

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.: 05-0228

Complainant: COMPLAINANT

**Subject Officer(s),
Badge No.
District:** SUBJECT OFFICER
Fourth

Allegation: Insulting, Demeaning, or Humiliating Language or Conduct

Examiner: Paula Xinis

Merits Determination Date:

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).

SUMMARY OF COMPLAINT ALLEGATIONS

The COMPLAINANT, filed a complaint with the Office of Police Complaints (OPC) on April 11, 2005. COMPLAINANT alleged that on April 5, 2005, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Fourth District, used language or engaged in conduct toward her that was insulting, demeaning, or humiliating.

Specifically, on April 5, 2005, COMPLAINANT, a 15-year-old student at SCHOOL #1, NW in the District of Columbia, had been fighting with another student, WITNESS #1, on school grounds. MPD SUBJECT OFFICER, who served as a School Resource Officer at SCHOOL #1, NW, was summoned to assist in breaking up the fight between COMPLAINANT and WITNESS #1. COMPLAINANT alleged that in the course of arresting her, SUBJECT OFFICER told her, "I'll break your fucking arm." COMPLAINANT also alleged that SUBJECT OFFICER grabbed her between her legs and slammed her to the ground while arresting her; picked her up by one handcuff, causing the cuff to cut into her skin; and repeatedly slammed her head into a metal doorknob, causing a laceration above her right eye. COMPLAINANT was arrested for disorderly affray/conduct and treated at Children's Hospital for minor injuries.

On December 21, 2005, a member of the Police Complaints Board (PCB) dismissed the allegations that SUBJECT OFFICER used unnecessary or excessive force, concurring with the OPC's executive director's determination. Accordingly, this opinion addresses the single surviving allegation that SUBJECT OFFICER used insulting, demeaning or humiliating language while arresting the Complainant.

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. Further, the subject officer did not file any objections to the Report of Investigation. The documentary evidence, therefore, presents a sufficient and accurate disclosure of the facts necessary to reach a determination. *See* D.C. Mun. Regs., title 6A, § 2116.3.

FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On the morning of April 5, 2005, COMPLAINANT, a fifteen-year old student at SCHOOL #1, NW, engaged in a physical altercation with another student, WITNESS #1, inside the school. The altercation involved both girls punching, kicking, and smacking each other. Other students were gathered around watching the fight.
2. Private Security Officers WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 responded to break up the fight. Security WITNESS OFFICER #1 attempted to restrain Complainant who continued to flail her arms and legs in an effort to break free from Security WITNESS OFFICER #1's restraint. Due to Complainant's size - five foot ten and approximately 180 lbs - Security WITNESS OFFICER #1 could not maintain complete control of Complainant. At one point, Complainant and WITNESS #1 broke free from the security officers and resumed fighting.
3. While the security officers tried to separate and restrain the two fighting students, MPD SUBJECT OFFICER, who acts as a resource officer for the high school, responded to the altercation. MPD SUBJECT OFFICER saw Security WITNESS OFFICER #1 struggling to restrain Complainant as she continued to kick and swing her fists in an attempt to break free. In response, MPD SUBJECT OFFICER repeatedly instructed Complainant to calm down and warned her that failure to calm down would result in her arrest.

4. Because Complainant continued to vigorously resist the Officers, SUBJECT OFFICER began to place her under arrest. While trying to place her under arrest, Complainant continued to resist and, at one point, knocked the handcuffs away from SUBJECT OFFICER.
5. Although Complainant continued to kick and swing her arms, SUBJECT OFFICER eventually was able to secure the handcuffs on Complainant's left wrist. SUBJECT OFFICER then employed a takedown technique by clocking his elbow around Complainant's knee, then placing her on the ground.
6. While in this take-down position, SUBJECT OFFICER repeatedly instructed Complainant to surrender her right arm so that he could fully cuff her. Complainant instead locked her left arm and would not give her right arm to the officer. According to Complainant, SUBJECT OFFICER told her during this time that "I don't care, I'll break your fucking arm."
7. SUBJECT OFFICER admits that he said to the Complainant words to the effect "Give me your fucking arm or I'll break it." SUBJECT OFFICER further explained that he intended this statement as a warning to Complainant that if she continued to resist, she could severely injure her arm.
8. Eventually, Complainant responded to SUBJECT OFFICER's commands and was placed under arrest. After receiving treatment for minor injuries, the Complainant was booked and processed as a juvenile.

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]."

This case involves a single allegation of an Officer having used language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H. Language prohibited by this Special Order "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.”

Additionally, MPD General Order 201.26 part I, Section C(3) clearly prohibits an Officer’s use of profanity. It states: “members shall refrain from harsh, violent, coarse, profane, sarcastic or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful or offensive to the dignity of any person.” Thus, pursuant to both MPD Special Order 01-01, Part III, Section H and MPD General Order 201.26 part I, Section C(3), officers must perform their often difficult jobs without resorting to profane or vulgar language.

Here, it is undisputed that SUBJECT OFFICER used profanity in the course of arresting Complainant. Complainant recalls SUBJECT OFFICER stating: “I’ll break your fucking arm.” SUBJECT OFFICER also, quite candidly, agrees that he used the words “fucking arm” in the course of the arrest. However, the Officer explains that he said something like “give me your fucking arm or I’ll break it” in an attempt to forewarn Complainant that she risked serious injury in continuing to resist arrest.

Recognizing SUBJECT OFFICER’s stated good intentions, his use of profanity nonetheless violated MPD Orders. In addition to Section C(3) of MPD General Order 201.26, part I, Section C(1) of that same Order also mandates 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.” These Orders make no exception for an officer’s use of foul language while issuing legitimate commands or warnings. Indeed such an exception would swallow the rule were an officer’s profanity excused if uttered in the course of performing such routine duties. Thus, even though SUBJECT OFFICER had to wrestle with Complainant who resisted so violently that she risked serious injury, he was required to refrain from using any profanity during this challenging encounter.

It is noteworthy that at other times during the incident, SUBJECT OFFICER gave Complainant firm, forceful and direct commands without resorting to vulgar language. He should have persisted in that approach during the entire encounter. The Officer’s obligation to execute his duties without using profanity is even more critical when considering that he is a resource Officer in a high school, and, as such, interacts with minors regularly. Accordingly, this Complaint Examiner finds that MPD SUBJECT OFFICER used profane language while performing his duties, in violation of MPD Special Order 01-01, Part III, Section H, and MPD General Order 201.26 part I, Section C(3).

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Sustained

Submitted on February 23, 2006.

Paula Xinis
Complaint Examiner