

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	22-0411
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment: Unlawful stop
Allegation 2:	Harassment: Handcuffing
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	April 17, 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

On March 21 2022, COMPLAINANT had an encounter with SUBJECT OFFICER, WITNESS OFFICER #1, and former WITNESS OFFICER #2 near AN ADDRESS IN SW, WASHINGTON, DC. COMPLAINANT was standing with six other adult men near a white CAR, which did not belong to any of the men. WITNESS OFFICER #1 felt a shoulder bag carried by COMPLAINANT looking for a weapon but did not find one. COMPLAINANT had a key FOB hanging from his belt or pants. The MPD Officers searched the vehicle and, among other items, recovered a firearm and ammunition. By the time of the car search, the seven men were gone from the scene.

While on patrol on March 23, 2022, SUBJECT OFFICER and former WITNESS OFFICER #2 recognized COMPLAINANT while he was walking in the general area where the March 21 encounter took place. COMPLAINANT was carrying a shoulder bag and a FOB was attached to his pants or belt. He was stopped and immediately handcuffed. A timely complaint was filed with OPC by COMPLAINANT challenging the stop and handcuffing.<sup>1</sup>

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<sup>1</sup> COMPLAINANT further alleged that on March 21, 2022, WITNESS OFFICER #1 harassed him when he unlawfully stopped him, searched his belongings, and frisked him. The complainant also alleged that SUBJECT OFFICER used unnecessary or excessive force against him when he bent his arms. COMPLAINANT further alleged that on March 23, 2022, SUBJECT OFFICER failed to provide his name and badge number when requested to do

## II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation (ROI), the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union on March 17, 2023, OPC's response to the objections, the Complaint Examiner's review of the exhibits of record, and the Body Worn Camera (BWC) footage (for March 21 and 23, 2022) of SUBJECT OFFICER and former Officer WITNESS OFFICER #2. Based on the foregoing material, the Complaint Examiner determined that the ROI 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 ROI, the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union on March 17, 2023, OPC's response to the objections, the Complaint Examiner's review of the exhibits of record, and the (March 21 and 23, 2022) BWC footage of SUBJECT OFFICER and former WITNESS OFFICER #2, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT and six other males had an encounter with MPD SUBJECT OFFICER, WITNESS OFFICER #2 and WITNESS OFFICER #1 around 8 pm on March 21, 2022, near AN ADDRESS IN SW, WASHINGTON, DC.
2. COMPLAINANT was carrying a shoulder bag. WITNESS OFFICER #1 patted the shoulder bag to see if it contained a gun, which it did not.
3. WITNESS OFFICER #1 told OPC that he felt the bag for weight and concluded that a weapon was not present.
4. COMPLAINANT was not asked for identification and did not identify himself.

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so. In addition, the complainant alleged that on May 2, 2022, WITNESS OFFICER #3 harassed him when he unlawfully stopped him. Second, COMPLAINANT alleged that WITNESS OFFICER #4 and WITNESS OFFICER #5 used unnecessary or excessive force against him when they bent his arms. Third, the complainant alleged that WITNESS OFFICER #4 harassed him when he searched his belongings. Fourth, the complainant alleged that WITNESS OFFICER #3 harassed him when he damaged his bag. Fifth, COMPLAINANT alleged that WITNESS OFFICER #3 harassed him when he searched his person. Lastly, the complainant alleged that WITNESS OFFICER #3, WITNESS OFFICER #4, and WITNESS OFFICER #5 failed to provide their names and badge numbers when requested to do so. Pursuant to D.C. Code § 5-1108(1), on February 1, 2023, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. *See Exhibit 2.*

5. COMPLAINANT had a FOB clipped to his pants or belt. An identifying logo is not visible on the FOB.
6. One of the individuals, not COMPLAINANT, was leaning on a white VEHICLE with Virginia license plates.
7. The officers did not ask any of the individuals for identification.
8. The responding officers determined that the car was registered to a female.
9. None of the seven males claimed to know anything about the car.
10. Based upon the visual identification of contraband in the VEHICLE, the Officers had probable cause to open the locked car and conduct a search. A loaded 45 caliber Glock pistol and a drum-style magazine for an assault rifle were found.
11. The seven males left the area when the officers began their efforts to enter the car.
12. The Report (MPD Form PD 251) for this encounter does not identify any individuals by name or physical description. Exhibit 9.
13. On March 23, 2022, WITNESS OFFICER #2 and SUBJECT OFFICER were on patrol on A STREET IN SW, WASHINGTON, DC, which is in the general vicinity of THE SAME ADDRESS IN SW, WASHINGTON DC, when they saw COMPLAINANT walking alone.
14. COMPLAINANT was holding an umbrella, a shoulder purse was slung over his shoulder, and a key FOB (a logo was not visible) was hanging from his pants or belt.
15. SUBJECT OFFICER was walking on the sidewalk behind COMPLAINANT, while WITNESS OFFICER #2 followed in the MPD cruiser.
16. SUBJECT OFFICER stopped COMPLAINANT and immediately placed him in handcuffs and patted the shoulder bag.
17. SUBJECT OFFICER concluded that the shoulder bag did not contain a weapon.
18. COMPLAINANT did not physically resist SUBJECT OFFICER.
19. COMPLAINANT refused to provide identification and refused consent for a search.
20. COMPLAINANT repeatedly asked whether the officers had probable cause to stop him.

21. SUBJECT OFFICER told COMPLAINANT that he was stopped because the officers recognized him from the March 21 encounter and that the gun found in the VEHICLE might have belonged to him.
22. COMPLAINANT refused to provide identification despite several requests from the officers.
23. SUBJECT OFFICER retrieved COMPLAINANT's identification from his pants pocket.
24. The handcuffs were removed after about eight minutes and COMPLAINANT was free to leave.

#### 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.

The essential facts of COMPLAINANT's encounter with SUBJECT OFFICER are not in dispute. COMPLAINANT was one of seven male individuals standing in the vicinity of a white VEHICLE with Virginia license plates parked near AN ADRESS IN SW, WASHIGNTON, DC on the evening of March 21, 2022, when SUBJECT OFFICER (and other MPD officers on patrol) approached him. COMPLAINANT was carrying a shoulder bag and had a car FOB attached to his belt or belt loop. One of the officers felt COMPLAINANT's shoulder bag and determined that it did not contain a weapon. According to the officers, contraband was visible in the VEHICLE, which gave them probable cause to search the vehicle. None of the men claimed to know anything about the car. The officers determined that the car was registered to a female. It took the officers approximately 15 minutes to enter the car. A gun and ammunition were found in the vehicle. By this time, COMPLAINANT and the other men had left the area. The officers did not ask COMPLAINANT or any of the others for identification. A police report, MPD Form PD 251, was filed. Exhibit 9. The report does not identify any of the seven males seen in the vicinity of the VEHICLE.

1. Stop

Fast forward to the early evening of March 23, 2022. SUBJECT OFFICER #1 and WITNESS OFFICER #2 are on patrol in the general area where the VEHICLE had been parked. They recognized COMPLAINANT from the March 21 encounter. COMPLAINANT was walking alone on the street holding an umbrella. He was carrying a shoulder bag and had a FOB hanging from his belt or belt loop. SUBJECT OFFICER approached him on foot and immediately put in him handcuffs. Despite several requests, COMPLAINANT refused to provide his name or identification. Nevertheless, WITNESS OFFICER #2 removed identification from COMPLAINANT's pocket, over his objections and, obviously, without consent. After identifying COMPLAINANT, the handcuffs were removed. COMPLAINANT was in handcuffs for approximately eight minutes.

To their credit, the officers were following up on the March 21 incident by investigating ownership of the guns and contraband found in the VEHICLE. Since COMPLAINANT was one of the individuals seen in the vicinity of the VEHICLE, it was not unreasonable for the officers to want to speak with him. And when the officers saw him on March 23 walking on A STREET IN SW, WASHINGTON, DC, it was entirely appropriate to approach him for that purpose, i.e., to initiate a field contact. The issue before the Complaint Examiner is whether SUBJECT OFFICER initiated a stop and, if so, whether the stop violated relevant law and regulation.

MPD General Order 304.10, paragraph II B provides in part:

1. Basis for a Stop

If a member has reasonable suspicion that an individual has committed, and is committing, or is about to commit any crime, the member has the authority to stop the individual for the purpose of determining whether or not probable cause exists to

arrest. The member may exercise that authority in any place in which he or she has a legal right to be. (Emphasis in original)

## 2. Reasonable Suspicion

The term reasonable suspicion necessitates a minimal level of objective justification for making the stop. Although reasonable suspicion is not capable of precise definition, it is more than a hunch or mere speculation but less than the probable cause necessary to arrest. Members shall consider the totality of the circumstances and base reasonable suspicion on their training and experience....

There is no objective evidence linking COMPLAINANT to the contraband found in the VEHICLE on March 21. The only possible link is the key FOB hanging attached to his belt or pants. The FOB, however, had no identifying logo – VEHICLE or otherwise. Even if it was, for the sake of argument, a VEHICLE FOB, there is no evidence linking COMPLAINANT to the particular white VEHICLE that was searched. COMPLAINANT was one of seven males near the VEHICLE on March 21, each of whom denied having information about it. Importantly, it was known by SUBJECT OFFICER that neither COMPLAINANT nor any of the other males owned the vehicle. At best, SUBJECT OFFICER had a hunch or was speculating that COMPLAINANT was in control of the contraband found in the vehicle. MPD Order 304.10 requires more than a hunch or mere speculation.

The Complaint Examiner notes that COMPLAINANT was not free to walk away from the encounter with SUBJECT OFFICER and WITNESS OFFICER #2, as he was in handcuffs for eight minutes and for most of that time one or both officers held his arms. Even though SUBJECT OFFICER advised COMPLAINANT that he was not under arrest, this encounter went well beyond what could be considered a lawful stop. See MPD General Order 304.10 II B 4. a. (3). (the length of the stop must be reasonable and will be evaluated on the particular facts, but caution dictates moving quickly so as to avoid the stop becoming more like an arrest).

Under the totality of the circumstances, the Complaint Examiner finds that SUBJECT OFFICER violated MPD General Order 304.10 when he stopped COMPLAINANT on March 23, 2022, and his actions constituted harassment in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

## 2. Use of Handcuffs

SUBJECT OFFICER told OPC that he used handcuffs because (1) he was concerned for his safety, and (2) COMPLAINANT was a “big guy and argumentative.” Exhibit 6, p. 3. Policing is an inherently dangerous profession and police officers must be able to take reasonable safety precautions as allowed by established legal standards.

Here, SUBJECT OFFICER upon encountering COMPLAINANT immediately handcuffed him without any meaningful dialogue. Moreover, he immediately determined that

the shoulder bag did not contain a weapon. The BWC footage does not show COMPLAINANT acting in an aggressive manner. He repeatedly asked the officers to state the probable cause for the stop. He exercised his right not to identify himself either verbally or by providing documents of identification. Exhibit 26, p. 6. Nevertheless, COMPLAINANT remained handcuffed for eight minutes. Simply stated, COMPLAINANT did nothing wrong. He was not under any obligation to provide information to SUBJECT OFFICER but seemingly was penalized for his failure to do so.

OPC and the FOP agree that officers may use handcuffs as part of a stop “where it was reasonably necessary to protect the officers’ safety or to thwart a suspect’s attempt to flee.” Womack v. United States, 673 A.2d 603 (D.C. 1996).

Applying the Womack standard to these circumstances does not provide justification for the use of handcuffs. As noted earlier, there was no objective evidence linking COMPLAINANT to the contraband found in the VEHICLE. The officers were acting on a hunch and speculating that the contraband belonged to COMPLAINANT. Nevertheless, SUBJECT OFFICER immediately handcuffed COMPLAINANT, even though he showed no signs of aggression or attempt to flee. Further, the handcuffs remained on COMPLAINANT notwithstanding the determination that he did not have a weapon. Also mitigating against the use of handcuffs is the fact that it was known to SUBJECT OFFICER that COMPLAINANT did not have a weapon in his shoulder bag on March 21. This fact would argue against him having a weapon in the bag on March 23 and not constituting a threat to either of the officers. The fact that COMPLAINANT was a large man does not support handcuffing. After all, it would be unreasonable without more information to handcuff an individual that the police want to interview merely because of their size.

Under the totality of the circumstances, the Complaint Examiner finds that SUBJECT OFFICER handcuffed COMPLAINANT in violation of MPD General Order 304.10 and his actions constituted harassment in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 Harassment: Stop	Sustained
Allegation 2: Harassment: Handcuffs	Sustained

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Submitted on April 17, 2023.

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Richard S. Ugelow  
Complaint Examiner