

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0112
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Property Division
Allegation 1:	Use of Excessive or Unnecessary Force
Allegation 2:	NA
Allegation 3:	NA
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	July 23, 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 timely filed with the Office of Citizen Complaint Review (OCCR) on December 28, 2001, the complainant, COMPLAINANT (“Complainant”), alleged that on that same date, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER (“SUBJECT OFFICER”), formerly assigned to the 3rd District, subjected her to unnecessary or excessive force. COMPLAINANT claimed that SUBJECT OFFICER kicked her, threw her to the ground, and struck her in the head with his tactical baton before arresting her outside a nightclub.

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 objections submitted by SUBJECT OFFICER on June 16, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant left the LOCATION #1 nightclub in Northwest Washington during the early hours of December 28, 2001.
2. A disagreement erupted between Complainant and another female patron of the nightclub prior to SUBJECT OFFICER's arrival on the scene.
3. Several other officers were present at the scene.
4. Complainant was not noticeably intoxicated at the scene.
5. Complainant did not pose an obvious threat to the safety of any other officer or citizen at the scene.
6. The other officers had the situation under control when SUBJECT OFFICER arrived.
7. SUBJECT OFFICER did not employ any alternative techniques of effectuating the arrest before using force against Complainant.
8. Complainant did not resist arrest before SUBJECT OFFICER grabbed Complainant and slammed her, face first, to the ground.

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]."

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.”¹ The MPD General Order 901.7A specifies 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 further written guidance regarding the appropriate use of force. According to the guidelines, use of physical force by an officer is limited to the following: 1. Defending yourself and others from an actual or perceived attack; 2. Effecting arrest or preventing the escape of the suspect; and 3. Overcoming resistance.

In this case, the various interviews contained in the Report of Investigation provide sufficient consistent testimony to prove that SUBJECT OFFICER employed unnecessary or excessive force when he slammed Complainant to the ground outside of the LOCATION #1 nightclub in Northwest Washington on December 28, 2001.

SUBJECT OFFICER used to Excessive Force to Effectuate the Arrest of Complainant.

It is uncontested that SUBJECT OFFICER used force against Complainant. SUBJECT OFFICER states that he used his hands to push Complainant to the ground and that that force was necessary. The statements of the witnesses, however, prove that SUBJECT OFFICER’s use of force was excessive under the circumstances. While Complainant’s account that SUBJECT OFFICER hit her with a “blackjack,” has not been proven; the consistent statements of these witnesses support her allegation that he hit her with force from behind and slammed her to the ground.

The statements of WITNESS #1, WITNESS OFFICER #1, WITNESS OFFICER #2, and WITNESS OFFICER #3 all corroborate Complainant’s allegation that SUBJECT OFFICER used excessive force to effectuate her arrest. WITNESS #1 states that SUBJECT OFFICER approached Complainant from behind and “slammed” her to the ground. [Exhibit 7]. WITNESS OFFICER #1, who was 15 feet from the incident, states that SUBJECT OFFICER “clotheslined” Complainant, describing this action as striking Complainant from behind, “[SUBJECT OFFICER’s] left arm going to the left side of her head.”² [Exhibits 10 & 11]. Similarly,

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 “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.

² Complaint Examiner notes WITNESS OFFICER #1’s statements contain an inconsistency. In his interview with OCCR, that SUBJECT OFFICER used his right hand to “clothesline” Complainant. [Exhibit 10]. In contrast, in his MPD interview, he indicated that SUBJECT OFFICER used his left hand to accomplish this maneuver. [Exhibit 11]. However, because the two interviews were conducted 8 months apart, the passage of time seems a more reasonable interpretation for this slight inconsistency than fabrication. Therefore, his statements regarding SUBJECT OFFICER’s use of force will be credited to the extent they illustrate that he used extreme force in pushing Complainant to the ground.

WITNESS OFFICER #2 describes SUBJECT OFFICER grabbing the Complainant by her clothes and slamming her body to the ground in a “body slam.” [Exhibit 12; see also Exhibit 13]. Finally, WITNESS OFFICER #3 stated that SUBJECT OFFICER used extreme force in restraining Complainant: “It was rough, she’s a female, he’s a man. I mean, cause you could see he was stronger than her, he took her and slammed her back on the ground ever time she tried to get up, I recall her trying to get up at least twice. And he slammed her back down.” [Exhibit 14].

SUBJECT OFFICER’s Use of Force was not Legitimate.

Under appropriate circumstances, an officer may use force in effectuating an arrest. As outlined above, police procedures dictate that force may be used based on an officer’s reasonable belief about the force necessary to bring the incident under control. However, the statements of several witnesses eliminate the possibility that SUBJECT OFFICER resorted to force based on any of these legitimate rationales. The statements reveal that while Complainant may have been agitated and may have been bracing for an assault by another citizen, WITNESS #2, Complainant was not threatening to flee, resisting arrest, nor was she posing a threat to anyone such that use of force was necessary.

The witnesses consistently describe Complainant as under control at the point SUBJECT OFFICER appeared on the scene. WITNESS #1, who was standing very close to the incident, states that WITNESS #2 had reached out and pulled Complainant’s hair and that other officers had restrained the parties prior to SUBJECT OFFICER’s arrival. [Exhibit 7]. WITNESS OFFICER #1 stated that Complainant was neither combative toward an MPD officer nor was she resisting arrest. WITNESS OFFICER #1 also denied that Complainant appeared intoxicated. [Exhibit 11]. WITNESS OFFICER #3 also denies that Complainant was intoxicated at the scene. While she does indicate that she witnessed Complainant struggling with SUBJECT OFFICER, she states that her resistance began only after she had been thrown to the ground. [Exhibit 14]. Further, although she did not witness the arrest, WITNESS OFFICER #4 spoke with Complainant just prior to the incident. She stated that Complainant was crying, but was not disorderly or intoxicated. [Exhibit 8].

SUBJECT OFFICER asserts in his defense that force was necessary to apprehend Complainant because she was assaulting WITNESS #2. According to his account, Complainant walked a distance of 15 feet to WITNESS #2, where Complainant pulled her hair, and then began to pummel her with a series of uppercuts to the face. [Exhibit 16]. This account is so inconsistent with the testimony of the other witnesses that it lacks credibility. Several witnesses did not perceive Complainant as acting aggressive in any way. [See WITNESS #1, Exhibit 7; WITNESS OFFICER #3, Exhibit 14]. While witnesses WITNESS OFFICER #1 and WITNESS OFFICER #2 agree that Complainant was combative with WITNESS #2, both indicate that Complainant’s actions were far less aggressive than SUBJECT OFFICER states. Even more significantly, both state that the scene had been brought under control prior to SUBJECT OFFICER’s arrival. [Exhibit 11; 12].

Based on the consistent witness statements contained in the OCCR Report of Investigation regarding the amount of force used and the context of that force, the allegation that SUBJECT OFFICER used excessive force under the circumstances in effectuating the arrest of Complainant will be sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
----------------------	-----------

Submitted on July 23, 2003.

Laurie S. Kohn
Complaint Examiner