

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0421
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Katherine L. Garrett
Merits Determination Date:	July 15, 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

COMPLAINANT alleges that SUBJECT OFFICER engaged in conduct or used language that was insulting, demeaning, or humiliating during the course of an exchange on the evening of July 23, 2002, involving COMPLAINANT, members of her family, and relatives of SUBJECT OFFICER.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on June 21, 2004. The following witnesses testified: Complainant, SUBJECT OFFICER, WITNESS #1, WITNESS #2, WITNESS #3, WITNESS OFFICER #1, WITNESS #4, WITNESS #5, and WITNESS #6. The following exhibit was introduced at the hearing:

Complainant Exhibit 1: Plat of Square 5898, Lots 74-87, Washington, DC

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation and an evidentiary hearing conducted on June 21, 2004, I find the material facts regarding this complaint to be:

1. COMPLAINANT and WITNESS #5, her immediate next-door neighbor and SUBJECT OFFICER'S brother, disagreed about parking rights in their residential community.
2. WITNESS #5 and WITNESS #4 own a home with a driveway and garage. They live next door to Complainant, who has no driveway or garage. Complainant's front door is only a few feet away from that of WITNESS #5 and WITNESS #4.
3. WITNESS #5 at times has parked his vehicle on the road known as 'the crescent,' in a space Complainant favors, as it is directly in front of her town home.
4. At some point prior to July 23, 2002, Complainant and WITNESS #5 had an argument when Complainant arrived home and found WITNESS #5's vehicle in her preferred parking space. At that time, WITNESS #5 told her that he "didn't argue with women," and directed her to go get her brother, husband, or other male.
5. On July 23, 2002, Complainant arrived home at approximately 9:30 p.m. and found WITNESS #5's truck parked in her preferred parking space. She parked elsewhere and went into her house where she spoke by telephone with her mother, WITNESS #2, and a member of the Home Owner's Association Board, about the issue. Complainant also spoke with her sister WITNESS #3 and told her what had happened.
6. Shortly after these phone calls, Complainant's sister WITNESS #1, her BROTHER, and friends FRIEND #1, FRIEND #2, and FRIEND #3 arrived at Complainant's house.
7. WITNESS #1, accompanied by Complainant, BROTHER, FRIEND #1, FRIEND #2, and FRIEND #3, loudly knocked on the WITNESS #5's door and, using profanity, yelled up to WITNESS #4 that they wanted to speak with her husband.
8. In response to the commotion, WITNESS #4 made several calls, including one to her brother-in-law, SUBJECT OFFICER, asking him to come over.
9. SUBJECT OFFICER was, at the relevant time, off-duty but working as a security guard in a neighboring housing complex.
10. In response to the call from WITNESS #4, SUBJECT OFFICER arrived at the scene in uniform, wearing his gun, flashlight, and ASP baton.
11. SUBJECT OFFICER initially spoke with WITNESS #4 and told her that she might need to call the police.
12. SUBJECT OFFICER spoke to Complainant and her companions. The conversation was heated, and the participants used profanity. WITNESS #5 and WITNESS #6 arrived in separate vehicles and joined the group.

13. WITNESS #4 called 911 several times and told the operator that SUBJECT OFFICER was “on duty,” and that “people [were] getting violent,” and that SUBJECT OFFICER needed “backup.” ROI Ex. 14.
14. WITNESS #5 got on the phone with the 911 operator and used the MPD code for ‘officer in distress.’ Id.
15. WITNESS #2 (Complainant’s mother) and WITNESS #3 arrived on the scene.
16. WITNESS #2 spoke to SUBJECT OFFICER. WITNESS #1 and Complainant felt that SUBJECT OFFICER’s response to their mother evinced a lack of respect, and at least one of them said, “That is our mother,” and urged that SUBJECT OFFICER be respectful.
17. In response, SUBJECT OFFICER used profanity, saying something to the effect of, “I don’t give a f---.”
18. At about the same time, between ten to fifteen MPD officers arrived on the scene, some with guns drawn, in response to the ‘officer in distress’ call. WITNESS OFFICER #1 also arrived, after a number of officers had responded.
19. No one was arrested or charged by the police for their conduct that evening.
20. SUBJECT OFFICER’S testimony that he did not use profanity during the exchanges identified above was not credible.
21. WITNESS #2’s testimony that SUBJECT OFFICER used profanity towards her was credible.

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].”

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.”

This complaint is one outgrowth of an argument that a group of adults had about where a car was parked. Rather than resolve the matter responsibly and with maturity, both sides chose an approach that was almost certain to end up badly. There is no question that the conduct of all parties involved – the SUBJECT OFFICER’s and COMPLAINANT’s families and their friends – led to the series of events that culminated in the arrival of between ten to fifteen fully-armed police officers. It is a shameful result.

The issue directly before me is SUBJECT OFFICER’s conduct that evening. SUBJECT OFFICER was not called through official channels to come resolve the situation in an official capacity. His sister-in-law called him to come and take her side in a personal dispute with neighbors. That he chose to do so at all – armed and in uniform – is troubling. And it is his conduct once he arrived that is at issue here. It is not my role to determine who started the melee, nor to determine who was the loudest or even the most profane. As a police officer, SUBJECT OFFICER was required to comply with, among other things, MPD General Order 201.26, which provides in part that members of the police department “shall be courteous and orderly in their dealings with the public[. . .] shall perform their duties quietly, remaining calm regardless of provocation to do otherwise[, and] shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language.” MPD General Order 201.26, Part I, Sections C.2, C.3. The same General Order also provides that police officers should be “firm and impersonal in situations calling for regulation and control.” Id., Section E.3. SUBJECT OFFICER failed to adhere to these directives.

As general background, it is plain from the record, including the testimony at the hearing, that there was some acrimony between Complainant and her next-door neighbor, WITNESS #5, about parking. The parties live in town homes that are on an arcing side road – known as ‘the crescent’ – parallel to 21st Street, S.E. Complainant Ex. 1. WITNESS #5 and WITNESS #4 have a driveway and a garage and driveway; Complainant does not. The town homes at issue are close together, with only a few feet separating Complainant’s front door from that of WITNESS #5 and WITNESS #4, and it appears from photographs that there is room in front of each town home for on-street parking of one vehicle. ROI Ex. 12. Complainant preferred to park her vehicle directly in front of her town home, in a space that is also adjacent to the home of WITNESS #5 and WITNESS #4. WITNESS #5 occasionally parked his vehicle in that space. Complainant testified that at the relevant time there was an informal agreement among residents in the community to allow residents to park in the space in front of their own home. WITNESS #5 took the view that since parking was unposted, it was unassigned and open to anyone. On one occasion prior to July 23, 2002, Complainant angrily confronted WITNESS #5 when she

arrived home and found him in his truck in the parking space she preferred. Both parties cursed at one another, and WITNESS #5 cut short the exchange telling Complainant that he didn't argue with women, directing her to get her brother, husband, or other man to talk to him. Apparently, until July 23, 2002, there were no other incidents about the parking space.

On the evening in question, July 23, 2002, Complainant arrived home and found WITNESS #5's truck parked in her preferred parking space. She parked elsewhere and made several phone calls when she got home, complaining about the parking issue. Both her mother, WITNESS #2, and a member of the Home Owner's Association with whom she spoke that evening, counseled her to raise it through the Home Owner's Association. Complainant also spoke with her sister WITNESS #3 and told her of the situation. WITNESS #3 apparently contacted others, including Complainant's sister WITNESS #1. WITNESS #1 then came to Complainant's house with BROTHER, their brother, and several friends. WITNESS #1 testified that she was aware of WITNESS #5's earlier comment that he would prefer to talk to a man instead of Complainant about the parking issue. WITNESS #1 testified that she believed the remark had been made earlier that same day. Although WITNESS #1 was mistaken about the timing of the remark, her understanding of WITNESS #5's preference – to deal with a man on Complainant's behalf rather than directly with Complainant – may explain why WITNESS #1 arrived accompanied by BROTHER.

WITNESS #1, accompanied by her brother, Complainant, and several friends, knocked loudly on WITNESS #5's door and, when WITNESS #4 appeared at an upstairs window, yelled that she wanted to speak with WITNESS #4's "punk ass husband." WITNESS #4 testified that she was intimidated by the group outside her door, and was concerned that they might get into a fight with WITNESS #5, who had left to drop some items off at the house of a cousin, WITNESS #6. Rather than speak with WITNESS #1 or Complainant, WITNESS #4 withdrew from the window. She first called WITNESS #6, looking for her husband, who had not yet arrived. WITNESS #6 testified that WITNESS #4 sounded "hysterical." WITNESS #4 then called her brother-in-law, SUBJECT OFFICER. She explained that she knew he was nearby and could get there quickly.

SUBJECT OFFICER was off-duty at the time, but in MPD uniform working as a security guard at a nearby housing complex. His duties did not include patrolling the crescent, but he testified that he would sometimes drive by on 21st Street, S.E. SUBJECT OFFICER'S nominal reason for coming was to get the situation 'under control' at the request of his sister-in-law. It is not clear that his arrival, or his actions, assisted in achieving that goal.

WITNESS #1 testified that after she, her brother, and friends had unsuccessfully tried to talk with someone in the house of WITNESS #5 and WITNESS #4, they started to leave. One friend, FRIEND #1, was in the street when SUBJECT OFFICER drove up. Several witnesses testified that SUBJECT OFFICER immediately asked the group who had knocked on his brother's door; at least one witness said that SUBJECT OFFICER used profanity. SUBJECT OFFICER testified that he said nothing, but walked into the foyer of his brother's house to speak

with WITNESS #4, before coming outside to talk with the group. Complainant testified that she and others present knew that SUBJECT OFFICER was WITNESS #5's brother.

SUBJECT OFFICER began talking with the group, and the scene, as described by witnesses, became somewhat chaotic, with people yelling and using profanity. SUBJECT OFFICER reported that he told Complainant that there was no assigned parking in the crescent. ROI Ex. 8, p. 2. BROTHER, Complainant's brother, angrily sought to talk with WITNESS #5, who had by that point returned home. SUBJECT OFFICER stood between them and kept them apart. SUBJECT OFFICER testified that, although he did not feel threatened by BROTHER, he drew his ASP baton because he wanted Michael to back away.¹ At the same time, WITNESS #4 called 911 and told the operator that a "whole bunch of people" were "getting violent" and were being "very disrespectful to [SUBJECT OFFICER]." ROI Ex. 14. At that point, WITNESS #5 took the phone, apparently identified himself as an officer, and gave a MPD 10-33 code,² indicating that an officer was in trouble. *Id.* The dispatcher sent the emergency call out, and a number of units responded, resulting in the appearance of between ten to fifteen police officers running to the scene, some with weapons drawn.

Meanwhile, WITNESS #2 had been called by her daughter WITNESS #3 and told that something was happening at Complainant's house. WITNESS #2 arrived at the scene before the squad cars got there, and testified that she sought to separate her son Michael and SUBJECT OFFICER, telling them to 'be quiet,' and ultimately saying, 'shut up.' At the same time, members of her family, feeling that SUBJECT OFFICER was not using respectful language, were telling SUBJECT OFFICER that their mother was there. WITNESS #2 testified that SUBJECT OFFICER responded by using profanity.³ This was supported by testimony of several witnesses, including Complainant. At that point, the other police officers arrived, BROTHER went into the house, and the situation gradually calmed down.

SUBJECT OFFICER testified that the only exchange he recalled with WITNESS #2 was when she approached him and WITNESS #5 to express her anger that her daughter, Complainant, was experiencing such trouble over a parking dispute. He denied using profanity around WITNESS #2 that evening. From the outset of the events that evening, WITNESS #2 advised her daughter to take a reasonable course in response to the parking dispute, counseling

¹ Several witnesses, including SUBJECT OFFICER'S brother WITNESS #5, testified that SUBJECT OFFICER took his flashlight -- not his ASP -- out of his belt and was holding it up. It makes little difference here whether SUBJECT OFFICER was holding his flashlight or his ASP, as the relevant facts are that SUBJECT OFFICER admittedly was wielding something during the altercation. The fact that some witnesses thought it was a flashlight does not, as SUBJECT OFFICER suggests, undermine their overall credibility.

² WITNESS #5 is a former MPD police officer, so was familiar with the 10-33 code.

³ WITNESS #2 testified that SUBJECT OFFICER said, "I don't give a f---." WITNESS #1 testified to a slightly different formulation, stating that SUBJECT OFFICER said, "I don't care whose mother is here. F--- your mother." Complainant testified that SUBJECT OFFICER said, "I don't give a f--- whose mother is here." The minor variations in phrasing reported by the witnesses do not appear material to me.

her to raise her concern with the Home Owner's Association. WITNESS #2 testified that after she spoke with Complainant, she got ready for bed, only to receive a call from another daughter that there was trouble at Complainant's house. WITNESS #2 got dressed and went to the scene. She again attempted to advise reasonableness, urging her son to go into the house, which he ultimately did. It was during WITNESS #2's efforts to extract her son from the confrontation that SUBJECT OFFICER used profanity. I find WITNESS #2 to be a credible witness, and believe her version of events.

I find SUBJECT OFFICER'S testimony on his use of profanity in WITNESS #2's presence to lack credibility, and there are several reasons why, including his demeanor at the hearing. Principally, SUBJECT OFFICER was called to scene because of his relationship with WITNESS #4 and WITNESS #5. His actions once he arrived were designed to try to convince Complainant and her family that they were wrong and WITNESS #5 and WITNESS #4 were right. Yet in his testimony, SUBJECT OFFICER sought to recast his role as that of a neutral. For example, he suggested that he could have driven up 21st Street, S.E., and passed the area in which the dispute was unfolding, in the regular course of his security guard duties. This would indeed have been a benign, neutral explanation for his presence there that night – if that is what had happened. There is no dispute, however, that he arrived only because his sister-in-law had called and asked him to come. A second example was SUBJECT OFFICER'S testimony about BROTHER. SUBJECT OFFICER, who is 6' 2" tall and weighs over 200 lbs., testified that he "did not know" and could not estimate whether he was taller or bigger than BROTHER. Yet the Memorandum of Interview reflects that nearly two months after the incident SUBJECT OFFICER gave the following description of BROTHER: "a short African-American male, with a brown complexion, and standing approximately 5'6" and weighing about 160 pounds." ROI Ex. 8, p. 2. SUBJECT OFFICER acknowledged at the hearing that part of his job requires him to estimate, report on, and testify to the height and weight of people. His unwillingness to do so at the hearing with respect to BROTHER, and his effort to recast his role that evening as one of a 'neutral,' undermines his credibility about his role in the events that evening, and undermines his credibility specifically with respect to the remarks he made in WITNESS #2's presence.

SUBJECT OFFICER urged that the testimony of WITNESS OFFICER #1 supports his claim that his own conduct was appropriate. WITNESS OFFICER #1, a 23-year veteran of the MPD, arrived on the scene in response to the 10-33 call. When he got there, a number of squad cars were already in place, and between 10-15 police officers were out and on the scene. WITNESS OFFICER #1 testified that SUBJECT OFFICER was at that point talking with other officers. WITNESS OFFICER #1 did not go up to the front of the town homes, but learned from others present that the dispute centered on a parking issue. He said that when he arrived, it was hard to tell who was speaking to whom. WITNESS OFFICER #1 did testify that officers are called upon to control their language even in enforcement situations. He said he did not hear SUBJECT OFFICER "shouting obscenities" on his arrival.

I find WITNESS OFFICER #1 to be a credible witness, albeit one who had little opportunity to observe the events of July 23, 2002. The most troubling conduct – particularly the exchange with WITNESS #2 – occurred prior to WITNESS OFFICER #1's arrival.

V. SUMMARY OF MERITS DETERMINATION

For the foregoing reasons, I find that SUBJECT OFFICER violated MPD General Order 201.26, Part I, Section C.

Allegation 1:	Sustained
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Submitted on July 15, 2004.

Katherine L. Garrett
Complaint Examiner