

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	23-0079
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment (stop)
Allegation 2:	Unnecessary/Excessive Force (handcuffs too tight)
Allegation 3:	Unnecessary/Excessive Force (length of time in too tight handcuffs)
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	November 10, 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 November 7, 2022. Complainant alleged that on November 2, 2022, Metropolitan Police Department (MPD) SUBJECT OFFICER (Subject SUBJECT OFFICER), harassed him by unlawfully stopping him. Complainant further alleged that SUBJECT OFFICER used unnecessary or excessive force against him by forcibly handcuffing him too tight.¹²

¹ Complainant alleged that FORMER MPD OFFICER and SUBJECT OFFICER used unnecessary or excessive force against him when they slammed him to the ground. Complainant also alleged that FORMER MPD OFFICER and SUBJECT OFFICER failed to provide their names and badge numbers upon request. Lastly, Complainant alleged that WITNESS OFFICER #1 harassed him when the officer threatened and unlawfully searched him. Pursuant to D.C. Code § 5-1108(1), on August 31, 2023, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

² OPC found that on November 2, 2022, FORMER MPD OFFICER conducted an unlawful stop, frisk, and search of the complainant's person and used unnecessary or excessive force against him by forcibly handcuffing him too tight.

Specifically, Complainant stated that on November 2, 2022, he was standing in front of a store located at AN INTERSECTION IN SE, WASHINGTON, DC, with two of his friends when he observed officers across the street in pursuit of an individual. Complainant said that the officers failed to apprehend the suspect. Then, FORMER MPD OFFICER and SUBJECT OFFICER approached him and his friends and asked them to lift their shirts without providing them with a reason why.

Complainant told OPC that he had his phone in his pocket and denied having any bulges in his clothing that could have been mistaken for weapons or contraband. Nonetheless, he and his friends complied and lifted their shirts. COMPLAINANT described that he lifted his shirt and put it back down, but FORMER MPD OFFICER told him to lift his shirt again. Complainant told FORMER MPD OFFICER that he already did and that he did not have anything. However, Complainant lifted his shirt again and then he pulled his pants up. FORMER MPD OFFICER asked him what he had and why he was reaching, and Complainant told FORMER MPD OFFICER that he was pulling his pants up. However, FORMER MPD OFFICER and SUBJECT OFFICER grabbed him and slammed him to the ground.

Complainant said that while on the ground, the officers put their knees into his back, handcuffed him, went into his pockets, and removed his money, marijuana, and phone. After Complainant was handcuffed, the officers picked him up and secured the handcuffs very tightly. Complainant alleged that he asked the officers approximately four to five times to loosen the handcuffs but was ignored each time. FORMER MPD OFFICER and SUBJECT OFFICER sat Complainant on the cold ground. Complainant asked the officers if he was under arrest and why he was in handcuffs and they said they did not know yet. The officers then “went into a huddle” to speak to a sergeant for approximately 20 minutes. Complainant assumed that the sergeant told the officers to release him because shortly after, the handcuffs were removed.

Because FORMER MPD OFFICER separated from MPD on August 14, 2023, the allegations of harassment relating to the stop, the pat down and the search, and the allegations of unnecessary or excessive force against FORMER MPD OFFICER related to the too tight handcuffing and the length of time Complainant was left in too tight handcuffs were closed by OPC, as OPC does not have jurisdiction over officers after they leave MPD employment. The allegations against SUBJECT OFFICER are to proceed through the adjudication process, however, and the decision that follows relates solely to him.

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 FORMER MPD OFFICER, SUBJECT OFFICER and WITNESS OFFICER #1 on November 2, 2022, objections submitted by SUBJECT OFFICER on September 29, 2023 (SUBJECT OFFICER’s Objections), and OPC’s Response to the Objections dated October 2, 2023, 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.

However, on August 14, 2023, FORMER MPD OFFICER separated from MPD. As OPC only has jurisdiction over sworn MPD officers, the allegations against FORMER MPD OFFICER are not addressed in this merits determination.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded by FORMER MPD OFFICER, SUBJECT OFFICER and WITNESS OFFICER #1 on November 2, 2022, objections submitted by SUBJECT OFFICER on September 29, 2023 (SUBJECT OFFICER's Objections), and OPC's Response to the Objections dated October 2, 2023, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on November 7, 2022.
2. On November 2, 2022, at approximately 6:50 p.m., SUBJECT OFFICER and FORMER MPD OFFICER pulled up to an apartment building on the STREET IN SE, WASHINGTON, DC. A man in front of the building began to flee and SUBJECT OFFICER and FORMER MPD OFFICER, along with other officers, pursued him. As the officers approached and entered through the gate of the property of the apartment building, they passed several individuals standing on the sidewalk just outside the gates, next to the street, including Complainant. A few others were standing on the stairs inside the gate.
3. At approximately 7:00 pm, SUBJECT OFFICER and FORMER MPD OFFICER returned to the apartment building. At this time, the men who had been standing on the sidewalk outside of and just inside the gate were no longer present. SUBJECT OFFICER and three other officers found the magazine of a gun in a box sitting at the top of the stairs inside the gate entrance to the property of the apartment building. FORMER MPD OFFICER subsequently also looked in the box.
4. At approximately 7:05 pm, several officers canvassed the area while FORMER MPD OFFICER and SUBJECT OFFICER walked across the street from the apartment building to talk to a group of five men standing in front of a shop. One of the men was Complainant.
5. FORMER MPD OFFICER and SUBJECT OFFICER each asked the group of men if they lost a gun mag. The men did not respond. FORMER MPD OFFICER circled the men, shining a flashlight on them and explained that they found a drum magazine and that their boy ran. While FORMER MPD OFFICER did this, SUBJECT OFFICER shone his flashlight at one of the men and asked if he had any weapons "right here?" FORMER MPD OFFICER then said to another man, "You mind showing me your waistband sir? We're just gonna pat everybody down because we just found a gun magazine right there and y'all were standing there." SUBJECT OFFICER then asked the same man to lift his shirt he had been talking to, which he did, and then asked, "what about your satchel?" The man opened it and showed SUBJECT OFFICER.
6. FORMER MPD OFFICER then directed his attention to Complainant, while SUBJECT OFFICER stood behind Complainant with his flashlight shining on him. Complainant had his left hand in his left pants pocket and was holding a shampoo bottle in his right hand.

FORMER MPD OFFICER asked, "How about you?" Complainant responded "No, no, nope, no." Complainant was slow to lift his shirt, but FORMER MPD OFFICER said he would do a pat down. After Complainant lifted his shirt, FORMER MPD OFFICER asked him to do it again because it was "real quick" and Complainant lifted it again.

7. FORMER MPD OFFICER then grabbed Complainant's sweatshirt near his torso and said, "what's this right here?" SUBJECT OFFICER grabbed Complainant's right side and said, "Don't reach" multiple times. Simultaneously FORMER MPD OFFICER grabbed Complainant's left side telling him to stop and then said, "Cuffs, cuffs, cuffs." The officers tried to pull Complainant's hands behind his back. SUBJECT OFFICER pulled out his handcuffs.
8. FORMER MPD OFFICER told Complainant to stop resisting or he would get pepper sprayed. Complainant said he was not resisting, but just trying to pull his pants up, and he used his hands to grab his pants. Complainant told the officers to stop grabbing him like that. FORMER MPD OFFICER said, "ground, ground" and he and SUBJECT OFFICER took Complainant to the ground.
9. SUBJECT OFFICER was on top of Complainant, whose back was on the ground, holding him down. FORMER MPD OFFICER told Complainant to stop reaching and he and SUBJECT OFFICER turned Complainant on to his stomach at which point FORMER MPD OFFICER was on top of Complainant. The officers told Complainant to stop resisting. Additional officers responded and assisted as SUBJECT OFFICER held Complainant's arms and FORMER MPD OFFICER handcuffed Complainant.
10. The Officers stood Complainant up, and FORMER MPD OFFICER lifted Complainant's shirt, pulled his underwear away from his body, looked inside and said, "What you got right there, bro?" FORMER MPD OFFICER removed an item from Complainant's hoodie pocket and put it back. FORMER MPD OFFICER patted down Complainant and told the officers to check the ground because Complainant was reaching the entire time. SUBJECT OFFICER told WITNESS OFFICER #2 to check the Pantene bottle (the shampoo that Complainant had been holding, which was now on the ground), which WITNESS OFFICER #2.
11. FORMER MPD OFFICER again patted down Complainant's legs, accused Complainant of having something, and pulled his underwear back again. Complainant denied having anything.
12. At 19:08 pm Complainant said, "these handcuffs tight man," and SUBJECT OFFICER, who was standing directly behind Complainant said, "Well you kept reaching to your waistband, that's why." Complainant reiterated that he didn't have anything and that his pants were falling. At least five other officers are visible on the scene at this point from SUBJECT OFFICER's BWC footage.
13. FORMER MPD OFFICER said, "Is it because weed's here, that's why?" Complainant said, "Yeah, that ain't nothing," and again complained that the handcuffs were too tight.

14. SUBJECT OFFICER asked FORMER MPD OFFICER if he patted down Complainant's legs and FORMER MPD OFFICER patted down Complainant's legs again and accused him of having something in his pants, stating, "every time I grab there, you go like this." Complainant again told him that his pants were coming down.
15. Complainant again said, "These handcuffs tight bro. I ain't do shit." The officers did not respond. Shortly after, SUBJECT OFFICER asked Complainant, "All this for nothing?" FORMER MPD OFFICER responded, "No, he's got something on him. A normal person wouldn't do that." SUBJECT OFFICER said, "Yeah. No one's going to fight like that for nothing." Complainant again said that his pants were coming down. FORMER MPD OFFICER searched the ground.
16. At 19:10 pm Complainant told the officers that the handcuffs were hurting him and SUBJECT OFFICER, still standing directly behind Complainant and with at least five other officers visible in the BWC footage, told him, "If you ain't act the way you acted, they wouldn't be like that!" Complainant again told the officers that his pants were coming down and that he just came from work. FORMER MPD OFFICER asked Complainant if he needed the ambulance and if he was hurt or injured. Complainant said, "Yes, you slammed me." FORMER MPD OFFICER asked another officer to call the board.
17. FORMER MPD OFFICER told Complainant an ambulance was coming. SUBJECT OFFICER, still standing behind Complainant and with at least five other officers visible on the scene, said, "We requested multiple times for you to stop resisting. You escalated it." Complainant again said his pants were falling down and SUBJECT OFFICER responded, "Nah. You escalated it. I don't want to hear that." During this interaction, SUBJECT OFFICER was scrolling through photos on his phone.
18. At 19:10 pm Complainant again asked SUBJECT OFFICER, "Can you loosen these a bit, man?" SUBJECT OFFICER, still standing behind Complainant and with at least ten officers visible on his BWC and scrolling through photos on his phone, responded, "Nope. At this point, you are a flight risk." Complainant again denied having done anything; saying that his pants were coming down.
19. At approximately 19:11 WITNESS OFFICER #3 and WITNESS OFFICER #4 pulled up. WITNESS OFFICER #3 approached FORMER MPD OFFICER who explained to WITNESS OFFICER #3 his account of what happened. FORMER MPD OFFICER told WITNESS OFFICER #3 that he and SUBJECT OFFICER told the men that they were going to do a pat down and Complainant had something, "right here," FORMER MPD OFFICER gestured to his waste. FORMER MPD OFFICER said when he asked, "what's there?" Complainant bent over and immediately tried to run away but the officers took him down. FORMER MPD OFFICER said, "I think it was crack in his pocket." He continued explaining that when they were wrestling Complainant to the ground, "it could be here or in his pants, but he kept reaching down. He's still wriggling." WITNESS OFFICER #3 then asked FORMER MPD OFFICER if he had the complainant under arrest for anything and FORMER MPD OFFICER responded, "Nah. I mean resisting. I

promise you, he definitely has something.” A few seconds later, WITNESS OFFICER #3 asked FORMER MPD OFFICER, “You gonna lock him up for resisting?” FORMER MPD OFFICER shrugged.

20. WITNESS OFFICER #3 told FORMER MPD OFFICER to do a thorough pat down after FORMER MPD OFFICER told him that he did not “do a real deal one.” FORMER MPD OFFICER told Complainant to spread his feet and did yet another pat down of Complainant’s legs and hoodie.
21. At approximately 19:13, WITNESS OFFICER #4 called SUBJECT OFFICER over and another officer took over standing with Complainant. SUBJECT OFFICER told WITNESS OFFICER #4 and WITNESS OFFICER #3 his account of what happened. In his explanation, he said that the group, including Complainant, had been at the top of the stairwell near the shoebox with the gun magazine in it when an individual fled, clutching his waistband. When the officers returned from chasing him, the group had relocated across the street. After locating the drum magazine, they approached the group that had moved across the street. When they approached and asked about the drum magazine and if they were armed, all complied with lifting their shirt except for Complainant. SUBJECT OFFICER said that FORMER MPD OFFICER observed a bulge in front of Complainant and when FORMER MPD OFFICER tried to check it out, Complainant immediately backed up and started resisting. SUBJECT OFFICER explained that Complainant was constantly reaching for his waistband and they did not know what for. He said that even after the takedown that Complainant kept reaching for his waistband.
22. At approximately 19:25, WITNESS OFFICER #4 informed Complainant that he was detained and not under arrest. WITNESS OFFICER #4 and WITNESS OFFICER #3 then discussed whether to charge the Complainant with resisting or to release him. WITNESS OFFICER #3 stated that FORMER MPD OFFICER believed that Complainant had narcotics in his pants. WITNESS OFFICER #4 said that the statute is that he obstructed the investigation. WITNESS OFFICER #3 said that FORMER MPD OFFICER wanted to request a strip search at the station, but they couldn’t use force to detain someone. WITNESS OFFICER #4 asked, “They weren’t trying to effect an arrest were they? Did he strike anyone?”
23. WITNESS OFFICER #3 and WITNESS OFFICER #4 call the WITNESS OFFICER #5 and told him that they had Complainant detained, but that they didn’t have a charge on him. They also informed WITNESS OFFICER #5 that they told Complainant he was detained.
24. At approximately 19:33, FORMER MPD OFFICER and SUBJECT OFFICER spoke to WITNESS OFFICER #3 and WITNESS OFFICER #4 who asked whether Complainant struck any officers. FORMER MPD OFFICER said that when he went to pat down Complainant, Complainant bent over and “kind of pushed off.” He added that Complainant “definitely resisted the stop.” SUBJECT OFFICER added that Complainant was maneuvering his arms to prevent them from gaining control of them.
25. At approximately 19:36, Complainant asked WITNESS OFFICER #1 to loosen the handcuffs. WITNESS OFFICER #1 checked the tightness and loosened the left handcuff.

26. At approximately 19:41 WITNESS OFFICER #1 removed Complainant's handcuffs and WITNESS OFFICER #3 told FORMER MPD OFFICER, WITNESS OFFICER #2, and SUBJECT OFFICER to walk away while he and WITNESS OFFICER #4 spoke to Complainant.

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, SUBJECT OFFICER approached Complainant and his group, along with FORMER MPD OFFICER, and asked them if they'd lost a drum mag. SUBJECT OFFICER BWC 00:45. Just after SUBJECT OFFICER asked one of the men if he had any weapons, "right here" shining his flashlight on his waistband, FORMER MPD OFFICER asked another of the men to lift up his shirt to show his waistband as he explained, "we're just gonna pat everybody down." SUBJECT OFFICER BWC 1:10. SUBJECT OFFICER then asked the man he was in front of to lift his shirt, and, after he lifted it, asked, "what about your satchel" and the man opened it. FORMER MPD OFFICER then turned his focus on Complainant and asked him to lift his shirt while SUBJECT OFFICER stood behind Complainant and shined his flashlight on Complainant's waistband from that direction. SUBJECT OFFICER BWC 1:25. Thus, to the extent a stop occurred, it was directed at Complainant by both SUBJECT OFFICER and FORMER MPD OFFICER, satisfying element one.

2. The Stop

a. Did SUBJECT OFFICER's Interaction with Complainant Constitute a Field Contact or a Stop?

As to element four, the question is whether the officer's conduct toward Complainant was a "field contact" or a "stop." A "field contact involves solely the voluntary cooperativeness of an individual who is free not to respond and leave" and would not, thus rise to the level of harassment. MPD General Order 304.10, Field Contacts, Stops, and Protective Pat downs (eff. July 9, 2019), Part II.A. 2. In conducting a field contact, "members shall not detain an individual in any manner against their will, nor conduct a protective pat down. Members may not require the individual to answer questions or respond in any way to the member if they choose not to do so The distinction between a field contact and a stop depends on whether, under the particular circumstances, an individual could reasonably perceive that he or she is not free to leave the member's presence." MPD General Order 304.10, Part II.A. 5.

Here, SUBJECT OFFICER's conduct toward the group, and Complainant in particular constituted a stop. SUBJECT OFFICER's and FORMER MPD OFFICER's initial question as they approached the men, if they lost a gun mag, indicates only a contact. SUBJECT OFFICER BWC 00:44. At that point there is no indication that the men, including Complainant, could not leave. The understanding that the men were free to leave became less clear when FORMER MPD OFFICER began circling the group with his flashlight pointed at them explaining that they found a drum magazine, their boy ran, and then asking if they had weapons. SUBJECT OFFICER BWC 00:58. The contact definitively transformed into a stop, however, when, almost immediately after asking the men if they had weapons, FORMER MPD OFFICER said that they were going to pat down all of the men in the group. SUBJECT OFFICER BWC 1:10. His statement was not a request. At this point the men, including Complainant, would not likely have believed they were free to leave the officers' presence. Both FORMER MPD OFFICER and SUBJECT OFFICER then directed their attention at Complainant with FORMER MPD OFFICER telling Complainant to lift up his shirt, and SUBJECT OFFICER standing behind Complainant with his flashlight pointed at Complainant's waistband. A directive to the men, including

Complainant, to lift their shirts is, at minimum, the equivalence of a pat down,³ which is allowable only during a stop. Given that the men, including Complainant, would not have felt free to leave and Complainant was directed to lift up his shirt, which constituted a pat down, the initial encounter with Complainant was a stop.

Thus, SUBJECT OFFICER stopped Complainant as part of the group, satisfying both the first and fourth elements of the requirements for harassment.

b. 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, “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, SUBJECT OFFICER, in his interview with OPC, characterized his initial interaction with Complainant and the group as a field contact and not a stop. Exh. 11 at 4:40, 10:50. He also characterized the request to lift shirts as a voluntary one. *Id.* at 2:35, 9:57, 10:50. However, he believed he and FORMER MPD OFFICER had sufficient reasonable suspicion for a pat down because the group was in “constructive possession” of the magazine by having “surrounded” the shoebox at the initial location. *Id.* at 10:05, 10:50, 11:55. SUBJECT OFFICER said that he “didn’t get an exact look on the complainant at the time when they were across the street. I just know that they relocated from that top of the stairwell to across the street from where the store front was.” *Id.* at 8:05. SUBJECT OFFICER also said he didn’t notice much about Complainant when they approached and asked the men to lift their shirts because he was speaking with the other individuals to see if they displayed any characteristics of being armed. *Id.* at 9:10.

SUBJECT OFFICER’s explanation does not provide reasonable suspicion for the stop of Complainant. First, as can be seen in the BWC footage, Complainant did not “surround” the shoebox. Rather, Complainant stood on the sidewalk, next to the street, outside the gate through which one walked up the stairs at the top of which was the shoebox. FORMER MPD OFFICER BWC 2:00. While Complainant could be said to be in the vicinity of the box, this is not “surrounding” it.

³ Courts have generally considered orders for persons to lift shirts to be subject to the same requirement of reasonable suspicion as a pat down under *Terry v. Ohio*, 392 U.S. 1, (1968), *U.S. v. Baker*, 78 F.3d 135 (4th Cir. 1996); *U.S. v. Edmonds*, 948 F. Supp. 562, 566 (E.D. Va. 1996).

Moreover, SUBJECT OFFICER hadn't had an exact look at Complainant, he "just knew they had relocated" across the street. Exh. 11 at 8:05. He wasn't even certain that Complainant was one of the men who had been standing on the side of the street of the apartment building. Exh. 11 at 8:30. His statements suggest that he simply made an assumption that the men on the other side of the street from the building where they found the gun magazine were the same as those who had been in front of the building when they gave chase to the individual that fled.

Notably, this identification was made based on running past the men as the officers chased the individual who fled, and then only approximately fifteen minutes later, approaching them on the other side of the street from where they found the magazine and had originally seen the men standing. SUBJECT OFFICER BWC 00:40; FORMER MPD OFFICER BWC 2:00. Moreover, in the BWC footage, while a couple men can be seen to be standing on the stairway leading up to where the box was sitting, most of the men are on the sidewalk outside the gate leading up to the apartment building. Not one is standing "around" or "surrounding" the shoebox. FORMER MPD OFFICER BWC 2:00.

The only other item SUBJECT OFFICER raised in his interview with OPC in relation to the basis to stop Complainant was that it was a high crime neighborhood known for narcotics and firearm sales. Exh. 11 at 1:30. Neither SUBJECT OFFICER nor FORMER MPD OFFICER said, however, that Complainant or any of the other individuals stopped were those known to gather there or whether this group was known to conduct illicit activity. Exh. 9 and 11, SUBJECT OFFICER BWC, FORMER MPD OFFICER BWC.

The officers thus seemed to have made an assumption about Complainant and the men across the street with a limited foundation and none of it provided specific reasonable suspicion that they had anything to do with the shoebox. Certainly the group's presence understandably elicited a field contact. Had the officers approached asking questions only and refrained from instructing the men, including Complainant, to lift their shirts, the interaction may have remained only a field contact. Instead, the officers led almost straight into an order to lift up their shirts. At that point, the individuals, including Complainant, were clearly not allowed to leave and the contact became a stop. Thus, given there was not reasonable suspicion for the stop, the stop of Complainant was unlawful.⁴

⁴ Because the harassment allegation as to the pat down in the ROI was directed only at FORMER MPD OFFICER who has resigned from MPD, it is not a part of this determination. That said, the interaction here was troubling. The order by FORMER MPD OFFICER to Complainant to lift his shirt was a pat down (*supra* note 2) and thus required "reasonable suspicion that [Complainant] was carrying a concealed weapon or dangerous instrument and that a pat down was necessary to self-protect or protect others." MPD General Order 304.10. At no time did FORMER MPD OFFICER articulate such a reasonable suspicion. He observed nothing that suggested Complainant was armed or a threat to him. Had this allegation been allowed to move forward against FORMER MPD OFFICER it would have been sustained. Moreover, given that SUBJECT OFFICER was standing behind Complainant with his flashlight on Complainant's waist at the time FORMER MPD OFFICER ordered Complainant to lift his shirt, this Complaint Examiner believes he was a part of that pat down. However, since the ROI addressed the pat down only as to FORMER MPD OFFICER and SUBJECT OFFICER did not have an opportunity to respond to such an allegation against him, a determination of whether his participation in the pat down constituted harassment is also not reached in this determination.

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

The determination of whether the unlawful stop constituted harassment depends on element two: whether SUBJECT OFFICER's unlawful conduct in stopping Complainant was purposeful, knowing or reckless. Here, SUBJECT OFFICER repeatedly stated that he viewed the stop as a field contact and that his request of another individual in the group to raise his shirt did not change that since it was a voluntary request. Exh. 11 at 2:35, 4:40, 9:57, 10:50. This belies, however, that his "request" came only after FORMER MPD OFFICER told the group that they were all to be patted down indicating that they did not have a choice in the matter. SUBJECT OFFICER BWC 1:10.

That SUBJECT OFFICER continued to refer to the encounter as a contact rather than a stop suggests that he knew that they did not have sufficient reasonable suspicion for a stop. Yet he continued to participate, including in FORMER MPD OFFICER's directive to Complainant to lift up his shirt by standing directly behind Complainant and shining his flashlight on him. SUBJECT OFFICER BWC 1:26. SUBJECT OFFICER's behavior was a part of Complainant's reasonable belief that he was not free to leave and a part of the effective pat down of Complainant. That SUBJECT OFFICER understood that the Complainant did not have the right to leave or refuse the request to lift up their shirts is suggested in his response to a question from the OPC investigator as to why Complainant was ordered twice to lift up his shirt. SUBJECT OFFICER said it was "due to the constructive possession of the firearm magazine that the group was standing around." Exh. 11 at 12:00. SUBJECT OFFICER's response suggests that he did not, in fact, view Complainant as free to leave or free to refuse to lift up his shirt because he viewed him as in constructive possession of a firearm magazine and therefore required to submit to a pat down.

SUBJECT OFFICER thus appears knowing that he did not have sufficient reasonable suspicion to stop Complainant and participate in requiring him to lift his shirt any more than any of the other members of the group, even if his intent had been to keep the interaction at the level of a field contact. Either that or SUBJECT OFFICER is ignorant as to the difference between a stop and a field contact, which, would make his conduct reckless since this is a regular part of his job.

Because SUBJECT OFFICER was involved in an unlawful stop of Complainant and his conduct rose to the level of knowing the stop was unlawful, or at a minimum reckless, Subject Officer's conduct rose to the level of harassment in violation of DC Code § 5-1107. Thus, the harassment allegation is sustained.

B. Excessive/Unnecessary Force

The allegations of Unnecessary or Excessive force here relate to 1) the tightness of the handcuffs forcibly applied to Complainant and 2) the length of time Complainant remained detained in the too tight handcuffs.⁵

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.” Handcuffing in the course of an investigatory stop is permissible “where it [is] 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) (citations omitted).

General Order 901.07, Use of Force, (eff. Jan. 1, 2022) provides that “In situations where the use of force is justified, the utmost restraint should be exercised. Members shall minimize the force that is used while protecting the lives of members and other persons, and continuously reassess the perceived threat in order to select the reasonable use of force response that is proportional to the threat faced by him, her, or others.”

General Order 901.07 Part II. B. specifically discusses precautions relating to handcuffing and clarifies that “Proper application and general wearing of handcuffs may lead to complaints of minor pain or injury (e.g., pinching of skin or scratches), but it is **not**, in and of itself, a use of force..... When a subject complains of pain or injury that is associated with the application or wearing of handcuffs, members shall notify an official who shall investigate the complaint or injury.”

1. Tightness of the handcuffs

Here, Complainant was handcuffed in response to FORMER MPD OFFICER’s perception that Complainant was “reaching” and not responding to orders to stop. Exh. 11 at 3:19. When SUBJECT OFFICER and FORMER MPD OFFICER tried to handcuff Complainant, they perceived that he was resisting which led to him being taken down to the ground before they were finally able to handcuff him. Exh. 11 at 3:30, 25:05. After Complainant had been brought back onto his feet, Complainant informed SUBJECT OFFICER and FORMER MPD OFFICER on five occasions that the handcuffs were too tight: twice shortly after the handcuffs had been placed, again after the pat down when Complainant was on his feet, and twice again a couple minutes later. SUBJECT OFFICER BWC 4:18. The first time FORMER MPD OFFICER responded, “Well you kept reaching to your waistband, that’s why.” SUBJECT OFFICER BWC 4:20. The second and third time, the officers did not respond at all. SUBJECT OFFICER BWC 4:32; 5:10.

The fourth time, Complainant said twice the cuffs were hurting him and SUBJECT OFFICER responded, “If you didn’t act the way you acted, they wouldn’t be like that.” SUBJECT OFFICER BWC 6:10.

⁵ Normally, an excessive length of time in handcuffs is handled as a harassment allegation related to prolonged detention. In the ROI, however, the length of time in handcuffs has been placed under excessive/unnecessary force. ROI, 18. In keeping with the ROI, the allegation relating to the excessive length of time in handcuffs will be left under excessive/unnecessary force.

Later SUBJECT OFFICER said, “we requested multiple times for you to stop resisting. You escalated it.” SUBJECT OFFICER BWC 6:53. When Complainant responded that his pants were falling down, SUBJECT OFFICER said, “Nah. You escalated it. I don’t want to hear that.” SUBJECT OFFICER BWC 6:58. Finally, a fifth time a couple minutes later, Complainant again asked SUBJECT OFFICER to loosen his handcuffs and SUBJECT OFFICER said, “Nope. At this point, you are a flight risk.” SUBJECT OFFICER BWC 7:27. The handcuffs were only loosened when Complainant asked WITNESS OFFICER #1, almost 30 minutes later, who checked the tightness of the handcuffs and loosened the left handcuff. WITNESS OFFICER #1 BWC 38:00.

In his interview with OPC, SUBJECT OFFICER acknowledged that he never checked the handcuffs to see if they were too tight. Exh. 11 at 28:45. He claimed in his interview that it was because they didn’t have enough officers on the scene at the time and they couldn’t check them because of scene security. *Id.* at 28:50, 33:00. When asked about his statement to Complainant that the cuffs wouldn’t be so tight if he hadn’t acted the way he had, SUBJECT OFFICER explained that it was Complainant’s resisting as he did that caused the handcuffs to become tighter. *Id.* at 29:50. As SUBJECT OFFICER explained, when handcuffs aren’t double-locked they will get tighter due to the movements that individuals make while being handcuffed. *Id.* at 30:10. When asked why, knowing this, he wouldn’t adjust the handcuffs once Complainant was standing and no longer resisting, he said it was because he didn’t want him to possibly break free while attempting to loosen up the handcuffs and have him be a flight risk and to fight the officers a second time. *Id.* at 30:33, 35:50. SUBJECT OFFICER explained that in his experience, he doesn’t try to make the handcuffs better unless they are “actively too tight” and the scene is secure, which, he said, it was not at the time. *Id.* at 35:55.

The first problem with SUBJECT OFFICER’s claims is that his statements to Complainant and in the interview indicate his knowledge that Complainant may have been telling the truth about the handcuffs being too tight if FORMER MPD OFFICER hadn’t double locked them. The second problem with SUBJECT OFFICER’s claims is that he claims he didn’t loosen them because the scene wasn’t secure. Except that during the period of Complainant reporting the too tight handcuffs, SUBJECT OFFICER was standing directly behind Complainant, staring at his phone, with a minimum of five other officers on scene who can be seen to be fairly casually standing around. SUBJECT OFFICER BWC 3:15. Thus, SUBJECT OFFICER’s claim regarding scene security is not credible. Moreover, his fear about Complainant fleeing if he were to loosen them is belied by the fact that WITNESS OFFICER #1 did not have the same fear when he loosened them. WITNESS OFFICER #1 BWC 38:00. Finally, even if his claims were legitimate, at a bare minimum SUBJECT OFFICER should have reported Complainant’s concerns about the handcuffs being too tight to the Sergeants when they arrived a couple minutes later in compliance with General Order 901.07.

The cumulation of these problems when viewed in light of SUBJECT OFFICER’s responses to Complainant when Complainant told him that his handcuffs were too tight suggest at minimum that SUBJECT OFFICER simply didn’t care that Complainant’s handcuffs were too tight.

At worst they suggest that SUBJECT OFFICER believed Complainant's handcuffs being too tight was a punishment for Complainant having resisted their handcuffing in the first place.

Thus, the allegation of excessive/unnecessary force in relation to the handcuffs being too tight and SUBJECT OFFICER refusing to check them and loosen them is sustained.

2. Length of time in the too tight handcuffs

In the first few minutes after Complainant was handcuffed, FORMER MPD OFFICER subjected Complainant to three pat downs and a number of searches into Complainant's pockets and pulling out his underwear to look into it. FORMER MPD OFFICER BWC 9:39; SUBJECT OFFICER BWC 3:15. He found no weapon or other evidence related to the investigation of the gun magazine. Nonetheless, despite the initial basis for the handcuffing being due to Complainant allegedly "reaching" (which Complainant claims was just him trying to keep his pants from coming down), even after all of these pat downs and searches in which no weapon was found, the officers kept Complainant in the handcuffs for over a half an hour.

When asked why Complainant was in handcuffs for over 30 minutes, SUBJECT OFFICER said Complainant had to be handcuffed for the duration of the investigation because he was a flight risk due to having already had to use force on him. Exh. 11 at 42:15. It was thus necessary to prevent further injuries to the officers or himself. Exh. 11 at 42:15. SUBJECT OFFICER explained that since the officers did not know if Complainant was being placed under arrest or not, his experience was that taking the handcuffs off and then having to put them on again if the individual was under arrest, the individual would resist going back into handcuffs a second time. Exh. 11 at 30:33, 35:50.

The Fourth Amendment requires that an investigative seizure "last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Further, "[t]he scope of the detention must be carefully tailored to its underlying justification." *Id.* The detention of a stopped person may continue beyond the normal time for that sort of stop if the officer encounters additional facts that give rise to a reasonable and articulable suspicion that "criminal activity is afoot" beyond the initial reasoning for the stop. *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015).

Thus, once FORMER MPD OFFICER had patted down Complainant and no weapon or other evidence relating to the investigation of the gun magazine was found, at approximately 19:08, Complainant should have been released from the handcuffs. Detention in the handcuffs past that point could only continue if additional facts gave rise to a reasonable articulable suspicion that Complainant was involved in some other criminal activity.

FORMER MPD OFFICER seemed to believe that this "other criminal activity" was Complainant having crack on him. This is evident first when SUBJECT OFFICER said to FORMER MPD OFFICER, "All this for nothing?" and FORMER MPD OFFICER said "No. He's got something on him.

A normal person wouldn't do that." Just what FORMER MPD OFFICER believed that "something" was became apparent in his conversation with WITNESS OFFICER #3 when he said that he thought Complainant had "crack" in his pocket. FORMER MPD OFFICER BWC 13:58. FORMER MPD OFFICER's comments and his actions suggest that he never believed Complainant was armed, the required basis for a pat down, but all of the pat-downs related to a belief Complainant had drugs.

Keeping Complainant detained in handcuffs on the basis of this belief that he had crack however, required reasonable suspicion, of which neither FORMER MPD OFFICER nor SUBJECT OFFICER articulate. FORMER MPD OFFICER's sole basis for his belief, as he explained to WITNESS OFFICER #3, was that when he asked Complainant "what's there," and reached for Complainant's waist, Complainant bent over and tried to run away, and that he kept reaching. FORMER MPD OFFICER BWC 13:40. FORMER MPD OFFICER failed to inform WITNESS OFFICER #3, however, that FORMER MPD OFFICER grabbed Complainant's sweatshirt and pulled out a bag of marijuana. Not only that, but he never articulated feeling anything during the numerous pat downs or seeing anything specific that led him to think Complainant would have crack on him. His only basis for this belief seems to be as he said to SUBJECT OFFICER, "A normal person wouldn't do that." SUBJECT OFFICER BWC 5:33. That may be, but "a normal person wouldn't do that," is not sufficient for reasonable suspicion that someone has crack resulting in their detention.

The only other possible basis for keeping Complainant in handcuffs was if he was under arrest for something. Here, the Officers allege that Complainant resisted. But resisted what? A pat down? Resisting a lawful pat down is not an arrestable offense (and it is questionable whether the order to Complainant to lift his shirt was a lawful pat down⁶). There is a law against resisting arrest, D.C. Code § 22-405.01, but the officers were not arresting Complainant at the time he resisted. The Sergeants also seem to reference an incredibly vague and unclear law titled, "Interference with Police," that prohibits willful interference with any member of the police force, by any of the persons named in [a repealed section of law]." D.C. Code § 5-117.04. Using such a law here would be unlikely to hold up in any court of law since just who is prohibited from interfering is undefined in the law. And finally, there is assault on a police officer, but FORMER MPD OFFICER himself acknowledged that Complainant never hit him, but only pulled away. D.C. Code § 22-405. Ultimately, the Sergeants agreed that there was no basis for arrest and released Complainant.

Thus, Complainant should have been released from handcuffs at 19:08 after the pat-downs had been completed and there was no threat to officer safety. FORMER MPD OFFICER should have known that they could not hold Complainant in handcuffs based on an inarticulable suspicion that Complainant had crack nor for pulling away when he tried to pat Complainant down. The Sergeants also should have realized this much sooner, but instead seem to want to support FORMER MPD OFFICER's suspicion that Complainant has crack on him, despite him not articulating any reasonable suspicion for detention on this basis and despite FORMER MPD OFFICER,

⁶ See *Supra* Note 4.

SUBJECT OFFICER, and WITNESS OFFICER #2 all reporting to them that Complainant did not hit FORMER MPD OFFICER, but only tried to pull away. WITNESS OFFICER #4 BWC 24:00. Nonetheless, they continued to “investigate” and watched camera footage to reach a conclusion. WITNESS OFFICER #4 BWC 26:30. The end result meant that it was over twenty minutes from the Sergeants’ arrival and almost 30 minutes overall before the Sergeants decided to release Complainant from the handcuffs. WITNESS OFFICER#4 BWC 33:40. This prolonged detention was unlawful and constituted an excessive and unnecessary use of force.

The problem here is, those primarily responsible for the prolonged detention, FORMER MPD OFFICER and WITNESS OFFICER #3 and WITNESS OFFICER #4 are not subject officers in the ROI presented to this Complaint Examiner. The question is, can SUBJECT OFFICER also be held responsible for the overly lengthy time Complainant was held in handcuffs? He cannot.

Although SUBJECT OFFICER does not seem inclined to release Complainant from the handcuffs in the few minutes between when he and FORMER MPD OFFICER handcuffed Complainant and the Sergeants arrived, he seemed to be deferring to FORMER MPD OFFICER who he referred to in his interview as “primary” on the scene. Exh. 11 at 11:40. Since FORMER MPD OFFICER was the officer who had been directly engaging with Complainant from the beginning, had been the one conducting the initial “pat-down” that led to Complainant resisting and being handcuffed, it is understandable that SUBJECT OFFICER would have been relying on FORMER MPD OFFICER’s knowledge of the facts. His reliance on FORMER MPD OFFICER’s knowledge of the facts is evident when he asked FORMER MPD OFFICER, “all this for nothing?” And then responded, “yeah. No one’s going to fight like that for nothing” after FORMER MPD OFFICER said to him, “No, he’s got something on him. A normal person wouldn’t do that.” Thus, although SUBJECT OFFICER did not give any indication that he would have released Complainant any sooner if it had been in his authority, it does not appear to have been in his authority.


Thus, the allegation of excessive/unnecessary force as to SUBJECT OFFICER in relation to the excessive amount of time Complainant was in tight handcuffs is exonerated.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 (Harassment - stop):	Sustained
Allegation 2 (Unnecessary/Excessive force – tight handcuffing):	Sustained
Allegation 3 (Unnecessary/Excessive Force – length of time in too tight handcuffs)	Exonerated

Submitted on November 10, 2023.



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Complaint Examiner