

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	21-0123
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	ARTHUR D. SIDNEY
<b>Merits Determination Date:</b>	AUGUST 23, 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 December 2, 2020. Complainant alleged that on November 28, 2020, Subject Officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #2, harassed him when they mishandled his personal property during his arrest by failing to secure and return his property after Complainant was released.<sup>1</sup> On November 28, 2020, COMPLAINANT was arrested for misuse of vehicle tags and subsequently was searched by the subject officers. During the search, subject officers placed Complainant's property on the trunk of a nearby parked vehicle and left it there. Complainant alleges that he was harassed by subject officers because his property was not returned to him upon his release.

**II.EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on July 14, 2021, and OPC's response to the objections, the Complaint

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<sup>1</sup>Additionally, COMPLAINANT alleged that WITNESS OFFICER harassed him by unlawfully arresting him. Pursuant to D.C. Code § 5-1108(1), on June 25, 2021, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's executive director

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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on July 14, 2021, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 28, 2020, after a lawful stop because Complainant's passenger was not wearing a seatbelt, Subject Officer #1 ran the Complainant's vehicle's tag and registration through the WALES system, MPD officers discovered that the tags on Complainant's vehicle belong to another vehicle owned by Complainant.
2. Complainant was arrested for misuse of tags at A LOCATION IN SE, WASHINGTON, DC, Subject Officer #2 began to search the Complainant but Subject Officer #1 took over the search because Subject Officer #2 was still in training.
3. During the search, Subject Officer #1 searched Complainant and handed the items retrieved from Complainant during the search to Subject Officer #2 who then placed Complainant's property on the trunk of a random parked vehicle. Among the items the officers took from him during the search were shoestrings, a belt, his wallet, \$220 cash, his iPhone 7, insurance card, driver's license, food stamp card, bank card, birth certificate, social security card, and medication.
4. When Complainant attempted to retrieve his property upon his release from the MPD DISTRICT STATION, he learned his items were never entered into property and were missing. Complainant's property was never returned to him.
5. On December 2, 2020, Complainant filed a complaint with OPC alleging that Subject Officers harassed him by failing to secure his property during his rest and return his property upon his release.

### **IV.DISCUSSION**

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority to adjudicate "a citizen complaint against a member or members of the MPD . . . that alleges abuse or misuse of police powers by such member or members, including "(1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or

display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

According to COMPLAINANT, at the time of his arrest, Subject Officers searched him and placed his property on the trunk of a random parked vehicle. After being released from custody, he attempted to recover his personal belongings and discovered that all of his items were missing, including his shoestrings, belt, wallet, \$220 cash, iPhone 7, insurance card, driver’s license, food stamp card, bank card, birth certificate, social security card, and medication.

According to Subject Officer #1, Subject Officer #2 began the search but Subject Officer #1 he took over the search of the Complainant to help train Subject Officer #2 because he was new and in training. During the search, Subject Officer #1 removed the Complainant’s property and handed the items over to Subject Officer #2, who in turn placed the Complainant’s property on a random blue mercury vehicle that was parked nearby. Subject Officer #2 and Subject Officer #1 did not have a conversation about who would safeguard Complainant’s property. Subject Officer #1 stated that it was the arresting or transporting officer’s responsibility to safeguard the Complainant’s property and, in his view, the chain of custody for the Complainant’s property was from Subject Officer #1 to Subject Officer #2, who was the last person to handle the Complainant’s property. Subject Officer #1 was also not aware of what the MPD general orders provides as to which MPD officer would be responsible for safeguarding property after a search.

According to Subject Officer #2, he admitted it was his responsibility to safeguard Complainant’s property but he did not because he was focused upon transporting Complainant to AN MPD DISTRICT STATION. Subject Officer #2 did go back to the scene of the arrest later that day but Complainant’s property was gone.

BWC footage shows Subject Officer #1 handing the Complainant's property to Subject Officer #2 and subject Officer #2 placing those items on a blue mercury vehicle parked nearby. The body-worn camera footage does not show Complainant receiving his property after his release from MPD.

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." The general order also 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."

Based upon the OPC statement of Subject Officer #1 and Subject Officer #2, Complainant's OPC statement, and the BWC footage, Subject Officer #1 was the first MPD officer to handle Complainant's property during the search and Subject Officer #2 was the last MPD officer to handle Complainant's property. According to MPD General Order 601.01, it is the responsibility of the first MPD officer that handles the property to ensure that the property is properly safeguarded. Even though the loss of property was not intentional, and Subject Officer #1 stepped in to conduct the search for Subject Officer #2, it was also Subject Officer #1's responsibility to safeguard Complainant's property. Subject Officer #1 knew or should have known to secure Complainant's property. It was in plain view in the BWC footage, but there was no communication between Subject Officers #1 or Subject Officer #2 about securing Complainant's property and it was not returned to him.

Subject Officer #2 admitted that it was his responsibility to safeguard Complainant's property, he felt badly that the Complainant's property was not returned to him upon his release from AN MPD DISTRICT STATION, and even went back to the scene to look for Complainant's property but it was gone. Neither Subject Officer #1 nor Subject Officer #2 discussed who would secure Complainant's property. They both knew or should have known that Complainant's property needed to be safeguarded and returned to him, they both were aware that Complainant's property was sitting on top of a nearby vehicle, but Subject Officer #1 and Subject Officer #2 did not secure Complainant's property even though they should have, and as result, their conduct was reckless. Because Subject Officer #1 and Subject Officer #2 were reckless in failing to secure Complainant's property and return it to him upon his release from AN MPD DISTRICT STATION, their actions constituted harassment and deprived Complainant the return of his property in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

**V.SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:Harassment</b>	Sustained
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SUBJECT OFFICER #2

<b>Allegation 1: Harassment</b>	Sustained
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Submitted on August 23, 2021.

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ARTHUR D. SIDNEY  
Complaint Examiner