GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	23-0772
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 SUBJECT OFFICER #4
Allegation 1: (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)	Harassment (stop)
Allegation 2: (SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, SUBJECT OFFICER #3)	Harassment (pat down)
Allegation 3: (SUBJECT OFFICER #1)	Harassment (handcuffing)
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	May 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 § 51107, 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 filed a complaint with the Office of Police Complaints (OPC) on August 14, 2023. COMPLAINANT alleged that on August 9, 2023, Metropolitan Police

Department (MPD) SUBJECT OFFICER #1 and SUBJECT OFFICER #2, harassed him when they unlawfully stopped him. COMPLAINANT also alleged that SUBJECT OFFICER #1 harassed him when he unlawfully handcuffed him. COMPLAINANT further alleged that SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and SUBJECT OFFICER #3 harassed him when they unlawfully patted down his bag.[1]

Specifically, COMPLAINANT stated that on August 9, 2023, at approximately 6:05 p.m., he was talking on his cell phone outside of A BUSINESS IN N.E., WASHINGTON, DC, when he observed two marked MPD Ford Explorer SUVs pull up toward him. According to COMPLAINANT, SUBJECT OFFICER #2 asked him from the rear of the driver side of the first cruiser if he needed any help, but he ignored her and continued his phone call.[2] COMPLAINANT said that SUBJECT OFFICER #2, SUBJECT OFFICER #1, SUBJECT OFFICER #4, WITNESS OFFICER #2, WITNESS OFFICER #1, and SUBJECT OFFICER #3 jumped out of their cruisers and approached him, and he was handcuffed by SUBJECT OFFICER #1. COMPLAINANT claimed that during that time, he was patted down twice. According to COMPLAINANT, the officers strongly held him as he "cussed and fussed" at them because he felt violated. He stated that the owner of A BUSINESS IN N.E., WASHINGTON, DC, WITNESS #1, came outside and shortly after, the officers removed the handcuffs and left the area without any explanation. COMPLAINANT alleged that the officers' stop, handcuffing, and pat downs were unlawful, as he was not committing any crimes or doing anything to justify those actions.

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 #1, SUBJECT OFFICER #4, SUBJECT OFFICER #2, SUBJECT OFFICER #3, WITNESS OFFICER #2, and WITNESS OFFICER #1 on August 9, 2023, objections submitted by SUBJECT OFFICERs on April 17, 2024 (SUBJECT OFFICERs' Objections), and OPC's Response to the Objections dated April 18, 2024, 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, Body Worn Camera Footage recorded by SUBJECT OFFICER #1, SUBJECT OFFICER #4, SUBJECT OFFICER #2,

[1] COMPLAINANT also alleged that on August 9, 2023, SUBJECT OFFICER #1 harassed him when he unlawfully frisked his person and searched his bag. COMPLAINANT further alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 discriminated against him based on his age and race, a young Black male. Pursuant to D.C. Code § 5-1108(1), on March 20, 2024, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

[2] OPC learned during its investigation that it was SUBJECT OFFICER #4 who asked COMPLAINANT if he needed help.

SUBJECT OFFICER #3, WITNESS OFFICER #2, and WITNESS OFFICER #1 on August 9, 2023, 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 August 14, 2023.

2. On August 9, 2023, at approximately 6:05 p.m., COMPLAINANT was pacing back and forth along the wall of A BUSINESS IN N.E., WASHINGTON, DC, talking on his cell phone. He had only minutes earlier exited from A BUSINESS IN N.E., WASHINGTON, DC, where he was doing some work for the owner, WITNESS #1.

3. At the time SUBJECT OFFICERs stopped COMPLAINANT, he was walking with the wall on his right and the parking lot on his left. He was carrying a fanny pack with the strap over his left shoulder and across his chest such that the bag of the fanny pack was on his right side under his arm. As he walked, he held his cell phone with his left hand against his left ear and his right arm was swinging as he walked.

4. SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and WITNESS OFFICER #1 pulled up into the parking lot in a police cruiser and stopped angled toward COMPLAINANT's front. SUBJECT OFFICER #4 from the rear passenger seat asked COMPLAINANT if he needed help, which COMPLAINANT ignored and continued with his phone conversation while walking along the wall. Moments later, SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and WITNESS OFFICER #1 emerged from their cruiser and approached COMPLAINANT. COMPLAINANT continued talking on the phone with his right arm swinging and ignored the officers. As they emerged from their vehicle, another police cruiser pulled into the parking lot and stopped angled toward COMPLAINANT's back. SUBJECT OFFICER #3 and WITNESS OFFICER #2 exited their vehicle and also approached COMPLAINANT.

5. As the officers approached, SUBJECT OFFICER #2 said to COMPLAINANT, "okay we're going to talk to you for a second." And COMPLAINANT responded, "No y'all not."

6. As all six officers surrounded him approaching from his front, rear, and left side, COMPLAINANT stopped walking and asked if he was being detained. Both SUBJECT OFFICER #2 and SUBJECT OFFICER #1 told him he was detained. SUBJECT OFFICER #2 grabbed his left arm as SUBJECT OFFICER #1 grabbed his right arm. COMPLAINANT resisted their hold and asked why they were touching him. SUBJECT OFFICER #4, and SUBJECT OFFICER #3 and WITNESS OFFICER #2 also grabbed hold of COMPLAINANT to assist in the hold.

7. As the officers struggled to place COMPLAINANT's arms behind him to place him in handcuffs, SUBJECT OFFICER #2 released her hold on COMPLAINANT and pressed down on COMPLAINANT's bag with her full palm, almost cupping it. Before she

released it, she did a press on the corner of the bag. SUBJECT OFFICER #2 then withdrew from COMPLAINANT.

8. Shortly thereafter, SUBJECT OFFICER #1 had his right hand on COMPLAINANT's right shoulder, and his left hand moved down and firmly squeezed the bag. As he did so, SUBJECT OFFICER #3 moved his right hand below the bag and lifted up on it.

9. Moments later, SUBJECT OFFICER #4 also pressed her full hand onto the bag. She then stepped away from COMPLAINANT and engaged WITNESS #1 and WITNESS #2. They explained that they were COMPLAINANT's relatives and that he had only moments earlier been helping in the BUSINESS and so they could not comprehend how something had happened so quickly that they could be handcuffing COMPLAINANT. SUBJECT OFFICER #4 explained that COMPLAINANT was not being arrested, just detained.

10. As SUBJECT OFFICER #1 and SUBJECT OFFICER #3 and WITNESS OFFICER #1 and WITNESS OFFICER #2 continued to hold COMPLAINANT and tried to pull his arms behind him to handcuff him, COMPLAINANT asked repeatedly, "why you touching me?" During the encounter, one officer threatened him with pepper spray and said, "spray him, spray him, spray him."

11. Approximately forty seconds into the encounter, after his bag had already been squeezed, patted, and lifted by SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and SUBJECT OFFICER #3, SUBJECT OFFICER #1 completed handcuffing COMPLAINANT.

12. Shortly after COMPLAINANT was handcuffed, SUBJECT OFFICER #1 again grabbed COMPLAINANT's bag and lifted it.

13. COMPLAINANT was then kept in handcuffs for almost another minute, while SUBJECT OFFICER #1 held the chain connecting the cuffs and pulled it slightly upward. COMPLAINANT was then finally released from the handcuffs and allowed to leave.

14. At no time did any of the officers give COMPLAINANT an explanation of why he was stopped.

IV. DISCUSSION

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."

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).[3]

Thus, to establish harassment, there must have been 1) conduct directed at COMPLAINANT by SUBJECT OFFICERs; 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 Subjected COMPLAINANT to an Infringement of His Personal Rights**

Elements one and four – conduct directed at COMPLAINANT subjecting COMPLAINANT to an infringement of his rights – is established here. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 approached COMPLAINANT and informed him that he was being detained. SUBJECT OFFICER #1 BWC 2:15; SUBJECT OFFICER #2 BWC 2:12. Thus, there is no dispute that they stopped COMPLAINANT.

All Subject and Witness Officers then assisted in holding COMPLAINANT as SUBJECT OFFICER #1 handcuffed him. SUBJECT OFFICER #1 BWC 2:46; SUBJECT OFFICER #2 BWC 2:23; SUBJECT OFFICER #4 BWC 2:20; WITNESS OFFICER #1 BWC 2:16; WITNESS OFFICER #2 BWC 2:13; SUBJECT OFFICER #3 BWC 2:40. As COMPLAINANT was being held, SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and SUBJECT OFFICER #3 all patted COMPLAINANT's bag without his consent. SUBJECT OFFICER #1 BWC 2:23; SUBJECT OFFICER #4 BWC 2:30; SUBJECT OFFICER #3 BWC 2:00; 2:12; 2:30. SUBJECT OFFICER #1 then patted the bag again after COMPLAINANT was handcuffed. SUBJECT OFFICER #3 BWC 3:10.

[3] Harassment is almost identically defined in MPD General Order 120.25 (effective Feb. 19, 2009), Part III, Section B, No. 2.

The question then is whether the stop, pat down, and handcuffing of COMPLAINANT was lawful and, if not, whether those actions were purposefully, knowingly, or recklessly unlawful.

2. The Stop of COMPLAINANT constituted Harassment

A stop is a brief seizure of a person for investigative purposes, even if the government lacks probable cause to arrest. *Terry v. Ohio*, 392 U.S. 1 (1968). Courts have ruled that police officers must have reasonable suspicion that criminal activity is afoot prior to initiating a stop. *Id*. Similarly, MPD General Order 304.10 provides that for a stop to be lawful, the member must have "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) the 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 #1 claimed in the report he filed of the incident that the basis for the stop was that officers observed COMPLAINANT talking on his phone and walking away from them while pushing a black satchel under his arm and pinning it down with his arm. Exh. 17. The report also states an observation that the bag looked to be weighted in a corner. *Id.*

SUBJECT OFFICER #1, in his interview with OPC, claimed that the basis for his reasonable suspicion for the stop of COMPLAINANT was that he observed COMPLAINANT in the parking lot on his phone, walking back toward parked vehicles and pinning a satchel under his arm. Exh. 11 at 1:55, 5:04. He also added that the corner of the satchel bag looked to be weighted, like an L-shape, and that there was "some type of object in there." Exh. 11 at 2:20, 5:30, 26:12. SUBJECT OFFICER #1 claimed that he observed this behavior for approximately 20-30 seconds before initiating the stop. Exh. 11 at 25:30. Additionally, SUBJECT OFFICER #1 stated that when the officers emerged from their cruisers, that COMPLAINANT started to walk away from them, and again, that he pinned the satchel under his right arm as if he was trying to evade the officers from knowing what was inside it. Exh. 11 at 2:45, 6:18.

SUBJECT OFFICER #2 similarly described the basis for reasonable suspicion for stopping COMPLAINANT. She explained that it was because he had a bag on him that was weighted more on one side than the other and that in her experience, individuals will carry their firearm in their bag rather than on their person. Exh. 9 at 28:00, 42:00. She claimed that when COMPLAINANT observed the officers he became wide-eyed and made movements of walking back and forth while holding the bag close to his body and that these movements indicated that he was armed. Exh. 9 at 7:00. She also claimed that the bag was weighted in the corner as if it had an L object inside. Exh. 9 at 2:02. His movements indicated to her that he didn't want to communicate with the officers. Exh. 9 at 2:30, 9:00, 26:00, 39:30. She believed COMPLAINANT was looking for a way to avoid the police. Exh. 9 at 29:30.

First, without more, SUBJECT OFFICER #1 and SUBJECT OFFICER #2's alleged observations do not constitute reasonable suspicion that COMPLAINANT had committed, was committing, or was about to commit any crime. At most, assuming arguendo that their observations were accurate, their observations were a hunch that COMPLAINANT was carrying a gun in his bag. Their alleged observations, however, describe almost any person who might be walking around outside a store, talking on a phone, and holding a bag that contains something. That the bag was "weighted" means almost nothing. It's notable that the claim that it appeared to hold something "L shaped" was made not in the report filed in relation to the stop, but only in the interviews with OPC.

Second, and more troubling, the BWC footage does not support SUBJECT OFFICER #1's and SUBJECT OFFICER #2's alleged observations. In the BWC footage, as the patrol cars pulled up to COMPLAINANT and the officers emerged and approached him, he did not change his trajectory walking along the wall, which was walking toward them. SUBJECT OFFICER #1 BWC 2:09; SUBJECT OFFICER #4 BWC 2:02. In fact, as the officers approached, COMPLAINANT stopped walking, did not flee, stopped his phone conversation, and asked the officers if he was being detained. SUBJECT OFFICER #2 BWC 2:15; SUBJECT OFFICER #1 BWC 2:14. Moreover, his right arm, the side on which his bag hung, was visibly swinging freely, even as the officers approached COMPLAINANT. SUBJECT OFFICER #1 BWC 2:07; SUBJECT OFFICER #4 BWC 2:02; SUBJECT OFFICER #2 BWC 2:12; WITNESS OFFICER #1 BWC 2:04. At no time did he move the bag to hide it or squeeze it under his arm. SUBJECT OFFICER #1 BWC 2:00-2:20; SUBJECT OFFICER #4 BWC 2:02-2:15; SUBJECT OFFICER #2 BWC 2:05-2:20; WITNESS OFFICER #1 BWC 2:04-2:10. Nor did the bag appear in any way to contain an L-shaped object.

Thus, the stop of COMPLAINANT was unlawful because SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have reasonable suspicion of any crime to stop him. Moreover, the fact that they described behavior that did not occur in their report of the incident later in their interview with OPC suggests that they knew that they did not have reasonable suspicion and felt a need to find reasons for the stop, pat down, and handcuffing.

That the unlawful stop was done knowingly, and at a bare minimum recklessly in that they should have known that they did not have reasonable suspicion for a stop, it constituted harassment in violation of DC Code § 5-1107. Thus, the harassment allegation against SUBJECT OFFICER #1 and SUBJECT OFFICER #2 for the stop is sustained.

3. The Pat of the Bag Constituted Harassment

The facts do not support conducting a protective pat down of COMPLAINANT, even if it was limited to patting his bag. According to *Terry v. Ohio*, 392 U.S. 1 (1968), officers may pat down an individual for weapons or frisk him for contraband if there is a reasonable, articulable suspicion that the person stopped is armed and dangerous. 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. MPD General Order 304.10.

As already discussed, the alleged observations that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 provided did not provide reasonable suspicion to stop COMPLAINANT and SUBJECT OFFICERs added nothing to further justify a pat down of COMPLAINANT's bag. Thus, their pat down of COMPLAINANT's bag was knowingly unlawful and constituted harassment.

SUBJECT OFFICER #4 and SUBJECT OFFICER #3, who also pat down COMPLAINANT's bag both claimed that they were relying on SUBJECT OFFICER #1's and SUBJECT OFFICER #2's conclusion that they had reasonable suspicion and that they were merely assisting them. Exh. 13 at 3:15, 5:10, 6:05; Exh. 15 at 1:20, 2:50, 3:15, 8:50, 15:42. While that may be true, without their own belief in reasonable suspicion and given that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 themselves were able to pat the bag, SUBJECT OFFICER #4 and SUBJECT OFFICER #3 had no reason to also pat the bag without having their own reasonable suspicion. This is all the more so true of SUBJECT OFFICER #4 who had been able to observe COMPLAINANT at the time SUBJECT OFFICER #1 and SUBJECT OFFICER #2 decided to stop COMPLAINANT and should have relied on her own observations. SUBJECT OFFICER #4 BWC 2:02; Exh. 15 at 1:20, 15:42. Thus, SUBJECT OFFICER #4's and SUBJECT OFFICER #3's pat down of COMPLAINANT's bag was recklessly unlawful and constituted harassment.

That the unlawful pat of COMPLAINANT's bag was done knowingly by SUBJECT OFFICER #1 and SUBJECT OFFICER #2, and at a bare minimum recklessly, in that they should have known they did not have reasonable suspicion for a pat down, and recklessly by SUBJECT OFFICER #4 and SUBJECT OFFICER #3, it constituted harassment in violation of DC Code § 5-1107. Thus, the harassment allegation against SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #4, and SUBJECT OFFICER #3 for the pat of the bag is sustained.

4. The Handcuffing of COMPLAINANT Constituted Harassment

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).

The report filed by SUBJECT OFFICER #1 in relation to the stop claimed that it was due to COMPLAINANT being combative. Exh. 17. SUBJECT OFFICER #1, in his interview with OPC, claimed that COMPLAINANT was handcuffed after COMPLAINANT was told he was

being detained and then tried to walk away. Exh. 11 at 3:10, 9:37, 16:15, 18:30. He claims that he told COMPLAINANT to put his hand behind his back to be handcuffed, but instead COMPLAINANT resisted and tried to flee, even after he was handcuffed. Exh. 11 at 16:40, 18:45. Moreover, when asked why he handcuffed COMPLAINANT even after he had already patted down COMPLAINANT's bag and discovered that COMPLAINANT was not armed, SUBJECT OFFICER #1 said that because COMPLAINANT had pinned his arm to the bag, he did not get a full pat down. Exh. 11 at 17:40. Only after he had COMPLAINANT handcuffed and he was certain COMPLAINANT did not have a gun in the bag, did SUBJECT OFFICER #1 release COMPLAINANT. Exh. 11 at 18:10, 18:55. None of the other SUBECT or WITNESS officers provided any additional rationale for the handcuffing of COMPLAINANT.

It is already established that the officers did not have reasonable suspicion to conduct a stop and thus there was no basis for their decision to handcuff COMPLAINANT. Moreover, although the BWC footage shows that COMPLAINANT was resisting the handcuffing, it does not support SUBJECT OFFICER #1's claim that COMPLAINANT tried to flee when he was told that he was being detained. SUBJECT OFFICER #1 BWC 2:14; SUBJECT OFFICER #4 BWC 2:10; SUBJECT OFFICER #2 BWC 2:15; WITNESS OFFICER #1 BWC 2:05. At that point COMPLAINANT was surrounded by six officers and fleeing would have been futile. SUBJECT OFFICER #1 BWC 2:30; SUBJECT OFFICER #4 BWC 2:19; SUBJECT OFFICER #2 BWC 2:20; WITNESS OFFICER #1 BWC 2:15. It is true that he did not agree to speak to them, yet it was mere seconds from the time the officers told COMPLAINANT he was detained to the time they laid hands on him and began to try to handcuff him. SUBJECT OFFICER #1 BWC 2:17; SUBJECT OFFICER #4 BWC 2:10; SUBJECT OFFICER #2 BWC 2:13; WITNESS OFFICER #1 BWC 2:04.

Even more troubling is that the alleged crime here was a hunch that COMPLAINANT had a gun in his bag, but four different officers, prior to the handcuffing all laid hands on the bag. SUBJECT OFFICER #1 BWC 2:23; SUBJECT OFFICER #4 BWC 2:30; SUBJECT OFFICER #3 BWC 2:00, 2:12; 2:30. They not only touched it, but they pressed down on it, squeezed it, including in the corner, and lifted it up while another officer pressed down on it. SUBJECT OFFICER #1 BWC 2:23; SUBJECT OFFICER #4 BWC 2:30; SUBJECT OFFICER #3 BWC 2:00, 2:12; 2:30. At no time is the bag seen to be pinned under COMPLAINANT's arm. SUBJECT OFFICER #1 BWC 2:23; SUBJECT OFFICER #4 BWC 2:30; SUBJECT OFFICER #3 BWC 2:00, 2:12; 2:30. Rather, it was fully patted down and a conclusion as to whether it contained a gun should easily have been able to be reached making any further attempt to handcuff COMPLAINANT irrelevant.

As if handcuffing COMPLAINANT prematurely after concluding the bag did not contain a weapon is not bad enough, SUBJECT OFFICER #1 kept COMPLAINANT in the handcuffs for another minute, even after he had patted down the bag yet again. SUBJECT OFFICER #1 BWC 3:20, 4:10; SUBJECT OFFICER #3 BWC 2:27, 4:20. It is impossible to see this behavior by SUBJECT OFFICER #1 as anything other than harassment of COMPLAINANT in retaliation

for resisting the officers as there was no longer any reason to prevent him from leaving the scene nor any worry that he was carrying a weapon.[4]

Thus, the handcuffing of COMPLAINANT was purposefully unlawful and constituted harassment in violation of DC Code § 5-1107. Thus, the harassment allegation against SUBJECT OFFICER #1 for the handcuffing is sustained.

[4] SUBJECT OFFICER #1's representative seems to argue that COMPLAINANT's resistance was a violation of DC Code § 22-405.01b, a law that makes it a violation to "without justifiable and excusable cause intentionally resists an arrest by an individual who he or she has reason to believe is a law enforcement officer." Except that at no time was COMPLAINANT here being placed under arrest and so his resistance is not a violation of that law. Were COMPLAINANT preventing the detention of another individual, however, then COMPLAINANT would be in violation of DC Code § 22405.01b. That law, however, does not make the resistance of one's own detention unlawful. Even if it did, however, one would have to question the constitutionality of making it illegal to resist an unlawful detention.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: (Harassment - stop)	Sustained
Allegation 2: (Harassment - pat down)	Sustained
Allegation 3: (Harassment – handcuffing)	Sustained

SUBJECT OFFICER #2

Allegation 1: (Harassment - stop)	Sustained
Allegation 2: (Harassment - pat down)	Sustained

SUBJECT OFFICER #3

Allegation 2: (Harassment - pat down)	Sustained

SUBJECT OFFICER #4

Allegation 2: (Harassment - pat down)	Sustained

Submitted on May 5, 2024.

Jennifer A. Fischer, Esq.
Complaint Examiner