

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	22-0573
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	April 21, 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, filed a complaint with the Office of Police Complaints (OPC) on July 13, 2022. COMPLAINANT alleged that on July 1, 2022, subject officer, Metropolitan Police Department (MPD) Officer SUBJECT OFFICER, harassed him when the officer unlawfully searched his car.¹

Specifically, COMPLAINANT stated that on July 1, 2022 at approximately 6:30 p.m., he was sitting inside his grey VEHICLE, as it was parked in a courtyard at AN ADDRESS IN NE, WASHINGTON, DC, speaking with a friend who was in the passenger seat. The complainant observed an MPD cruiser pull into the courtyard, which blocked his vehicle. He then observed WITNESS OFFICER #1 and SUBJECT OFFICER, WITNESS OFFICER #2 and WITNESS

¹ COMPLAINANT also alleged that SUBJECT OFFICER, WITNESS OFFICER #2, and WITNESS OFFICER #3, and SUBJECT OFFICER #1 harassed him by unlawfully stopping his vehicle. The complainant also alleged the SUBJECT OFFICER harassed him when the officer unlawfully frisked and searched him, unlawfully searched the passenger compartment of his vehicle, and unlawfully seized his registered firearm. The complainant further alleged that the subject officers used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when they behaved rudely. Lastly, the complainant alleged that the subject officers discriminated against him based on his race, African American. Pursuant to D.C. Code § 5-1108 (1), on February 1, 2023, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. *See* Dismissal submitted by OPC and concurred with by OPC Board Member Jeffrey Tignor on February 1, 2023.

OFFICER #3 exit the cruiser. COMPLAINANT's friend left the vehicle. SUBJECT OFFICER approached COMPLAINANT and asked to see his license and registration. SUBJECT OFFICER asked the complainant if he had any weapons on him and he responded that he did have a firearm on his person as well as a permit for the firearm. COMPLAINANT provided SUBJECT OFFICER his firearm registration along with his concealed carry pistol license. SUBJECT OFFICER told the complainant to exit his vehicle and patted him down. Thereafter SUBJECT OFFICER told him to sit on the ground and searched his vehicle, including the trunk, without his consent. Concluding the search, the officer seized COMPLAINANT's firearm and let him go.

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 SUBJECT OFFICER on March 7, 2023, and OPC's response to the objections, 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 SUBJECT OFFICER on March 7, 2023, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 1, 2022 SUBJECT OFFICER observed complainant, COMPLAINANT, sitting in his vehicle while parked in a courtyard parking lot at AN ADDRESS IN NE, WASHINGTON, DC. SUBJECT OFFICER's body-worn camera footage begins at 6:29 pm. SUBJECT OFFICER parked his vehicle in the courtyard in front of COMPLAINANT' car.
2. SUBJECT OFFICER approached COMPLAINANT as he sat in his car and asked COMPLAINANT if he was going to leave to which he replied yes. During this interaction, SUBJECT OFFICER observed open containers of miniature bottles of wine in COMPLAINANT' vehicle. SUBJECT OFFICER also observed miniature bottles of wine in a "four case"/"little carry container" in the rear passenger driver's side seat of the car. SUBJECT OFFICER then returned to his vehicle. SUBJECT OFFICER stated while in his vehicle "it's good enough for POCA (possession of open container of alcohol) if you want to go up there."
3. SUBJECT OFFICER exited his vehicle and approached COMPLAINANT in his vehicle again. SUBJECT OFFICER asked for COMPLAINANT's identification. SUBJECT OFFICER asked COMPLAINANT if he had a weapon and COMPLAINANT indicated that he did and told the officer it was in the compartment in the driver's door. COMPLAINANT provided his driver's license and Concealed Carry Pistol License to the

officer. SUBJECT OFFICER removed the gun from COMPLAINANT's door and verified the serial number.

4. SUBJECT OFFICER and WITNESS OFFICER #2 talked with COMPLAINANT as he remained sitting in his car. SUBJECT OFFICER reached toward the door and retrieved a small Sutter Home wine bottle. COMPLAINANT handed the officer another small Sutter Home wine bottle from the center console.
5. SUBJECT OFFICER then had COMPLAINANT exit the vehicle, patted him down and told him to move back. SUBJECT OFFICER and WITNESS OFFICER #2 searched COMPLAINANT's vehicle. In the backseat of the vehicle, SUBJECT OFFICER searched a black bag locating two unopened Sutter Home small wine bottles and a black weapons' case that contained two magazines. SUBJECT OFFICER asked COMPLAINANT if he had consumed any alcohol and COMPLAINANT replied that he did. SUBJECT OFFICER did not ask COMPLAINANT if he had any additional weapons or alcohol in the trunk of his car.
6. SUBJECT OFFICER searched the trunk of COMPLAINANT's vehicle. COMPLAINANT described a process for opening the trunk to SUBJECT OFFICER because the buttons to do so did not work. COMPLAINANT did not provide consent to search the trunk. No additional weapons, ammunition, or alcohol were found in the trunk.
7. SUBJECT OFFICER informed COMPLAINANT of the process to follow up on his gun and license. COMPLAINANT was free to go.

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 both the regulations governing OPC and 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.”

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.

SUBJECT OFFICER’s Search of the Trunk of COMPLAINANT’ Vehicle

SUBJECT OFFICER unlawfully searched the trunk of COMPLAINANT’ vehicle. This violation of the law subjected COMPLAINANT to an unauthorized search and constitutes harassment under both the relevant regulations and MPD General Order.

A search incident to a lawful arrest is a valid exception to the rule that warrantless searches are ‘per se unreasonable’. *Punch v. United States*, 377 A.2d 1353, 1357 (D.C. 1977) (citing *Chimel v. California*, 395 U.S. 752, (1969)). In *Arizona v. Gant*, the Supreme Court redefined the law governing searches of a vehicle incident to arrest restricting searches to those situations in which “the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” 556 U.S. 332, 332, 343 (2009). *Gant* also established that a search is legal when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Id.* at 343. In D.C., “officers must have reasonable, articulable suspicion to conduct a vehicle search under the second prong of *Gant*.” *United States v. Taylor*, 49 A.3d 818, 824 (D.C. 2012). The court in *Taylor* clarified that to determine whether the “reasonable suspicion standard has been met, a court must consider the totality of the circumstances, as “viewed through the lens of a reasonable police officer, guided by his training and experience.”” *Id.* (internal citations omitted).

In this case, SUBJECT OFFICER observed two opened bottles of Sutter Home wine in the vehicle and therefore he had reasonable articulable suspicion to search the remainder of the passenger compartment. He also observed a weapon being improperly carried further providing a basis to search the car except for the trunk. Thus, SUBJECT OFFICER’s search of the passenger compartment of COMPLAINANT’s vehicle was legal however, his further search of the trunk was not lawful. This distinction is made clear in the law and MPD General Order 602.01, *Vehicle Searches and Inventories*, Section II Procedures, B. Searches, 7:

“Members may legally search the passenger compartment of a vehicle incident to an arrest of a recent occupant when it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense for which the person was arrested [*Arizona v. Gant*, 556 U.S. 332 (2009)].

- a. The search may legally include the glove compartment and space under the seats.

- b. The search may legally include locked or unlocked containers that could conceal the object of the search [*California v. Acevedo*, 500 U.S. 565 (1991)].
- c. **The search does not legally include the vehicle's trunk unless the trunk is immediately accessible to the arrestee** (e.g., through a rear seat fold down) [*Chimel v. California*, 395 U.S. 752 (1969)]. *Emphasis added.*

Further, as articulated in *United States v. Ross*, “[t]he scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” 456 U.S. 798, 824 (1982).

In this instance, at the time of the trunk search, COMPLAINANT was outside of the vehicle several feet away and surrounded by officers. While COMPLAINANT was not properly carrying the weapon on his person, he had been compliant and had a lawful permit to carry a concealed weapon. COMPLAINANT explained to SUBJECT OFFICER that opening the trunk of his car required a special approach because the buttons to do so did not work – the trunk was not readily accessible to anyone. Further SUBJECT OFFICER had seen, prior to the search of the vehicle, two small bottles of wine in the rear passenger seat in a “four case”/“little carry container”. Thus, the four-carry case was complete when COMPLAINANT provided the two opened bottles from the front of the car. SUBJECT OFFICER explained that he was looking for further evidence of the crime of improper carry or more weapons or more alcohol but there was no reasonable justification, facts or circumstances to believe there were additional weapons or alcohol in the trunk of his car. The “object” of SUBJECT OFFICER’s search was complete and there was not probable cause to believe it could be found in the trunk of COMPLAINANT’s car. Thus, the search was improper and in violation of the law and constitutes harassment as defined by the MPD General Order. *See* General Order 120.25, Part III, Section B, No. 2

In conclusion, SUBJECT OFFICER harassed COMPLAINANT when he unlawfully searched his vehicle trunk and did not follow MPD protocol. Whether SUBJECT OFFICER did not comply with the law and policy purposefully, knowingly, or recklessly is unclear however the lack of compliance exists. Further, in contemplation of the totality of the circumstances, there were no extenuating circumstances to justify lack of compliance. As an officer of the law, basic understanding of and compliance with the governing laws, policies, and orders is required. Indeed, all MPD “searches....shall be conducted in strict observance of the constitutional rights of the owner...of the motor vehicle.” *See* MPD General Order 602.01, Part II Procedures, Section A, No. 1. Failure to comply with the laws, policies, and orders constitutes harassment.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on April 21, 2023.

Rebecca Goldfrank
Complaint Examiner