

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	20-0742
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
<b>Allegation 1</b>	Harassment (Handcuffs) – SUBJECT OFFICER #1 and SUBJECT OFFICER #2
<b>Allegation 2</b>	Harassment (Search of Wallet) – SUBJECT OFFICER #3
<b>Allegation 3</b>	Failure to Provide Identification – SUBJECT OFFICER #1
<b>Allegation 4</b>	Language or Conduct – SUBJECT OFFICER #1
<b>Complaint Examiner:</b>	Jennifer A. Fischer, Esq.
<b>Merits Determination Date:</b>	June 16, 2021

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

The Complainant, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on August 19, 2020. Complainant alleged that on August 12, 2020, Metropolitan Police Department (MPD) Officer SUBJECT OFFICER #1 (SUBJECT OFFICER #1) and SUBJECT OFFICER #2 (SUBJECT OFFICER #2) harassed him by unlawfully placing him in handcuffs. Additionally, Complainant alleged that SUBJECT OFFICER #3 (SUBJECT OFFICER #3) harassed him by unlawfully searching his wallet. Furthermore, Complainant alleged that SUBJECT OFFICER #1 failed to provide his business card or name and badge number upon request. Finally, Complainant alleged that SUBJECT OFFICER #1 used language

or engaged in conduct toward him that was insulting, demeaning, or humiliating by verbally abusing him and using profanity.<sup>1</sup>

Specifically, Complainant explained that on August 12, 2020, at approximately 6:07 p.m., near A STREET IN SE, WASHINGTON, DC, he went to check his mailbox outside of his apartment building. His firearm, which was legally registered in the District was in his fanny pack, which was strapped around his chest. Before he could return to his apartment, SUBJECT OFFICER #3 and his colleagues aggressively approached him. Complainant said he had a firearm and permit, and the officers placed him in handcuffs.<sup>2</sup> SUBJECT OFFICER #3 then retrieved Complainant's wallet and removed his identification cards without his consent. When the officers were running away from the scene, Complainant requested their business cards and badge numbers, but SUBJECT OFFICER #3 was the only one who provided his information. Complainant approached SUBJECT OFFICER #1 with the same request, but SUBJECT OFFICER #1 started cursing at him and verbally abusing him and never provided the requested information.

---

<sup>1</sup> Complainant also alleged that SUBJECT OFFICER #1, SUBJECT OFFICER #3, and SUBJECT OFFICER #2 harassed him by unlawfully stopping him. Second, Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 used unnecessary force or excessive force against him by forcibly placing him in handcuffs. Third, Complainant alleged that SUBJECT OFFICER #2 used unnecessary or excessive force against him by applying his handcuffs too tight. Fourth, Complainant alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against him by aggressively removing his fanny pack. Fifth, Complainant alleged that SUBJECT OFFICER #3 harassed him by unlawfully searching his pocket. Sixth, Complainant alleged that SUBJECT OFFICER #1 harassed him by unlawfully searching his fanny pack. Seventh, Complainant alleged that WITNESS OFFICER #5 harassed him by unlawfully seizing his firearm. Eighth, Complainant alleged that SUBJECT OFFICER #2 harassed a bystander by threatening to arrest them. Ninth, Complainant alleged that SUBJECT OFFICER #3 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating by throwing his identification cards on the ground. Tenth, Complainant alleged that SUBJECT OFFICER #2 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating by throwing his mail on the ground. Eleventh, Complainant alleged that SUBJECT OFFICER #2 and WITNESS OFFICER #2 and WITNESS OFFICER #3 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating by lecturing him about the firearm laws. Twelfth, Complainant alleged that SUBJECT OFFICER #2 used language or engaged in conduct toward a bystander that was insulting, demeaning, or humiliating when he used profanity. Thirteenth, Complainant made general language and conduct allegations against multiple Subject Officers, and, based on the BWC footage, OPC determined that SUBJECT OFFICER #3 used profanity while speaking with Complainant. Fourteenth, Complainant alleged that SUBJECT OFFICER #2, and WITNESS OFFICER #5, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #1, WITNESS OFFICER #4, WITNESS OFFICER#6, WITNESS OFFICER #7, WITNESS OFFICER #8, and WITNESS OFFICER #9 failed to provide their business cards or names and badge number upon request. Fifteenth, Complainant alleged that the Subject Officers discriminated against him based on his race and place of residence. Finally, Complainant alleged that SUBJECT OFFICER #3 and SUBJECT OFFICER #2, and WITNESS OFFICER #5, WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #1, WITNESS OFFICER #4, WITNESS OFFICER #6, WITNESS OFFICER #7, WITNESS OFFICER #8, and WITNESS OFFICER #9 failed to intervene to stop the misconduct. Pursuant to D.C Code § 5-1108(1), on April 16, 2021, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

<sup>2</sup> Based on the BWC footage, OPC determined that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 placed Complainant in handcuffs.

## **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 August 12, 2020, by SUBJECT OFFICER #3, SUBJECT OFFICER #1 and SUBJECT OFFICER #2, and WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #4, the objections submitted by the Subject Officers on May 11, 2021 (Subject Officers' Objections), and OPC's response to the objections dated May 14, 2021, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. Tit. 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded on August 12, 2020, by SUBJECT OFFICER #3, SUBJECT OFFICER #1 and SUBJECT OFFICER #2, and WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #4, the objections submitted by the Subject Officers on May 11, 2021 (Subject Officers' Objections), and OPC's response to the objections dated May 14, 2021, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with Office of Police Complaints on August 19, 2020.
2. At approximately 6:07 p.m. on August 12, 2020, Complainant had just picked up his mail and was returning to his apartment building when SUBJECT OFFICER #3, SUBJECT OFFICER #1, and SUBJECT OFFICER #2 approached him from the street. They emerged from their unmarked vehicle several vehicles down from the grounds of the apartment complex where they engaged with Complainant. They were not in police uniform, but wearing bullet proof vests, with "police" written on the back, but not the front.
3. Subject Officers approached Complainant from the street some distance away from where he was standing near the door of his apartment building. As they walked down the incline and while some distance from Complainant, SUBJECT OFFICER #3 yelled out, "What's up, man? Everything good.?" SUBJECT OFFICER #1 said immediately after, "What's up, bro? How you doing, man?" SUBJECT OFFICER #3 then yelled "Everything chill? Everything cool? No guns or nothing, right?"
4. As the officers shouted, Complainant was turned away from them and staring down at his phone. He turned a bit toward SUBJECT OFFICER #2 in response to their shouts, but he did not appear to realize immediately that they were addressing him and he did not respond.
5. As SUBJECT OFFICER #1 reached Complainant, he asked, "Can you just do me a favor, man? The way that thing's hanging, can you just bend it for me?" While speaking SUBJECT OFFICER #1 gestured toward his own chest.

6. Complainant removed the mail from his left pocket. SUBJECT OFFICER #1 pointed to the fanny pack on Complainant's chest and said, "Nah. This right here."
7. Complainant responded, "Hold up. Nah. I'm about to show you. 'Cause I got my license." He then removed his wallet from his left pocket.
8. SUBJECT OFFICER #1 said, "Okay. Is there a gun in there?"
9. Complainant answered, "Yeah. I got my license."
10. SUBJECT OFFICER #2 immediately grabbed Complainant's right arm, causing the mail he was holding to fall. SUBJECT OFFICER #1 then grabbed Complainant's left arm and SUBJECT OFFICER #2 began applying the handcuffs. Complainant said, "Hold up. Hold up."
11. Complainant, who was holding his wallet as they grabbed his arms, said, "I got my license right here." SUBJECT OFFICER #1, while continuing to hold one of Complainant's arms, called on the radio, "We got a 1-800. Might have a license."
12. SUBJECT OFFICER #3 asked him, "You have a license to carry?" He grabbed the wallet from Complainant's hand and opened it.
13. Complainant did not resist the officers handcuffing him, but complained, "you gotta ask me first." SUBJECT OFFICER #1 responded, "No. No. No. We don't."
14. Complainant continued to insist that he had a license and SUBJECT OFFICER #3 said "Okay. I'm a get it out." SUBJECT OFFICER #3 proceeded to remove various cards from the wallet.
15. While SUBJECT OFFICER #3 removed the cards, SUBJECT OFFICER #1 loosened, unclipped, and removed the fanny pack. While he did that, Complainant said, "Come on. I'm just checking the mailbox. Sir, you didn't even give me the chance to tell you, and I got my license right there."
16. Complainant continued to insist that he had his license and that they didn't give him a chance to tell them. SUBJECT OFFICER #1 told him to chill out. SUBJECT OFFICER #3 told him, "You told me. You said you had a gun, and you have a license."
17. Complainant continued with insisting he'd told them he had a license and SUBJECT OFFICER #1 said, "Listen, this is protocol. That's it. Let him do what he gotta do."
18. After SUBJECT OFFICER #3 had removed the license from Complainant's wallet, Complainant said, "that's my license. Yes." SUBJECT OFFICER #3 then examined it and SUBJECT OFFICER #3 and SUBJECT OFFICER #1 verified the gun in the fanny pack matched the license.
19. At that point, a little over a minute into the encounter, SUBJECT OFFICER #3 said, "Uncuff him." SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not uncuff Complainant.

20. SUBJECT OFFICER #1 removed the magazine from the firearm and observed another mag in the fanny pack. WITNESS OFFICER #3 asked, "Was it in a holster?" SUBJECT OFFICER #1 said, "No." WITNESS OFFICER #3 added, "and the ammo's illegal too."
21. SUBJECT OFFICER #1 proceeded to tell Complainant that Complainant was going to be placed under arrest, "Just because you know you went to the class and everything else. You gotta have this where?" Complainant responded that it was in his holster. Simultaneously, WITNESS OFFICER #5 and WITNESS OFFICER #2 told SUBJECT OFFICER #1 that it was a warrant case, not an arrest.
22. Complainant again insisted that the gun had been in a holster. SUBJECT OFFICER #1 responded that it wasn't in a holster. WITNESS OFFICER #2 told Complainant, "They sell in-the-pants holsters. . . . You can't even get to that if you need to."
23. Complainant again explained to SUBJECT OFFICER #1, "you asked was it a gun, I told you it was a gun in there, then you just immediately snatched me up for no reason. And I told you I had a license." SUBJECT OFFICER #1 responded, "If you wanna get an attitude."
24. Complainant worried about his wallet and mail and SUBJECT OFFICER #3 said, "We have your wallet and your mail right here." SUBJECT OFFICER #1 told him, "Just calm down, champ. Calm down. You not getting locked up."
25. After WITNESS OFFICER #6 photographed the contents of the fanny pack, the firearm registration and the concealed carry permit, he put them in the fanny pack and told Complainant they were taking them for safekeeping. SUBJECT OFFICER #2 then removed Complainant's handcuffs, approximately three minutes into the stop, and two minutes after SUBJECT OFFICER #3 said they could be removed.
26. WITNESS OFFICER #2 asked SUBJECT OFFICER #2, "Did he say he had a gun on him when you asked?" SUBJECT OFFICER #2 responded, "Yeah. I think WITNESS OFFICER #4 asked."
27. SUBJECT OFFICER #1 told Complainant that they were going to take the gun and that Complainant needed to get a holster. The officers returned his phone and his mail. SUBJECT OFFICER #1 said, "He understands. He been cool. I think he understands." Complainant responded, however, "I'm upset with you sir. Cause that was messed up what you did man. You didn't even give me a chance or none of that." SUBJECT OFFICER #1 walked away without responding and deactivated his camera.
28. WITNESS OFFICER #2 asked SUBJECT OFFICER #1, "WITNESS OFFICER #4. Did he say he had one when you asked?" SUBJECT OFFICER #1 responded, "No. Not when we asked. No." Moments later, WITNESS OFFICER #4 also asked SUBJECT OFFICER #1, "Did he say he had it on him when you asked?" SUBJECT OFFICER #1 responded, "Not right away, no. . . . He turned away. Saw us walking up. Walked away. Said, "You gotta gun on you? Or whatever. He turned away. I said, 'Bro, you gotta gun on you?' or whatever. He said, 'I have a license.'" So after that, I said, 'Alright. Cool.' Put him in cuffs."

29. After obtaining SUBJECT OFFICER #3's card and conversing further with SUBJECT OFFICER #3 and SUBJECT OFFICER #2, Complainant approached SUBJECT OFFICER #1 and asked for his card. SUBJECT OFFICER #1 did not reactivate his body camera, but responded, "I don't have a card." Complainant responded, "You don't have a card?" SUBJECT OFFICER #1 said, "No. But I'll tell you what we didn't do though. How about this? We didn't lock your ass up. How about that? You cool with that? Because you wanna be on man time? Let's be on man time. I'm sick of that, bro. Man up, dog. You know you was wrong." Although SUBJECT OFFICER #1 continued speaking, all officers in the vicinity at this point deactivated their body cameras.

#### **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 ... (3) Use of language or conduct that is insulting, demeaning, or humiliating; ... (6) Failure ... 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 and in the regulations governing OPC as "words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity."

"In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating." D.C. Mun. Regs. tit. 6A, § 2199.1.

##### **a. Detention in handcuffs**

Handcuffing Complainant was a violation of the law and MPD Policy. General Order 304.10 provides that "[An] Officer shall use the least coercive means necessary to effect a stop. The least coercive means, depending on the circumstances, may be a verbal request, an order, or the use of physical force."

The question here is whether handcuffing was the least coercive means necessary to effect the stop of Complainant. Under *Womack v. United States*, handcuffing in the course of an

investigatory stop is only permissible “where it [is] reasonably necessary to protect officers’ safety or to thwart a suspect’s attempt to flee.” 673 A.2d 603 (D.C. 1996) (citations omitted).

Here, the officers handcuffed Complainant after he told them that he had a gun on him and a license, and that he would show it to them as he pulled out his wallet. SUBJECT OFFICER #3 BWC footage recorded on Aug. 12, 2020 (“WITNESS OFFICER #3 BWC”) at 2:00; SUBJECT OFFICER #1 BWC footage recorded on Aug. 12, 2020 (“SUBJECT OFFICER #1 BWC”) at 2:10; SUBJECT OFFICER #2 BWC footage recorded on Aug. 12, 2020 (“SUBJECT OFFICER #2 BWC”) at 2:25. He had made no suspicious movements visible in the BWC footage and SUBJECT OFFICER #1, SUBJECT OFFICER #3 and SUBJECT OFFICER #2 all admitted in their interviews with OPC that they could not recall having a fear for their safety other than Complainant’s informing them that he was in possession of a gun. Exh. 9 at 9:25; Exh. 11 at 10:05, 17:25; Exh. 14 at 4:04, 4:34. Although SUBJECT OFFICER #1 stated that his initial approach of Complainant was because of the satchel and his body language suggested he was nervous, he could not articulate what specifically about his body language gave him that impression. Exh. 9 at 3:25. Neither SUBJECT OFFICER #3 nor SUBJECT OFFICER #2 claimed to see Complainant acting nervously prior to their approach. Exh. 11 at 5:53; Exh. 14 at 2:04.

Although the Subject Officers articulated differing standards for deciding to handcuff someone who had a gun and claimed to have a permit, they all stated that here, the reason for handcuffing Complainant was that he had a firearm and had not been up front about his registration and permit. Exh. 9 at 7:11, 13:27, 17:25; Exh. 11 at 9:25, 10:21, 13:30, 21:05; Exh. 14 at 3:45, 7:15, 31:45. In the case of SUBJECT OFFICER #1, he stated that Complainant did not disclose that he was carrying a firearm even though they asked him multiple times. Exh. 9 at 6:15. Had the Complainant said he was carrying a firearm, that it was registered and provided the location of his permit, SUBJECT OFFICER #1 said he might not have placed the handcuffs. Exh. 9 at 57:45. SUBJECT OFFICER #3 said that his usual experience of stopping civilians with legally registered firearms was that the individuals told him about the firearms when he started speaking with them, took out their firearms and their permits. Exh. 11 at 18:27. He said it was not his standard practice to place an individual in handcuffs if the individual was cooperative and told him about the firearm, but they put Complainant in handcuffs because he didn’t tell them about his permit. Exh. 11 at 20:40. SUBJECT OFFICER #2 said he heard Complainant tell his colleagues that he had a permit, but he was not specific about what type of permit and moments later told him that he had a firearm and only later learned it was a concealed carry permit. Exh. 14 at 4:45. He said on their initial contact, however, Complainant did not disclose that he had a firearm and permit, which was a violation of the law. Exh. 14 at 5:42. Instead, they had to ask Complainant if he had a firearm before he told them. Exh. 14 at 7:00.

The duties to disclose, however, only arise in the case of an investigative stop, not a mere contact. D.C. Code § 7-2509.04 (d) requires that “if a law enforcement officer initiates an investigative stop of a licensee carrying a concealed pistol pursuant to § 22-4506, the licensee . . . shall (1) Disclose to the officer that he or she is carrying a concealed pistol; (2) Present the license and registration certificate; (3) Identify the location of the concealed pistol and (4) Comply with all lawful orders and directions from the officer, including allowing a pat down of his or her person and permitting the law enforcement officer to take possession of the pistol for as long as necessary for the safety of the officer or the public”.

D.C. Code § 7-2509.04 does not define “investigative stop.” A “Stop” is defined by General Order 304.10, however, as “The temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person. A stop occurs whenever an officer uses his/her authority to compel a person to halt, remain in a certain place, or to perform some act (such as walking to a nearby location where the officer can use a radio or telephone). If a person is under a reasonable impression that he/she is not free to leave the officer’s presence, a “stop” has occurred. GO 304.10 II.3.

In contrast, General Order 304.10 defines a “Contact” as “Conduct by a member which places the sworn member in face-to-face communication with an individual citizen under circumstances in which the citizen is free not to respond and leave.”

Here, the officers clarified in their interviews with OPC that their initial approach of Complainant was a mere contact and not a stop. Exh. 9 at 2:50; Exh. 11 at 5:58, 8:30; Exh. 14 at 3:30, 26:40. It is debatable that their initial yelling at Plaintiff could even be considered a “contact” given that they were not “face-to-face” with him, nor did they have any specific police markings facing Complainant, but, rather, they simply yelled questions at him from a distance. From the BWC footage it seems Complainant doesn’t even realize they are talking to him. Regardless, even assuming *arguendo* it was a contact, at that point, Complainant had no duty to inform the officers of his gun since it had not yet escalated to a stop.

The Subject Officers articulate that the Contact became a Stop only after they learned that he had a gun. Exh. 9 at 10:10; Exh. 11 at 6:57, 8:30; Exh. 14 at 3:30, 26:40. As soon as SUBJECT OFFICER #1 was face-to-face with Complainant and asked him if he had a gun in the satchell on his chest, Complainant said, “yeah” and immediately followed with, “I got my license” and began to pull out his wallet to show them, in compliance with the law, but was impeded by SUBJECT OFFICER #2 and SUBJECT OFFICER #1 handcuffing them. SUBJECT OFFICER #1 BWC 2:14; SUBJECT OFFICER #3 BWC 2:20; SUBJECT OFFICER #2 BWC 2:30. Although SUBJECT OFFICER #3 states that at the same time Complainant answered the question about his gun, that Complainant’s demeanor changed, he was unable to articulate how it changed. Exh. 11 at 7:40. Thus, Complainant was in compliance with D.C. Code § 7-2509.04 and his lack of response to the first question yelled from afar did not provide any basis for handcuffing Complainant given the lack of any other articulable concern for the officers’ safety. That this is so is emphasized by (d)(4) which requires a licensee to comply with all lawful orders and directions from any officer including allowing a pat down and permitting the law enforcement officer to take possession of the pistol for the safety of the officer. It does not, however, include allowing officers to handcuff a licensee for the safety of the officer, suggesting that in cases in which the licensee is complying with § 7-2509.04, that mere possession cannot be a sole basis for inferring a threat of safety rising to the level of handcuffing a licensee.<sup>3</sup>

---

<sup>3</sup> The Subject Officers in their interviews with OPC also seem to insinuate that Complainant was carrying his gun improperly as a possible basis for handcuffing him, although in the case of SUBJECT OFFICER #3 this was only after prompting by his union representative. Exh. 9 at 14:10; Exh. 11 at 11:20, 11:49; Exh. 14 at 30:00, 30:55 SUBJECT OFFICER #3 claimed that the gun had to be holstered on his hip. Exh. 11 at 11:29. SUBJECT OFFICER

Even if SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had lawfully handcuffed Complainant simply because he confessed to carrying a gun, they continued to detain him in handcuffs for approximately three minutes after SUBJECT OFFICER #1 was in possession of the gun and any threat to officer safety was passed and two and a half minutes after SUBJECT OFFICER #3 confirmed the license and told them Complainant could be released from the handcuffs. SUBJECT OFFICER #1 BWC 2:30, 3:21, 5:35; SUBJECT OFFICER #3 BWC 2:48, 3:39, 5:55; SUBJECT OFFICER #2 BWC 2:47, 3:38, 5:50. That there was no threat to officer safety and no danger of Complainant fleeing was all the more evident by there being at least nine officers surrounding SUBJECT OFFICER #1 BWC 3:05; SUBJECT OFFICER #3 BWC 3:15; SUBJECT OFFICER #2 BWC 3:40.

Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 should have known that they had no basis to detain Complainant in handcuffs without an articulable threat to officer safety beyond Complainant admitting to having a concealed gun and a license for that gun. At the very least, they should have known that they no longer had a right to keep him detained in handcuffs once the gun was in the officers' possession and the license was verified. They clearly did know this because SUBJECT OFFICER #3 stated that they could release him from the handcuffs and they did not do so. Because the officers should have and clearly did know better, their action was reckless, if not knowing or intentional.

Thus, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed Complainant by detaining him in handcuffs without a threat to officer safety and Complainant's allegation is sustained.

#### **b. Search**

SUBJECT OFFICER #3 reached into Complainant's wallet to retrieve Complainant's firearm registration and concealed carry permit. SUBJECT OFFICER #3 BWC 2:44. The act of

---

#1 said the problem was that the firearm was not in a holster or attached to his body, underneath his clothing and out of view. Exh. 9 at 14:10,15:40.

D.C. Code 24-2344.2 provides that "A licensee shall carry any pistol in a holster on their person in a firmly secure manner that is reasonably designed to prevent loss, theft, or accidental discharge of the pistol." The law does not provide a definition of "holster," thus, the sole explanation is that it be held on their person in a firmly secure manner that is reasonably designed to prevent loss, theft, or accidental discharge of the pistol. It does not require that it be in a holster on a licensee's hip as claimed by SUBJECT OFFICER #3. In fact, that holsters are made to carry guns on other parts of the body is indicated in General Order 110.11 C.1 which specifically mentions both leg holsters and hip holsters. A brief perusal for holsters on the internet also shows satchels called holsters that may be carried across the chest. Moreover, SUBJECT OFFICER #1 in his interview with OPC specified that Complainant was carrying his pistol in a satchel tight and close to his body, which would seem to comply with the requirement that it be "in a firmly secure manner." Exh. 9 at 4:45. While it is not the intent here to dispute the Subject Officers' conclusion that Complainant's satchel was not a proper holster, it suggests that there may be some confusion about what constitutes a holster in compliance with the law, most especially when a person is simply stepping out of their apartment building briefly to collect their mail, and it is questionable that this alone can be a basis for a fear for officer's safety that requires handcuffing. Particularly when, as noted by WITNESS OFFICER #2 who commented to Complainant about carrying his gun in a satchel on his chest, "you can't even get to [your gun] if you need to." WITNESS OFFICER #2 BWC footage recorded on Aug. 12, 2020 ("WITNESS OFFICER #2 BWC") at 4:57.

reaching into a wallet constitutes a search under the Fourth Amendment. *United States v. Alston*, 311 F. Supp. 296 (D.D.C.1970). Thus, reaching into Complainant's wallet required a warrant or an exception to the warrant requirement. *See Katz v. United States*, 389 U.S. 347 (1967); *U.S. v. Scott*, 987 A.2d 1180 (D.C. 2010). Such exceptions include probable cause to believe that contraband or evidence of a crime will be found, consent, and search incident to arrest. *Katz*, 389 U.S. 347.

Probable cause to conduct a search requires "facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, [that] are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed." *Brinegar v. United States*, 338 U.S. 160 (1949). Here, SUBJECT OFFICER #3 did not have probable cause because it was an investigative stop in which Complainant had admitted to having a licensed concealed weapon in his satchel. Thus, reaching into the wallet would not provide evidence of a crime, but, rather, evidence that no crime had been committed. Had Complainant not been handcuffed, SUBJECT OFFICER #3 wouldn't even have needed to reach into Complainant's wallet because Complainant was in the process of trying to retrieve it himself when SUBJECT OFFICER #1 and SUBJECT OFFICER #2 handcuffed him.

In the case of consent, it must be given unequivocally, specifically, freely, and intelligently. *Judd v. United States*, 190 F. 2d 649, 651 (D.C. Cir. 1951). SUBJECT OFFICER #3 argues in his interview with OPC that Complainant implicitly gave him consent when he told him about the permit and where to locate it. Exh. 11 at 31:27. Implicit consent is not unequivocal or specific, however. SUBJECT OFFICER #3 also argued that the act of obtaining a concealed carry permit qualifies as implicit consent similar to the implied consent for sobriety testing when one drives. Exh. 11 at 35:16, 36:33. Except that there is a specific implied consent law in relation to chemical testing when there is a suspicion of driving while intoxicated, D.C. Code § 50-1904.02. There is no such implied consent law that allows an officer to search a licensee's wallet, particularly when the Complainant was willing to provide the license himself, but was prevented by inappropriate handcuffing. Thus, proper consent was not given here to justify an exception to the warrant requirement.

Moreover, search incident to arrest also does not apply here because Complainant was at no time arrested, as acknowledged by SUBJECT OFFICER #3 in his interview with OPC. Exh. 11 at 29:47. Although a minute into the stop, SUBJECT OFFICER #1 told Complainant that he would be placed under arrest; simultaneously, WITNESS OFFICER #5 and WITNESS OFFICER #2 told SUBJECT OFFICER #1 that it was a warrant case, not an arrest. SUBJECT OFFICER #1 BWC 3:47; WITNESS OFFICER #2 BWC 3:31. SUBJECT OFFICER #3 contended in his interview with OPC that he could search because they could have arrested Complainant. Exh. 11 at 14:30, 15:19, 32:07. Even if it is true that they could have arrested Complainant, there is no warrant exception for the ability to arrest, only for actual arrest. Thus, there is no search incident to arrest exception applicable here.

Thus, before reaching in the wallet, in the absence of clear and unequivocal consent from Complainant, SUBJECT OFFICER #3 should have asked Complainant for permission to search the wallet for the gun permit and registration. Here, SUBJECT OFFICER #3 searched Complainant's wallet in violation of the law and MPD policy. That SUBJECT OFFICER #3

should know better under MPD General Order 201.26 which requires him to be familiar with the laws and regulations he enforces, indicates that Subject Officer recklessly searched Complainant's wallet in violation of the law and MPD policy and the allegation of harassment is sustained. Part V.B.1.

**B. Failure to Identify**

MPD General Order 110.11 (effective November 13, 2018), Part II, Section C, No. 8(a), in part states, "Members shall provide business cards upon request."

MPD Special Order 16-08 (effective July 19, 2016), Part III, Sections A & B also provide that "Members shall carry or otherwise have readily available a sufficient number of MPD business cards while on-duty.

If Members run out of cards, they "may request new cards through the 'MPD Business Card Order Form' available on the MPD intranet homepage [and] shall obtain a sufficient number of blank, fillable business cards for use until their replacement cards are available." MPD Special Order 16-08, Part IV, Section B, Nos. 1 & 2.

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

In the BWC footage Complainant walked up to SUBJECT OFFICER #1 and asked for his card. SUBJECT OFFICER #2 BWC 7:50; WITNESS OFFICER #1 BWC footage recorded on Aug. 12, 2020 ("WITNESS OFFICER #1 BWC") at 7:10. SUBJECT OFFICER #1 said he didn't have one. *Id.* When Complainant asked for clarification, rather than provide another means of identification to Complainant, SUBJECT OFFICER #1 proceeded to lambast him, "No. But I'll tell you what we didn't do though. How about this? We didn't lock your ass up. How about that?" *Id.*

SUBJECT OFFICER #1 not only failed to comply with MPD General Order 110.11, Special Order 16-08, and General Order 201.26, but his response indicates a belief that Complainant had no right to even ask for a card. Assuming *arguendo* Complainant could have been arrested in this situation, these General and Special Orders do not provide an exception for providing identifying information when a Subject could be arrested, but isn't. Nor do they provide an exception when the officer is annoyed by Complainant, which SUBJECT OFFICER #1 clearly was by Complainant's request. Officers are simply required to provide identification information when it is requested.

SUBJECT OFFICER #1 claimed during his interview with OPC that he had run out of his business cards and that it was a whole process to get more since the department had to order them. Exh. 9 at 25:42. He implies that for this reason, all he had to do was tell Complainant that he didn't have a card available and it didn't put any other burden on him to provide Complainant with his identification information if he didn't ask for it directly since his name plate and badge

were displayed. Exh. 9 at 26:50, 52:10. Here again, the policies do not provide an exception for when a name plate and badge are displayed. The requirement to wear them is a separate requirement. Moreover, MPD policy requires officers to carry blank cards that they can fill out and provide in response to requests until their new cards arrive. At the very least SUBJECT OFFICER #1 could have and should have recognized Complainant's request as one for his identification information and should have verbally provided Complainant with his name and badge number.

SUBJECT OFFICER #1 claimed in his interview with OPC that if he did not provide that information, it was because there was a lot going on at the scene and he probably wasn't thinking about it; that there were different people talking to him, but that he would have responded to Complainant's request if he were asked directly. Exh. 9 at 25:50, 53:05. The BWC footage shows however that SUBJECT OFFICER #1 was speaking directly to Complainant and no other officer was speaking to him nor was other activity occurring at the time of Complainant's request to distract him. SUBJECT OFFICER #2 BWC 7:50; WITNESS OFFICER #1 BWC 7:10. Nonetheless, SUBJECT OFFICER #1 failed to have the business cards he was required under MPD policy to carry and did not provide Complainant with any substitute verbal identification information.

MPD General Order 110.11, MPD Special Order 16-08, and MPD General Order 201.26 provide that officers will provide business cards and identifying information upon request in a respectful and polite manner. SUBJECT OFFICER #1 did not do so here. Thus, Complainant's allegation as to SUBJECT OFFICER #1's failure to identify under D.C. Code § 5-1107 is sustained.

### **C. Language and Conduct**

Insulting, demeaning or humiliating language or conduct is defined under D.C. Mun. Regs. Tit. 6A, § 2199.1 as "language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension."

MPD General Order 201.26 requires that "All members shall: (1) Be courteous and orderly in their dealings with the public. (a) Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. (3) Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person." MPD General Order 201.26 (effective April 5, 2011), Part V. Section C. Nos. 1(a) & 3

The General Order goes on to state, "(E)(1) It is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for and confidence in, the MPD and its members. (2) In an effort to strengthen the citizen-police officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public."

At the conclusion of the incident, Complainant asked various officers for their cards and they provided them. SUBJECT OFFICER #3 BWC 6:30; SUBJECT OFFICER #2 BWC 6:28; WITNESS OFFICER #1 5:45. When he asked SUBJECT OFFICER #1, however, SUBJECT OFFICER #1 did not reactivate his body camera to record the encounter with Complainant, but responded, "I don't have a card." SUBJECT OFFICER #2 BWC 7:50; WITNESS OFFICER #1 7:10. Complainant responded, "You don't have a card?" *Id.* SUBJECT OFFICER #1 said, "No. But I'll tell you what we didn't do though. How about this? We didn't lock your ass up. How about that? You cool with that? Because you wanna be on man time? Let's be on man time. I'm sick of that, bro. Man up, dog. You know you was wrong." *Id.* Although SUBJECT OFFICER #1 continued speaking, all officers in the vicinity at this point deactivated their body cameras. *Id.*

Complainant described SUBJECT OFFICER #1's demeanor during the entire event as aggressive and angry and he felt scared and humiliated. Exh. 3 at 10:23, 32:08. He compared it with SUBJECT OFFICER #3's behavior who he said was trying to keep the situation "level" but this other officer [SUBJECT OFFICER #1] kept getting aggressive. Exh. 3 at 22:40, 27:02. He particularly noted that this was all taking place in front of his neighbors. Exh. 3 at 39:00. He specifically described SUBJECT OFFICER #1's reaction to Complainant's polite request for his card as aggressive and demeaning. Exh. 3 at 28:40, 32:08. Complainant Examiner agrees that SUBJECT OFFICER #1's demeanor toward Complainant throughout the incident was aggressive as viewed in the BWC footage. Most notably, however, his response to Complainant's polite request for his card in front of Complainant's family and neighbors was retributive, insulting, demeaning and humiliating. Moreover, it is troubling that SUBJECT OFFICER #1 did not reactivate his body camera when he engaged with Complainant in violation of MPD General Order 302.13 (effective March 11, 2016).

SUBJECT OFFICER #1, in his interview with OPC, saw nothing wrong with his response to Complainant's request for his card. Exh. 9 at 37:00. Rather, he seemed miffed that Complainant did not appreciate what the officers had done for him by not arresting him. Exh. 9 at 39:06. When asked if he used this kind of language with all civilians, he said, "I don't think I do it to all the civilians. I think I was probably . . . trying to use discretion, . . . and then when somebody . . . keeps getting irate . . . you try to do something decent for someone, and . . . it backfires, so . . . if you're sitting there getting cursed at . . . something might slip out every once in a while." Exh. 9 at 54:52. SUBJECT OFFICER #1 also claimed that it was unfair for Complainant to complain about profanity when Complainant used it himself. Exh. 9 at 1:00:00.

Notably, while Complainant was clearly "irate" during the encounter, he did not yell or use profanity with SUBJECT OFFICER #1 or any other officers. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #3 BWC; SUBJECT OFFICER #2 BWC. Rather, he repeatedly expressed being upset that he had a license for the gun and yet was being handcuffed. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #3 BWC; SUBJECT OFFICER #2 BWC. He wasn't even given a chance to prove he had the permit for the gun despite having admitted having it and telling them he had a license, as he was required to do under the law. Thus, he protested the unfairness of his treatment during the encounter. SUBJECT OFFICER #1 BWC; SUBJECT OFFICER #3 BWC; SUBJECT OFFICER #2 BWC.

According to his interview with OPC, SUBJECT OFFICER #1 did not consider his statements to Complainant as demeaning since he was just letting Complainant know they were cutting him a break. Exh. 9 at 51:39. Also, he claimed, the profanity he used was as an adjective and not derogatory name-calling. Exh. 9 at 1:02:00. He noted that civilians harassed him on a daily basis by using demeaning language and followed his union representative's lead in noting that he is human and not perfect. Exh. 9 at 55:27. But he also explained that Complainant was doing illegal things and he was trying to treat Complainant like an adult. Exh. 9 at 34:17. He wanted Complainant to acknowledge that he was wrong so they could move forward. Exh. 9 at 34:45. SUBJECT OFFICER #1 explained that he was from the city and grew up in "the hood" and he tried to talk to people to effect change. Exh. 9 at 35:15. He thought Complainant only complained in retaliation for the seizing of his firearm. Exh. 9 at 29:38, 51:00. SUBJECT OFFICER #1 believed that he behaved professionally throughout the encounter and in response to Complainant's request for his identification. Exh. 9 at 35:27, 37:00.

SUBJECT OFFICER #1's explanations for his behavior suggest he does not understand what professional behavior for an officer is. In response to a polite question for his card, SUBJECT OFFICER #1 launched into a tirade against Complainant that had nothing to do with Complainant's request and everything to do with SUBJECT OFFICER #1's clear annoyance at Complainant thinking he had the right to ask for his identification. The problem with his response to Complainant is not only his use of the word "ass" which is a violation of policy to not use profane language, but the demeaning lecture he gave to Complainant about manning up. That SUBJECT OFFICER #1 is from "the hood" does not give him the right to give such a lecture, which is in clear violation of MPD policy to remain calm regardless of provocation to do otherwise and to refrain from harsh, coarse, profane, and insolent language.

Rather than strengthen police-community relations, his behavior deteriorated it Exh. 3 at 8:36; 11:30. SUBJECT OFFICER #3 managed to respond to Complainant's request professionally without subjecting Complainant to a lecture. SUBJECT OFFICER #3 BWC 6:30; SUBJECT OFFICER #2 BWC 6:28; WITNESS OFFICER #1 BWC 5:45; Exh. 3 at 44:00. SUBJECT OFFICER #2, SUBJECT OFFICER #3 and WITNESS OFFICER #3 also managed to explain to Complainant why there was a problem with how he was carrying his gun without subjecting him to using humiliating or degrading language and tone. SUBJECT OFFICER #3 BWC 7:20; SUBJECT OFFICER #2 BWC 5:10, 6:15; WITNESS OFFICER #3 BWC footage recorded on Aug. 12, 2020 ("WITNESS OFFICER #3 BWC") at 3:40; Exh. 3 at 44:00. As SUBJECT OFFICER #1 stated, he is only human and not perfect, but as someone with a license to carry a gun and enforce the laws of this city, he is held to a higher standard of behavior.

Subject Officer's language violated MPD General order 201.26 to be courteous and orderly in his dealings with the public, and to refrain from harsh profane and insolent language. His words and conduct were insulting, demeaning, and humiliating in violation of DC Code § 5-1107. Thus, Complainant's language or conduct allegation is sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1</b>	Harassment (Handcuffs)	Sustained
<b>Allegation 3</b>	Failure to Provide Identification	Sustained
<b>Allegation 4</b>	Language or Conduct	Sustained

SUBJECT OFFICER #2

<b>Allegation 2</b>	Harassment (Handcuffs)	Sustained
---------------------	------------------------	-----------

SUBJECT OFFICER #3

<b>Allegation 2</b>	Harassment (Search of Wallet)	Sustained
---------------------	-------------------------------	-----------

Submitted on June 16, 2021.

---

Jennifer A. Fischer, Esq.  
Complaint Examiner