

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 20-0584 |
| Complainant: | COMPLAINANT |
| Subject Officer, Badge No., District: | SUBJECT OFFICER |
| Allegation 1: | Harassment: failure to safeguard complainant's personal property during an arrest |
| Complaint Examiner: | Meaghan Hannan Davant |
| Merits Determination Date: | February 19, 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

Complainant COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on June 15, 2020 alleging that, on June 8, 2020, Metropolitan Police Department (MPD) SUBJECT OFFICER, harassed him by failing to safeguard his property following his arrest.¹

¹ COMPLAINANT further alleged that, first: SUBJECT OFFICER, along with WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 harassed him by unlawfully stopping and arresting him. Second, that SUBJECT OFFICER and WITNESS OFFICER #1 harassed him by unlawfully placing him in handcuffs. Third, that WITNESS OFFICER #1 and WITNESS OFFICER #2 harassed him by unlawfully searching him. Fourth, that WITNESS OFFICER #3 harassed him by unlawfully searching his bag. Fifth, that WITNESS OFFICER #1, WITNESS OFFICER #2 and WITNESS OFFICER #3 harassed him by mishandling his phone. Finally, COMPLAINANT alleged that SUBJECT OFFICER, WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 discriminated against him based on his race, African American. Pursuant to D.C. Code § 5-1108(1), on January 4, 2021, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

Specifically, COMPLAINANT stated that, on June 8, 2020, at approximately 10:00 p.m., at A LOCATION IN SE, WASHINGTON, DC, COMPLAINANT was stopped in his car and asked to exit the driver's seat. When he stepped out of the car, "officers" took his phone and placed it on the roof of the car. When COMPLAINANT later went to retrieve his prisoner's property, the phone was missing and never recovered. COMPLAINANT alleged the officers mishandled his phone by failing to safeguard it while in police possession.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation including the body-worn camera footage, the objections submitted by the subject officers on January 22, 2021 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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the exhibits thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 8, 2020, at approximately 10:00 p.m. complainant was stopped in his car by subject SUBJECT OFFICER and WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 outside of AN ADDRESS IN SE, WASHINGTON, DC.
 2. Body Worn Camera ("BWC") footage of the incident shows that SUBJECT OFFICER and WITNESS OFFICER #1 approached the driver's side door of the car, while WITNESS OFFICER #3 approached the passenger side door.
 3. When the passenger said he had a firearm, SUBJECT OFFICER and WITNESS OFFICER #1 stepped COMPLAINANT out of the car.
 4. As COMPLAINANT exited the vehicle, the BWC footage clearly shows that his iPhone is in his right hand. He also had in his possession a black fanny pack containing marijuana, money, and keys.
 5. As complainant exited the vehicle, the BWC footage shows that SUBJECT OFFICER took COMPLAINANT' phone from his hand and placed it on the roof of the vehicle.
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6. In his interview with OPC, SUBJECT OFFICER explained that he quickly placed the phone on the roof because he had learned there was a firearm in the vehicle and wanted to make sure that there was nothing in COMPLAINANT's hands. He also stated that he didn't "intentionally" lose complainant's phone.
7. COMPLAINANT was placed in handcuffs, after which time his personal property was removed and placed in property bags. In the BWC footage, WITNESS OFFICER #2 can be seen asking complainant, "You got any jewelry on you?" COMPLAINANT responded by shaking his head, "no." WITNESS OFFICER #2 then asked, "Nothing? Alright. Phone?" To which complainant responded, "They took my phone."
8. In is interview with OPC, SUBJECT OFFICER stated that whoever recovered, or first came into possession of, COMPLAINANT's property at the scene of the incident was responsible for its chain of custody going forward. SUBJECT OFFICER also admitted that he himself had handled COMPLAINANT's property, including his phone.
9. SUBJECT OFFICER further stated that, after he placed complainant's phone on the roof of the car, he did not recall seeing it again, nor did he know if anyone else handled the phone thereafter. The subject officer stated that he "assumed" another officer at the scene would have retrieved the phone.
10. In their interviews with OPC, WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 each stated that they did not handle COMPLAINANT's phone, nor did they know what ultimately happened to it.
11. Complainant's phone was not documented in the property book or property record, as required incident to an arrest.

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."

A. Harassment

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.

MPD General Order 601.01 (effective April 30, 1992) Part 1 (A)(5) states, “Members shall ensure all property, which comes into their possession, is properly safeguarded *until relieved of that responsibility*” (emphasis added). The general order further specifies, “In all cases of property which comes into the possession of this department, *it is the responsibility of the member who first handles the property* to ensure that the property is *properly recorded and processed* in accordance with the procedures set forth in this order” *Id.* (emphasis added).

Based on the review of the BWC footage of the incident, as well as corroborating statements made by complainant and each of the subject officers, it is clear that COMPLAINANT had his iPhone in his possession at the time of the stop. Specifically, the BWC footage shows that the iPhone was in complainant’s right hand as he stepped out of the driver’s side of the vehicle. Seconds later, the footage shows SUBJECT OFFICER remove the phone from COMPLAINANT’s hand and place it on the roof of the vehicle. As such, SUBJECT OFFICER “first handle[d]” complainant’s property was thereafter responsible for safeguarding it “until relieved of that responsibility.”

In his statement to OPC, the subject officer admitted that he took COMPLAINANT’s phone from his hand and placed it on the roof of the car and that—although he didn’t “intend” to lose the iPhone—he mishandled it in such a way that it was, at the very least, lost. SUBJECT OFFICER further admitted that it was his responsibility, pursuant to General Order 601.01, to safeguard the phone and that he did not do so. Nor, as he admitted, did he enter the iPhone into the property record, as required.

While SUBJECT OFFICER's actions do not appear to have been intentional or malicious, they nonetheless constitute a reckless violation of MPD Guidelines, directly resulting in the permanent loss of COMPLAINANT's property.

There is, therefore, reasonable cause to believe that SUBJECT OFFICER harassed complainant, in violation of D.C. Code § 5-1107 and MPD General Order 120.25, by failing to follow orders and MPD guidelines and safeguard his possessions during the course of his arrest.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

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| Allegation 1: Harassment: failure to safeguard complainant's personal property | Sustained |
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Submitted on February 19, 2021

Meaghan Hannan Davant
Complaint Examiner