 96-10 provides that officers shall only summarily arrest a person for "failure to comply" if "the continued refusal creates a flagrant and immediate danger to the violator, other persons or the motoring public, or interferes with ongoing traffic enforcement activities of the police." No such circumstances occurred here or were discussed by the officers and an arrest in these circumstances was completely unwarranted. Notably, the officers could, however, have at least used this threat to obtain Complainant's compliance with exiting the vehicle and perhaps avoided the Use of Force. That they considered it only after the Use of Force suggests that their motivation had more to do with annoyance with Complainant than necessity.

Moreover, WITNESS OFFICER #1's pejorative reference to Complainant as a mental health consumer is troubling. SUBJECT OFFICER BWC 11:59; WITNESS OFFICER #1 BWC 11:47. Nothing about Complainant's behavior suggested mental health problems and if they had, then their actions toward Complainant should have been with this

makes the order to exit lawful. 434 U.S. 106 (1977). To justify the use of physical force and particularly, here, the hair pulling, Subject Officer needed to justify the reasonableness and necessity of his actions under D.C. Mun. Regs. Titl. 6A § 2199.1 and MPD General Order 901.07

Here, Subject Officer's use of force in pulling Complainant's hair was neither reasonable nor necessary and it thus constituted an excessive and unnecessary use of force as defined under D.C. Mun. Regs. Titl. 6A § 2199.1 and MPD General Order 901.07.<sup>4</sup> The allegation of Unnecessary and Excessive force is, thus, sustained.

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in mind. Given the interest in improving trust between the public and police, one would expect a higher level of professionalism than exhibited by these officers.

<sup>4</sup> In the ROI, OPC also referred to Subject Officer's failure to report the Use of Force as required by MPD General Order 901.07. A use of force is reportable if it results in a complaint of injury or pain if it is directly associated with the member's use of force. Complainant reported pain to WITNESS OFFICER #2 and WITNESS OFFICER #3. WITNESS OFFICER #2 BWC 8:20; WITNESS OFFICER #3 BWC 9:02. Subject Officer and WITNESS OFFICER #1 were not present with Complainant when he made these statements and were unaware of the report, however. Exh. 5; Exh. 11. Thus, they did not fail to properly report the use of force. Nonetheless, WITNESS OFFICER #2 and WITNESS OFFICER #3 should have reported Complainant's alleged pain to Subject Officer and WITNESS OFFICER #1 who they knew were preparing the reports or to a supervisor. MPD General Order 901.07.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1: Unnecessary/Excessive Force</b>	Sustained
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Submitted on January 4, 2021.

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Jennifer A. Fischer, Esq.  
Complaint Examiner