

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0327
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, Seventh District SUBJECT OFFICER #2, Seventh District SUBJECT OFFICER #3, Seventh District SUBJECT OFFICER #4, Seventh District SUBJECT OFFICER #5, Seventh District SUBJECT OFFICER #6, Seventh District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Turna R. Lewis
Merits Determination Date:	October 26, 2005

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the 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 that section. 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 alleged that MPD SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, and SUBJECT OFFICER #6 (1) harassed him and (2) used unnecessary or excessive force against him. COMPLAINANT claimed that on May 16, 2002, SUBJECT OFFICER #4 struck him with an unmarked police vehicle and that SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, and or SUBJECT OFFICER #6 used unnecessary and excessive force when they arrested COMPLAINANT. COMPLAINANT claimed that the aforementioned officers and SUBJECT OFFICER #1 injured and harassed him by not taking him to the hospital or informing other members of the Metropolitan Police Department (MPD) that COMPLAINANT needed to go to the hospital and not ensuring that he was taken to the hospital.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on July 20 and 21, 2005. The Complaint Examiner heard the testimony of COMPLAINANT and Complainant's witnesses WITNESS #1, WITNESS #2, and WITNESS #3. Respondents SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, and SUBJECT OFFICER #6 testified. Respondents' witnesses included WITNESS OFFICER #1, WITNESS #4, and WITNESS #5. The following exhibits were introduced at the hearing:

- | | |
|-----------------------------|--|
| Complainant Exhibit 1-3: | Photographs of location where Complainant washed cars |
| Complainant Exhibit 4-14 | Photographs of Complainant's injuries taken by WITNESS #3 |
| Subject Officers Exhibit 1: | Xerox Copies of Photos taken at Seventh District Precinct from arrest of Complainant |
| Subject Officers Exhibit 2: | Reconstruction Analysis prepared by WITNESS OFFICER #1 |
| Subject Officers Exhibit 3: | The Pedestrian Article |
| Joint Exhibit 1: | Map of the rear of 950 Southern Avenue |

The Report of Investigation was also submitted into the record.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, and SUBJECT OFFICER #6 on May 17, 2005, and an evidentiary hearing conducted on July 20 and 21, 2005, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT was in the alley/parking lot area of the 900 Block of Bellevue Street, SE, on May 16, 2002, at approximately 7:50 p.m.
2. Complainant trains boxers as his livelihood.
3. SUBJECT OFFICER #4 was on duty that day and driving a white unmarked Crown Victoria in the area of the 4300 block of Wheeler Road when he received a radio report detailing a lookout for a gentleman who was observed conducting a drug transaction in the alley of the 900 Block of Bellevue Street, SE. The radio report provided a description

of the suspect. Upon hearing the police radio lookout, SUBJECT OFFICER #4 entered the alley/parking lot southbound from the 900 block of Bellevue Street in between 913 Bellevue and 4301 Wheeler.

4. SUBJECT OFFICER #4 observed Complainant in the alley/parking lot and drove the white unmarked Crown Victoria toward the fence, stopping before he reached the fence. SUBJECT OFFICER #4 observed Complainant running towards the car and attempt to jump over the front end of the car. Complainant struck the car as he attempted to jump the fence and fell over the fence.
5. SUBJECT OFFICER #4 exited the unmarked white Crown Victoria and approached the fence. He observed that Complainant was in custody, that Complainant was not injured and that there were no visible bruises.
6. SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 were driving in the 900 block of Bellevue Street into the alley that runs adjacent to the 4300 block of Wheeler Road where they observed Complainant in a drug transaction with an unidentified male. They entered the alley shortly after SUBJECT OFFICER #4.
7. A routine monthly inspection of the vehicle, detailed in a Form 775A, determined that no the white Crown Victoria driven by SUBJECT OFFICER #4 was not damaged in the May 16, 2002, incident involving Complainant.
8. Complainant was arrested and photographs of his face were taken during the processing of his arrest on May 17, 2002 at 7:25 a.m.
9. SUBJECT OFFICER #1 was the arresting officer and completed the PD Form 163, the Arrest Report, which detailed that Complainant was arrested with six (6) small clear Ziplocs bags of crack cocaine and \$5.00 cash, believed to be received from an illegal narcotics sale.
10. A PD Form 168, "Court Case Review" lists SUBJECT OFFICER #1, SUBJECT OFFICER #6 and SUBJECT OFFICER #2 as the arresting officers and police witnesses. The form lists SUBJECT OFFICER #3 and SUBJECT OFFICER #5, but their names are crossed out.
11. Complainant was offered medical treatment at the Seventh District Precinct and was taken to D.C. General Hospital where he declined medical treatment.
12. Complainant sought medical treatment on May 17, 2002 for facial contusions. The medical report detailed injuries to Complainant's face. The medical reports contained no documentation of injuries to any other part of Complainant's body. Complainant reported to his treating physician that he was hit by a car, that his leg had a bump on it

and that he suffered back pain. The treating physician prescribed ice and Motrin and Flexeril for pain. No further medical treatment was prescribed.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and 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; or (5) retaliation against a person for filing a complaint pursuant to [the Act].”

Allegation of Unnecessary and Excessive Force

Complainant alleges that the Subject Officers engaged in unnecessary and excessive force when they arrested him on May 16, 2002, in two separate incidents that occurred consecutively in the alley/parking lot area of the 900 Block of Bellevue Street, SE. Use of unnecessary or excessive force, as defined by MPD Special Order 01-01, Part III, Section N includes “the use of force that is improper in the context of the incident giving rise to the use of force.”¹ MPD General Order 901.7, Part II states, “[T]he policy of the Department is that an officer shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others.”

Complainant alleges that SUBJECT OFFICER #4 hit him with the white unmarked Crown Victoria he was driving striking him and forcing him in the air and over the fence. Complainant alleges that the second instance of unnecessary and excessive force occurred when SUBJECT OFFICER #1 and SUBJECT OFFICER #6 and SUBJECT OFFICER #5 tackled him and beat him when he fell over the fence after being struck by the Crown Victoria. (Tr. 240-247.) Complainant alleged that as a result of being struck by the Crown Victoria driven by SUBJECT OFFICER #4 and the subsequent beating by SUBJECT OFFICER #6, SUBJECT OFFICER #5, SUBJECT OFFICER #2, and SUBJECT OFFICER #1 he suffered injuries to his face and body, specifically his left knee. (Tr. 251-253). Complainant testified that the Crown Victoria struck him “right above the knee.” (Tr. 312.) Complainant testified that he was taken to the Seventh

¹ The Police Complaints Board, which is OPC’s governing body, promulgated regulations regarding OPC on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of “excessive or unnecessary force” contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

District precinct on Alabama Avenue where he was processed. (Tr. 255.) He testified that an unidentified police officer took him to the hospital but that he refused treatment because he was concerned about missing his arraignment. (Tr. 257-259, 330.)

Under cross-examination, Complainant admitted that he had been previously convicted of providing false statements on a federal gun application and subsequently served eight (8) months in prison. (Tr. 283.) Under cross-examination Complainant denied that the officers recovered six (6) Ziploc bags of crack cocaine from him when he was arrested. (Tr. 288-289.) Complainant testified under cross-examination that he waited two-and-one-half days to seek medical treatment because he “wanted to clean [him]self up.” (Tr. 304.)

Complainant’s witness, WITNESS #2 testified that he is Complainant’s friend and has known him for about three years. (Tr. 110.) WITNESS #2 testified that he was with Complainant on May 16, 2002, when the Complainant was washing cars with WITNESS #2’s brother, WITNESS #6, and an unidentified male. He testified that he witnessed SUBJECT OFFICER #4 striking Complainant with the Crown Victoria he was driving and four (4) or five (5) police officers attacking Complainant after he was thrown over the fence. (Tr. 121-134.) WITNESS #6 testified that he observed Complainant’s injuries immediately after the officers stopped beating him. He described Complainant’s injuries as “peeled back injuries on the forehead and on the cheeks” and identified pictures taken by Complainant’s wife that showed injuries to Complainant’s face (Tr. 174, 178-180, Complainant’s Exhibit 2.)

WITNESS #3, Complainant’s wife testified that she took pictures of Complainant on May 17, 2002, the day after he was arrested. (Tr. 185-186.) She testified that she took pictures of Complainant’s face focusing on the left side of his face, left knee and ankle, and pants, which showed bloodstains on his pants, immediately after Complainant was arraigned in front of D.C. Superior Court and later that same day at their home. (Tr. 190-194, 200, Complainant’s Exhibits 4-14.) Under cross-examination, WITNESS #3 testified they she could not explain why Complainant’s medical reports did not document the injuries she photographed. (Tr. 209.)

Complainant’s witness, WITNESS #1 testified that he has known Complainant “since the late 1960s.” WITNESS #1 testified that on May 16, 2002, he was en route to visit a friend on Southern Avenue and took a shortcut through the alley leading from Bellevue Street to Southern Avenue. (Tr. 56-57) WITNESS #1 was able to identify the area using Exhibit 21, pictures of the incident location taken by OPC Investigator WITNESS #7. (ROI, Exhibit 21.) He testified that as he was walking in the alley he observed what he described as an unmarked police car and Complainant standing about a foot from a fence. (Tr. 72, 73.) WITNESS #1 testified that as he was walking down the alley towards Southern Avenue he saw five (5) to seven (7) police officers approach Complainant and begin to beat and punch him to the ground, then handcuff him and place him in a vehicle. He testified that one of the officers, who had a police radio, commented that Complainant’s head was hard. (Tr. 82-84.) WITNESS #1 testified that Complainant was “disheveled and his face was bleeding and swollen, and that he had scrapes on his arms.” (Tr. 86.) WITNESS #1 was unable to identify any of the officers he alleged beat Complainant testifying that he was fifteen (15) feet away. (Tr. 85.) Under cross-examination, WITNESS #1

admitted that he gave a different version of the incident to OPC investigators on June 20, 2002, a month after the incident. (Tr. 97-101). WITNESS #1 admitted under cross-examination that he did not tell the OPC investigator that he observed Complainant being beaten by police in the statement given on June 20, 2002. (Tr. 95-102.)

All of the officers deny that Complainant was injured or bleeding when he was arrested and taken to the police station for processing and arraignment. The officers deny that any unnecessary or excessive force was used, citing their years of police experience and the lack of a history of unnecessary or excessive force complaints. Of the six officers accused, only SUBJECT OFFICER #1 had one unsubstantiated allegation of unnecessary and/or excessive force filed against him in his eleven-year career. The remaining five officers had no history unnecessary or excessive force complaints. All of the officers deny that Complainant was injured or bleeding at the time of arrest. The officers were experienced and each had extensive arrest experience. (Tr. 472, 571-573.)

Regarding Complainant's allegation that he was struck by the vehicle driven by SUBJECT OFFICER #4, Respondents offered the testimony of WITNESS OFFICER #1. WITNESS OFFICER #1, a sixteen-year veteran of MPD, was qualified as an expert in vehicle accidents and vehicular homicides based upon his extensive training which included studying pedestrian and bicycle crash investigation at the Institute of Police Technology and Management, University of Florida, in August 2003. (Tr. 380-381.) WITNESS OFFICER #1 testified that WITNESS OFFICER #2, Respondents' Fraternal Order of Police Representative, asked him to provide an expert opinion of the incident as part of his representation of the Respondents and that he was unaware of the identities of the Respondents until after he rendered his opinion to WITNESS OFFICER #2. (Tr. 381.)

WITNESS OFFICER #1 testified that he was provided Complainant's statement that he gave as part of the Report of Investigation and that served as the basis for his reconstruction analysis. WITNESS OFFICER #1 testified that he conducted the reconstruction analysis on July 19, 2005. (Respondent Exhibit 2.) As part of his analysis WITNESS OFFICER #1 examined physical evidence, the scene of the incident, Complainant's medical evidence and self-reporting of injuries, a vehicle specifications report,² an analysis of pedestrian/vehicle dynamics, and the medical evidence that consisted of medical reports submitted by Complainant's treating physician. As part of his analysis, he physically inspected the scene, noting that the scene was viewed approximately three years after the incident and that no physical evidence was located. WITNESS OFFICER #1 testified that he measured and diagrammed the scene as well as took seven (7) digital photographs and developed a vehicle specifications report, which detailed the measurements of the Crown Victoria. (Respondent Exhibit 2.)

² The Vehicle Specifications Report details the measurements (weights in pounds and distances in inches) for a 1997 model Crown Victoria 4 door sedan was obtained from the Canadian Vehicle Specs database.

Based upon the Complainant's and Respondents' accounts of the incident, a vehicle specifications report, pedestrian data analysis of pedestrian walking speeds/velocities by age, analysis of the roadway surface, Complainant's injuries as detailed in medical reports submitted by Complainant's treating physicians, WITNESS OFFICER #1 concluded that the incident did not occur as described by Complainant. Specifically, WITNESS OFFICER #1's reconstruction analysis concluded that:

There is no evidence to support the claim of the [C]omplainant that he was struck by a vehicle and propelled over a four (4) foot high fence. The low speed of the vehicle and the short distance provided would not have been adequate to cause the [C]omplainant to become airborne with sufficient height to clear the fence. For the [C]omplainant to have been propelled over the fence, the vehicle would have had to have been traveling at a greater speed to have placed the [C]omplainant on a portion of the vehicle (windshield) that would create vertical lift. At a greater speed the vehicle could not have stopped without striking the fence. (Respondent Exhibit 2.)

Specifically, WITNESS OFFICER #1 opined that Complainant "was not struck by the Crown Victoria. If contact was made between the vehicle and the [C]omplainant, the [C]omplainant used the vehicle as a stepladder to get over the fence." (Respondent Exhibit 2.)

The Complaint Examiner credits Respondents' testimony and their expert witness, WITNESS OFFICER #1 over that of Complainant and his witnesses, WITNESS #2, WITNESS #3, and WITNESS #1. Complainant's testimony was inconsistent and contradictory. In his statement to the OPC investigator Complainant identified WITNESS #6 as the person who took pictures of him in front of D.C. Superior Court on May 17, 2002. At the evidentiary hearing he identified his wife. Complainant never identified WITNESS #2 as a witness to the May 16, 2002, event until shortly before the evidentiary hearing. Consequently, WITNESS #6 was not interviewed by the OPC investigator and was not part of the Report of Investigation.³ The Complaint Examiner does not find WITNESS #6's testimony credible or persuasive and it is unreasonable for Complainant not to provide witnesses who could corroborate his allegations to the OPC investigator. WITNESS #1's testimony was inconsistent and contradictory in that he never mentioned to the OPC investigator when interviewed on June 20, 2002 that he witnessed police officers beat Complainant. Given that Complainant's allegation is that he was subjected to unnecessary and excessive force, it is not credible that WITNESS #1 would forget to provide this critical information to the OPC investigator. The Complaint Examiner also finds Respondent Officers' testimony credible and persuasive, based on its internal consistency. The Complaint Examiner is further persuaded by Respondent Officers' experience with MPD in

³ WITNESS #2's brother, WITNESS #6, was interviewed by OPC, but was subsequently convicted and is in prison.

making arrests and that none of the Officers had any substantiated allegations of unnecessary or excessive force despite having made, individually, hundreds of arrests

Ultimately, neither Complainant's witnesses nor the medical reports submitted by his treating physicians corroborated his assertion that he suffered the alleged injuries. The Complaint Examiner credits WITNESS OFFICER's well-reasoned testimony which concluded that Complainant would have suffered visible injuries to his body if the incident occurred as he asserted and noted that Complainant's medical reports did not include evidence of "impact to damage or pattern injuries to the person" which would be typical in the type of impact alleged by Complainant. (Tr. 465.) Further, WITNESS OFFICER #1 testified that Complainant's medical record included a chart of the human body but that the only notations made by the treating physician were bruising on the eye and around the eye area. WITNESS OFFICER's conclusion that it would be inconsistent with a person struck by a bumper of a vehicle, especially a Crown Victoria, who was airborne, not to have suffered lower extremity marks, sprained wrist, broken wrists, broken fingers, or injured fingers from trying to break the fall was reasoned, credible, and persuasive. (Tr. 465.) Therefore, based on a preponderance of the evidence of record, the allegation of unnecessary and excessive force is unfounded.

Allegation of Harassment

Complainant alleges that he was harassed when the police officers denied him medical treatment. Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes "acts that are intended to bother, annoy, or otherwise interfere with a citizen's ability to go about lawful business normally, in the absence of a specific law enforcement purpose."

MPD General Order 201.26, Part I, Section C provides that "All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise." MPD General Order 502, Part I, Section A "Medical Treatment" provides that "persons held in departmental confinement facilities who claim a need for medical treatment due to any injury or disease shall be immediately transported to D.C. General Hospital for examination and treatment." As applied to this matter, Respondents are charged with harassing Complainant because they did not transport him to the hospital. By failing to do so, Respondents allegedly prevented Complainant from going about his lawful business, which would have included his receiving such treatment.

The evidence does not support this allegation. Complainant's own testimony that he declined medical treatment when offered at the Seventh District Precinct would exonerate the Subject Officers of this allegation. Further, as discussed above, Respondent's evidence rebuts Complainant's allegation that he was struck by the Crown Victoria driven by SUBJECT OFFICER #4's car and subsequently beat by Respondent officers. The two witnesses who claimed to have witnessed SUBJECT OFFICER #4 strike Complainant with the Crown Victoria and the subsequent beating by SUBJECT OFFICER #1 and SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, and SUBJECT OFFICER #5 are not credible. WITNESS #2 was not identified in Complainant's complaint filed with the OPC and WITNESS

#1's testimony was inconsistent and contradicted his witness statement provided to OPC on June 20, 2002. (Report of Investigation, Exhibit 9.) None of Complainant's witnesses were credible in their assertions that Complainant suffered injuries requiring immediate medical care. Based on the evidence of record, this allegation is unfounded.

The Complaint Examiner finds, based on a preponderance of the evidence of record that the allegation of harassment and the allegation of unnecessary and excessive force are unfounded.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, and SUBJECT OFFICER #6.

Allegation 1:	Unfounded
Allegation 2:	Unfounded

Submitted on October 26, 2005.

Turna R. Lewis
Complaint Examiner