

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	20-0462
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1</b>	Harassment (prolonged detention)
<b>Allegation 2</b>	Harassment (handcuffed detention)
<b>Allegation 3</b>	Harassment (search)
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	December 15, 2020

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 April 29, 2020. COMPLAINANT alleged that on March 6, 2020, the subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1 (Subject Officer SUBJECT OFFICER #1), and SUBJECT OFFICER #2 (Subject Officer SUBJECT OFFICER #2), harassed him when they prolonged his detention and unlawfully searched the complainant’s vehicle.<sup>1</sup>

Specifically, Complainant stated that on March 6, 2020, while driving in the BLOCK OF A STREET IN NW, WASHINGTON, DC, SUBJECT OFFICER #1 pulled him over for a window tint violation. After Complainant provided his driving documents, SUBJECT OFFICER

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<sup>1</sup> In addition, COMPLAINANT alleged that SUBJECT OFFICER #1 harassed him when he issued a bad ticket, and used unnecessary or excessive force against the complainant when he applied handcuffs too tightly. Pursuant to D.C. Code § 5-1108 (1), on September 21, 2020, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

#1 returned to his patrol vehicle. Shortly thereafter, SUBJECT OFFICER #1 asked Complainant for consent to search his vehicle. Complainant did not provide consent and SUBJECT OFFICER #1 returned to his patrol vehicle where he remained for almost 30 minutes.

While awaiting SUBJECT OFFICER #1's return, Complainant asked assisting officers why he was still there and explained that he was trying to go home. Complainant was never informed that a K9 officer had been called nor was he given any answer regarding the reason for keeping him at the traffic stop for such a prolonged time. Subsequently, the K9 officer arrived to the scene and SUBJECT OFFICER #2 and SUBJECT OFFICER #1 asked Complainant to step out of his vehicle. Complainant complied and was placed in handcuffs while the K9 walked around his vehicle. Complainant was informed that the K9 "hit" on his vehicle and officers searched the car.

Complainant received a written warning for his tinted windows and a citation for no running headlights. Complainant alleged that Subject Officers intentionally and unlawfully prolonged his detention and wrongfully searched his vehicle. The entire stop lasted more than 40 minutes.

## **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 March 6, 2020, by Subject Officers, and Witness Officers WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6, the objections submitted by the Subject Officers on October 1, 2020, and OPC's response to the objections dated October 27, 2020, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. Tit. 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation including exhibits, Body Worn Camera Footage recorded on March 6, 2020, by Subject Officers, and Witness Officers WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6, the objections submitted by the Subject Officers on October 1, 2020, and OPC's response to the objections dated October 27, 2020, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 6, 2020, at approximately 9:39 p.m., SUBJECT OFFICER #1 pulled Complainant over for a window tint violation. When he radioed the stop in, he stated that the window tint was too dark to determine the number of vehicle occupants. Then when he approached Complainant's vehicle that had pulled over and stopped, he explained to Complainant that he'd pulled him over because "Your tint's way too dark, man." SUBJECT OFFICER #1 did not tell Complainant that his headlights were out.

2. Complainant initially only rolled his window down 1/3 of the way and SUBJECT OFFICER #1 asked him to roll it down further and Complainant rolled it down about half way. SUBJECT OFFICER #1 then asked Complainant for his license and registration and Complainant responded that he would need to reach for it. SUBJECT OFFICER #1 explained that because the tint was so dark, he couldn't observe Complainant's movements and asked him to roll it all the way down, which Complainant did. Complainant then retrieved his documents and provided them to SUBJECT OFFICER #1. He did not have his proof of insurance and SUBJECT OFFICER #1 said he could pull it up on his phone. SUBJECT OFFICER #1 then returned to his patrol vehicle.
3. In his patrol vehicle, SUBJECT OFFICER #1 pulled up various information regarding Complainant on his MDT screen and then called WITNESS OFFICER #4 to assist with the traffic stop. He then exited his vehicle, approached WITNESS OFFICER #7 and told him that Complainant was reluctant to roll his window down, that the tint was "super dark," and that he was known to be a gang member for burglaries, PWID, and robberies. He told WITNESS OFFICER #7 that he's "got the tint and there were no headlights" so he was going to see if he could search the car. Subject Officer made a similar explanation to WITNESS OFFICER #4 when he arrived.
4. SUBJECT OFFICER #1 then approached Complainant's window and
  - He explained that he could write several tickets and asked if Complainant had any weapons in the vehicle. Complainant responded in the negative.
  - SUBJECT OFFICER #1 asked Complainant if he consented to a search of the vehicle and after some confusion, Complainant refused.
  - SUBJECT OFFICER #1 asked Complainant why his headlights were off. Complainant said he turned them off after he pulled over. SUBJECT OFFICER #1 stated that he was following the Complainant, but the Complainant said he saw the Subject Officer turn off of a side street. The Subject Officer then changed the subject to ask the Complainant for his insurance.
5. SUBJECT OFFICER #1 moved away from Complainant's vehicle and asked to borrow a ticket book from the assisting officers, which WITNESS OFFICER #2 went to his squad car to retrieve.
6. While waiting for WITNESS OFFICER #2 to return, SUBJECT OFFICER #1 returned to Complainant's vehicle to view his insurance information on his cell phone.
7. SUBJECT OFFICER #1 then obtained the ticket book from WITNESS OFFICER #2 and moved toward the back of a nearby patrol vehicle. SUBJECT OFFICER #2 approached.
  - SUBJECT OFFICER #1 explained to SUBJECT OFFICER #2 that he pulled Complainant over for no headlights and dark window tint. He then explained the same background about Complainant that he gave to WITNESS OFFICER #7 and WITNESS OFFICER #4.
  - SUBJECT OFFICER #2o asked him if he thought that Complainant had something in the car. SUBJECT OFFICER #1 didn't answer in the affirmative, but rather said, "I got nothing."
  - SUBJECT OFFICER #2 asked, "He won't let you search the car? We can ask for canine. Wanna ask for canine?"
  - SUBJECT OFFICER #1 didn't think it would arrive before the end of the traffic stop.
  - SUBJECT OFFICER #2 told him, "you won't know unless you try."

- SUBJECT OFFICER #1 told him to call one and also to go to his patrol vehicle and view Complainant's history on his MDT.
  - SUBJECT OFFICER #2 called for a drug dog over the police radio.
8. SUBJECT OFFICER #1 began writing the citations on the trunk of a patrol vehicle. After finishing the first citation and while writing the second, WITNESS OFFICER #1 approached and asked if SUBJECT OFFICER #1 would be on his way after writing the citations. SUBJECT OFFICER #1 answered affirmatively.
  9. While they were talking, SUBJECT OFFICER #2 approached and said there was an "attempt to locate" in WALES.
    - WITNESS OFFICER #1 told him to check the date on the alert and call the detectives,
    - SUBJECT OFFICER #1 agreed with WITNESS OFFICER #1.
  10. SUBJECT OFFICER #2 returned to SUBJECT OFFICER #1's police vehicle where he then spoke to a detective about the alert, which he verbalized was from 2018.
  11. While SUBJECT OFFICER #2 was on the phone, SUBJECT OFFICER #1 finished writing the two citations, returned the ticket book to WITNESS OFFICER #4 to return to WITNESS OFFICER #4, and returned to the front passenger seat of his patrol vehicle. In the vehicle, he organized his paperwork and began reading the WALES alert while SUBJECT OFFICER #2 was still on the phone.
    - SUBJECT OFFICER #1 asked SUBJECT OFFICER #2 when the alert was put in.
    - SUBJECT OFFICER #2 pointed to a line on the screen, approximately 22 minutes into the stop, and asked how long it would be until the canine arrived.
    - SUBJECT OFFICER #1 said, "well, I mean we have to standby anyway to see what the detective says."
  12. The Wales alert states twice within it, "EXP/20190621."
  13. After the conversation with SUBJECT OFFICER #2, SUBJECT OFFICER #1 returned to Complainant's vehicle and told him to keep his windows rolled down.
  14. SUBJECT OFFICER #1 then returned to his vehicle where SUBJECT OFFICER #2 was still on the phone. When SUBJECT OFFICER #2 finished, approximately 24 minutes into the stop, he told SUBJECT OFFICER #1, "They don't need him."
    - SUBJECT OFFICER #1 responded, "They don't?"
    - SUBJECT OFFICER #1 then scrolled, yet again, through WALES.
  15. Meanwhile SUBJECT OFFICER #2 spoke to someone named WITNESS on the phone. The portion of the conversation that could be heard on the BWC suggested WITNESS knew Complainant. SUBJECT OFFICER #2 ended the conversation by telling WITNESS, "Alright, we're waiting for K9."
  16. While SUBJECT OFFICER #2 spoke to WITNESS, SUBJECT OFFICER #1 asked the K9 officer to switch to TAC, but no one responded.
  17. When SUBJECT OFFICER #2 ended his call, SUBJECT OFFICER #1 told him that he hadn't been able to reach the K9 to find out their ETA and asked what the detectives said.
    - SUBJECT OFFICER #2 told him, 28 minutes into the traffic stop, "They don't need him. 'Cause he was a victim of something and they were trying to reach him. But that was like a year ago so they don't need him."
    - SUBJECT OFFICER #2 stated, "Trying to figure out how long it's gonna be 'till they get here?"

- SUBJECT OFFICER #1 responded, “Yeah.”
  - SUBJECT OFFICER #2 asked if SUBJECT OFFICER #1 finished writing the NOIs and SUBJECT OFFICER #1 responded affirmatively.
  - Subject Officers looked again at the COBALT result page. SUBJECT OFFICER #1 remarked that he forgot to do a 28/29 check and noted the Complainant had a valid license.
  - SUBJECT OFFICER #2 asked if SUBJECT OFFICER #1 searched JUSTIS and SUBJECT OFFICER #1 said he did not so they again looked at the computer.
18. Approximately a minute later the K9 arrived. After briefly looking at JUSTIS, SUBJECT OFFICER #1 exited his vehicle and approached Complainant’s vehicle, approximately 31 minutes into the stop.
  19. Complainant exited his vehicle after SUBJECT OFFICER #2 threatened to arrest him if he did not. SUBJECT OFFICER #1 moved Complainant to the rear of his vehicle and handcuffed him.
  20. The K9 completed a search on the vehicle and hit on it.
  21. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 and WITNESS OFFICER #5 then searched Complainant’s vehicle.<sup>2</sup> They found no illegal substances in the vehicle.
  22. SUBJECT OFFICER #1 told Complainant he was “good to go,” signed the bottom of the citations and gave them to him. Complainant left.

#### 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. . . .”

Complainant alleges that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by unlawfully prolonging his traffic stop to wait for a K9 to conduct a drug sniff. Here, SUBJECT OFFICER #1 initiated a lawful traffic stop of Complainant based on a possible window tint violation.<sup>3</sup> By purposefully prolonging that stop twenty minutes beyond what was necessary to handle the stop and without probable cause to wait for a dog sniff the stop violated the law and internal guidelines of MPD and subjected Complainant to an unlawful detention, handcuffing, and a search. It thus constituted harassment.

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<sup>2</sup> WITNESS OFFICER #6 conducted the K9 sweep, looked at the marijuana roaches in the center console and shined his flashlight into the vehicle, but did not otherwise actively participate in the search.

<sup>3</sup> Although SUBJECT OFFICER #1 also issued a ticket for Complainant not having his headlights on, he did not raise that allegation until seven minutes into the stop. When he radioed in the stop, he noted only the tinted windows and when he initially explained the basis for the stop to Complainant, he only told him his window tint was too dark. SUBJECT OFFICER #1 BWC 2:52. When Subject Officer later raised it with Complainant, Complainant stated that he turned his headlights off when he was pulled over and Subject Officer said he had been following the Complainant. The Complainant said he saw the Subject Officer turn off of a side street. The Subject Officer then changed the subject to ask the Complainant for his insurance. SUBJECT OFFICER #1 BWC 9:51. Although Complainant’s allegation as to the NOI for the headlights has been dismissed by OPC and is not at issue here, that Subject Officer’s accusation has questionable merit detracts from his credibility in this decision.

**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.

**B. SUBJECT OFFICER #1 And SUBJECT OFFICER #2’s Prolongation of the Stop of Complainant to Wait for a K9 Constituted Harassment**

Here, Subject Officer pulled Complainant over as part of an ordinary traffic stop due to a possible violation of window tint that was too dark. He articulated the reason for the stop twice: once when he radioed that he was making the stop and a second time when he explained to Complainant the reason for the stop. BWC footage of SUBJECT OFFICER #1 dated March 6, 2020 (SUBJECT OFFICER #1 BWC) at 2:18 and 2:52. Subject Officer articulated no other reason at the outset for pulling over Complainant nor anything indicating a reasonable suspicion that Complainant was involved in a crime. *Id.*

According to the Supreme Court in *Rodriguez v. United States*, “An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” 135 S. Ct. 1609, 1615 (2015) (citations omitted). “Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to [the traffic] stop. Typically, such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* Thus, according to *Rodriguez*, the stop here should have ordinarily ended after SUBJECT OFFICER #1 checked Complainant’s driver’s license, inspected the automobile’s registration and proof of insurance, determined whether there were outstanding warrants against the driver, and finished writing any citations.

MPD General Order 304.10 is even more specific as to the length of time for a stop, “[o]fficers shall detain a person only for the length of time necessary (in most cases not to exceed twenty(20) minutes) to obtain or verify the person’s identification; to obtain an account of the person’s presence or conduct, or otherwise determine if the person should be arrested. . . . caution dictates moving quickly so as to avoid the stop becoming more like an arrest.”. MPD General Order OPS 304.10, Police-Citizen Contacts Stops and Frisks, III.B.4.a.(2) and (3)

Here, SUBJECT OFFICER #1 completed the tasks outlined in *Rodriguez* approximately 20-22 minutes into the stop of Complainant. SUBJECT OFFICER #1 BWC 0:00 to 24:00. In that time, he approached Complainant's vehicle, checked his license, registration and insurance, checked his MDT computer, and finished writing the NOIs. *Id.* SUBJECT OFFICER #1 expressed to WITNESS OFFICER #1 that he would be releasing Complainant when he finished writing the citations and expressed no further basis on which to detain Complainant. *Id.* at 18:33.

The stop here, however, lasted, not 20 minutes, but approximately 42 minutes. SUBJECT OFFICER #1 BWC. Complainant's allegation is that that additional time was due to waiting for a K9 unit to arrive and conduct a dog sniff, and then the subsequent search that occurred because of the dog alerting on Complainant's vehicle. Under *Rodriguez*, a seizure justified only by a police-observed traffic violation, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." 135 S. Ct. at 1612 (citations omitted). Officers may conduct inquiries unrelated to the traffic stop as long as they "do not measurably extend the duration of the stop." *Id.* at 1615. Thus, a traffic stop may not be prolonged to wait for a K9 unit and dog sniff absent reasonable suspicion of a crime justifying the dog sniff. *Id.* at 1616. According to *Rodriguez*, then, the additional 20-22 minutes Subject Officers detained Complainant beyond the needs of an ordinary traffic stop required reasonable suspicion of a crime to hold Complainant for the K9 unit to arrive and conduct the dog sniff.

Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 contend in their interviews with OPC that they had basis to extend the stop because SUBJECT OFFICER #2 found an "attempt to locate" alert in relation to Complainant on WALES that required them to check with DISTRICT detectives if anyone came in contact with Complainant. Exh. 5 at 8:23, 10:45, 15:02, 17:20; Exh. 7 at 23:25, 27:35, 35:50. While such an alert would normally seem to provide justification, the problem here is that the alert contained in it, twice, the phrase, "EXP/20190621." Exh. 12. The phrase indicates that the alert had expired on June 21, 2019, 9 months prior to SUBJECT OFFICER #1's stop of Complainant and it was, therefore, no longer valid. SUBJECT OFFICER #2, when he brought the alert to SUBJECT OFFICER #1's attention, didn't mention the expiration date nor did he claim to know it when WITNESS OFFICER #1 asked him the date on it. SUBJECT OFFICER #1 BWC 18:52; BWC footage of SUBJECT OFFICER #2 dated March 6, 2020 (SUBJECT OFFICER #2 BWC) at 11:33. Looking at the alert, it is hard to understand how he missed it since it is written twice within the alert and quite obvious. Exh. 12. Moreover, as an officer trained to search for this type of information, he should be aware of relevant information like expirations dates – just as WITNESS OFFICER #1 was. *See* Exh. 7 at 20:45.

Why SUBJECT OFFICER #2 didn't seem concerned with the expiration date seems likely explained by his convincing SUBJECT OFFICER #1, just before the discovery of the alert, to call for a K9. SUBJECT OFFICER #1 BWC 12:22; SUBJECT OFFICER #2 BWC 5:19. When SUBJECT OFFICER #1 told SUBJECT OFFICER #2 that Complainant had refused to consent to a search of his car and that he "got nothin'" to justify it, SUBJECT OFFICER #2 suggested calling a K9. SUBJECT OFFICER #1 BWC 12:12; SUBJECT OFFICER #2 BWC 5:14. SUBJECT OFFICER #1 said that he didn't think it would arrive before the traffic stop ended – which made sense since at that point SUBJECT OFFICER #1 had almost finished

writing the traffic tickets and completed all ordinary activities in relation to a traffic stop. SUBJECT OFFICER #1 BWC 12:16; SUBJECT OFFICER #2 BWC 5:28. SUBJECT OFFICER #2, however, convinced him to do it anyway because “you won’t know unless you try.” SUBJECT OFFICER #1 BWC 12:33; SUBJECT OFFICER #2 BWC 5:30. It was then that SUBJECT OFFICER #2 called for K9 and a minute or so later that SUBJECT OFFICER #2 found the alert. SUBJECT OFFICER #2 BWC 6:39, 7:46.

WITNESS OFFICER #2 and SUBJECT OFFICER #1 then told SUBJECT OFFICER #2 to check the date on the alert and call the detectives. SUBJECT OFFICER #1 BWC 18:58; SUBJECT OFFICER #2 BWC 11:33. SUBJECT OFFICER #2 checked the date, but rather than inform SUBJECT OFFICER #1 it was expired, he proceeded to call the DISTRICT detectives to check on it and told them that he couldn’t find an expiration date on it. SUBJECT OFFICER #2 BWC 13:10. In and of itself, this didn’t prolong the stop since SUBJECT OFFICER #1 was still preparing the citations. SUBJECT OFFICER #1 BWC 23:23. Yet, it did prolong the stop when SUBJECT OFFICER #1 returned to his vehicle and SUBJECT OFFICER #2 pointed at a line on the screen when SUBJECT OFFICER #1 asked when the alert was put in. SUBJECT OFFICER #1 BWC 24:26; SUBJECT OFFICER #2 BWC 17:16. Approximately 22 minutes into the stop, a minute after SUBJECT OFFICER #1 finished writing the citations, both Subject Officers should have known the alert was no longer valid. SUBJECT OFFICER #1 BWC 24:26; SUBJECT OFFICER #2 BWC 17:16. At this point, they should have known that the time had come for the traffic stop to end.

SUBJECT OFFICER #2 had already called the DISTRICT Detectives about the alert, however, and was on the phone waiting for information from them. SUBJECT OFFICER #1 BWC 24:26; SUBJECT OFFICER #2 BWC 17:16. Less than three minutes later, approximately 25 minutes into the stop, he informed SUBJECT OFFICER #1 that the detectives no longer were looking for Complainant. SUBJECT OFFICER #1 BWC 27:04; SUBJECT OFFICER #2 BWC 20:02. From that moment, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 knew, unequivocally, that they had no basis to continue detaining Complainant. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 acknowledged during their interviews with OPC that the reason to extend the stop after the citations were prepared was to check on the “intent to locate” alert. Exh. 5 at 8:23, 10:45, 15:02, 17:20; Exh. 7 at 25:00, 27:35, 35:50. Thus, once that alert was cleared, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 knew that under the law, SUBJECT OFFICER #1 should have issued the citations to Complainant and let him be on his way.

Instead, however, they continued to detain Complainant approximately an additional seven minutes to wait for the K9 to arrive. SUBJECT OFFICER #1 BWC 27:04 to 34:04; SUBJECT OFFICER #2 BWC 20:02 to 26:48. Once the K9 arrived they extended the stop an approximately additional ten minutes for the detention of Complainant, the dog sniff and car search. SUBJECT OFFICER #1 BWC 34:04 to 43:42; SUBJECT OFFICER #2 BWC 26:48 to 36:44. None of this would have or should have happened if SUBJECT OFFICER #1 had issued the citations and released Complainant when he discovered the alert was no longer valid.

In their Objections to the ROI, however, Subject Officers contend that they were not unlawfully detaining Complainant. Rather, they argue that they were “actively engaged in



investigating law enforcement databases concerning [Complainant]. Subject Officers' claim lacks credibility, however. First, as already mentioned, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 said to the OPC investigator that the reason to extend the stop after completing the NOIs was because of the alert and that they had no other reasonable suspicion of a crime being committed.<sup>4</sup> Exh. 5 at 8:23, 10:45, 15:02, 17:20; Exh. 7 at 25:00, 27:35, 35:50. Moreover, also as already discussed, under *Rodriguez* unrelated inquiries to the reason for the traffic stop, here the tinted windows, "was lawful only 'so long as [they did not] not measurably extend the duration of the stop.'" 135 S. Ct. at 1615. Thus, when the alert was cleared (if not before), SUBJECT OFFICER #1 should have issued the citations and released Complainant since he had already completed all inquiries related to the stop prior to preparing the citations. *Supra* 6.

Moreover, SUBJECT OFFICER #2 says himself the true reason for prolonging the stop after notifying SUBJECT OFFICER #1 that the detectives did not need to locate Complainant. Immediately after, he spoke to someone on the phone named "WITNESS" and said, "Alright, we're waiting for K9." SUBJECT OFFICER #1 BWC 28:13; SUBJECT OFFICER #2 BWC 21:09. Finally, that the additional database checks were mere cover for their true purpose is revealed by the fact the Subject Officers suddenly found no more "investigative" checks they needed to do as soon as the K9 unit arrived. SUBJECT OFFICER #1 BWC 34:00; SUBJECT OFFICER #2 BWC 27:11. Other officers on the scene were also aware of the true purpose for the prolongation. While SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were in the car, WITNESS OFFICER #3 asked WITNESS OFFICER #2 what was happening with the traffic stop and if SUBJECT OFFICER #1 was writing a traffic citation. BWC footage of WITNESS OFFICER #3 dated March 6, 2020 (WITNESS OFFICER #3 BWC) at 20:15; BWC footage of WITNESS OFFICER #2 dated March 6, 2020 (WITNESS OFFICER #2 BWC) at 20:14. WITNESS OFFICER #2 told him that they were waiting for K9 to arrive. WITNESS OFFICER #3 BWC 20:19; WITNESS OFFICER #2 BWC 20:18.

Subject Officers contend in their Objections to the ROI that their case is distinguishable from *Rodriguez* because in *Rodriguez* the tickets were issued and then the driver was made to wait for the K9. Here, on the other hand, the NOIs had not yet been issued to Complainant. The distinction has no merit, however. The Supreme Court specifically refutes Subject Officer's argument, "The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff 'prolongs' – *i.e.*, adds time to – 'the stop.'" *Rodriguez*, 135 S. Ct. at 1616. The point of *Rodriguez* is not that the citations were in the hand of the driver or in the hand of the officer. The point is to look to when the officer finished the police work that needed to be done. *See Id.* An officer simply choosing to hold onto the NOIs

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<sup>4</sup> SUBJECT OFFICER #2 also mentioned during his interview with OPC that he smelled marijuana in the vehicle and seemed to suggest that this provided reasonable suspicion for the dog sniff and/or to extend the stop to make sure Complainant wasn't impaired, although he later clarified that he didn't mean they took those actions in this case. Exh. 7 at 33:27. In the BWC footage, no officer mentions an odor of marijuana. The only references to marijuana take place after the K9 arrives and the sniff has been completed. Roaches were observed on the center console and the passenger saying that he had less than the legal amount of marijuana, although he later said it wasn't in the vehicle at the time. SUBJECT OFFICER #1 BWC 37:22, 41:20; BWC footage of WITNESS OFFICER #6 dated March 6, 2020 (WITNESS OFFICER #6 BWC) at 16:09. Thus, SUBJECT OFFICER #2's statement about smelling marijuana in the vehicle is not credited, especially since he later clarified that it was not the basis for any actions taken to extend the stop of Complainant.

for longer without reasonable suspicion to continue prolonging the stop is not doing stop related police work. *See Id.* If it were, then any stop could be extended indefinitely which is contrary to the holding of *Rodriguez*.

Subject Officers also cite to the 8<sup>th</sup> Circuit's decision in *Rodriguez* to contend that the amount of time Complainant's stop was prolonged was *de minimis* and therefore reasonable "to ensure officer safety." Except the Supreme Court's decision in *Rodriguez* overruled the Eighth Circuit's reliance on the *de minimis* rule for ordinary traffic stops: "Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular." *Rodriguez*, 135 S. Ct. at 1616.

Here, at no time did any of the officers express that they feared for their safety nor did they take actions one would expect if they had. For example, they didn't conduct a protective sweep, allowed under *Terry v. Ohio*, 392 U.S. 1 (1968). Their actions, rather, suggested that it was a routine traffic stop in which the officers conducted checks on a police computer while Complainant remained in his vehicle and other officers milled about.

The desire for the K9 sniff, as articulated by SUBJECT OFFICER #1 numerous times, was based solely on Complainant not rolling down his window far enough and having a criminal history involving selling drugs. SUBJECT OFFICER #1 BWC 7:47, 8:19, 11:56. These facts do not provide reasonable suspicion of a crime. If they had, they would not have needed to try to find an endless array of reasons to stall issuing the citations to Complainant once they were completed. Their desire to search Complainant's car was entirely speculative and had nothing to do with officer safety.

Finally, in the Objections to the ROI, SUBJECT OFFICER #2 objects to his inclusion in Complainant's allegations. He argues that SUBJECT OFFICER #1 was the lead officer and he was just one of many officers assisting SUBJECT OFFICER #1. That position was not what he told to the OPC investigator, however. He told her that he actively participated in the decision-making during the traffic stop and that his actions directly contributed to the traffic stop being extended beyond its initial purpose. Exh. 7 at 6:39, 12:00. His actions support his statement. SUBJECT OFFICER #2 suggested the idea of calling for a K9 and convinced SUBJECT OFFICER #1 to do it when SUBJECT OFFICER #1's initial inclination was to not call one. SUBJECT OFFICER #2 BWC 5:30. SUBJECT OFFICER #2 called for the K9 and found the "attempt to locate" that led to the prolongation of the stop. *Id.* at 6:39. SUBJECT OFFICER #2 called the DISTRICT detectives and when it was clear that they could no longer prolong the stop on the basis of the attempt to locate, it was SUBJECT OFFICER #2 that suggested a JUSTIS search. *Id.* at 24:43. While SUBJECT OFFICER #1 may have been the lead officer and in theory the one responsible for decision making, it was clearly SUBJECT OFFICER #2 that led him each step of the way. None of the other officers had any involvement in the incident other than to observe. Thus, SUBJECT OFFICER #2 is properly included as a Subject Officer in these allegations.

The Supreme Court in *Rodriguez* held that a traffic stop may not be prolonged for a dog sniff absent reasonable suspicion justifying it. 135 S. Ct. at 1616. Here, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had no reasonable suspicion for the dog sniff. Thus, they had no

basis to prolong the stop of Complainant approximately 20 to 24 minutes beyond what was necessary for an ordinary traffic stop. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 knew that they did not have reasonable suspicion and admitted it when they said in their interviews with OPC that the only basis to extend the stop was the “attempt to locate” alert. Thus, even if it is accepted that an expired alert justified prolonging the stop, once that alert was cleared any further prolongation of Complainant’s stop to wait for the K9 was a purposeful violation of the Constitution and MPD General Order OPS 304.10. That purposeful prolongation deprived Complainant of his rights and constitutes harassment under MPD General Order 120.25. The allegation of harassment against SUBJECT OFFICER #1 and SUBJECT OFFICER #2 for the prolongation of Complainant’s traffic stop is, therefore, sustained.

**C. SUBJECT OFFICER #1 And SUBJECT OFFICER #2’s Detention of Complainant in Handcuffs While Conducting the Dog Sniff and Car Search Constituted Harassment**

After the K9 arrived, SUBJECT OFFICER #2 threatened Complainant with arrest if he did not get out of the car. SUBJECT OFFICER #1 BWC 34:14; SUBJECT OFFICER #2 BWC 27:08. SUBJECT OFFICER #2 provided no explanation for why the stop was being extended beyond a traffic stop for tinted windows as required by MPD General Order 304.10. III.B.4.a.(2) and (3). SUBJECT OFFICER #1 BWC 34:14; SUBJECT OFFICER #2 BWC 27:11. When Complainant exited the car, understandably protesting having received no explanation, SUBJECT OFFICER #1 physically accompanied him beyond the vehicle and handcuffed him. SUBJECT OFFICER #1 BWC 34:27; SUBJECT OFFICER #2 BWC 27:24. He also did not provide an explanation for the extension of the stop. None of this would have happened but for SUBJECT OFFICER #1 and SUBJECT OFFICER #2 unlawfully prolonging the traffic stop. Because the purposeful and unlawful decision to prolong the stop to conduct a K9 sniff of Complainant’s vehicle led to Complainant’s handcuffed detention, SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s conduct constituted harassment. The allegation of harassment against SUBJECT OFFICER #1 and SUBJECT OFFICER #2 for the detention and handcuffing of Complainant’s vehicle is, therefore, sustained.

**D. SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s Search of Complainant’s Car Constituted Harassment.**

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 conducted a search of Complainant’s vehicle predicated on probable cause established by a dog sniff hit on Complainant’s passenger door indicating the presence of drugs. SUBJECT OFFICER #1 BWC 38:07; SUBJECT OFFICER #2 BWC 30:56. As already discussed, however, the prolongation of the detention to conduct the dog sniff was not based on reasonable suspicion, and thus the search conducted on its basis was also unlawful. *See Rodriguez*, 135 S. Ct. at 1616. Thus, SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s search of Complainant’s car was purposefully in violation of the Constitution and MPD policy and constituted harassment. The allegation of harassment against SUBJECT OFFICER #1 and SUBJECT OFFICER #2 for the search of Complainant’s vehicle is, therefore, sustained.



**V. SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER #1**

<b>Allegation 1</b>	Harassment (Prolonged Traffic Stop)	Sustained
<b>Allegation 2</b>	Harassment (Handcuffed detention)	Sustained
<b>Allegation 3</b>	Harassment (Search)	Sustained

**SUBJECT OFFICER #2**

<b>Allegation 1</b>	Harassment (Prolonged Traffic Stop)	Sustained
<b>Allegation 2</b>	Harassment (Handcuffed detention)	Sustained
<b>Allegation 3</b>	Harassment (Search)	Sustained

Submitted on December 15, 2020.

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Complaint Examiner