

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	22-0342
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 SUBJECT OFFICER #4 SUBJECT OFFICER #5 SUBJECT OFFICER #6
Allegation 1:	Harassment (stop) (SUBJECT OFFICER #1 and SUBJECT OFFICER #2, SUBJECT OFFICER #3, and SUBJECT OFFICER #4)
Allegation 2:	Harassment (frisk) (SUBJECT OFFICER #1 and SUBJECT OFFICER #2, SUBJECT OFFICER #3, and SUBJECT OFFICER #4)
Allegation 3:	Language and Conduct (SUBJECT OFFICER #5 and SUBJECT OFFICER #6)
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	September 16, 2023

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC), has the sole authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by § 5-1107(a). This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

The complainant, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on March 30, 2022. Complainant alleged that on March 29, 2022, Metropolitan Police Department (MPD) SUBJECT OFFICER #4, SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #1, (together, “Subject Officers”) harassed him when they unlawfully stopped and patted him down. During the course of the investigation into these allegations, OPC determined that MPD Officer SUBJECT OFFICER #5, and SUBJECT OFFICER #6, (together, “Subject Officers”) used language or engaged in conduct that was insulting, demeaning or humiliating toward a juvenile male when they used profanity and

name calling. OPC added these allegations pursuant to D.C. Code Section 5-1107(g-1)(1), which allows the Executive Director to initiate a complaint against subject officers when the Executive Director discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the original complaint.¹

Specifically, Complainant stated that on March 29, 2022, while sitting in his wheelchair on the sidewalk of the A BLOCK IN NE, WASHINGTON, DC, he observed approximately three MPD vehicles pull onto the street. The officers exited their vehicles and three of them approached COMPLAINANT and other individuals and proceeded to “chill” with them on the sidewalk. Sometime later, a K-9 unit arrived at COMPLAINANT’s vehicle, and he was then informed that the K-9 smelled something. The officers then retrieved a lockout kit but were unsuccessful in gaining entry to his vehicle. Afterward, the officers gathered as a group and talked. Then the officers approached COMPLAINANT, so he attempted to roll away because he did not want to speak to them. However, SUBJECT OFFICER #2 cut COMPLAINANT off by putting his arm out and COMPLAINANT was told that he was detained. COMPLAINANT said that two officers grabbed his arms up and behind a gate that he was sitting in front of and at least ten officers were on him. During that time, a pat down was conducted on COMPLAINANT. COMPLAINANT believed that the officers did not have a lawful reason to stop him or pat him down.

OPC determined through body-worn camera (BWC) footage of the incident that in addition to the allegations made by the complainant, SUBJECT OFFICER #5 used profanity toward a juvenile male who was with the complainant on the sidewalk. Specifically, SUBJECT OFFICER #5 called the juvenile an “asshole.” OPC also determined through BWC footage that SUBJECT OFFICER #6 used profanity and engaged in name calling toward the same juvenile male when she said, “Boy if I called, I called, you dumb and don’t know what you’re talking about, shut the fuck up.”

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 by SUBJECT OFFICER #3, SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #5, and SUBJECT OFFICER #6 and WITNESS OFFICER #1, on March 29, 2022, objections submitted by SUBJECT OFFICER #2 on August 1, 2023 (SUBJECT OFFICER #2’s Objections) and by SUBJECT OFFICER #1, SUBJECT OFFICER #6, SUBJECT OFFICER #3, SUBJECT OFFICER #4, and SUBJECT OFFICER #5 on August 3, 2023 (Other Subject Officers’ Objections), and OPC’s Response to the Objections dated August 7, 2023, the Complaint Examiner determined

¹ COMPLAINANT also alleged that on March 29, 2022, SUBJECT OFFICER #2, SUBJECT OFFICER #3, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #4 used unnecessary or excessive force against him when they placed his arms behind a gate and raised him from his wheelchair. The complainant further alleged that SUBJECT OFFICER #2 harassed him when he unlawfully arrested him. The complainant further alleged that SUBJECT OFFICER #3 and WITNESS OFFICER #2 harassed him when they unlawfully searched him and his wheelchair. The complainant also alleged that SUBJECT OFFICER #3, WITNESS OFFICER #3, SUBJECT OFFICER #5, WITNESS OFFICER #5, and SUBJECT OFFICER #4 harassed him when they unlawfully searched his vehicle. Lastly, the complaint alleged that SUBJECT OFFICER #1 harassed him by not providing him with wheelchair accessible transport. Pursuant to D.C. Code § 5-1108(1) on June 26, 2023, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

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 by SUBJECT OFFICER #3, SUBJECT OFFICER #2, SUBJECT OFFICER #5, and SUBJECT OFFICER #6 and WITNESS OFFICER #1, on March 29, 2022, SUBJECT OFFICER #1's Objections and Other Subject Officers' Objections, and OPC's Response to the Objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on March 30, 2022.
2. On March 29, 2022, at approximately 4:25 p.m., SUBJECT OFFICER #2, SUBJECT OFFICER #3, and WITNESS OFFICER #1 in one car, SUBJECT OFFICER #4 and WITNESS OFFICER #3 in a second car, WITNESS OFFICER #4 and WITNESS OFFICER #2 in a third car and SUBJECT OFFICER #5 and SUBJECT OFFICER #1 in a fourth car pulled up near Complainant and his SEDAN with D.C license plate # REDACTED on the BLOCK OF NE, WASHINGTON, DC.
3. SUBJECT OFFICER #4 and WITNESS OFFICER #2 exited their vehicle and approached Complainant, who was sitting in his wheelchair on the sidewalk with his back to a black iron fence, and the other people standing around him. The officers engaged the group in conversation although Complainant did not participate. SUBJECT OFFICER #5 and SUBJECT OFFICER #1 joined them about a minute later.
4. At the same time, SUBJECT OFFICER #2 and WITNESS OFFICER #1 exited their vehicle, approached Complainant's vehicle and shined their flashlights into each window. WITNESS OFFICER #1 observed that "the [driver] seat's leaned way back."
5. SUBJECT OFFICER #3 walked over to join SUBJECT OFFICER #2 and WITNESS OFFICER #1. SUBJECT OFFICER #2 said, "Realistically, it's either in here or on him. I think we have enough to call K-9 for the car based on two different cars, same person fleeing from us all the time, seat leaned way back." SUBJECT OFFICER #3 agreed. SUBJECT OFFICER #2 then returned to his MPD vehicle and radioed for K-9.
6. SUBJECT OFFICER #3 then called to SUBJECT OFFICER #1 and told him that he was going to raise the K-9s to check the SEDAN based on four characteristics: it sped from them, they know who it belonged to, Complainant possessed firearms, and his seat was positioned to block anything from being seen in the rear.
7. SUBJECT OFFICER #3 then told SUBJECT OFFICER #2, "If it's not in the car it's under his butt right now." SUBJECT OFFICER #3 added, "just keep a good eye on Complainant to make sure he doesn't hand it off."

8. A couple minutes later SUBJECT OFFICER #3 said, "The fact that he's not reacting at us looking at his car is telling me that it's under him," and SUBJECT OFFICER #2 responded, "Yup, either that or he's too cool, calm and collected."
9. SUBJECT OFFICER #1 walked over to join SUBJECT OFFICER #3 and SUBJECT OFFICER #2. SUBJECT OFFICER #1 asked SUBJECT OFFICER #3 if they were calling the K-9 unit. SUBJECT OFFICER #3 told him that the K-9 was on the way and "the fact that he's not pressed about us looking at his car leads me and SUBJECT OFFICER #2 to think he has something on him." SUBJECT OFFICER #1 asked him, "if you're saying he's not pressed, you want to call them?" SUBJECT OFFICER #3 said, "Yeah, I want to . . . I believe there's something in the vehicle."
10. SUBJECT OFFICER #2 said that they know they are probably counterfeit tags on the vehicle, but after discussion, the officers determined that Complainant could not be arrested unless he was in operation of the vehicle. They complained that Complainant was thus parked on public space and avoiding parking fines. SUBJECT OFFICER #3 commented that Complainant is not fond of the police.
11. SUBJECT OFFICER #2 started talking to the K-9 unit on the phone, explaining the basis for the sniff: 1) a known individual to possess firearms; 2) the tags on the car have been on two other cars; 3) the owner of the car has sped from them in the past; and 4) the individual had been locked up in the past for robbery. SUBJECT OFFICER #2 added that they know 100% that it is Complainant's vehicle because it is a handicapped vehicle and Complainant is the only one in a wheelchair and the tags came back to him.
12. SUBJECT OFFICER #2 asked if the K-9 hits on the car but they don't find anything, whether they would do a pat down. SUBJECT OFFICER #3 said that it was reasonable to believe that since the scent was so fresh that the firearm would still be on the scene. He added that even if the K-9 didn't alert, they still had enough based on Complainant avoiding eye contact with police officers and having not moved a muscle on his body. SUBJECT OFFICER #2 commented that it was nervous behavior. SUBJECT OFFICER #2 again stated that if the K-9 alerted that a firearm was recently in the vehicle that they would have enough for a pat down based on having seen him driving the car multiple times. SUBJECT OFFICER #1 agreed that it was reasonable.
13. SUBJECT OFFICER #1 asked, "are you sure he's not sitting on it?" SUBJECT OFFICER #3 responded that, "people in wheelchairs in this environment often conceal firearms underneath their bodies due to the improbability for police to check that area." He then added that Complainant had a criminal history and nervous behavior. SUBJECT OFFICER #1 then left to do a criminal history check of Complainant on the computer in his MPD vehicle.
14. SUBJECT OFFICER #1 asked if anyone had talked to Complainant. SUBJECT OFFICER #3 said that SUBJECT OFFICER #4 had tried. [Although SUBJECT OFFICER #3 said this, SUBJECT OFFICER #4 never talked to Complainant about a gun and only spoke to the young man in the white coat].

15. While SUBJECT OFFICER #2 was looking up Complainant on his computer, he found a GRU lockup, but did not find the robbery he was looking for.
16. About fourteen minutes into the stop, Complainant turned slightly away from the officers and was talking on his cell phone. He then moved a little further from the Officers and put his back to the Officers.
17. SUBJECT OFFICER #3 observed that Complainant positioned himself away from the officers who were standing near him. SUBJECT OFFICER #1 said that he thought this provided reasonable suspicion, but also recommended that they wait for the K-9. SUBJECT OFFICER #3 reiterated that if there's a positive alert and the gun is not in the vehicle, it strengthens their position.
18. SUBJECT OFFICER #1 told SUBJECT OFFICER #3 and SUBJECT OFFICER #2 to take a good look at Complainant when the K-9 unit arrives and said if the K-9 alerts on the driver's side, "it will all play into that." SUBJECT OFFICER #3 added that they've seen Complainant driving the vehicle and that Complainant is the only person who can drive his car because it is designed for a handicapped person.
19. Over with the group with Complainant, one young male in a white jacket heard SUBJECT OFFICER #5 answer his phone and ask, "How you doing judge?" The young male asked SUBJECT OFFICER #5, "Bitch why the fuck the judge calling you?" SUBJECT OFFICER #5 responded, "it's called a search warrant asshole."
20. Approximately twenty-two minutes into the encounter, Complainant lifted himself up in his chair, sat back down, and then slumped over.
21. Approximately twenty-six minutes into the encounter, SUBJECT OFFICER #3 and SUBJECT OFFICER #1 moved to sitting in the cruiser and SUBJECT OFFICER #3 asked SUBJECT OFFICER #1 if the "chain of events made sense." SUBJECT OFFICER #1 responded, yes. SUBJECT OFFICER #3 then asked SUBJECT OFFICER #1 if he felt that they had their "characteristics by the way Complainant positioned himself and wheeled away from officers." SUBJECT OFFICER #1 responded, "Well here's the thing, you guys have more knowledge about characteristics than I do." SUBJECT OFFICER #3 told him that he wanted to "feed it through many channels" so if they do stop, pat down, and recover a firearm, he wants him [SUBJECT OFFICER #1] to think that they met the threshold of reasonable suspicion to do so. SUBJECT OFFICER #1 said, "Yeah and especially waiting to see what happens with K-9 and I think using that to make a determination." SUBJECT OFFICER #3 reiterated that he had three [characteristics] plus the fact that Complainant is a known firearm carrier and has fled from law enforcement on numerous occasions. SUBJECT OFFICER #1 asked SUBJECT OFFICER #3 if they have run Complainant through the computer. SUBJECT OFFICER #3 said no, but said SUBJECT OFFICER #2 had been in there. SUBJECT OFFICER #3 then began typing on his computer.
22. Complainant during this time had not moved from his position, but was at times talking with other onlookers who walked over to talk to him and looking at his phone.

23. While SUBJECT OFFICER #3 and SUBJECT OFFICER #1 were sitting in the cruiser, SUBJECT OFFICER #2 came over to join them. SUBJECT OFFICER #2 observed that he thought the gun was in the car since Complainant hadn't tried to get in it and take off. SUBJECT OFFICER #3 observed that his AR pistol (ARP) might be in the car, but others who are around kept doing things to try to get the officers to leave them alone. SUBJECT OFFICER #2 observed Complainant shifting in his chair and said, "it could be 50/50 for me." SUBJECT OFFICER #3 concluded that he had his three characteristics, the dog alert was the fourth along with Complainant's priors and that fact that he was not moving. SUBJECT OFFICER #3 explained that Complainant normally talked shit and then fled, but he had not said anything to the officers, which was not his baseline.
24. At little less than forty minutes into the officers' arrival, the K-9 unit arrived. SUBJECT OFFICER #2 told WITNESS OFFICER #5, the handler, that the guy in the wheelchair had been locked up and the same tags on Complainant's vehicle had been seen on three cars, two of which Complainant had been seen in. He explained that Complainant used to have an Infinity that was associated with a robbery with an AR pistol, for which he was the getaway driver. SUBJECT OFFICER #2 concluded that "he's definitely got guns the way he's acting now."
25. SUBJECT OFFICER #3 added that they have four characteristics on Complainant and they want the car sniffed because Complainant has not left being near the vehicle despite his friends doing so. SUBJECT OFFICER #3 added that they have enough characteristics to stop Complainant but they want to wait until the K-9 sniff can tell them if the gun is in the vehicle or not before they start a riot.
26. When the K-9 arrived, Complainant rolled over closer to the car and sat with his back to the fence.
27. The K-9 sniffed around the vehicle twice. The dog made a noise when he sniffed the hood between the bottom right corner of the front windshield window and the driver's door. WITNESS OFFICER #5 told SUBJECT OFFICER #1 that the K-9 mostly alerted at the driver's door, but showed interest all around it. SUBJECT OFFICER #1 then conveyed this information to SUBJECT OFFICER #3.
28. Following the sniff, SUBJECT OFFICER #3 told other officers that there was a positive reaction by the dog. He asked SUBJECT OFFICER #2 for the lockout kit or if someone wanted to ask Complainant for his keys. SUBJECT OFFICER #2 said to SUBJECT OFFICER #3, "let's ask him for his keys first," and offered to go talk to him.
29. Meanwhile, WITNESS OFFICER #1 was asking Complainant to move down the sidewalk. Complainant initially refused saying that there was no crime scene tape and that they were letting the dog scratch his car. WITNESS OFFICER #1 insisted that he needed to move five feet, which Complainant did, outside of the crime scene tape that was being put up. SUBJECT OFFICER #4 stood on the sidewalk near them.

30. As Complainant moved, SUBJECT OFFICER #2 was in his way and he told SUBJECT OFFICER #2 to get out of the way before he spit on him. SUBJECT OFFICER #2 told him that they would be talking real soon. He also told him, "Hey COMPLAINANT, you can unlock it or we can use the lock out kit, it's your choice." Complainant responded, "suck my dick."
31. WITNESS OFFICER #4 brought the lock out kit, which SUBJECT OFFICER #5 used to try to enter the vehicle while SUBJECT OFFICER #3 looked through the windows of the vehicle. SUBJECT OFFICER #3 said that he didn't have a wedge which may be why they couldn't get the vehicle open. While the officers worked to open the vehicle, the car's alarm went off. SUBJECT OFFICER #3 said that Complainant was locking his vehicle with his key. SUBJECT OFFICER #1 told SUBJECT OFFICER #3 and SUBJECT OFFICER #2 to take the car and do a search warrant.
32. SUBJECT OFFICER #3 then told WITNESS OFFICER #4 and SUBJECT OFFICER #5 that they would tow the car and get a search warrant while SUBJECT OFFICER #1 called for a tow. Meanwhile, SUBJECT OFFICER #2 walked over to Complainant and told him that the officers were going to take his car pending a search warrant. Complainant did not respond, but moved away from him.
33. SUBJECT OFFICER #1 and SUBJECT OFFICER #3 and SUBJECT OFFICER #2 approached Complainant and he moved away from them. SUBJECT OFFICER #4 stood in Complainant's way and told him, "you're not doing this right now, they're talking to you." Complainant responded, "I don't have to talk to you Bruh, get the fuck out of my face" and continued to move down the sidewalk.
34. SUBJECT OFFICER #1 and SUBJECT OFFICER #3, SUBJECT OFFICER #4, and SUBJECT OFFICER #2 walked back to Complainant's car and the alarm triggered again. SUBJECT OFFICER #4 then asked SUBJECT OFFICER #3 if they should pat down Complainant's bag and SUBJECT OFFICER #3 said that he thought they had enough to do so given the dog alerting on the driver's side, but asked what SUBJECT OFFICER #4 thought. SUBJECT OFFICER #4 agreed.
35. SUBJECT OFFICER #3 then told WITNESS OFFICER #2, WITNESS OFFICER #4, WITNESS OFFICER #3, and WITNESS OFFICER #1 to go with SUBJECT OFFICER #4 to the Complainant because they were going to do a pat down of his bag and personal belongings for a firearm because Complainant kept locking the door so they can't get into his vehicle. He called to WITNESS OFFICER #1 and told him to go with SUBJECT OFFICER #4, WITNESS OFFICER #2, and WITNESS OFFICER #4 and push Complainant over. Again, he stated, "the K-9 alerted on the car, but he keeps locking it so we can't get in."
36. SUBJECT OFFICER #3 then turned to SUBJECT OFFICER #1 who had been radioing to start a tow crane. SUBJECT OFFICER #3 told him that the officers were going to push Complainant over and do a pat down. SUBJECT OFFICER #1 asked him if he had "reasonable suspicion at this point that he's presently armed?" SUBJECT OFFICER #3 responded, "yeah."

37. SUBJECT OFFICER #2, WITNESS OFFICER #2, and SUBJECT OFFICER #3 then approached Complainant as SUBJECT OFFICER #4, facing the rest of the onlookers, told them to back away. When the group resisted moving, SUBJECT OFFICER #4 threatened to use OC spray. WITNESS OFFICER #1 took SUBJECT OFFICER #4's place as SUBJECT OFFICER #4 put up more crime scene tape as he continued to yell at the crowd to back up and threatened anyone who crossed the tape with jail. During this time, other officers arrived on scene and assisted in moving the citizens who had been standing with Complainant outside the police tape.
38. WITNESS OFFICER #2 and WITNESS OFFICER #4 approached Complainant from his right and WITNESS OFFICER #3 and SUBJECT OFFICER #2 approached from the left. SUBJECT OFFICER #3 stood in front of Complainant. The officers were then surrounding Complainant and SUBJECT OFFICER #2 told Complainant that they were going to conduct a pat down. Complainant tried to move away, but WITNESS OFFICER #2 and SUBJECT OFFICER #2 stopped him by each grabbing an arm. The Complainant told them that he was not detained. SUBJECT OFFICER #3 responded, "yes you are, you're stopped right now." Complainant protested, "you didn't say that." WITNESS OFFICER #2 responded, "I'm telling you right now, you're detained. You are not free to go." Complainant told him that he should have said that and stopped moving.
39. WITNESS OFFICER #2 then asked Complainant twice if he had any weapons and Complainant told him to leave him alone. WITNESS OFFICER #2 then told him to put his hands in the air. Complainant put his right hand on his right jacket pocket and WITNESS OFFICER #2 grabbed it and put it up behind the black gate and told him that he was going to be patted down for weapons. SUBJECT OFFICER #2 lifted Complainant's left arm up, back, and towards the fence. WITNESS OFFICER #2 patted Complainant's jacket and Complainant said that he did not consent to a search. Complainant moved his right arm out of WITNESS OFFICER #2's grasp and up and across to the left with a balled fist. SUBJECT OFFICER #2 said that Complainant was going for APO. WITNESS OFFICER #2 reclaimed Complainant's arm and SUBJECT OFFICER #3 grabbed Complainant's front jacket. SUBJECT OFFICER #3 patted Complainant's pants and bag hanging behind the wheelchair. SUBJECT OFFICER #2 then told Complainant that he was going to jail for APO for hitting him in the face. WITNESS OFFICER #2 alleged that Complainant attempted to bite him.
40. Officers then told Complainant he was under arrest, put him in handcuffs, and rolled him to the patrol vehicle.
41. While SUBJECT OFFICER #6 was providing crowd control during the interaction, the young male in the white coat recording the officers pointed to her and said, "she do [knows what's going on], she the one that called them." SUBJECT OFFICER #6 responded, "boy if I called I called, you dumb and don't know what you're talking about, shut the fuck up."

IV. DISCUSSION

A. Harassment

Pursuant to D.C. Official 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 (effective Feb. 19, 2009), 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 (2002).

Thus, to establish harassment, there must have been 1) conduct directed at Complainant by Subject Officer; 2) that was purposeful, knowing, or reckless; 3) in violation of the law or internal guidelines of the MPD; and 4) so as to subject Complainant to search, mistreatment, or other infringement of his personal or property rights or to deny or impede Complainant in the exercise or enjoyment of any right.

1. The Conduct directed at Complainant

As to element one and four. SUBJECT OFFICER #2, SUBJECT OFFICER #3, and WITNESS OFFICER #2, approached Complainant, told him he was detained, and subjected Complainant to a frisk of his person and a pat down of his bag. SUBJECT OFFICER #1 is included in this conduct as he was the supervising officer on the scene and approved the decision to stop and frisk Complainant. Thus as to these officers, elements one and four are satisfied.

As to SUBJECT OFFICER #4, however, he did not participate in the stop and frisk; but rather, was handling crowd control at that time. Thus, the allegations of harassment for the stop and the frisk as to SUBJECT OFFICER #4 are not sustained.²

2. Lawfulness of the Stop

As to element three and the lawfulness of the stop, it required “reasonable suspicion that an individual has committed, is committing, or is about to commit any crime.” MPD General Order 304.10 Part II.B.1. According to MPD General Order 304.10, Police-Citizen Contacts, Stops, and Frisks (eff. August 30, 2013), “reasonable suspicion necessitates a minimal level of objective justification for making the stop..... it is more than a hunch or mere speculation, but less than probable cause to arrest. Members shall consider the totality of the circumstances and base reasonable suspicion on their training and experience,” including: 1) the stopped individual’s characteristics; 2) the stopped individual’s actions; 3) demeanor of the stopped individual during a field contact; 4) police training and experience; 5) information obtained from witnesses or information; and 6) information obtained from law enforcement sources.

Here, the officers had reasonable suspicion to conduct a stop of Complainant. Ostensibly what brought three or four police cars to converge around Complainant’s car and Complainant were the tags on Complainant’s car that they believed to be counterfeit because they had previously seen them on another car that Complainant had been in. Yet, the crime the officers were really concerned with was finding a gun. At the very beginning of the interaction SUBJECT OFFICER #2 stated to SUBJECT OFFICER #3 and WITNESS OFFICER #1, “realistically it’s either in here or on him.”³ SUBJECT OFFICER #3 BWC 3:30. As members of the SPECIAL UNIT this objective is not surprising, but it colored how they viewed what transpired.

Early in his discussion with SUBJECT OFFICER #1, SUBJECT OFFICER #3 discussed not about reasonable suspicion to stop Complainant, but about reasonable suspicion to call a K-9 unit to conduct a sniff for a gun on the vehicle. SUBJECT OFFICER #3 BWC 3:45. The facts giving rise to such suspicion included: 1) that the tags on the car had been seen on another car in the past that had previously fled from officers; 2) that Complainant had been seen by the officers in both of the cars that had the same tags; 3) that they knew the vehicle belonged to Complainant;⁴ 4) that they knew Complainant had a history of weapon possession based on a search that showed he had a GRU lockup for carrying a pistol without a license;⁵ and 5) when

² It is unclear why WITNESS OFFICER #2 who participated in the stop and pat down was not named as a Subject Officer. In any case, as the allegation was not brought forward in this ROI against WITNESS OFFICER #2, no decision will be issued as to him.

³ Approximately nine minutes into the interaction the officers do briefly discuss that they believe the tags to be counterfeit but conclude that they can only arrest him if he’s actually driving the vehicle. The concern here seems to be not about the crime of having counterfeit tags, but whether they can arrest him, and then have justification to do a search for the gun they believe Complainant possesses.

⁴ This is confirmed when Complainant states to one of the officers during the K-9 sniff, “you’re letting the dog scratch my car.”

⁵ Although not included in the original ROI, this arrest has been confirmed by this Complaint Examiner.

they peered through the windows the seat was seen to be leaning way back suggesting concealment of something. Subject officer #3 BWC 4:00. In justifying the dog sniff of the car, not only did they have background information about Complainant and his car suggesting that it might have a gun in it, but they articulated a specific fact about the car that in their experience was suggestive of potentially hiding a gun when considered in light of the other factors. In any case, there is no question here regarding the sufficiency of the justification for the dog sniff of the vehicle as that portion of the complaint has already been dismissed.

When the K-9 unit arrived, the officers added to their explanation of reasonable suspicion for the sniff that Complainant has been locked up for robbery, although they acknowledged that he was not the one with the gun, but the “getaway driver or something like that.” SUBJECT OFFICER #3 BWC 38:30. SUBJECT OFFICER #3 also stated that they have enough characteristics to stop Complainant, but don’t want to stop him until they do the sniff and search the car because they don’t want to “start a riot before you tell us the gun is in the car or not.” SUBJECT OFFICER #3 BWC 39:00. Notably, they did not say that they had reasonable suspicion to pat down Complainant at this point, only to stop him.

The K-9 alerted on the driver’s side door and the officers tried to unlock it, but they were unable. SUBJECT OFFICER #3 BWC 41:00. Although SUBJECT OFFICER #5 believed their inability was due to not having a wedge, SUBJECT OFFICER #3 believed it was because Complainant kept locking it to keep them from getting in. SUBJECT OFFICER #3 BWC 47:45. As a result, SUBJECT OFFICER #3 concluded that they are “going to do a pat down.” SUBJECT OFFICER #3 BWC 48:20. In response, SUBJECT OFFICER #1 asked whether they had reasonable suspicion that “he’s presently armed.” SUBJECT OFFICER #3 said “yeah.” SUBJECT OFFICER #3 BWC 49:50. They then approached Complainant and informed him that he was detained and almost immediately patted him down.” SUBJECT OFFICER #3 BWC 50:00.

By the time Subject Officers stopped Complainant, they had reasonable suspicion to stop Complainant both to further investigate the questionable tags, but also, on the basis of their prior knowledge about Complainant’s possession of guns and the positive K-9 alert on Complainant’s vehicle, for possible possession of an unlicensed gun in his car. Thus, the allegation of harassment as to the stop of Complainant by SUBJECT OFFICER #3 and SUBJECT OFFICER #2 and SUBJECT OFFICER #1 is not sustained.

3. Lawfulness of the Pat down

The facts that support the reasonable suspicion to STOP Complainant, are not sufficient on their own, however, to support a protective pat down of Complainant, which requires additionally articulable “reasonable suspicion that the individual is carrying a concealed weapon or dangerous instrument and that a pat down is necessary to self-protect or protect others.” The standard for a pat down as articulated in MPD General Order 304.10 is whether a reasonably prudent law enforcement officer would be warranted in believing his or her safety or that of other individuals is in danger because the individual may be carrying a weapon or dangerous instrument.” The factors to be considered are similar to those for a stop, but the descriptions are expanded to account for factors that increase the suspicion of a concealed weapon and

dangerousness such as a bulge in a stopped individuals clothing, movements that suggest either the hiding or movement toward a weapon, the time of day or location that might increase the risk of an attack, and prior knowledge of the stopped individuals having weapons.

The only observations Subject Officers make that tend toward providing support for reasonable suspicion that Complainant might have a gun on his person are vague and not specific. For example, while the officers are waiting for the K-9-unit, SUBJECT OFFICER #3 surmises that the gun is not in the car, but “under Complainant” (who is sitting in a wheelchair) because Complainant was not reacting to the officers peering into the vehicle’s windows. SUBJECT OFFICER #3 BWC 7:00. A discussion then ensues whether the dog sniff will provide sufficient reasonable suspicion to do a pat down of Complainant. SUBJECT OFFICER #3 BWC 10:30. For SUBJECT OFFICER #3 it ultimately is irrelevant – if the dog alerts, then it suggests a fresh scent and the firearm is still on the scene, but if it doesn’t alert, he believes they still have reasonable suspicion based on Complainant not making eye contact with the officers nor moving “any muscle on his body,” which SUBJECT OFFICER #2 refers to as “nervous behavior.” SUBJECT OFFICER #3 BWC 10:30. SUBJECT OFFICER #3 then adds that in his experience, people in wheelchairs often conceal weapons under their bodies because officers often won’t check there. SUBJECT OFFICER #3 BWC 13:00. Fourteen minutes into the interaction, Complainant moves a little away from the officers who had been standing near him on the sidewalk, which SUBJECT OFFICER #1 seems to think is reasonable articulable suspicion, but he again recommends waiting for the K-9 sniff. SUBJECT OFFICER #3 BWC 14:00. A few minutes later, SUBJECT OFFICER #3 added to the list by saying that Complainant “covered his waist.” SUBJECT OFFICER #3 BWC 16:00. A little later, he observed that Complainant would normally have made his way over to his car by now, and then observed that Complainant was sitting with his hands on his lap refusing to wheel over. SUBJECT OFFICER #3 BWC 18:00. Several minutes later, SUBJECT OFFICER #3 asked SUBJECT OFFICER #1 if he thought they had sufficient characteristics to meet the threshold of reasonable suspicion to do a pat down. SUBJECT OFFICER #3 BWC 26:00. SUBJECT OFFICER #1 did not disagree, but deferred in saying that they have greater knowledge of the characteristics than him. He also, however, told him that they should wait to see what happened with the K-9 and use that to make a determination. SUBJECT OFFICER #3 BWC 28:00.

That these observations of Complainants behavior are vague and indeterminate as to providing reasonable suspicion that he may be carrying a gun is evidenced when approximately thirty minutes into the interaction, while still waiting for the K-9, SUBJECT OFFICER #3 surmised that the gun is in the car “since he hasn’t tried to get in and take off.” SUBJECT OFFICER #3 BWC 30:00. In contrast, SUBJECT OFFICER #2 observed that Complainant keeps adjusting himself in the chair, which, he suggested, made the question of where the gun was 50/50. SUBJECT OFFICER #3 BWC 30:00. If Complainant’s behavior was so suggestive that he might have a gun on him, one would expect the officers to not be so on the fence about it. What created this issue is that the Officers here sound as if they are looking for evidence of a crime and are unsure where it might be located, not concerned about a safety issue relating to Complainant possibly being able to shoot them or others.

It is worth noting that even before the K-9 arrived, the officers are certain that there is a gun present. Not because of a tip or any specific observation related to the presence of a gun, but

because of a car with alleged counterfeit tags belonging to Complainant and an understanding that Complainant was previously arrested with a gun and was involved in a robbery as a getaway driver. It is not terribly surprising that no matter what actions Complainant took – whether it be not fleeing from the officers, or, on the contrary, moving away from officers – they found a way to turn it into suspicious behavior. SUBJECT OFFICER #3 BWC 7:00, 14:00, 16:50.

Particularly problematic is that they seem to be suggesting that Complainant moved away from the officers and “bladed his body” so that the officers couldn’t see him. SUBJECT OFFICER #3 BWC 14:00. Yet, that ignores that he was sitting in full view of them for over ten minutes at the beginning of the encounter, and again in full view later in the encounter, and they do not articulate any specific observation of Complainant’s person that would indicate that he was concealing a gun. WITNESS OFFICER #1 BWC 0:00- 13:00; 16:50; 43:00.

Moreover, had the officers stopped Complainant and asked him questions before they patted him down, they would have been able to view him up close to see if he exhibited any signs of gun possession or actions that suggested he was reaching for or trying to cover up or hide a gun. Vague observations about Complainant putting his hands in his lap or adjusting himself in his wheelchair over the course of forty minutes is hardly suggestive of anything more than what any person would do over that period of time if they were relegated to living life in a wheelchair. It thus did not provide reasonable suspicion that Complainant might have been carrying a gun, even in light of the other information the Officers had about Complainant’s past behavior and a positive dog sniff on his car.

That officers had all of this information and only decided to pat down Complainant when he was preventing them from unlocking his car doors suggests that the pat down was based on frustration rather than on reasonable suspicion of Complainant carrying a gun on his person and a concern for protection of themselves or others. SUBJECT OFFICER #3 BWC 49:00.

Before the dog sniff, officers had all of the same observations of Complainant that they had after the dog sniff. At no time in the almost fifty minutes prior to the pat down did the officers indicate any concern for safety due to Complainant possessing a gun. The officers explained the delay in conducting the pat down as avoiding causing a riot if they stopped Complainant. SUBJECT OFFICER #3 BWC 39:00. SUBJECT OFFICER #3 in his interview with OPC reiterated this concern and stated that they were waiting until they had a tactical advantage because of the crowd. Ex. 11. While that is a reasonable explanation, it still doesn’t express a safety concern around Complainant possessing a gun, a requirement for doing a pat down. Moreover, the explanation is somewhat belied by the fact that ultimately they stopped and patted down Complainant before the additional officers arrived. SUBJECT OFFICER #6 BWC 2:00.

It is notable to compare this situation with the one in which Complainant was arrested for possession of a concealed pistol. In that instance, two officers observed a bulge inconsistent with human anatomy bulging from Complainant’s groin area; Complainant’s pants were unbuttoned and partially unzipped revealing multiple layers of compression shorts/underwear which in the officer’s experience was often used as a makeshift holster; and Complainant placed his cell

phone on top of the bulge.⁶ These are specific observations and actions that indicate the immediate presence of a gun on an individual's person. There are no such observations here that provide the reasonable suspicion that Complainant was presently carrying a gun on his person and the officers' needed to protect themselves and others from it by doing a protective pat down.

4. Was the Unlawful Conduct Purposefully, Knowingly, or Recklessly in violation of the law or policy?

Subject Officers here had reasonable suspicion to stop Complainant. Thus to the extent this allegation relates to the stop, it is not sustained. Subject Officers did not, however, have reasonable suspicion to do a protective pat down of Complainant. The determination of whether the unlawful pat down constituted harassment depends on element two: whether Subject Officer's unlawful conduct was purposeful, knowing or reckless.

SUBJECT OFFICER #3 and SUBJECT OFFICER #2 were those most involved in determining whether there was reasonable suspicion to conduct the pat down. SUBJECT OFFICER #3 seemed to be making an effort to ensure he had sufficient reasonable suspicion when he asked SUBJECT OFFICER #1 whether the factors he delineated constituted reasonable suspicion. SUBJECT OFFICER #3 BWC 26:00. SUBJECT OFFICER #1 repeatedly emphasized the importance of adding the dog sniff to the list of factors. SUBJECT OFFICER #3 BWC 14:00, 26:00. In the discussions of how the dog sniff would impact the reasonable suspicion, it was surmised, but not concluded that not finding the gun in the car, would then give them reasonable suspicion that the gun was on Complainant. SUBJECT OFFICER #3 BWC 14:00, 26:00.

However, when the officers finally decided to pat down Complainant, after the dog had alerted on the car door, but before the officers before they were able to search the car, SUBJECT OFFICER #1 asked if they had reasonable suspicion that Complainant was PRESENTLY armed. SUBJECT OFFICER #3 BWC 50:00. It seems an odd question to ask after the dog sniff which he has previously suggested to the officers would, when combined with their other knowledge and observations, provide reasonable suspicion. His use of the word "presently" suggests a doubt, that is the same problem with the factors relied upon for reasonable suspicion raised in the previous section: that what they had observed up to that moment, while giving rise to a reasonable suspicion to stop Complainant, was not sufficiently specific as to rise to a reasonable suspicion that he had a gun on his person.

Throughout the interaction SUBJECT OFFICER #3 seemed to be hesitant about reaching a firm conclusion about whether reasonable doubt existed and repeatedly asked others what they thought. SUBJECT OFFICER #3 BWC 14:00, 26:00, 50:00. When he asked SUBJECT OFFICER #1 he explained that he wanted to "feed it through many channels" so if they do stop, pat down, and recover a firearm, he wanted him [SUBJECT OFFICER #1] to think that they met the threshold of reasonable suspicion to do so. SUBJECT OFFICER #3 BWC 26:00. Similarly, right before they decide to do the pat down, he asked SUBJECT OFFICER #4, "I think we have

⁶ Complainant's September 2020 arrest.

enough, but what do you think? Alerted on the driver's side." SUBJECT OFFICER #3 BWC 50:00. SUBJECT OFFICER #4 agreed with his assessment. SUBJECT OFFICER #3 BWC 50:00. Yet, when SUBJECT OFFICER #3 told SUBJECT OFFICER #1 that they were going to do a pat down, SUBJECT OFFICER #1 asked if they had "reasonable suspicion that he's presently armed," SUBJECT OFFICER #3 confidently responded, yeah. SUBJECT OFFICER #3 BWC 50:00. SUBJECT OFFICER #1 did not ask for further elaboration. SUBJECT OFFICER #3 BWC 50:00.

SUBJECT OFFICER #1, however, was the highest-ranking officer on scene and thus ultimately, the officer in charge. According to General Order 101.09, Duties and Responsibilities of Sworn Officials, "patrol sergeants shall provide appropriate supervision and guidance. . ." As the highest-ranking officer on the scene who was specifically asked for guidance and then later notified prior to the pat down happening, SUBJECT OFFICER #1 was ultimately responsible for the decisions made. That SUBJECT OFFICER #3 who seemed to be the officer actively in charge of the scene made attempts to confirm his conclusions with SUBJECT OFFICER #1 suggests neither a purposeful, knowing, or even reckless violation of the law or policy on his part.

As for SUBJECT OFFICER #2, while he was involved in the discussions around whether reasonable suspicion for a pat down existed and agreed that it did, he ultimately relied on the final determination of SUBJECT OFFICER #3 and acted upon his direction. Throughout the interaction they all seemed to express a certain level of uncertainty, this was not an easy call, and they relied upon the determination of SUBJECT OFFICER #3 who relied on the expertise and seniority of SUBJECT OFFICER #1. Thus, SUBJECT OFFICER #2 also cannot be said to have acted purposefully, knowingly, or recklessly in violation of the law or policy.

As for SUBJECT OFFICER #1, he did not exercise his duties of supervision and guidance in this case where his subordinate officers seemed to be hesitant about reaching a definitive conclusion as to reasonable suspicion to conduct a pat down and sought his guidance. Instead, SUBJECT OFFICER #1 seemed to defer to them despite what sounds like his own lack of certainty. His own lack of certainty was reflected in his deflecting the decision back to SUBJECT OFFICER #3, but also in his final question as they went to do the pat down as to whether they had reasonable suspicion that he's *presently* armed despite having already been a part of the reasonable suspicion discussions. His own seeming uncertainty should have raised red flags as to whether sufficient reasonable suspicion for a pat down existed. That it did not, is reckless on his part.

Allegations of harassment as to SUBJECT OFFICER #4 are not sustained as he did not participate in the stop and pat down. Allegations of harassment as to the stop of Complainant are not sustained as to the remaining Subject Officers as there was sufficient reasonable suspicion to stop Complainant. The allegations of harassment as to the unlawful pat down of Complainant as to SUBJECT OFFICER #3 and SUBJECT OFFICER #2 are not sustained as their conduct was not purposefully, knowingly, or recklessly unlawful. The allegation of harassment as to the unlawful pat down as concerns SUBJECT OFFICER #1, however, is sustained due to his failure to exercise leadership on the question of reasonable suspicion when he appeared to have doubts about whether reasonable suspicion for the pat down existed, but still allowed it to move forward.

B. 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 (effective April 5, 2011), Part V. Section C, Nos. 1(a) & 3 states 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.” The general order goes on to state, “(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 any 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.” *Id.*

1. SUBJECT OFFICER #5

SUBJECT OFFICER #5 violated General Order 201.26 when he stated to a young man on the sidewalk, “It’s called a search warrant, asshole” in response to a mocking question of “How you doing judge? Bitch why the fuck the judge calling you?” SUBJECT OFFICER #5 BWC 19:00. SUBJECT OFFICER #5 violated MPD General Order 201.26 when he allowed himself to be provoked and used coarse, profane, sarcastic, and insolent language that was also disrespectful name-calling. SUBJECT OFFICER #5 acknowledged during his interview with OPC that he “lost [his] bearing for a minute after sitting there for a while, a lot of that stuff tends to build up.” Ex. 9. As there is no dispute that Subject Officer made the insulting, demeaning and humiliating statement that he did, understands that it is a violation of policy, and such a statement would have the effect of causing a reasonable person to experience distress, anxiety or apprehension, in violation of DC Code § 5-1107 the language and conduct allegation against SUBJECT OFFICER #5 is sustained.

2. SUBJECT OFFICER #6

SUBJECT OFFICER #6 violated General Order 201.26 when she stated to a young man while she was providing crowd control, “Boy if I called, I called, you dumb and don’t know what you’re talking about. Shut the fuck up.” SUBJECT OFFICER #6 BWC 9:40. Her statement was made in response to the young man saying, “She do, she the one that called them,” indicating that she was the one who had called the officers to the scene. SUBJECT OFFICER #6 BWC 9:40. SUBJECT OFFICER #6 violated MPD General Order 201.26 when she allowed herself to be provoked and used coarse, profane, sarcastic, and insolent language that was also disrespectful name-calling. SUBJECT OFFICER #6 acknowledged during her interview with OPC that she made the statement and explained that “they were saying a bunch of very foul and

demeaning things and it probably just got to me a little bit.” Ex. 13. As there is no dispute that SUBJECT OFFICER #6 made the insulting, demeaning and humiliating statement that she did, understands that it is a violation of policy, and such a statement would have the effect of causing a reasonable person to experience distress, anxiety or apprehension, in violation of DC Code § 5-1107, the language and conduct allegation against SUBJECT OFFICER #6 is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1 (stop):	Exonerated
Allegation 2 (frisk):	Sustained

SUBJECT OFFICER #3

Allegation 1 (stop):	Exonerated
Allegation 2 (frisk):	Exonerated

SUBJECT OFFICER #2

Allegation 1 (stop):	Exonerated
Allegation 2 (frisk):	Exonerated

SUBJECT OFFICER #4

Allegation 1 (stop):	Exonerated
Allegation 2 (frisk):	Exonerated

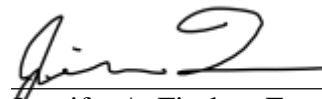
SUBJECT OFFICER #5

Allegation 3 (language and conduct)	Sustained
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SUBJECT OFFICER #6

Allegation 3 (language and conduct)	Sustained
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Submitted on September 16, 2023.



Jennifer A. Fischer, Esq.
Complaint Examiner