

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0604
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Unnecessary/Excessive Force
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	December 20, 2019

Pursuant to D.C. 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

SUBJECT OFFICER was one of approximately 19 MPD officers responding to a 911 domestic violence call at the residence of the complainant, COMPLAINANT. SUBJECT OFFICER was not among the first officers on the scene. When SUBJECT OFFICER arrived, other officers were in the process of physically subduing COMPLAINANT's son, WITNESS #1. Upon entering the residence, SUBJECT OFFICER immediately placed his hand on WITNESS #1's neck and held it for approximately 35 seconds. WITNESS was subdued, handcuffed, and arrested by the other officers. OPC concluded that SUBJECT OFFICER used unnecessary or excessive force against WITNESS #1 in violation of D.C. Code § 5-1107 and MPD General Order 901.07.¹

¹ COMPLAINANT also alleged that WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 used unnecessary or excessive force against her son, WITNESS #1, when they handled him aggressively. COMPLAINANT also alleged that WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3, harassed her when they damaged her property and left marks on her wall. She further alleged that WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6 harassed her when they went upstairs and searched her home. Lastly, COMPLAINANT alleged that WITNESS OFFICER #7 harassed her children when the officer unlawfully arrested her son, WITNESS #1, and her daughter, WITNESS #2. Pursuant to D.C. Code § 5-1108(1), on November 4, 2019, a member of the Police Complaints Board dismissed these allegations, concurring with the determination by OPC's executive director. *See* Exhibit 2.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. The Complaint Examiner determined that no genuine issues of material facts are in dispute that required a hearing based on a review of the OPC's Report of Investigation (ROI) the Body Worn Camera (BWC) footage for SUBJECT OFFICER, WITNESS OFFICER #3, WITNESS OFFICER #1, WITNESS OFFICER #2, WITNESS OFFICER #7, and WITNESS OFFICER #8. objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on November 20, 2019, and OPC's response to the objections. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of the ROI, the BWC footage for MPD officers identified above, the objections submitted by the FOP on behalf of SUBJECT OFFICER, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 10, 2018, the complainant placed a 911 to the MPD because of a family dispute.
2. Specifically, COMPLAINANT wanted her son, WITNESS #1, "out of the house."
3. Three officers responded to COMPLAINANT's residence, AN ADDRESS IN SE, WASHINGTON, DC.
4. COMPLAINANT admitted the officers into the house.
5. Almost immediately, a physical struggle ensued between the responding officers and WITNESS #1, when he attempted to leave the house.
6. WITNESS #1 was observed taking a knife from his clothing and tossing it on a table.
7. At least one of the officers placed a 10-33 call (officer in need of assistance), which resulted in approximately 16 additional officers arriving on the scene.
8. The scene was chaotic as it took place in a small space and WITNESS #1's sister, WITNESS #2, joined the scuffle in an effort to frustrate the handcuffing.
9. The subject officer, SUBJECT OFFICER, was one of the responding officers to the 10-33 call.
10. SUBJECT OFFICER entered the residence and saw his fellow officers trying to subdue and handcuff WITNESS #1.

11. SUBJECT OFFICER immediately placed a hand on WITNESS #1's neck in a C-shape for approximately 35 seconds to restrain him until the handcuffs could be secured.
12. The BWC footage shows SUBJECT OFFICER applying minimum force.
13. There is no evidence to suggest, nor is there a claim, that WITNESS #1 was injured as a result of SUBJECT OFFICER's neck hold.
14. The BWC footage shows WITNESS #1 continuing to struggle after he was arrested.
15. Emergency Medical Services were not requested by SUBJECT OFFICER or any other responding officer.

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.”

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.

At the outset, it is noted that SUBJECT OFFICER refused to be interviewed by OPC as part of its investigation. As a result, in reaching its decision OPC drew “an adverse inference as to his actions and credibility.” ROI at p. 5. In reaching this decision, the Complaint Examiner does not rely in any way on the adverse inference. The Complaint Examiner believes that there must be independent evidence to support a finding that SUBJECT OFFICER (or any officer) violated his responsibilities as set forth in D.C. Code § 5-1107 and MPD General Order 901.07.

Here, the Complaint Examiner relied on the Exhibits to the ROI, the FOP’s objections filed on behalf of SUBJECT OFFICER, and most importantly on a careful review of the BWC for six of the responding officers.

The essential facts of this case are not in dispute. When SUBJECT OFFICER responded to a domestic dispute, he observed several officers struggling to subdue WITNESS #1. He proceeded immediately to place a hand on WITNESS #1’s neck to help restrain him. SUBJECT OFFICER engaged in an intentional grabbing of the neck and not an accidental or incidental touching.

The Complaint Examiner believes that SUBJECT OFFICER was well intentioned in helping his fellow officers and that he used minimal force on WITNESS #1’s neck. That is not the relevant standard, however.

General Order 901-07, Part IV J. Neck Restraints provides in pertinent part.

1. The use of neck restraints of any kind including, but not limited to, the use of “trachea hold” and “carotid artery holds” as they are defined in D.C. Official Code 5-125.02 are not authorized use of force options and are prohibited.
2. In the event that a member employs a neck restraint or chokehold of any kind, he or she shall request emergency medical services immediately.

The General Order could not be clearer. Simply stated, neck restrains are prohibited under all circumstances. Here, there was no justification for SUBJECT OFFICER to violate the General Order’s prohibition. The BWC footage clearly shows, and the FOP objections admit, that SUBJECT OFFICER employed an intentional neck restraint on WITNESS #1 for approximately 35 seconds. The Complaint Examiner concludes, based upon a review of the BWC footage and the other evidence, that a neck restrain was unnecessary. There were multiple officers engaged in the struggle with WITNESS #1, none of whom saw the need to touch his neck. Further, in light of the number of officers on the scene it is reasonable to conclude that WITNESS #1 could have been subdued without grabbing his neck.² In sum, it was entirely

² The FOP objections note the existence of the knife as threat to the responding officers. See FOP Objections, p 3-4, 11. There is no evidence (or reason to believe) that SUBJECT OFFICER was aware that a knife might be present or that it affected his decision to restrain WITNESS #1 by the neck.

unnecessary and inappropriate for SUBJECT OFFICER to apply a neck restraint on WITNESS #1. In doing so, SUBJECT OFFICER used excessive and unnecessary force in violation of the D.C. Code § 5-1107 and MPD General Order 901.07.

The totality of the circumstances demonstrates that SUBJECT OFFICER violated from D.C. Code § 5-1107 and MPD General Order 901.07 when he restrained WITNESS #1 by the neck.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Unnecessary/Excessive Force	Sustained
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Submitted on December 20, 2019

Richard S. Ugelow
Complaint Examiner