

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	19-0511
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Unnecessary/Excessive Force
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	October 19, 2020

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 May 30, 2019. COMPLAINANT alleged that on May 23, 2019, he witnessed Metropolitan Police Department (MPD) SUBJECT OFFICER (“Subject Officer”), use unnecessary or excessive force against THIRD PARTY when grabbing him by his hair.¹

Specifically, COMPLAINANT stated that on May 23, 2019, at approximately 8:00 p.m. while driving on A STREET IN NE, WASHINGTON, DC, near A PUBLIC FACILITY, he witnessed Subject Officer grab THIRD PARTY by the hair as other officers pulled him to the ground. COMPLAINANT then exited his vehicle and informed the officers that he was watching them.

¹ COMPLAINANT also alleged that on May 16, 2019, WITNESS OFFICER #1 used unnecessary or excessive force against him when pushing him, harassed him by stopping and arresting him and then searching his car, and retaliated against him. COMPLAINANT further alleged that on May 23, 2019, WITNESS OFFICER #2 and WITNESS OFFICER #1 used unnecessary or excessive force against THIRD PARTY when they slammed him onto the ground. Pursuant to D.C. Code § 5-1108(1), on August 24, 2020, a member of the Police Complaints board dismissed these allegations, concurring with the determination made by OPC’s executive director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICER, WITNESS OFFICER #1, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6 on May 23, 2019, the objections submitted by Subject Officer on September 9, 2020, and OPC's response to the objections dated September 15, 2020, the Complaint Examiner determined that the ROI presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

Subject Officer objected to the allegation because the alleged recipient of Subject Officer's actions, THIRD PARTY, did not complain himself about excessive force. OPC's regulations state, however, that "any individual having personal knowledge of alleged officer misconduct may file a complaint with the Office on behalf of a victim." D.C. Code § 5-1107(c). D.C. Mun. Regs. Tit. 6A, § 2105.1(b). Thus, THIRD PARTY's lack of participation does not bar consideration of this complaint filed by a witness of the allegation.

Moreover, Subject Officer also objects that the allegation was not included on the original complaint form and that it is thus outside OPC's jurisdiction. Subject Officer's objection has no merit. First, restricting the Complaint here in the way suggested by Subject Officer is contrary to the purposes of providing "easy access" to a process of review of citizen complaints involving the police. *See* D.C. Code 5-1101(3). Citizens may complain when they believe that they or others have been mistreated, but they can't be expected to know the ins and outs of what exactly constitutes a violation. For that reason, the definition of a "complaint" required to begin the process of investigating a complaint requires only "an allegation of misconduct . . . during an incident occurring within the District of Columbia." D.C. Mun. Regs. Tit. 6A, §2199.1. Here, Complainant filed such a complaint, which launched an investigation. During Complainant's interview with OPC, he described the conduct contained in the ROI. *See* Exh. 3 at 14:20. Thus, the allegation of excessive or unnecessary force relating to Subject Officer pulling THIRD PARTY's hair was appropriately investigated and brought here.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICER, WITNESS OFFICER #1, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and WITNESS OFFICER #6 on May 23, 2019, the objections submitted by Subject Officer on September 9, 2020, and OPC's response to the objections dated September 15, 2020, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint on May 30, 2019.

2. At approximately 8:00 pm on May 23, 2019, WITNESS OFFICER #2 approached THIRD PARTY who was sitting on a bench in front of A PUBLIC FACILITY with his back against a brick wall and a child, who someone called his son, on his lap. A number of people sat on either side of THIRD PARTY and others were standing nearby.
3. WITNESS OFFICER #2 asked THIRD PARTY if he could pat him down. THIRD PARTY refused. At some point WITNESS OFFICER #2 was joined by WITNESS OFFICER #3 at the scene.
4. WITNESS OFFICER #2 asked THIRD PARTY if he had been riding a bike earlier. THIRD PARTY denied it. Again, WITNESS OFFICER #2 asked THIRD PARTY's consent to pat him down and THIRD PARTY again refused.
5. WITNESS OFFICER #2 then accused THIRD PARTY of running from a shooting, which led the crowd to start yelling at WITNESS OFFICER #2. WITNESS OFFICER #2 informed the crowd that he was investigating a shooting, and the crowd's shouts became louder. One person can be heard shouting, "ya'll gonna get fucked up right here. I'm telling you, y'all gonna get y'all ass whooped."
6. WITNESS OFFICER #2 stepped up on the bench to try to get behind THIRD PARTY, but when he saw it wasn't possible he stepped down, returned to a spot in front of THIRD PARTY and asked him to stand up. THIRD PARTY responded, "No, bruh! I'm not doing shit! You bitch ass!"
7. WITNESS OFFICER #2 and WITNESS OFFICER #3 moved away and continued to verbally spar with the members of the crowd. The officers seemed familiar with many of the members of the crowd and used their names in their interaction. Although the crowd was very vocal and objected to their trying to search THIRD PARTY, the officers' level of engagement with the crowd did not suggest concern of immediate danger despite an alleged belief that THIRD PARTY might be carrying a weapon.
8. After a couple minutes, WITNESS OFFICER #2 moved further away from the crowd while WITNESS OFFICER #3 remained and continued with the verbal banter.
9. Approximately five minutes later five backup officers arrived, SUBJECT OFFICER, WITNESS OFFICER #1, WITNESS OFFICER #5, WITNESS OFFICER #4, and WITNESS OFFICER #6.
10. Initially, the five officers stood at a distance across a walkway from the crowd. WITNESS OFFICER #2 asked WITNESS OFFICER #3 to go and inform the officers about the situation and he did so.
11. As WITNESS OFFICER #3 moved to speak to the officers, first WITNESS OFFICER #5 and shortly thereafter WITNESS OFFICER #1 walked over to WITNESS OFFICER #2

and he informed them, each individually, that he had seen THIRD PARTY earlier leaving the area of a reported shooting on his bike, adjusting the left side of his waistband, which led him to believe THIRD PARTY had a gun. WITNESS OFFICER #2 spotted THIRD PARTY at the PUBLIC FACILITY when he was canvassing the area for the shooter.

12. WITNESS OFFICER #2 and WITNESS OFFICER #1 then approached THIRD PARTY while WITNESS OFFICER #5 stood close behind them, watching.
13. THIRD PARTY told the officers that they didn't have probable cause and to not touch him. As they got closer, he leaned away from the officers against the wall, and stiffened his body. He also raised his arms in the air and moved them around to avoid the officers grabbing his arms.
14. WITNESS OFFICER #2 grabbed THIRD PARTY's right wrist with his left hand while WITNESS OFFICER #1n grabbed THIRD PARTY's left wrist and they appeared to be trying to pull him off the bench. While doing that, WITNESS OFFICER #2 used his right hand to pat THIRD PARTY's waistband with his right hand. THIRD PARTY continued to stiffen his body and try to pull away his arms. At no time did he or anyone in the crowd touch the officers or try to pull them off THIRD PARTY. WITNESS OFFICER #5, who was watching from close behind them, made no move to assist.
15. After approximately 8 seconds, Subject Officer and the other officers walked toward the scene. WITNESS OFFICER #3 and WITNESS OFFICER #4 began doing crowd control while Subject Officer walked behind and to the right of WITNESS OFFICER #1, reached over him and grabbed THIRD PARTY's hair, which had been pulled into a sort of ponytail, and pulled him upward. As he did so, THIRD PARTY was pulled up and forward onto the ground. As the officers lowered THIRD PARTY onto the ground, Subject Officer released THIRD PARTY's hair. WITNESS OFFICER #2 then completed the pat down.

IV. DISCUSSION

Complainant alleged that Subject Officer used unnecessary or excessive force when he pulled THIRD PARTY's hair. Complaint Examiner sustains this allegation.

Pursuant to D.C. Official Code § 5-1107(a), and (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: (2) unnecessary or excessive use of force."

D.C. Mun. Regs. Tit. 6A, § 2199.1 defines Excessive or Unnecessary Use of Force for the purposes of OPC as "Unreasonable 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 and physically 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 or DCHAPD, including adherence to the Use of Force Framework; and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective. MPD's Use of Force Framework requires a similar analysis. MPD General Order 901.07 IV.E.

“The policy of the Metropolitan Police Department (MPD) is to value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. Therefore, MPD members 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. When using force, members shall continuously reassess the perceived threat in order to select the reasonable use of force response, or one that is proportional to the threat faced by him, her or others.” MPD General Order 901.07 (effective November 3, 2017), Part II.

The Use of Force framework articulated in MPD General Order 901.07 provides that “To ensure the force response is objectively reasonable and proportionate to the perceived threat, members shall: a. Continuously assess the threat and develop strategies, consider their authority and Department policies, identify options and contingencies, take action and review, and gather information. This approach requires members to: (1) Consider 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 members with specialized training for assistance). (2) Modify their level of force in relation to the amount of resistance offered by a suspect. As the subject offers less resistance, the member shall lower the amount or type of force used.” MPD General Order 901.07 IV.E.

At the time Subject Officer approached THIRD PARTY, he had leaned back, stiffened his body, and was trying to pull his arms away from WITNESS OFFICER #2 and WITNESS OFFICER #1 who were holding his wrists up in the air. WITNESS OFFICER #5 BWC at 2:41; SUBJECT OFFICER BWC at 2:04. On the Use of Force framework, THIRD PARTY's behavior constituted that of an “Active Resister.” Subject Officer agrees with this conclusion in his interview with OPC. Exh. 5 at 9:00. An “Active Resister” is defined as “the subject is uncooperative and will not comply with the member's requests or commands. The subject exhibits physical and mechanical defiance, including evasive movements to defeat the member's attempt at control, including but not limited to, bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested.” MPD General Order 901.07 IV.E.1.a.(3).

The appropriate level of response to an Active Resister is “Compliance techniques,” which include actions [e.g., control holds, joint locks, and oleoresin capsicum (OC) spray, solo or team takedowns] that may induce pain or cause discomfort to the subject who is actively resisting until control is achieved, but will not generally cause an injury when used in accordance with Department training and standards.” MPD General Order 901.07 Attachment B and IV.E.1.b.(3).

Subject Officer acknowledged in his interview with OPC that he grabbed THIRD PARTY by his dreadlocks and “started to lift.”² Exh. 5 at 3:30. He explained that he did so to “resolve the situation as quickly as possible.” Exh. 5 at 6:20. He explained that it was the only part of THIRD PARTY he could safely grab and that grabbing him “by his hair would quickly gain compliance without causing injury.” Exh. 5 at 10:00. He felt that pulling on a subject’s arms when the subject is resisting could cause more injury than grabbing by the hair. Exh. 5 at 11:15, 14:28.

The first question is whether Subject Officer’s actions, whether appropriate or not, were even necessary in the moment. Looking at the event in its entirety, it never seemed like there was a serious threat to officer or bystander safety even despite the couple of threats shouted. The officers acted quite casually up until the moment of grabbing THIRD PARTY’s arms, and even made their own chest thumping statements to members of the crowd, which is the opposite of trying to deescalate a dangerous situation.³ WITNESS OFFICER #2 BWC at 2:17; WITNESS OFFICER #3 BWC 1 at 2:02.

It is true that WITNESS OFFICER #2 had a belief that THIRD PARTY had a gun and that is to be considered as to Subject Officer’s decision. Yet, WITNESS OFFICER #2 and WITNESS OFFICER #1 were holding both of THIRD PARTY’s wrists up in the air at the time so that he was unable at that point reach for a weapon and he posed no threat to the officers. WITNESS OFFICER #5 BWC at 2:46; WITNESS OFFICER #2 BWC at 14:07; WITNESS OFFICER #1 BWC at 4:02. Moreover, WITNESS OFFICER #2 was actively patting down THIRD PARTY’s waistband while the two officers continued trying to pull him from the bench.

² In his objections, Subject Officer’s representative claims that Subject Officer only “held” THIRD PARTY’s hair and did not pull. That is contrary to Subject Officer’s own statement during his interview with OPC, however. Exh. 5 at 6:20. Thus, the objection has no merit.

³ Although it is not the subject of this Complaint, this Complaint Examiner observed that the banter that took place seemed akin to schoolyard bullying, particularly on the part of WITNESS OFFICER #3. At one point, WITNESS OFFICER #3 spoke to one of the young men by name and taunted him by saying “you’re not tough. Last time you were crying.” WITNESS OFFICER #3 BWC 1 at 10:31; WITNESS OFFICER #2 BWC at 10:51. He repeated a similar taunt shortly after mockingly saying “what about when you were crying? You were hugging on to your mom crying, ‘I can’t get locked up.’” WITNESS OFFICER #2 BWC at 11:23; WITNESS OFFICER #3 BWC 1 at 11:13. This kind of engagement is not professional police conduct. Given the current state of concern around police behavior, it only serves to aggravate the distrust of police officers. Moreover, it is incredibly disconcerting that an officer stooped to behave like a schoolyard bully rather than as a professional law enforcement officer.

WITNESS OFFICER #5 BWC at 2:46; WITNESS OFFICER #2 BWC at 14:09; WITNESS OFFICER #1 BWC at 4:04. The officers never asked for assistance from the other officers. WITNESS OFFICER #5 BWC at 2:40; WITNESS OFFICER #2 BWC at 14:07; WITNESS OFFICER #1 BWC at 4:02. WITNESS OFFICER #5 was watching the event and standing much closer than WITNESS OFFICER #3 and saw no need to step in. WITNESS OFFICER #5 BWC at 2:46. Nor did the other three officers that had been standing further away with WITNESS OFFICER #2. Rather, they moved forward and engaged in crowd control to prevent any interference from the shouting and videotaping crowd. SUBJECT OFFICER BWC at 2:20; WITNESS OFFICER #3 BWC 2 at 1:19; WITNESS OFFICER #4 BWC at 2:02; WITNESS OFFICER #6 BWC at 3:09.

Subject Officer alone seemed to feel a need to “speed the process up.” Speeding things up is not part of the use of force analysis. That Subject Officer alone felt a need to step in and act, suggested a desire to be a hero rather than allowing WITNESS OFFICER #2 and WITNESS OFFICER #1 to properly handle the situation and assisting with crowd control as the other officers did.

Even if stepping in to assist WITNESS OFFICER #2 and WITNESS OFFICER #1 was appropriate, however, the use of hair pulling as a technique to do so was not and it constituted excessive violence. Hair pulling is not specifically noted as an approved compliance technique in the general order, but the list does not purport to be exclusive. MPD General Order 901.07 Attachment B and IV.E.1.b.(3). When asked whether he was trained to use hair pulling as a control technique, Subject Officer did not answer in the affirmative specifically as to hair pulling. Exh. 5 at 11:35. Rather, he stated that at the Academy, they teach hand control techniques involving the entire body, and according to the general order, the only prohibited location is the neck. Exh. 5 at 11:45. Moreover, when asked if there is anything that explicitly approves hair pulling as a method to overcome resistance, he responded that he knew there was nothing in the general order that specifically excludes it. Exh. 5 at 12:45. Subject Officer’s more general response suggests that hair pulling is not, in fact, a technique he was trained to use. Moreover, he noted the concern about the neck area, yet failed to recognize that pulling up on a subject’s hair seems like a highly risky way to injure a subject’s neck given the risk of jerking the neck around - especially when the other officers were pulling THIRD PARTY’s arms in a different direction.

Thus, Subject Officer’s pulling of Complainant’s hair was unnecessary and excessive force: 1) he unnecessarily interfered with and increased the amount of force already being used by WITNESS OFFICER #2 and WITNESS OFFICER #1; and 2) hair pulling creates a dangerous risk to the subject’s neck and Subject Officer did not provide any indication that he was actually trained to use it. In fact, its use would appear to be a violation of the one thing Subject Officer said he was prohibited from doing when using control tactics – risk neck injury of a subject.

Subject Officer, here, is found to have violated MPD General Order 901.07 when he pulled THIRD PARTY's hair. As such, Subject Officer's action constituted unnecessary and excessive force as defined under D.C. Mun. Regs. Tit. 6A, § 2199.1 and MPD General Order 901.07. The allegation of Unnecessary and Excessive force is, thus, sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Unnecessary/Excessive Force	Sustained
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Submitted on October 19, 2020.

Jennifer A. Fischer, Esq.
Complaint Examiner