

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0090
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 4th District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Michael K. Lewis
Merits Determination Date:	September 12, 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).

I. SUMMARY OF COMPLAINT ALLEGATIONS

In a complaint filed with the Office of Citizen Complaint Review (OCCR) on December 14, 2001, COMPLAINANT alleged that SUBJECT OFFICER harassed him. On December 13, 2001, SUBJECT OFFICER followed COMPLAINANT into LOCATION #1, N.W., confronted him in the store, and arrested him for disorderly conduct when allegedly no such conduct occurred. The complainant also alleged that while being arrested, the subject officer used unnecessary or excessive force against him by causing his head to strike a Plexiglas barrier, resulting in injury. The complainant further alleged that the subject officer used language or engaged in conduct that was insulting, demeaning or humiliating by following him around the store, threatening to arrest him in front of store employees, and placing him under arrest in front of store employees and his fiancée.

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 and on the objections submitted by SUBJECT OFFICER's attorney, which the Complaint Examiner considered fully despite the fact that they were submitted one day after the deadline, on July 29, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 13, 2001, SUBJECT OFFICER, who had been assisting WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 on the corner of STREET #1 and STREET #2, N.W., noticed a car stopping near the corner.
2. SUBJECT OFFICER yelled to the driver, Complainant's fiancée, WITNESS #1, to move the car away from the corner.
3. SUBJECT OFFICER then saw the Complainant get out of the front passenger seat of the car, look toward SUBJECT OFFICER, and walk into a store on the corner.
4. SUBJECT OFFICER approached the driver's side of the car and told the driver, WITNESS #1, "It's against the law to park within 40 feet of an intersection." SUBJECT OFFICER also told WITNESS #1 that there was a lot of traffic at the corner of STREET #1 and STREET #2, N.W., and that narcotics were often bought and sold on the corner. SUBJECT OFFICER told WITNESS #1 that he would issue her a \$20 Notice of Infraction (NOI) for parking in front of a mailbox and a \$50 NOI for parking in an intersection. The appropriateness of the parking tickets is not at issue in this complaint.
5. At this point Complainant approached the car and asked SUBJECT OFFICER if he had "nothing better to do." SUBJECT OFFICER told him to go back in the store. COMPLAINANT complied with SUBJECT OFFICER instructions and went back into the store.
6. According to SUBJECT OFFICER's Arrest/Prosecution Report, the officer then "went into the store to inform COMPLAINANT that it is a D.C. violation to park on the corner of the intersection or to park in front of a mailbox."
7. SUBJECT OFFICER followed Complainant down the store's freezer aisle, where the Complainant removed some ice cream from the freezer. SUBJECT OFFICER heard COMPLAINANT make a reference to Osama Bin Laden. SUBJECT OFFICER believed that COMPLAINANT was being loud, argumentative and obnoxious.
8. According to the Complainant, SUBJECT OFFICER walked closely behind him, telling him, "Say one more word, I'm going to lock your ass up." WITNESS #2, a clerk in the

store, states that he heard SUBJECT OFFICER say only that he would arrest COMPLAINANT if he said anything else.

9. As COMPLAINANT approached the front counter to pay for the ice cream, SUBJECT OFFICER approached him. At that point WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS #1 entered the store and stood near the door. SUBJECT OFFICER heard WITNESS #1 tell COMPLAINANT to “just get what you want to get and let’s go” and WITNESS OFFICER #2 and WITNESS OFFICER #3 tell WITNESS #1 to “step out of the way.” SUBJECT OFFICER then told COMPLAINANT to put his hands on the counter. COMPLAINANT replied, “I’m not doing nothing.”
10. SUBJECT OFFICER then began to frisk COMPLAINANT. SUBJECT OFFICER found no weapons but felt COMPLAINANT “yank away” from him and start to walk toward the door. SUBJECT OFFICER told COMPLAINANT that he was under arrest. SUBJECT OFFICER later told WITNESS OFFICER #2 that he had arrested Complainant because he was “running his mouth.” He told WITNESS OFFICER #3 that Complainant had been “disorderly in the store.”
11. SUBJECT OFFICER grabbed COMPLAINANT, putting both hands on the upper part of his bicep, and swung COMPLAINANT around to SUBJECT OFFICER’s left. The lower part of COMPLAINANT’s body struck a cooler and his head struck the Plexiglas divider. COMPLAINANT said that his head was bleeding. SUBJECT OFFICER requested medical attention for COMPLAINANT, who was transported to the 4th District station.
12. Complainant subsequently was charged with disorderly conduct, paid a fine and was released.

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”

Harassment

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

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

MPD General Order 304.10, Part I, Section B, No. 1 states “[i]f a member reasonably suspects that a persons has committed, is committing, or is about to commit any crime, the officer has the authority to stop and detain that person for the purpose of determining whether or not probable cause exists to arrest. The officer may exercise the authority in any place in which he/she has a legal right to be.” [Emphasis in original]

MPD General Order 304.10, Part I. Section B, No. 2 states “[t]he term ‘reasonable suspicion’ is not capable of precise definition; it is more than a hunch or mere speculation on the part of the officer but less than the probable cause necessary to arrest. Reasonable suspicion is the combination of specific facts and circumstances which would justify a reasonable officer to believe that the person stopped had committed, was committing, or was about to commit a criminal act.”

While an officer may detain a person based upon reasonable suspicion, SUBJECT OFFICER failed to provide any evidence that he had any suspicions, reasonable or otherwise, that COMPLAINANT “had committed, was committing, or was about to commit a criminal act,” according to MPD General Order 304.10, Part I, Section B, No. 1 and No. 2. Without such suspicions, both the arrest and SUBJECT OFFICER’s desire to stop and frisk COMPLAINANT to document their prior interaction on the street were unjustified.

SUBJECT OFFICER was in the process of discussing a parking violation with WITNESS #1 when her fiancé, COMPLAINANT, came out of the store and asked what was going on. SUBJECT OFFICER told COMPLAINANT to return to the store, which, according to all of the witnesses, he did. SUBJECT OFFICER followed COMPLAINANT into the store, and continued following him around the store, threatening to arrest him if he continued to make comments to him.

The owners of the store had not indicated that COMPLAINANT was being disruptive in the store. SUBJECT OFFICER stated that COMPLAINANT was loud and boisterous outside of the store and that he attempted to stop and frisk the Complainant inside the store because he wanted to “document their interaction on the street.” At another point he said that he had followed COMPLAINANT into the store “to make sure [he] wasn’t being disruptive in the store.” SUBJECT OFFICER does not claim that he had cause to arrest Complainant when he entered the store.

COMPLAINANT’s comments to SUBJECT OFFICER inside the store caused SUBJECT OFFICER to continue to follow and threaten him, subsequently resulting in his arrest. SUBJECT OFFICER charged COMPLAINANT with disorderly conduct. However, according to WITNESS OFFICER #2, SUBJECT OFFICER told him that he arrested COMPLAINANT for “running his mouth.”

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.

SUBJECT OFFICER's conduct in the store interfered with COMPLAINANT's ability to go about his business normally. Prior to the actual arrest, SUBJECT OFFICER disrupted COMPLAINANT's "lawful business" of shopping in the store, annoying and bothering him to the point that he made comments back to SUBJECT OFFICER. Upon arresting COMPLAINANT, SUBJECT OFFICER further caused COMPLAINANT's "lawful business" to be interrupted and delayed when Complainant was transported to the 4th District station and held in custody for several hours.

SUBJECT OFFICER charged COMPLAINANT with disorderly conduct as the basis for his arrest. D.C. Code § 22-1321 states:

"Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; [or] (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons . . . shall be fined not more than \$250 or imprisoned not more than 90 days or both."

Regardless of whether a breach of the peace may have occurred outside the store, SUBJECT OFFICER arrested COMPLAINANT for actions that occurred inside the store. These actions did not fall within the definition of disorderly conduct, as provided in D.C. Code § 22-1321. SUBJECT OFFICER himself said that he gave COMPLAINANT a specific order to return to the store and that COMPLAINANT complied. SUBJECT OFFICER told OCCR investigators that he entered the store to make sure that COMPLAINANT was not disturbing customers, while in the PD 163 Arrest/Prosecution report, he stated that he entered the store to inform COMPLAINANT about parking regulations. In either case, SUBJECT OFFICER clearly did not enter the store to arrest COMPLAINANT for any conduct that occurred outside. There were no other customers in the store, and as SUBJECT OFFICER himself acknowledged, no store employee indicated that COMPLAINANT was causing a disturbance or annoying them in any way. SUBJECT OFFICER admitted that he did not have adequate legal justification to arrest COMPLAINANT for disorderly conduct.

Instead of preserving the peace, SUBJECT OFFICER aggravated an already tense situation. SUBJECT OFFICER had no legitimate law enforcement reason to enter the store, approach COMPLAINANT, prevent him from making a purchase or arrest him. Consequently, the Complaint Examiner concludes that SUBJECT OFFICER's conduct amounted to harassment of the complainant, in violation of MPD Special order 01-01, Part III, Section G, and MPD General Order 304.10, Part I, Section B, No. 1, and No. 2.

Unnecessary or Excessive Force

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.”

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

When SUBJECT OFFICER placed the Complainant under arrest, he did so in a manner that caused him injury. Although witnesses in the store support SUBJECT OFFICER’s statement that he did not purposefully cause COMPLAINANT’s head to hit the Plexiglas barrier at the counter, the witnesses support Complainant’s statement that SUBJECT OFFICER grabbed COMPLAINANT’s wrists in order to handcuff him and, as a result, caused COMPLAINANT’s head to hit the barrier. SUBJECT OFFICER himself acknowledged that two other officers were present in the store at the time of the arrest. Surely the additional officers could have stopped COMPLAINANT if he had attempted to leave the store. Instead, SUBJECT OFFICER employed physical force when such force was unnecessary. Complainant’s injuries were a direct result of the force employed by SUBJECT OFFICER. The Complaint Examiner concludes that SUBJECT OFFICER used unnecessary or excessive force against COMPLAINANT while arresting him, in violation of MPD General Order 901.7.

Language or Conduct

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. . . . 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.” No. 1, 3.

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.

According to the Complainant, when SUBJECT OFFICER followed him into the store, SUBJECT OFFICER said, "Say one more word, I'm going to lock your ass up." On its face, the use of such language would violate the MPD's prohibition of "harsh, violent, coarse, profane, sarcastic, or insolent language." However, the store clerk, WITNESS #2, stated only that SUBJECT OFFICER told COMPLAINANT that he would arrest him if he said anything else. Because WITNESS #2's independent statement did not corroborate COMPLAINANT's version of the language used by SUBJECT OFFICER, the Complaint Examiner concludes that there are insufficient facts to sustain the allegation.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained
Allegation 3:	Insufficient Facts

Submitted on September 12, 2003.

MICHAEL K. LEWIS
Complaint Examiner