

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	24-0198
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment (stop)
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	August 16, 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

The complainant, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on December 19, 2023. Complainant alleged that on December 16, 2023, Metropolitan Police Department (MPD) SUBJECT OFFICER (SUBJECT OFFICER), harassed him by unlawfully stopping him.¹

Specifically, Complainant stated that on December 16, 2023, while cleaning his brother's car outside of AN ADRESS IN NE, WASHINGTON, DC, he observed three MPD vehicles coming down the street. He made eye contact with SUBJECT OFFICER on three occasions while cleaning his vehicle before he observed nine officers exit their police vehicles. SUBJECT OFFICER approached COMPLAINANT and told him that it was not safe to leave his car running and that vehicles in his neighborhood were always being broken into and stolen. During this time, three officers were on COMPLAINANT's

¹ Complainant alleged that WITNESS OFFICER #1 and WITNESS OFFICER #2 harassed him when they unlawfully handcuffed him. Complainant also alleged that WITNESS OFFICER #2 harassed him when he unlawfully frisked him. Complainant further alleged that SUBJECT OFFICER harassed him when he unlawfully confiscated his firearm. Lastly, Complainant alleged that SUBJECT OFFICER discriminated against him based on his race, African American, his place of residence, NE, WASHINGTON, neighborhood, based on his personal appearance, his clothing, and based on his car that resembled an unmarked police car. Pursuant to D.C. Code § 5-1108(1), on June 22, 2024, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

driver's side looking into his vehicle with their flashlights and two officers were standing behind him. COMPLAINANT advised SUBJECT OFFICER that he was cleaning his car and went back to cleaning his car. Shortly after, WITNESS OFFICER #2 grabbed him, placed him in handcuffs, and patted him down. According to COMPLAINANT, when he was being handcuffed, his firearm, which was on his right hip holster on his belt, became visible. His firearm was removed from his person and the officers asked him if he had his concealed carry license. COMPLAINANT provided his concealed carry documents. The handcuffs were removed, and SUBJECT OFFICER told him that his firearm was being taken because he did not let the officers know that he was armed. COMPLAINANT alleged the officers had no lawful purpose to stop him as he was doing nothing illegal or suspicious.

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, WITNESS OFFICER #3 and WITNESS OFFICER #2, and WITNESS OFFICER #4 on December 16, 2023, objections submitted by SUBJECT OFFICER on July 17, 2024 (Subject Officer's Objections), and OPC's Response to the Objections dated July 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, WITNESS OFFICER#3 and WITNESS OFFICER #2, and WITNESS OFFICER #4 on December 16, 2023, objections submitted by SUBJECT OFFICER on July 17, 2024 (Subject Officer's Objections), and OPC's Response to the Objections dated July 18, 2024, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on December 16, 2023.
2. On December 16, 2023, at approximately 7:31 p.m., Complainant was cleaning out his brother's car parked on the street in front of his apartment at ADDRESS IN NE, WASHINGTON, DC. The car was running with the passenger side doors of the four-door sedan open. Over the next minute three police cars pulled up next to Complainant's car on the street blocking it in. SUBJECT OFFICER left his police vehicle and approached Complainant. An additional eight other officers also approached Complainant, his brother's vehicle, and his apartment building. At least four officers, including SUBJECT OFFICER, circled the vehicle and shined their flashlights into the vehicle looking into it, either through open doors or through the windows.
3. When SUBJECT OFFICER approached Complainant, he first told him that he should be careful because of carjackings and robberies. Complainant explained that he just came outside and that he was cleaning out trash. He then closed the front passenger door.

SUBJECT OFFICER and the other officers continued to watch as Complainant cleaned out his car from the rear passenger side. While this happened, WITNESS OFFICER #2 walked up to the apartment building and tried to open the front door, but it was locked.

4. Complainant whistled and yelled to his brother, who was inside, about the officers that had pulled up.
5. SUBJECT OFFICER, standing behind and slightly to the side of Complainant, told Complainant that when the officers pulled up that Complainant kept looking down and shutting his car doors. He then asked if Complainant was concealing anything in the vehicle. Complainant said no and that he did not consent to any searches. SUBJECT OFFICER said that he didn't say anything about searches.
6. As they conversed, WITNESS OFFICER #2, walked from the building toward Complainant and glimpsed Complainant's gun in its holster on his hip while Complainant was bent over through the car door. WITNESS OFFICER #2 yelled, "95" and grabbed Complainant from behind. WITNESS OFFICER #2 and SUBJECT OFFICER held Complainant while WITNESS OFFICER #1 handcuffed him. The officers took his gun and asked Complainant if he had a permit, which he said he did.
7. WITNESS OFFICER #5 explained to Complainant that they were taking his firearm because he had to inform the officers that he was armed when they made contact with him. Complainant responded that they had pulled up for something else. WITNESS OFFICER #5 said that it didn't matter, that he had to tell them that he had a gun on him. Complainant provided the officers with his concealed carry permit on his phone.
8. After the officers advised Complainant that they were taking his gun and how to get it returned, SUBJECT OFFICER gave Complainant a business card with the report numbers on it.

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 and eight other officers pulled up to Complainant’s vehicle in three police cars with lights on, emerged from their vehicles and approached Complainant. SUBJECT OFFICER BWC 2:05. SUBJECT OFFICER was the one who observed Complainant’s vehicle running with its doors open and was the only one who made contact with Complainant while at least three other uniformed officers shined their flashlights into Complainant’s car and looked into it. Ex. 7 at 1:08; SUBJECT OFFICER BWC 2:10 Four other uniformed officers stood nearby surveying the scene and WITNESS OFFICER #2 tried to enter Complainant’s apartment building. WITNESS OFFICER #2 BWC 2:25. SUBJECT OFFICER stated in his interview with OPC that the decision to make contact with Complainant was a group decision among those in his car. Ex. 7 at 7:32, 18:43. SUBJECT OFFICER and many of the witness officers stated in their interviews with OPC that the MPD SPECIAL UNIT approach individuals as a group for safety reasons. Ex. 7 at 7:32, 18:43; Ex. 9 at 7:15, 10:37; Exh. 11 at 9:10, 10:40; Exh. 15 at 5:30. Neither WITNESS OFFICER #2 nor WITNESS OFFICER #3 knew why the interaction was initiated with the Complainant. Ex. 13 at 1:10, 14:00; Ex. 15 at 3:20. Both witness officers stated that SUBJECT OFFICER was the lead officer in the interaction, which

indicates that while SUBJECT OFFICER may not have made the decision to approach Complainant unilaterally, that he was the primary instigator, and he was the only one to speak to and question Complainant. Ex. 13 at 10:02; Ex. 15 at 10:40. Thus, to the extent a stop occurred, it was directed at Complainant by SUBJECT OFFICER, satisfying element one.

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

As to element four, the question is whether SUBJECT OFFICER's conduct toward Complainant was a "field contact" or a "stop." Under *Terry v. Ohio*, 391 U.S 1 (1968), a stop is a brief seizure of a person for investigative purposes, even if the government lacks probable cause to arrest. Prior to initiating a stop, however, police officers must have reasonable suspicion that criminal activity is afoot. *Id.* A field contact, however, "involves solely the voluntary cooperativeness of an individual who is free not to respond and leave." MPD General Order 304.10, Field Contacts, Stops, and Protective Pat downs (eff. July 9, 2019), Part II.A. 2. A contact, thus, does not require reasonable suspicion, and would not, rise to the level of harassment.

In distinguishing between a contact and a stop, MPD General Order 304.10 provides that in conducting a field contact, "members shall not detain an individual in any manner against their will.....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 (emphasis added). The Supreme Court has also held that an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that she/he was not free to leave. *Immigration and Naturalization Serv. v. Delgado*, 466 U.S. 210 (1984).

The District of Columbia Court of Appeals has provided additional explanation of what conditions may cause a reasonable person to not believe she/he was free to leave. Such factors include the presence of several officers, and the surrounding or boxing in of a person by officers or police vehicles such that they amount to an "impressive show of police authority." *Golden v. United States*, 248 A.3d 925 (D.C. 2021); *T.W. v. United States*, 292 A.3d 790 (D.C. April 2023). Additional factors summarized by the court in *T.W. v. United States* include, among others, whether the individual is by himself such "that the police presence was apparently focused exclusively on him," "if the officers are uniformed or have their weapons available," "the officers' questions are 'accusatory,'" and the repeating of accusatory questions in the face of an initial denial, signaling that officers have 'refused to accept' the answer given. *T.W.* at 790 citing *Jones v. United States*, 154 A.3d 591, 596 (D.C. 2017) and *Golden*, 248 Ad.3d at 935, 938.

This case is in many ways similar to that found in *Golden v. United States*, which involved "four police officers in two unmarked vehicles who simultaneously converged on and

partially surrounded a lone pedestrian, with one of the vehicles blocking his path by stopping directly in front of him.” *Golden*, 248 A.3d at 936. Similar to the case here, *Golden* also involved an officer asking the defendant if he had any weapons on him, which the court concluded could suggest to the individual more than just a simple request for information from an ordinary civilian who is not a suspect. *Id.* Rather, the court concluded that the question in combination with the large group of officers, singling an individual out and partially surrounding him would lead a reasonable individual to believe he was suspected of committing a crime at that moment. *Id.* The court went on to surmise that any innocent person in that position “could not know what grounds the police had to suspect this, what else the police suspected about him, or how the police officers deemed him to be. Such uncertainties contribute to a reasonable person’s sense of powerlessness in an investigative confrontation by the police, regardless of the person’s belief in their own innocence or their willingness to cooperate with law enforcement.” *Id.*

Here, the officers’ approach of Complainant amounted to an impressive show of police authority. Almost all at once, three police cars stopped in the street next to Complainant, blocking Complainant’s car in, with their lights flashing, nine officers in uniform emerged from those vehicles, again, almost all at once, and approached Complainant, his vehicle, and his apartment building. SUBJECT OFFICER BWC 2:00 – 2:30 Although SUBJECT OFFICER’s initial words to Complainant were to warn him about leaving his car running because of rampant carjackings in the vicinity, his statements turned seemingly suspicious very quickly. SUBJECT OFFICER BWC 2:56. He told Complainant about how when they pulled up Complainant kept looking down and shutting his car doors and then asked if Complainant was concealing anything in the vehicle. *Id.* at 3:00.

While SUBJECT OFFICER said during his interview that this interaction was a contact rather than a stop because Complainant was free to leave, Ex. 7 at 10:40, any reasonable person would likely experience such a show of force and questioning as one in which walking away would be risky if not prohibited. The conduct thus constituted a stop, rather than a contact.

In SUBJECT OFFICER’s objections, he claims this situation is distinguishable from *Golden* and thus does not rise to the level of a stop because 1) the officers and their vehicles did not block Complainant in and so his movements were not inhibited such that he would be prevented from leaving, and 2) because Complainant did not exhibit behavior that suggested he felt he was stopped as he continued to move about his vehicle, shutting its doors, and reaching into the rear to clear items. These objections are not a correct application of the case law, however. First, even if one particular aspect of *Golden* was not found here, it would not preclude it from being perceived as an impressive show of police force. The question is not whether every aspect of *Golden* is recreated here, but whether the circumstances were such that a reasonable person would be likely to perceive themselves as free to leave or not. The high number of officers and police cars with their lights flashing, their shining their flashlights on Complainant’s car, an officer approaching Complainant’s apartment and another engaging in suspicious questioning of Complainant all exhibit an “impressive show of police authority.”

Second, Complainant was, in fact, blocked in. The police cars were parked in a way that Complainant could not have driven off in his car. SUBJECT OFFICER BWC 2:03; Exh. 20. Complainant had

officers around all sides of him and in front of his apartment door such that means of departure that wouldn't involve an officer moving out of his way, were very limited. SUBJECT OFFICER BWC 2:00 – 3:10.

Finally, the “reasonable person” under the test is a reasonable “innocent” person. *T.W. v. United States*, 292 A.3d 795. Complainant stated in his Complaint that he perceived the officers’ approach as being “threatening” and “intimidating.” Exh. 1. That Complainant continued about his business does not change how the “impressive show of police force” as demonstrated here would likely be perceived by a “reasonable innocent person.”

The conclusion that the interaction could reasonably be interpreted as a stop of Complainant rather than a field contact is buttressed by WITNESS OFFICER #2 and WITNESS OFFICER #3 who acknowledged this reasonable interpretation under the circumstances during their interviews with OPC. Ex. 13 at 6:50, 7:35; Ex. 15 at 6:50. Moreover, that SUBJECT OFFICER decided to keep Complainant’s licensed gun due to Complainant’s failure to inform the officers that he was carrying it also indicates that SUBJECT OFFICER interpreted the interaction as a stop. Ex. 7 at 1:40, 12:10, 12:50. D.C. Code §7-2509.04 only requires licensees to notify law enforcement officers regarding their carrying of a concealed pistol when the officer initiates an investigative stop, not during a mere field contact. Thus, Complainant’s failure to inform was only a violation if the officers’ interaction with Complainant was an investigative stop.

Thus, viewing all of the circumstances surrounding the incident, the conduct toward Complainant rose to the level of a stop, satisfying point four of the requirements for harassment.

3. Was the Stop Lawful?

As to element three and the lawfulness of the stop, it required “reasonable suspicion that [Complainant had] committed, [was] committing, or [was] 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 as a field contact and not a stop. Ex. 7 at 1:16, 1:22, 9:20. As already discussed, however, the interaction rose to the level of a stop, not a field contact. SUBJECT OFFICER did not claim to have reasonable suspicion to make the stop, and even stated during his interview with OPC that he believed that Complainant was just cleaning out his car.

Ex. 7 at 4:15, 4:37. Other statements he made to Complainant during the stop, however, suggested that he was suspicious of Complainant. He told Complainant that when the officers

pulled up, that Complainant kept looking down and shutting doors. SUBJECT OFFICER BWC 2:56. Additionally, in his interview with OPC, SUBJECT OFFICER stated that Complainant displayed “a bit of characteristics of an armed gunman” in that he kept blading his body and putting his hip toward the door. Ex. 7 at 3:30, 3:50, 8:40. The other officers in their interviews with OPC either knew only that the contact was due to Complainant’s car running and thus concerns about the risk of carjacking, or they had no knowledge of the reason for the contact and provided no additional information supporting reasonable suspicion for a stop. Ex. 9 at 5:30, 6:15 11:50; Ex. 11 at 1:10, 3:30, 6:11, 24:30; Ex. 13 at 1:10, 10:35; Ex. 15 at 3:20. At most WITNESS OFFICER #3 speculated that the interaction appeared to be an investigation of a theft of or a stolen auto or stealing things from a car based upon what he saw when he approached the scene, but he did not have knowledge of the reason for the stop. Ex. 13 at 1:15

Car doors being open while the engine is running, without more, does not provide reasonable suspicion. As for SUBJECT OFFICER’s observations of Complainant blading his body and putting his hip toward the door, these are not observable in the BWC footage. Rather, Complainant appeared to be removing and rearranging items in his car, in conformity to his claim that he was in the process of cleaning it out, which SUBJECT OFFICER said he believed Complainant was doing. Thus, without something more specific suggesting SUBJECT OFFICER had a reasonable suspicion that Complainant had committed, was committing, or was about to commit a crime, the stop of Complainant by SUBJECT OFFICER was unlawful.

4. 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. Ex. 7 at 1:16, 1:22, 9:20. He claimed during his interview that initially he was just warning Complainant about carjackings. *Id.* at 1:08, 3:22, 4:37, 5:17. Yet, if SUBJECT OFFICER’s concern was solely to warn Complainant about carjackings, he could have done so without exiting his vehicle. He most definitely could have warned him without instigating three police cars stopping with their lights on blocking Complainant’s car in and eight additional officers leaving their vehicles and surrounding Complainant and his vehicle.

It is hard to imagine that SUBJECT OFFICER didn’t understand that such a significant police presence would lead a reasonable individual to believe they couldn’t leave. Both WITNESS OFFICER #5 and WITNESS OFFICER #3 mentioned DC case law that they were aware of that led them to understand this level of police presence as potentially being experienced as a stop. Ex. 11 at 6:50, 7:50, 12:20, 13:30; Ex. 13 at 3:15, 4:40. Although, WITNESS OFFICER #5 claimed that this interaction took place before he was aware of the “new D.C. case law from the Court of Appeals.” Ex. 11 at 12:12, 12:55.

WITNESS OFFICER #5 is incorrect, however. The case law since 1980 (and reiterated in MPD policy) is that an encounter rises to the level of a stop if “a reasonable person would have

believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The Supreme Court in *Mendenhall* gave examples of circumstances that might indicate a seizure including the threatening presence of several officers. *Id.* This same list of circumstances was reiterated by the D.C. Court of Appeals in 2017 in *Jones v. United States*. *Jones*, 154 A.3d at 596. An almost identical situation to that at issue here was examined by the D.C. Court of Appeals in *Golden v. United States*, discussed above, in 2021. *Golden v. United States*, 248 A.3d 925 (D.C. 2021). And *T.W. v United States*, the case referenced by WITNESS OFFICER #3 in his interview with OPC, was issued in April 2023, eight months prior to this incident. *T.W. v. United States*, 292 A.3d 790 (D.C. April 2023). Thus, the circumstances of police presence at issue here have long been discussed in case law as likely to cause a reasonable person to believe they would not be free to leave.

That SUBJECT OFFICER and his fellow officers stated that they always respond as a team meant that SUBJECT OFFICER would have known that when he approached Complainant in the manner that he did, allegedly solely to warn him of carjacking, that it would appear to be an impressive show of police authority. Given that some of the officers specifically mention case law in their conclusion that this encounter would likely have appeared to be a stop, indicates that SUBJECT OFFICER must also have been aware that such a show of police force would likely be interpreted as a stop. Thus, SUBJECT OFFICER must have known that his interaction with Complainant was an unlawful stop. At the very least, as pointed out by WITNESS OFFICER #3, the officers are supposed to be up to date on their understanding of case law. Ex. 13 at 4:43. Thus, SUBJECT OFFICER should have known that it could be interpreted as a stop, and his action toward Complainant was thus reckless.


Because SUBJECT OFFICER initiated and was the lead officer 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.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 (Harassment - stop):	Sustained
--	-----------

Submitted on August 16, 2024



Jennifer A. Fischer, Esq.
Complaint Examiner