

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF CITIZEN COMPLAINT REVIEW**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	01-0120
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, 4th District
<b>Allegation 1:</b>	Use of Excessive or Unnecessary Force
<b>Complaint Examiner:</b>	Cynthia B. Schultz
<b>Merits Determination Date:</b>	November 6, 2003

Pursuant to D.C. Official Code § 5-1107(a), 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).

Pursuant to standard OCCR policy, since the complaint alleged the use of unnecessary or excessive force, OCCR referred the matter on March 21, 2001 to the U.S. Attorney for the District of Columbia for possible criminal prosecution of the subject officer. On August 12, 2002, OCCR received a letter dated August 12, 2002 and signed by Assistant U.S. Attorney Sherri Berthrong on behalf of Roscoe Howard Jr., U.S. Attorney, declining any criminal prosecution arising from the incident. Thereafter, OCCR conducted its own investigation of the matter. SUBJECT OFFICER did not file any objections to the OCCR Report of Investigation.

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

In a complaint filed with the Office of Citizen Complaint Review (OCCR) on March 21, 2001, COMPLAINANT alleged that SUBJECT OFFICER used unnecessary or excessive force against her when the officer arrested her.

Specifically, COMPLAINANT alleged that when SUBJECT OFFICER arrived at her friend's apartment on March 13, 2001 for a noise complaint, she attempted to reenter the apartment to retrieve her keys and got into a verbal exchange with the officer. Subsequently, according to the complainant, the officer slammed her against the wall and placed her in handcuffs. The complainant further alleges that that the subject officer pushed her "wall to wall" down the hallway and deliberately pushed her down five steps. The complainant sustained injuries and was treated at Washington Adventist Hospital.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR'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 OCCR's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 13, 2001, COMPLAINANT, WITNESS #1, and WITNESS #2 were playing music and singing karaoke at WITNESS #2's apartment at LOCATION #1, N.W., around midnight.
2. WITNESS #2 is a friend of the Complainant.
3. SUBJECT OFFICER and his MPD partner, WITNESS OFFICER #1, arrived at the apartment in response to a noise complaint made by a neighbor.
4. The officers questioned the neighbor and WITNESS #2.
5. WITNESS #3, the Mother of WITNESS #2, was present in the hallway during the questioning and subsequent events.
6. The discussion between WITNESS #2 and the neighbor was acrimonious.
7. While the officers were in the hallway discussing the complaint with the neighbor and WITNESS #2, both COMPLAINANT and WITNESS #1 left the apartment and walked past the officers who were standing in the hallway.
8. As COMPLAINANT passed the neighbor and the officers, she made loud and inflammatory remarks such as "Even if the TV's loud [neighbors] still call the cops."
9. COMPLAINANT realized as she was departing the building that she had left her keys in the apartment.
10. She attempted to return to the apartment to retrieve her keys and SUBJECT OFFICER told her to leave the building.
11. COMPLAINANT attempted to pass the subject officer to retrieve her keys and he pushed her away as she tried to reenter the apartment.
12. COMPLAINANT responded by saying, "get the fuck off me, I did not touch you."
13. SUBJECT OFFICER grabbed and overpowered the complainant and handled her roughly by pushing her "wall to wall" against the walls in the hallway.
14. COMPLAINANT struggled and fought back.
15. SUBJECT OFFICER placed her under arrest for disorderly conduct and placed her in handcuffs.

16. SUBJECT OFFICER stated that Complainant “calmly” complied and was handcuffed.
17. WITNESS #1 ran to render aid to COMPLAINANT and SUBJECT OFFICER and WITNESS OFFICER #1 physically intervened and WITNESS OFFICER #1 restrained WITNESS #1.
18. SUBJECT OFFICER walked behind COMPLAINANT and held her by the handcuffs.
19. SUBJECT OFFICER said to the Complainant, “You’re going to fall down the steps,” because the Complainant kept struggling.
20. While COMPLAINANT was in handcuffs, at least three witnesses observed SUBJECT OFFICER push the Complainant down the stairs.
21. WITNESS #3 saw SUBJECT OFFICER push COMPLAINANT down the hall and push her down the steps after she was handcuffed. She was “shocked” by SUBJECT OFFICER’s conduct.
22. WITNESS #2 and WITNESS #1 saw SUBJECT OFFICER push COMPLAINANT down the hall, handcuff her, and push her down the steps, because they were standing in the hallway within plain view.
23. COMPLAINANT sustained a contusion to her head, a bruised elbow, and a knot on her forehead and deep bruises on her wrist from the handcuffs and was treated at Washington Adventist hospital for her injuries on March 14, 2001.
24. After being pushed down the steps, COMPLAINANT was picked up by SUBJECT OFFICER and escorted to the police car.
25. SUBJECT OFFICER denied pushing COMPLAINANT.
26. WITNESS OFFICER #1 drove her to the Fourth District.
27. The person who initially filed the complaint no longer lives in the building and was not interviewed.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), “[t]he Office [of Citizen Complaint Review] shall have the authority to receive and to dismiss, conciliate, mediate, or 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; ... Use of unnecessary or excessive force ... .”

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.”

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.”<sup>1</sup>

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 officer and others.”

“Application of the Use of Force Continuum for the Metropolitan Police Department” provides additional written guidelines to MPD officers on the appropriate use of force. The guidelines state that “the use of physical force by members of the Metropolitan Police Department is limited to the following: 1. Defending yourself or others from an actual or perceived attack; 2. Effecting the arrest or preventing the escape of a suspect; and 3. Overcoming resistance.”

The Complainant’s allegations that SUBJECT OFFICER grabbed her and pushed her against the wall have merit. Three witnesses who stood in the hallway and had direct view of the incident stated that they saw SUBJECT OFFICER push COMPLAINANT “wall to wall” to the end of the hallway, place her under arrest, and then push her down a flight of five steps. As a result of being pushed down the steps, the Complainant hit her head on the concrete landing and suffered a contusion to her forehead. The following day, the Complainant received treatment for her injuries at the Washington Adventist Hospital.

SUBJECT OFFICER’s account that COMPLAINANT ran down the steps instead of being pushed lacks merit. Not only did SUBJECT OFFICER admit that he had handcuffed COMPLAINANT prior to reaching the steps, he also admitted that she was calm after she was arrested, and that he had control of her by holding on to her and guiding her from behind. It is likely that there was resistance at certain points of this incident not only by COMPLAINANT, but also by her friends who attempted to assist her. Even if there was initial resistance by COMPLAINANT when SUBJECT OFFICER physically blocked her reentry into the apartment, it is understandable given the fact that she was simply attempting to retrieve her keys so that she could comply with his request that she exit the building. It was SUBJECT OFFICER’s inappropriate handling of this situation that triggered the chain of events that followed.

Once SUBJECT OFFICER placed the Complainant under arrest, he stated that she was calm. SUBJECT OFFICER no longer was justified in applying the use of force, because he had gained control over her person and was not under an actual or perceived attack or overcoming resistance. It is highly unlikely given all of the facts and the eye witness accounts, that the

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<sup>1</sup> The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR 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 fell down the steps and suffered the injuries that she without the use of some force to push her down the stairs. Given that SUBJECT OFFICER had control of her handcuffs and stood behind her and was seen pushing her from “wall to wall,” prior to the arrest and given that SUBJECT OFFICER did not admit that he had lost control of the complainant, it would follow that he also pushed her when he directed her body toward the stairs.

Additionally, the subject officer’s statement to the Complainant that she was going to fall down the stairs prior to it actually occurring should have compelled him to exercise extra caution so that no harm would come to her as he directed her toward the stairs. SUBJECT OFFICER had backup support from WITNESS OFFICER #1 who was responding to WITNESS #2’s outrage at SUBJECT OFFICER’s handling of his friend. WITNESS OFFICER #1 said that SUBJECT OFFICER did not push the Complainant down the stairs, but he also said that at the time she went down the stairs he was in the process of stopping WITNESS #2 from rushing down the hallway toward SUBJECT OFFICER and the Complainant. Based on the credible statements from the other witnesses, WITNESS #2, WITNESS #3, and WITNESS #1, who were all watching what was happening at the stairs, I concur with OCCR and conclude that SUBJECT OFFICER pushed COMPLAINANT against a wall and down the steps, while she was handcuffed, causing her to strike her head against the concrete floor.

Moreover, SUBJECT OFFICER’s use of force to push the complainant down the steps – while she was in his custody – was not justified. Once the subject officer placed the complainant in custody and put handcuffs on her, SUBJECT OFFICER was responsible for the complainant’s safety. The evidence suggests that SUBJECT OFFICER either pushed or allowed the complainant to fall down the stairs. In sum, I conclude that SUBJECT OFFICER used unnecessary or excessive force against the complainant, in violation of MPD General Order 901.7.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER, 4th District

<b>Allegation 1:</b>	Sustained
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Submitted on November 6, 2003.

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Cynthia B. Schultz  
Complaint Examiner