

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0442
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	July 26, 2019

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 filed a complaint with the Office of Police Complaints (OPC) on April 24, 2018.¹ Complainant alleged that, on April 19, 2018, Metropolitan Police Department (MPD) SUBJECT OFFICER² used unnecessary or excessive force against the complainant when he slammed his face against a dumpster, and again when he slammed complainant's body onto the ground and into a puddle of waste.³

Specifically, COMPLAINANT alleged that, on April 19, 2018 at approximately 4:50 p.m., he was in the alley behind A BUSINESS IN SE, WASHINGTON, DC, urinating next to a

¹ While OPC received complainant's original complaint on April 24, 2018, a signed version was not executed until May 2, 2018.

² At the time of the incident, SUBJECT OFFICER was assigned to A DIFFERENT DISTRICT.

³ The complainant also alleged that the subject officer harassed him by unlawfully arresting him and searching him; engaged in conduct toward him that was insulting, demeaning or humiliating by laughing and grinning; and discriminated against him based on his age and his race, African American. Complainant further alleged that WITNESS OFFICER #1 used unnecessary or excessive force by forcibly handcuffing him. Pursuant to D.C. Code § 5-1108(1), on May 19, 2019 a member of the Police Complaints Board dismissed these allegations, concurring with the decision made by the OPC's Executive Director.

dumpster. SUBJECT OFFICER approached complainant from behind and ordered him to stop urinating immediately. COMPLAINANT replied that it was difficult to stop urinating once he had started and that he was almost finished, and continued urinating. SUBJECT OFFICER told complainant that he was under arrest and grabbed complainant's right arm, pulling it behind his back. COMPLAINANT continued to urinate. The subject officer told complainant to put both hands on the dumpster. Complainant initially complied, but then tried to move one of his hands to put his penis back inside his pants, at which point the subject officer grabbed complainant's hand and put it back on the dumpster. COMPLAINANT tried to explain why he needed his hands free and SUBJECT OFFICER grabbed his head and slammed it against the dumpster. Complainant heard a cracking sound as the right side of his face hit the dumpster. SUBJECT OFFICER then used his own body to force complainant to the ground, into a pile of waste leaking from the dumpster. Complainant sustained injuries as a result of the subject officer's use of force.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and exhibits thereto, 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 and exhibits thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 19, 2018 at approximately 4:39 p.m., complainant was urinating next to a dumpster in the alley behind A BUSINESS IN SE, WASHINGTON, DC.
2. At 4:41 p.m. SUBJECT OFFICER entered the alley on his bicycle, dismounted, and approached complainant. While the body worn camera (BWC) footage from the incident contains no sound at this point, it is evident that the two men exchanged words.
3. SUBJECT OFFICER credibly recounted the verbal exchange prior to the audio recording. He stated that he asked COMPLAINANT to stop urinating several times and that complainant replied, "no" repeatedly and then stated "you're gonna do what you're gonna do anyways." Complainant appeared drunk, as was later noted by other officers at the scene.
4. It is not clear from the footage whether the subject officer instructed complainant to put his hands behind his back prior to any physical contact by the officer.

5. Complainant continued to urinate, at which point SUBJECT OFFICER placed his left hand on the complainant's back, gripping the back of his jacket, and pushed complainant forward. Based on the BWC footage from the incident, as well as surveillance footage from a store camera located in the alley, the subject officer did not appear to use a great deal of force against the complainant; the push might be characterized as a light shove.
6. Complainant nonetheless fell forward as a result of the push. Complainant raised his hands to brace himself as he fell against the dumpster. The right side of complainant's face made contact with the dumpster. SUBJECT OFFICER continued to have a hold on the back of complainant's jacket as he fell.
7. SUBJECT OFFICER then instructed complainant to put his arms behind his back. Complainant refused, asking "for what?" Complainant's attitude toward the subject officer was belligerent and immediately confrontational.
8. At approximately 4:42 p.m. the subject officer grabbed complainant's right arm and placed it against the dumpster. He then pushed complainant forward again, pulling COMPLAINANT's right arm behind his back. Complainant stated, "that's illegal force" and struggled against the subject officer.
9. SUBJECT OFFICER repeatedly told the complainant to "stop," referring to complainant's efforts to resist having his hands placed behind his back. When complainant did not desist, the subject officer grabbed hold of complainant's left arm, pulling it behind his back.
10. The complainant repeatedly stated, "that's illegal force," to which SUBJECT OFFICER calmly responded, "Just put your hands behind your back. That's all I'm asking you."
11. The subject officer, continuing to grip both of complainant's hands behind his back with his left hand, pushed against complainant's back several times in short succession, telling him repeatedly to "lean forward," so that the officer could place him in handcuffs.
12. Interjected between the subject officer's repeated orders to lean forward, complainant responded, "[s]top pushing my face forward," and then "you've got one more second to push me and I'ma [inaudible]." Complainant's tone was increasingly threatening, as were his attempts to resist being restrained.
13. After being asked to "lean forward" at least 6 times over the course of a minute. Complainant pulled his left arm free. SUBJECT OFFICER almost immediately regained his grip on the arm, again pulling it behind complainant's back, and pushed COMPLAINANT against the dumpster. Complainant then stated, "I oughta knock you out," several times, growing increasingly agitated.

14. SUBJECT OFFICER responded that complainant was “now [] going for threats as well.” The subject officer wrapped his right arm around complainant’s chest and turned to the left, forcing him the ground in the nearest empty space next to the dumpster. Complainant landed face-down in a puddle of waste from the dumpster, which may have included his own urine.
15. Complainant shouted, “Oh shit. That’s fucked up.” As SUBJECT OFFICER continued his attempts to place complainant in handcuffs, WITNESS OFFICER #1 arrived on the scene and assisted in securing the handcuffs.
16. SUBJECT OFFICER said, “I told you to put your hands behind your back,” to which complainant responded, “I was trying to do that.” SUBJECT OFFICER responded, “no you were not.”
17. WITNESS OFFICER #2 arrived on the scene and SUBJECT OFFICER explained to WITNESS OFFICER #1 and WITNESS OFFICER #2 that COMPLAINANT threatened to “knock him out,” and that it “would have been a ticket.”
18. Once complainant’s handcuffs are secured, the officers helped him to his feet. Complainant continued to yell at SUBJECT OFFICER that the officer had “bust my lip” and “slammed my face.” Complainant repeatedly told SUBJECT OFFICER that he would lose his job and that he was going to file a lawsuit against him. “[Y]ou slammed me and bust my lip. Lawsuit. I got you. Thank you for my lawsuit.” SUBJECT OFFICER calmly responded that is “[p]erfectly fine. It’s all on camera.”
19. Complainant grew increasingly agitated, repeatedly stating that the subject officer is a “liar” and “piece of shit,” and that complainant was “not resisting,” arrest and that he “never threatened” SUBJECT OFFICER.
20. SUBJECT OFFICER approached several bystanders and asked if they wanted to write a statement as witnesses to the event. One of the men stated that he was a witness and SUBJECT OFFICER told him to “hang out” long enough to give a statement, but the witness walked off shortly after, refusing to do so.
21. Complainant then asked WITNESS OFFICER #2 if he had a camera. WITNESS OFFICER #2 responded that he did, and COMPLAINANT began to relay his version of the incident, stating that SUBJECT OFFICER had grabbed his head and slammed his face against the dumpster and that he had not been resisting arrest. Complainant continued that, “[y]ou gonna slam my face up against the wall, you damn right I wanna hit you.”
22. WITNESS OFFICER #3 arrived on the scene and COMPLAINANT described what had happened. Complainant told him that SUBJECT OFFICER “slammed his face” against the dumpster and that he had never resisted arrest. Complainant complains that the right

side of his lip is swollen. WITNESS OFFICER #3 examined it and stated that he didn't see any swelling and there was no blood. Complainant argued back that he could nonetheless "feel it," and that his back, lip and "privates" were injured and he wanted an ambulance.

23. A paramedic arrived and asked complainant to describe his injuries. Complainant stated that he had a preexisting back injury that was aggravated by the incident.
24. Complainant was brought to A DC HOSPITAL for treatment. The hospital documented swelling in complainant's right cheek. Scans of his cheek bones and pelvis did not reveal any acute fractures or dislocations.
25. In a video footage from April 25, 2018 it appears that COMPLAINANT was having difficulty speaking due to pain on the right side of his face.
26. COMPLAINANT made an emergency visit to his DENTIST, on April 30, 2018 as he was unable to open his mouth and continued to experience pain in his right jaw. Dental x-rays revealed a fracture on the right side of complainant's jaw.

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."

MPD General Order 901.07, Part II, states, "The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others."

The regulations governing OPC define excessive or unnecessary force as "[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the 'reasonableness' of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the

use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

MPD General Order 201.26, Duties, Responsibilities and Conduct of Members of the Department, reminds officers to remain calm “regardless of provocation,” and to “be courteous and orderly in their dealings with the public.”

1. SUBJECT OFFICER Used Excessive Force in His Initial Physical Contact with Complainant.

Review of the BWC, as well as surveillance footage from a store camera located in the alley, confirms that COMPLAINANT and SUBJECT OFFICER were already exchanging words as the subject officer approached the man urinating in the alley, despite the absence of audio in either footage. SUBJECT OFFICER credibly stated that he asked COMPLAINANT to stop urinating several times prior to making physical contact and that complainant refused. Complainant has stated that he could not stop urinating “immediately;” the subject officer, in his statement to OPC, said that he had an expectation that complainant could have stopped urinating “after a few seconds” and refused to do so.

It is not clear from the footage whether or not SUBJECT OFFICER asked complainant to put his hands behind his back prior to grabbing hold of the back of complainant’s jacket and pushing him forward. Contrary to complainant’s statements, the subject officer did not grab his head and “slam” it into the dumpster in an aggressive manner. Rather, the push, as viewed on the BWC and surveillance tape, was little more than a light shove. Complainant’s statements to the police and the OPC that he did not resist arrest and did not threaten SUBJECT OFFICER similarly lack credibility.

However, it is clear from the BWC and surveillance footage that SUBJECT OFFICER entered the alley at approximately 4:39 p.m. and –regardless of what was said between the men—shoved complainant fewer than three minutes later, causing him to fall against the dumpster.

MPD General Order 901.07 states, in pertinent part, that “[a]ll members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication or other de-escalation techniques,” and that “[a] member shall use the force response that is reasonably necessary to bring the situation under control.” The General order further states that “in response to a perceived threat, members shall apply the proportionate and objectively reasonable force response ... consider[ing] the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, the suspect’s mental capacity, his or her access to weapons, agency policies, and available options (e.g., calling upon [other] members ... for assistance.”

Even if full deference is given to *SUBJECT OFFICER*'s statements that, during the initial period of time caught on the BWC and surveillance tapes that did not include audio, he repeatedly told complainant to stop urinating and complainant repeatedly refused, it does not follow that *any* force would be immediately warranted.

First, the subject officer had a duty to use "de-escalation techniques" prior to using *any* force. Upon review of the surveillance tape *SUBJECT OFFICER* entered the alley at 4:41 p.m. and, by 4:42 p.m., pushed complainant into the dumpster and pulled his right arm behind his back. Therefore, any attempt by the subject officer to "de-escalate" lasted less than two minutes before he resorted to force. Moreover, complainant was drunk, exposed, and older, given credence to his claim that he literally could not stop urinating once he had started. If anything, these factors warranted a bit more time and patience on the part of the subject officer. Further, *SUBJECT OFFICER* could have given complainant a verbal warning that he would have to use force if complainant did not timely comply with his orders.

Second, the crime in question did not meet any of the criteria that might otherwise escalate the need to use force. Public urination is not a "serious" crime posing harm to others. Further, *SUBJECT OFFICER* never claimed that, in those few minutes between entering the alley and use of force, he believed *COMPLAINANT* posed any threat to himself or others, that there was any "imminent danger," or that complainant might have "access to weapons." Moreover, with respect to the "subject's mental capacity," *COMPLAINANT* was clearly inebriated and, therefore, more likely to be slow to react, both verbally and physically.

Thereby, at least as to *SUBJECT OFFICER*'s initial push of *COMPLAINANT* into the dumpster, there is *no amount* of force that would have been "proportionate and objectively reasonable," and the subject officer's use of force was unlawfully excessive.

2. SUBJECT OFFICER's Subsequent Use of Force While Attempting to Handcuff Complainant Were Not Excessive.

In direct contrast, as the physical and verbal struggle between the subject officer and complainant escalated, *SUBJECT OFFICER* again pushed complainant into the dumpster several more times. These pushes—which did not appear to be overly forceful or aggressive—came as the subject officer single-handedly attempted to restrain complainant who had, by that point, become verbally and physically combative.

During this struggle, *SUBJECT OFFICER* did attempt to de-escalate the situation, instructing the complainant repeatedly to "stop," referring to complainant's efforts to resist having his hands placed behind his back, and to "lean forward" at least 6 times over the course of a minute. When complainant argued, "that's illegal force," *SUBJECT OFFICER* calmly responded, "just put your hands behind your back. That's all I'm asking you."

Further, despite his later claims that he did not threaten the subject officer, complainant's tone became increasingly threatening. *COMPLAINANT* can be heard on the BWC footage

yelling “you’ve got one more second to push me and I’m a [inaudible]” and variations of “I oughta knock you out.” At one point subsequent to these threats, complainant pulled his left arm free. SUBJECT OFFICER, reasonably believing that complainant intended to follow through on his threats to hit him, immediately grabbed complainant’s arm and pulled it behind his back again forcing COMPLAINANT against the dumpster. Based on the BWC and surveillance footage of this struggle, and where the subject officer was trying to handcuff complainant as part of a legal arrest, these uses of force may very well be considered proportionate.

3. SUBJECT OFFICER’s “Tactical Takedown” of Complainant Was Excessive.

Immediately after complainant pulled his left hand free and the subject officer pulled his hand behind his back, SUBJECT OFFICER performed what he later described as a “tactical takedown.” In one motion, the subject officer placed his right arm around complainant’s chest and, turning to the left to avoid the dumpster, pulled COMPLAINANT to the ground. Complainant hit the ground face-down with considerable force into a puddle of waste leaking from the dumpster, again hitting the right side of his face. It is unclear whether SUBJECT OFFICER intentionally forced complainant into the puddle of waste. Review of the footage suggests that the “takedown” occurred so swiftly, immediately following what the subject officer believed to be complainant’s attempt to punch him, that there was no forethought in where on the ground he would land. Further, the puddle was immediately adjacent to the dumpster and the most logical place to bring complainant to the ground while avoiding colliding with the dumpster. Finally, the subject officer himself also landed in the puddle, as evidenced by wet spots on his uniform, which suggests he did not intend that particularly landing spot.

As with his initial contact with complainant, SUBJECT OFFICER’s use of force in this instant was excessive and disproportionate to any perceived threat of harm. While the subject officer had made numerous attempts to de-escalate the situation, both verbally and physically, he could have called for backup before taking such drastic measures as forcing an older, drunk, exposed man onto the concrete face down. In fact, WITNESS OFFICER #1 entered the alley just as he was throwing complainant to the ground, less than five minutes after the incident began. Further, in the moment prior to the takedown, SUBJECT OFFICER had successfully regained control of complainant, again pinning both hands behind his back. Thereby, complainant did not pose any immediate threat.

Finally, while complainant’s injuries as a result of the altercation may not have been immediately evident, the subsequent x-ray revealing a fracture on the right side of complainant’s jaw can reasonably be attributed to the subject officer’s use of force. Immediately after he was returned to a standing position, complainant began vociferously complaining to several officers at the scene that SUBJECT OFFICER had “busted his lip” and injured his back, lip and “privates.” Upon examination, WITNESS OFFICER #3 didn’t see any swelling or blood and complaint appeared to move around with relative ease. However, the doctor that examined complainant at A WASHINGTON DC HOSPITAL immediately after the incident documented swelling in complainant’s right cheek. Several days later, video footage clearly showed that complainant was having difficulty speaking, and fewer than two weeks after the incident, a

dental x-ray revealed a fracture on the right side of complainant's jaw. Based on this evidence, the subject officer's use of force was clearly excessive.

Based on the totality of the circumstances, SUBJECT OFFICER used excessive and unnecessary force in his interaction with complainant, thereby violating § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1 and MPD General Orders 201.26 and 901.07.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Use of Excessive or Unnecessary Force	Sustained
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Submitted on July 26, 2019.

Meaghan Hannan Davant
Complaint Examiner