GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	23-0708
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1:	Harassment by Unlawful Stop (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)
Allegation 2:	Harassment by Unlawful Vehicle Search (SUBJECT OFFICER #2 and SUBJECT OFFICER #3)
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	August 5, 2024

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

I. SUMMARY OF COMPLAINT ALLEGATIONS

Complainant COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on July 21, 2023, alleging that Metropolitan Police Department (MPD) SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed her by performing an unlawful stop of her vehicle and SUBJECT OFFICER #2 and SUBJECT OFFICER #3 (collectively, the subject officers) harassed her by unlawfully searching her vehicle.[1]

[1] COMPLAINANT also alleged SUBJECT OFFICER #1 and SUBJECT OFFICER #3 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating. Additionally, COMPLAINANT alleged that SUBJECT OFFICER #1, SUBJECT OFFICER #3, and SUBJECT OFFICER #2 discriminated against her based on personal appearance, place of residence, and race, African American. Lastly, COMPLAINANT alleged that SUBJECT OFFICER #1 used unnecessary or excessive force when he snatched her out of the car. Pursuant to D.C. Code § 5-1108 (1), on May 23, 2024, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's Executive Director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by the subject officers on June 26, 2024, OPC's response to the objections and body worn camera (BWC) footage of the incident, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by the subject officers on June 26, 2024, OPC's response to the objections and BWC footage of the incident, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 22, 2023, at approximately 5:00 p.m., COMPLAINANT parked the vehicle she was driving in front of her home, exited the vehicle and briefly entered her home.

2. As she exited her home several minutes later, COMPLAINANT noticed three or four police cars turning onto her block. COMPLAINANT, who was on a cell phone at the time, re-entered her parked car and sat in the driver's seat while she continued her call.

3. In their statements to OPC, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 both stated that, shortly after COMPLAINANT reentered her parked car while wearing a crossbody bag, they drove by in their police vehicle and saw her move in a frantic or furtive manner.

4. Shortly after, SUBJECT OFFICER #1 approached the driver's side window of COMPLAINANT's car. Upon seeing the officer, COMPLAINANT held up a finger to indicate that she needed a moment to finish her phone call.

5. While COMPLAINANT finished her call, three or four other MPD police offers approached and surrounded her parked car.

6. SUBJECT OFFICER #2 shone his flashlight into COMPLAINANT's car as he approached the passenger side window. As she continued to speak on the phone, he used the flashlight to look through the passenger side window and windshield.

7. SUBJECT OFFICER #3 approached the car on the driver's side, standing to the right and behind SUBJECT OFFICER #1.

8. After approximately one minute, SUBJECT OFFICER #1 again indicated he wanted to speak to COMPLAINANT, who was still on the phone call. COMPLAINANT rolled down her window, asking "How can I help you?"

9. SUBJECT OFFICER #1 asked COMPLAINANT to mute her phone call. She complied. He inquired as to the nature of her call, and she explained she was speaking to her lawyer. SUBJECT OFFICER #1 then explained that the police had received a call regarding a stolen car in that area of the city and wanted to make sure the car was not stolen. COMPLAINANT explained that it was her girlfriend's car and was not stolen.

10. COMPLAINANT then finished her phone call and SUBJECT OFFICER #1 said that he had noticed that the crossbody satchel she had been wearing when she walked from her home to the car had not been swinging freely. SUBJECT OFFICER #1 if she had a permit to carry a concealed firearm, and whether she had any firearms in her bag. COMPLAINANT responded, "no."

11. SUBJECT OFFICER #1 asked to see COMPLAINANT's bag. COMPLAINANT raised the bag, still hung diagonally across her chest, away from her body, closer to SUBJECT OFFICER #1, and palpated its contents to demonstrate there were no firearms in the bag.

12. SUBJECT OFFICER #1 then asked COMPLAINANT if she had put something underneath the hooded sweatshirt on the front passenger seat. COMPLAINANT responded that she did not have any guns or weapons, and she did not know why the police had approached her. She added that she had to pick up her son from school by 5:30 p.m. and was running late.

13. SUBJECT OFFICER #1 asked COMPLAINANT to step out of the car so he could "check to make sure." COMPLAINANT again stated that she had to get her son from school and there were no guns.

14. SUBJECT OFFICER #1 reached through the open driver's side window, unlocked the door, and opened it. COMPLAINANT again asked why she needed to exit the car and said the subject officers had no reason to stop her and that she was going to call the police. SUBJECT OFFICER #1 responded, "we are the police."

15. SUBJECT OFFICER #3 placed his hand at the top of the driver's door to assist SUBJECT OFFICER #1 in opening it as SUBJECT OFFICER #1 escorted COMPLAINANT out of the car.

16. SUBJECT OFFICER #2, still standing at the passenger side of the car, pulled on the passenger door handle. Finding it locked he asked SUBJECT OFFICER #1 to, "press the unlock button" and SUBJECT OFFICER #1 complied. SUBJECT OFFICER #2 then opened the passenger door, picked up the hooded sweatshirt on the passenger seat and felt it for concealed objects before placing it back on the seat.

17. SUBJECT OFFICER #2 then stated, "due to the reach, I'm going to check the glove box and center console, too." He then placed his head and upper body inside the vehicle and searched the front passenger area, glove box and center console.

18. As SUBJECT OFFICER #1 spoke with COMPLAINANT, SUBJECT OFFICER #3 approached the open driver's side door, placed his head and upper body inside the car and searched the driver's seat area for approximately 10 seconds. As he concluded, he stated, "my side's good" and shut the door.

19. As the searches of the vehicles were taking place, COMPLAINANT answered an incoming cell phone call from her girlfriend, the owner of the car. COMPLAINANT put the caller on speaker phone to confirm that it was her car, and that COMPLAINANT had not stolen it. COMPLAINANT told the caller that she was being subjected to "racial profiling" and told the officers they had "no reason to search her car." COMPLAINANT then hung up the phone so that she could record video of her interactions with the subject officers.

20. After completing his search of the driver's side area, COMPLAINANT told SUBJECT OFFICER #2 that she knew the police could not search her car without probable cause and that they had no reason to stop her. SUBJECT OFFICER #3 stated, "based on reasonable suspicion." COMPLAINANT then asked what reasonable suspicion they had, and SUBJECT OFFICER #3 responded that it would be in the report.

21. No handgun, nor any other weapon or contraband, was recovered during the subject officers' stop and search of COMPLAINANT and the vehicle.

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.

1. The subject officers harassed COMPLAINANT by conducting an unlawful stop.

The Fourth Amendment prohibits law enforcement from conducting "unreasonable searches and seizures," and "this protection extends to a brief investigatory stop of persons or vehicles." *U.S. v. Williams*, 878 F. Supp. 2d 190, 196-197 (D.D.C. 2012) (quoting *U.S. v. Bailey*, 622 F.3d 1, 5, 393 U.S. App. D.C. 131 (D.C. Cir. 2010). Searches that are conducted without prior approval by a judge are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Id*.

Police officers may stop a vehicle and briefly detain its occupants without a warrant in a *Terry* stop if they have a "reasonable, articulable suspicion that 'criminal activity may be afoot.'" *U.S. v. Edmonds*, 240 F.3d 55, 59 (D.C. Cir. 2001) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (U.S. 1968)). In *Terry*, the Court recognized a "narrowly drawn authority" to "permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." The Court continues to state, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man, in the circumstances, would be warranted in the belief that his safety or that of others was in danger." *Id. Citing Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Brinegar v. U.S.*, 338 U.S. 160, 174-176 (1949); *Stacey v. Emery*, 97 U.S. 642, 645 (1878).

The June 26, 2024, objections submitted on behalf of the subject officers cited three factors supporting their alleged reasonable suspicion for the stop: (1) the officers were "aware this area had recently experienced an uptick in the carrying and use of illegal firearms;" (2) "the crossbody bag [COMPLAINANT] was wearing appeared to be weighed down by a heavy object and [was] not swinging freely," and (3) COMPLAINANT "began making frantic, furtive movements, before producing an item from the crossbody bag and stowing it on the passenger side of the vehicle." Objections at 2-3.

First, COMPLAINANT's presence in her own neighborhood does not alone justify reasonable suspicion. In *Illinois v. Wardlow*, 528 U.S. 119 (2000), the Supreme Court held that even "while 'reasonable suspicion' is a less demanding standard than probable cause, there must be at least a minimal level of objective justification for the stop. An individual's presence in a 'high crime area,' standing alone, is not enough[.]" In that case, the Court found reasonable suspicion existed only where the subject's presence in a high crime area was coupled with his

highly suspicious conduct: fleeing the scene unprovoked as police cars arrived. Here, COMPLAINANT exited her home in broad daylight and, seeing police cars turning on to her street, did not flee the area, or even return to the safety of her home, but rather walked to her parked car and remained in the car while she finished her telephone call.

Second, the argument that the weight and motion of COMPLAINANT's handbag alone could not lead a reasonably prudent person to conclude she had a loaded weapon. A loaded handgun weighs 1-2 pounds on average. Items of similar weight and size—and those more likely to be found in the average person's handbag—include a water bottle, makeup bag, portable power bank or large earphones, among others. In *U.S. v. Jones*, 2024 WL 2269428 (D.D.C. 2024), the D.C. Circuit dismissed officers' claims that a bulge in a defendant's pocket (which turned out to be a Gatorade™ bottle) constituted reasonable suspicion that he possessed a firearm, even coupled with his "nervous demeanor" and presence in a high-crime area. Here, the subject officers failed to state any reason why the item in COMPLAINANT's handbag was more likely to be a handgun than any other common item. As described, COMPLAINANT appeared to be acting like any other mother juggling multiple objects and tasks on her way to pick up her son from school.

Similarly, the subject officers' argument that COMPLAINANT's bag was held close to her chest and "not swinging freely" is nonsensical, as crossbody bags are specifically designed to rest against the body for security and support and to be "hands free," allowing the wearer to do other things. In fact, crossbody bags are so popular and ubiquitous at present that there is a "crossbody bag mom" meme, with wearers seen as "organized" and "responsible."[2]

Third, the subject officers stated their reasonable suspicion was based on alleged "frantic, furtive movements," made by COMPLAINANT shortly after re-entering her car, as she produced an item from the crossbody bag and stowed it on the passenger side of the vehicle. However, there is nothing unusual or suspicious about a driver settling into their car prior to driving, especially to remove any item that may interfere with a seat belt, or otherwise cause discomfort when sitting behind a steering wheel. Further, the subject officers have no evidence of any "furtive" movements. In fact, SUBJECT OFFICER #1's BWC footage clearly shows that COMPLAINANT was calm and collected as he approached her driver's side window—casually holding up a finger to ask him to wait while she completed her call—and throughout the remainder of the stop.

For all these reasons, the subject officers lacked reasonable suspicion to conduct a lawful stop and thereby harassed the complainant in violation of D.C. Code§ 5-1107(a) and MPD General Order 120.25.

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[2] *See e.g.*, Newsweek, *What Is a 'Crossbody Bag Mom'? Why Parents Are Making Trend Go Viral* (Aug. 1, 2024) *available at* https://www.newsweek.com/what-crossbody-bag-mom-1923476 (last visited Aug. 5, 2024).

2. The subject officers harassed COMPLAINANT by conducting an unlawful search of her vehicle.

Searches conducted without prior approval by a judge are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. *Williams*, 878 F. Supp. 2d at 196-197.

First, a protective search of a vehicle's passenger compartment may be conducted only on a "lawfully stopped vehicle," which was not the case here. *See* MPD General Order 602.01, *Vehicle Searches and Inventories* (eff. June 20, 2019) at 2.

Second, vehicle or wingspan searches can be conducted only where there is probable cause, or a "reasonable articulable suspicion" to believe the vehicle, or a container therein, may contain a weapon. MPD General Order 602.01 *citing Michigan v. Long*, 465 U.S. 1032 (1983). Probable cause is measured by the totality of the circumstances and "must be supported by more than *mere suspicion*." *Perkins v. U.S.*, 936 A.2d 303, 306 (D.C. 2007) (quoting *Blackmon v. U.S.*, 835 A.2d 1070, 1075 (D.C. 2003) (emphasis added). MPD General Order 304.10 defines reasonable suspicion as "more than a vague hunch…under the circumstances, 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."

D.C. courts have held that the "reasonable articulable suspicion" to support a search must be specific as to both why the officer believes the subject concealed a weapon—and not some other item—and that their demeanor or activity suggested they had committed, or were likely to commit, a crime. In *Champion v. U.S.,* 307 A.3d 425 (D.C. 2024), the court held "the totality of the circumstances must contain at least some indication that the concealed item is a weapon, and reasonable suspicion will rarely if ever be established, solely by evidence that the defendant appeared to be concealing *something*. (emphasis in original). D.C. courts have also held that reasonable suspicion cannot be based on "ambiguous movements," as the law requires a "more particularized basis for suspecting that [a suspect] was armed and dangerous." *Jackson v. U.S.*, 56 A.3d 1206 (D.C. 2012). *See also*, U.S. v. Page, 298 A.2d 233 (D.C. 1972) ("Furtive movements standing alone would hardly warrant a search[.]") Evidence supporting a suspicion that the subject was trying to hide something, absent an officer's ability to "recount specific facts" other than an ambiguous gesture of concealment, does not give rise to a reasonable suggestion that the suspect is concealing a weapon, and not some other item. *Champion*, 307 A.3d at 434.

Perhaps most fittingly, in *Hawkins v. U.S.*, 248 A.3d 125 (D.C. 2021), the court's inquiry centered around whether the subject's behavior established reasonable suspicion for a search. Specifically, the police stated they were patrolling a certain area due to "an increase in violent crime" and, upon seeing the police drive up, the subject's "movement of his hands around his satchel caused police to suspect he was concealing contraband." The officer stated he suspected the satchel contained a gun because his unit had recently "recovered many firearms" from

satchels. The court held that the entirety of the evidence, including the subject's "nervousness upon seeing the police officers, the repeated movements of his hands toward his satchel," the officer's testimony about violent crime in the neighborhood and the "'trend' of finding guns hidden in satchels" did not provide a lawful basis for a search. *Id.* at 131.

Here, the subject officers failed to articulate why they suspected COMPLAINANT was carrying a gun, rather than some other similarly sized or weighted object. Further, while SUBJECT OFFICER #1 and SUBJECT OFFICER #2 stated that they had witnessed COMPLAINANT move in a frantic or furtive manner as they drove past her parked car, neither was able to provide any additional details supporting their belief that she had stowed or stashed an item from her satchel somewhere within the passenger area, nor was this activity recorded on the officers' BWC footage. In contrast, the BWC footage shows that COMPLAINANT appeared calm and collected at the time SUBJECT OFFICER #1 initially approached her, and throughout the stop.

Based on the totality of the circumstances, the subject officers searched complainant's vehicle without consent, probable cause, or any exigent circumstances that might have justified a warrantless search. The subject officers thereby harassed complainant in violation of D.C. Code § 5-1107 and MPD General Order 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment by Unlawful Stop	Sustained.

SUBJECT OFFICER #2

Allegation 1: Harassment by Unlawful Stop	Sustained.
Allegation 2: Harassment by Unlawful Vehicle Search	Sustained.

SUBJECT OFFICER #3

Allegation 1: Harassment by Unlawful Vehicle Search	Sustained.

Submitted on August 5, 2024.

Meaghan Hannan Davant
Complaint Examiner