

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0103
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Seventh District
Allegation 1:	Use of Excessive or Unnecessary Force against COMPLAINANT
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	September 7, 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 filed a complaint with the Office of Police Complaints (OPC) on February 24, 2005.¹ COMPLAINANT alleged that on January 11, 2005, Metropolitan Police Department (MPD) SUBJECT OFFICER, Seventh District, used unnecessary or excessive force against the complainant and her companion, WITNESS #1, and subjected them to language that was insulting, demeaning, or humiliating.

Specifically, COMPLAINANT stated that she was riding in the back seat of a car being driven by a male whom she knew as "WITNESS #2." Also riding was WITNESS #1, who was seated in the front passenger seat. As they were driving, she saw a police car behind them. WITNESS #2 began driving faster and the complainant told him to slow down. The car subsequently crashed into a guardrail on Morris Road, S.E. WITNESS #2 ran from the car. The complainant alleged that SUBJECT OFFICER approached the car with his gun drawn. When he reached the car, SUBJECT OFFICER allegedly opened the front passenger door and pulled

¹ The complaint form was initially completed by the complainant's aunt, WITNESS #3, on behalf of her niece, COMPLAINANT, who was 16 years old. The complaint form was also signed by COMPLAINANT, and this Complaint Examiner considers COMPLAINANT to be the proper complainant.

WITNESS #1 from the car. SUBJECT OFFICER then “dragged” WITNESS #1 to the rear of the car, “jump[ed] on” WITNESS #1 while standing above him, and kicked him. SUBJECT OFFICER allegedly asked WITNESS #1, “who the fuck is your friend?” and handcuffed him.

The complainant further alleged that the subject officer then came to the rear passenger door and opened it. The complainant was still seated in the car. The subject officer grabbed the complainant’s arm and pulled her from the vehicle. The subject officer placed the complainant’s arm behind her and escorted her to the rear of the car. Once they reached the rear of the car, the subject officer pushed the complainant’s head onto the trunk where the complainant’s cheek struck the trunk. The subject officer then handcuffed the complainant and asked her, “who was the boy that ran?” The complainant told him that she did not know and the subject officer then sat her down on the curb. SUBJECT OFFICER approached the complainant a short while later and asked her what happened to her eye. The complainant told him that he caused her eye injury when he pushed her head onto the trunk. The subject officer allegedly responded, “oh fucking well!” and walked away. He came back with a flashlight and looked at her eye. The subject officer told the complainant that the swelling looked like it was going down. The complainant was asked to identify the driver in photographs, but could not. However, she provided the officers with his nickname, “WITNESS #2.” The complainant was subsequently taken to her aunt’s hair salon where she was released. Complainant submitted a complaint to OPC in timely way and in the proper form.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC’s Report of Investigation, 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., title 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC’s Report of Investigation and the objections submitted by SUBJECT OFFICER through his representative on August 1, 2005, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 11, 2005, COMPLAINANT and WITNESS #1 were riding in a stolen car with a driver who was known by his nickname, “WITNESS #2.” WITNESS #1 was seated in the front passenger seat of the car and COMPLAINANT was seated in the rear. COMPLAINANT and WITNESS #1 are not suspected to be involved in the theft of the car.
2. The driver, WITNESS #2, was driving recklessly and attracted the attention of SUBJECT OFFICER, Seventh District who began to follow the car. When the driver failed to pull over for a traffic stop, SUBJECT OFFICER ceased his pursuit. The car subsequently

crashed into a guardrail on Morris Road, S.E., and SUBJECT OFFICER rediscovered the car.

3. After the collision, the driver of the car fled on foot and evaded apprehension. SUBJECT OFFICER grabbed WITNESS #1 and handcuffed him.
4. SUBJECT OFFICER then reached into the back seat where COMPLAINANT sat. COMPLAINANT had not exited the vehicle on her own volition. SUBJECT OFFICER grabbed COMPLAINANT's arm and forcefully removed her from the backseat, using what appears to have been an arm bar technique.
5. COMPLAINANT did not struggle to avoid handcuffing.
6. In the process of handcuffing COMPLAINANT, SUBJECT OFFICER pushed COMPLAINANT's face into the trunk of the car. From this force, COMPLAINANT bruised her right cheek.
7. SUBJECT OFFICER noticed swelling under COMPLAINANT's eye several minutes after handcuffing her and inquired how she had been injured. COMPLAINANT told SUBJECT OFFICER that he had injured her.
8. WITNESS OFFICER #1 arrived on the scene and observed a large bruise under COMPLAINANT's right eye. He inquired of COMPLAINANT how she had become hurt. COMPLAINANT told WITNESS OFFICER #1 that SUBJECT OFFICER had slammed her head against the trunk of the car as he was handcuffing her.
9. WITNESS OFFICER #1 also asked SUBJECT OFFICER how COMPLAINANT had received her injury. SUBJECT OFFICER replied that she had gotten injured while exiting the vehicle.
10. COMPLAINANT was released and WITNESS OFFICER #1 drove her to her aunt's place of employment. COMPLAINANT's aunt observed the swelling on COMPLAINANT's face and spoke with WITNESS OFFICER #1. WITNESS OFFICER #1 advised her how to file a complaint with OPC.
11. Later that night, COMPLAINANT sought treatment at Greater Southeast Community Hospital and filed a timely report with OPC.

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].”

Turning to Allegation 1, 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.”²

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., title 6A, § 2199.1.

The evidence presented in the Report of Investigation provides sufficient evidence to determine that SUBJECT OFFICER employed excessive or unnecessary use of force against COMPLAINANT when he pushed her face into the trunk of a car causing significant bruising on the right side of her face. Even taking into account the objections raised in SUBJECT OFFICER’s response to the Report of Investigation, the allegations that SUBJECT OFFICER used excessive force against COMPLAINANT are simply more credible than SUBJECT OFFICER’s denial and inconsistent explanations for the undisputed fact that COMPLAINANT was injured on January 11, 2005.

COMPLAINANT’s allegations were consistent – with minor, immaterial variations – both during the night in question and throughout the pendency of the investigation. COMPLAINANT alleged that SUBJECT OFFICER slammed her face into the trunk of the car and that she received a bruise on the right side of her face, under her eye. COMPLAINANT made this allegation first on January 11, 2005 when SUBJECT OFFICER inquired what happened to her cheek. Exhibit 1; Exhibit 2; Exhibit 7. Shortly thereafter, she repeated the allegation to WITNESS OFFICER #1 at the scene of the incident. Exhibit 5; Exhibit 2. That same night, COMPLAINANT asserted the same allegation to the medical personnel at Greater Southeast Community Hospital. This exhibit presented extremely compelling evidence since

² 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.

COMPLAINANT had virtually no reason to fabricate the source of her injury to the doctor. Even if COMPLAINANT's aunt had been present during her interviews with the medical personnel, COMPLAINANT had little reason to lie about the incidents that resulted in her injury. COMPLAINANT's aunt knew COMPLAINANT had been in a car accident earlier in the evening and therefore, COMPLAINANT could easily have supplied that explanation to the medical personnel when asked had that been the true source of her injury. Exhibit 3. Subsequently, she alleged the very same conduct occurred in her OPC complaint, filed on February 23, 2005. Exhibit 1. Finally, during her OPC witness interview, COMPLAINANT against asserted that SUBJECT OFFICER pushed her head into the trunk of the car causing the bruising on her cheek.

In addition to asserting consistent allegations regarding the incident, COMPLAINANT provided a credible version of the events because she failed to embellish or dramatize when recounting the story. COMPLAINANT did not claim that SUBJECT OFFICER used a spectacular amount of force when he hit her head on the hood of the car. Further, she did not even claim that she immediately felt pain after the impact, but that after a few minutes she felt a pounding sensation. Exhibit 2. Finally, she did not claim that she has lasting injuries from the incident. Exhibit 2.

SUBJECT OFFICER, on the other hand, offered several different explanations for COMPLAINANT's injury, depending on his audience and the moment that he spoke. Of course, as SUBJECT OFFICER suggests in his Objections, if SUBJECT OFFICER was unsure how COMPLAINANT was injured, he might have suggested various possibilities for the cause of her injuries. However, since SUBJECT OFFICER presented each explanation he offered not as a possibility but as fact, these alternative explanations suggest fabrication rather than idle hypothesis.

WITNESS OFFICER #1 reported that when he arrived at the scene and observed COMPLAINANT's injury, SUBJECT OFFICER explained that COMPLAINANT injured herself when she bumped her head on the way out of the car. Exhibit 5. During his witness interview, SUBJECT OFFICER stated that he believed that COMPLAINANT's injury resulted from the car accident that preceded his interaction with her. Exhibit 7. On the evening of the incident, SUBJECT OFFICER filed two reports which addressed COMPLAINANT's injuries in ways that are internally inconsistent and which offer still two additional narratives about COMPLAINANT's injury and its cause. In the Stop and Frisk Report that he filed, SUBJECT OFFICER reported that COMPLAINANT had minor swelling under her right eye, but stated that she had sustained the injury in an unknown manner before being placed in handcuffs. Exhibit 8. Finally, in the Traffic Accident Report that SUBJECT OFFICER completed on the night of the incident, he denied that COMPLAINANT had *any* injuries and further stated that no persons were injured in the accident. Exhibit 9. Because SUBJECT OFFICER claimed that he noticed COMPLAINANT's injury several minutes after handcuffing her (Exhibit 7), it is virtually impossible that he completed this report before noting her injury. Even if he had, he would have

been compelled to edit the report for accuracy once noting the injury. This statement, of course, directly contradicts the statement that he made to the OPC interviewer.

Neither the Report of Investigation nor the Objections suggest that use of force against COMPLAINANT was reasonable given the circumstances. There is no evidence that COMPLAINANT was resisting arrest or posing a threat to the safety of the arresting officer. SUBJECT OFFICER's actions, therefore, were in violation of MPD orders governing conduct incident to an arrest. Because COMPLAINANT's allegations about use of force against her are extremely credible and consistent and SUBJECT OFFICER's statements are, on the other hand, substantially inconsistent, the allegation of Use of Excessive or Unnecessary Force will be sustained.

On the other hand, the allegation of Use of Excessive or Unnecessary Force by SUBJECT OFFICER against WITNESS #1 must be dismissed for insufficient facts. While COMPLAINANT made several statements accusing SUBJECT OFFICER of using excessive force against WITNESS #1, there is insufficient information about the nature of the force and WITNESS #1's injuries. COMPLAINANT's allegations are simply too vague to sustain these allegations. These allegations were apparently not discussed with WITNESS OFFICER #1 at the scene. In addition, WITNESS #1 did not make himself available to the OPC investigator.

Turning to Allegation 2, language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H "includes, but is not limited to acts, words, phrases, slang, slurs, epithets, 'street' talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual."

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."

COMPLAINANT alleged that SUBJECT OFFICER violated the MPD orders when he asked "who the fuck" the driver of the car was and when he responded to COMPLAINANT's allegation that SUBJECT OFFICER had injured her by saying, "oh fucking well." COMPLAINANT repeated her allegation that SUBJECT OFFICER said "oh fucking well" in both her initial complaint and in her OPC interview. Exhibits 1 and 2. However, she only alleged that he asked "who the fuck is your friend?" in her OPC interview. No other exhibits or witnesses – with the exception of SUBJECT OFFICER who denied asking "who the fuck is your friend" – address these allegations. On the basis of COMPLAINANT's allegations and no further corroboration by other sources, the facts are simply insufficient to sustain the allegation of Insulting, Demeaning, or Humiliating Language.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained in part; Insufficient Facts in part
Allegation 2:	Insufficient Facts

Submitted on September 7, 2005.

Laurie S. Kohn
Complaint Examiner