

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0172
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, 3rd District SUBJECT OFFICER #2, 3rd District SUBJECT OFFICER #3, 3rd District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language
Allegation 3:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	February 8, 2004

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).

I. SUMMARY OF COMPLAINT ALLEGATIONS

In a complaint filed with the Office of Citizen Complaint Review (OCCR) on April 19, 2001, COMPLAINANT alleged that on April 17, 2001, SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3, harassed him when they chased him in the absence of a legitimate law enforcement purpose, handcuffed him, apprehended him and, and again pursued him for sport after they released him. COMPLAINANT also alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 directed language toward him that was insulting, demeaning or humiliating. Specifically, COMPLAINANT reported that SUBJECT OFFICER #2 called him a “punk,” a “nobody,” a “lying stupid motherfucker,” and told him “you [ain’t] never going to amount to nothing,” and “bet you can’t take a hit.” COMPLAINANT complained that SUBJECT OFFICER #1 told him to “take [his] ass home.” COMPLAINANT further alleged that SUBJECT OFFICER #1 subjected him to unnecessary or excessive force by striking him in the head with a hard object.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, although the Complaint Examiner determined that there were issues of material fact in dispute that required a hearing, COMPLAINANT was unavailable for a hearing due to his current incarceration. Although a complainant's failure to appear without good cause can result in dismissal of the complaint, this Complaint Examiner finds that incarceration provides good cause for COMPLAINANT's absence under D.C. Mun. Reg., Tit. 6A, § 2118.9. However, going forward with a hearing would be futile in COMPLAINANT's absence, since he carries the burden of proof in this proceeding.

On January 5, 2004, the Office of Citizen Complaint Review determined that the complaint should proceed without a hearing and so informed Subject Officers' counsel. Counsel responded on January 6, 2004, that the Subject Officers would rather the Executive Director dismiss the complaint outright pursuant to D.C. Mun. Reg., Tit. 6A, sec. 2118.7. On January 7, 2004, the Executive Director denied the request of Subject Officers' counsel. Instead of dismissing the complaint, the Executive Director determined that, in order to comply with the regulatory obligation to adjudicate complaints in a fair and impartial manner without significant additional delay, the complaint should be adjudicated by written opinion based only on the Report of Investigation and its supporting documents. D.C. Mun. Reg., Tit. 6A, § 2116.1. Moreover, the concerns of the Subject Officers have been rendered moot by the Complaint Examiner's failure to sustain any of the allegations herein.

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation, the objections submitted by SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 on August 22, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 17, 2001, the Subject Officers were on patrol near the intersection of 4th Street and R Street, N.W. The Subject Officers, who drove an unmarked white Crown Victoria, spotted COMPLAINANT.
2. Upon seeing the white car, COMPLAINANT fled the scene, and attempted to conceal himself in the tall grass at 3rd Street, N.W.
3. When COMPLAINANT fled, the Subject Officers pursued him to 3rd Street. They conducted a stop and frisk of COMPLAINANT in front of 1618 3rd Street, N.W., calling the warrant squad to determine if there was a warrant pending against him.
4. After the stop and frisk, the Subject Officers released COMPLAINANT.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Citizen Complaint Review] 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].”

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.”¹

Based on the facts as presented, this allegation cannot be sustained. As detailed above, COMPLAINANT alleged that the Subject Officers harassed him when they pursued him, apprehended him, and later chased him on April 17, 2001. Although the evidence illustrates that the Subject Officers pursued and apprehended COMPLAINANT, there is no evidence that those actions were undertaken to bother or annoy COMPLAINANT. Instead, the evidence suggests that the Subject Officers were motivated by a specific law enforcement purpose when they pursued, stopped, and frisked COMPLAINANT. COMPLAINANT’s statements illustrate that when he was approached by the white Crown Victoria, which was an unmarked police car, he fled from the site. General Order No. 304.10 dictates that an officer may conduct a stop and frisk if he “reasonably suspects that a person has committed, is committing, or is about to commit any crime.” Gen. Order No. 304.10. Reasonable suspicion may be provoked by the suspect fleeing from an incident. Further, an individual’s prior record, together with other circumstances may form the basis of reasonable suspicion. *Id.* COMPLAINANT’s precipitous flight after sighting the police car, together with his prior record would provide ample basis for reasonable suspicion. Because SUBJECT OFFICER #3 had arrested COMPLAINANT in 1998 for possession with intent to distribute, he may have been aware of his prior record.

COMPLAINANT further alleged that SUBJECT OFFICER #1 harassed him by chasing him up 4th Street without a law enforcement purpose after having released him. Because this allegation is uncorroborated and lacks sufficient detail, the allegation cannot be sustained.

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,

¹ 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 “harassment” contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

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."

There is insufficient evidence to sustain COMPLAINANT's allegations of insulting, humiliating or demeaning language against the Subject Officers. COMPLAINANT alleged during an interview with OCCR that SUBJECT OFFICER #2 stated to him: "You are a lying stupid motherfucker," "you [ain't] never going to amount to nothing," and "bet you can't take a hit." Further, he alleged that the three officers cursed at him and called him a "punk" and a "nobody." Finally, COMPLAINANT complained that SUBJECT OFFICER #1 told him to "take [his] ass home." If COMPLAINANT had put forth sufficient evidence to prove that the officers made these statements, then indeed, they might have amounted to actionable demeaning language. However, these allegations are not corroborated and COMPLAINANT's allegations regarding the statements are inconsistent.

None of the individuals interviewed by OCCR corroborated that the demeaning statements were made. The Subject Officers do not recall such statements being made. More significantly, however, neither WITNESS OFFICER #1, the watch commander who spoke with COMPLAINANT the night of the incident, nor WITNESS #1, COMPLAINANT's mother, indicated that COMPLAINANT complained that the officers made demeaning statements.

Further, COMPLAINANT damaged his own credibility regarding these allegations when he failed to mention the harassing statements in his OCCR interview one year after the incident. Although COMPLAINANT complained of harassment and excessive use of force during the interview, he did not report any demeaning language by the Subject Officers.

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

Again, the evidence is insufficient to sustain the allegation that SUBJECT OFFICER #1 subjected COMPLAINANT to use of unnecessary or excessive force by hitting him in the head with a hard object. The report of investigation reveals both that this allegation is uncorroborated and that COMPLAINANT's allegations are inconsistent. Although COMPLAINANT spoke to

² 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.

both WITNESS OFFICER #1 and to his mother the night of the incident, neither individual reported that COMPLAINANT complained of being hit in the head with flashlight or something hard. WITNESS OFFICER #1 stated that COMPLAINANT complained only that the officers had “roughed him up.” Similarly, WITNESS #1 recalled hearing only that the officers may have kicked and punched COMPLAINANT.

Further, COMPLAINANT’s statements to OCCR are internally inconsistent regarding his allegations of excessive force. COMPLAINANT alleged in his complaint that an officer hit him with something in the head. In his April 19, 2001, interview with OCCR, he elaborated that SUBJECT OFFICER #1 was the officer who hit him in the head with, what he suspected was a flashlight. In the April 24, 2002, interview, COMPLAINANT did not recall which officer had hit him. Further, COMPLAINANT reported, for the first time, that an officer kicked him in the stomach. Such inconsistencies call COMPLAINANT’s credibility into question. COMPLAINANT’s lack of credibility and the absence of corroborative evidence prevent this allegation from being sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3

Allegation 1: Harassment	Exonerated in Part/Insufficient Facts in Part
Allegation 2: Insulting or Demeaning Language	Insufficient Facts
Allegation 3: Excessive Force	Insufficient Facts

Submitted on February 8, 2004.

Laurie S. Kohn
Complaint Examiner