

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF POLICE COMPLAINTS**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	03-0508
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officers:</b>	SUBJECT OFFICER #1, First District SUBJECT OFFICER #2, Third District
<b>Allegation:</b>	Use of Unnecessary or Excessive Force
<b>Complaint Examiner:</b>	Irene N. Pantelis
<b>Merits Determination Date:</b>	January 3, 2007

D.C. Official Code Section 5-1107(a) authorizes the Office of Police Complaints (OPC) to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) alleging abuse or misuse of police powers by such members. The complaint here at issue was timely filed in the proper form required by Section 5-1107 and referred to this Complaint Examiner for a determination on the merits, as provided by Section 5-1111(e).

**I. SUMMARY OF COMPLAINANT ALLEGATIONS**

COMPLAINANT alleges that on July 7, 2003, MPD SUBJECT OFFICER #1 used unnecessary or excessive force against her. COMPLAINANT claims that a disagreement among passengers on a Greyhound bus took place that led to her being arrested for disorderly conduct. According to COMPLAINANT, during the incident, SUBJECT OFFICER #1 placed his forearm against her neck and forcibly pushed her back from the steps of the bus where she was standing, causing her thumb to bend backward from the bus's railing and then her whole body to fling and hit a nearby gas pump. COMPLAINANT further alleges that SUBJECT OFFICER #1 twisted her arm before tightly handcuffing her. COMPLAINANT also alleges that SUBJECT OFFICER #2 handed SUBJECT OFFICER #1 the handcuffs and held his baton close to her face, causing her to fear further physical abuse.

Finally, COMPLAINANT claimed to the OPC investigator and at a hearing conducted by the Complaints Examiner that SUBJECT OFFICER #2 used unnecessary or unreasonable force against her then fiancé, and now husband, WITNESS #1, while pulling him off the bus.

**II. EVIDENTIARY HEARING**

The Complaint Examiner conducted an evidentiary hearing regarding this complaint on October 30, 2006, in which she heard the testimony of WITNESS #1 and COMPLAINANT, SUBJECT OFFICER #1, SUBJECT OFFICER #2, and WITNESS #2, an employee at the bus

station. The Complaint Examiner also admitted the following exhibits:

Exhibit 1A:	Highlighted complaint form
Exhibit 3A:	Marked medical records
Exhibit 14A:	Marked pictures of the scene of the incident
Exhibit 18	Objections to the report of investigation

### **III. FINDINGS OF FACT**

Based on a review of the OPC's report of investigation and exhibits, the objections to the report filed by the subject officers, the OPC response to those objections, and the testimony and evidence presented at the October 30, 2006, hearing, the Complaint Examiner finds that the material facts pertaining to this complaint are as follows:

1. On July 7, 2003, WITNESS #1 and COMPLAINANT were on a Greyhound bus to Raleigh, North Carolina, via Washington, DC. Because the latch on the bus's bathroom door was broken, the bus driver told the passengers to leave the bus and board a new one, keeping the same seats. Some passengers, including WITNESS #1 and COMPLAINANT, took different seats in the second bus, despite the bus driver's instructions to keep the same seats, generating a discussion or argument over the seating arrangement. One of the passengers became upset and cursed because she could not seat where she desired. The bus driver asked COMPLAINANT if she would change seats, which she declined to do.
2. The bus driver left the bus to summon security officers for assistance. It appears that he had made a determination that WITNESS #1 and COMPLAINANT should leave the bus and ride the next one. While the bus driver was gone, the passengers, eager to depart, decided to each take the exact same seats as in the first bus, resolving the disagreement.
3. When the bus driver returned with the officers, SUBJECT OFFICER #1 asked COMPLAINANT to step off the bus. She complied without resisting, but stated that she believed the disagreement was resolved and that the bus could now leave.
4. WITNESS #1, still inside the bus, informed the bus driver that the disagreement among the passengers had been resolved and asked him to let COMPLAINANT and himself to continue to ride the bus. The driver told WITNESS #1 that the police would handle the situation.
5. SUBJECT OFFICER #2 got on the bus and asked WITNESS #1 to leave the bus. WITNESS #1 replied that the situation had been resolved. SUBJECT OFFICER #2 grabbed WITNESS #1 by the wrist and pulled him off the bus. SUBJECT OFFICER #2 told WITNESS #1 that he would be arrested for disorderly conduct if he didn't "shut up." WITNESS #1 attempted to intercede on his and COMPLAINANT's behalf, but overall complied with the Officer's directions to stay quiet.
6. COMPLAINANT saw SUBJECT OFFICER #2 approaching WITNESS #1 inside the

bus. In response, she stepped back onto the first step of the bus to urge WITNESS #1 to take their belongings and leave the bus, pleading with SUBJECT OFFICER #2 not to hurt WITNESS #1.

7. SUBJECT OFFICER #1 pulled COMPLAINANT off the steps of the bus. The motion caused COMPLAINANT to pull her thumb back from the bus' railing, spin around on the platform, and hit a nearby fuel pump. SUBJECT OFFICER #1 then grabbed COMPLAINANT's arm behind her back and handcuffed her.
8. During the incident, COMPLAINANT repeatedly asked SUBJECT OFFICER #1 "why he was doing this to me" and insisted that the disagreement had been resolved. SUBJECT OFFICER #1 told her several times to cooperate and stay quiet and informed her that she was being arrested for disorderly conduct.
9. COMPLAINANT complained that her wrists were hurting because the handcuffs were too tight on her. Either SUBJECT OFFICER #2 or the officer summoned to drive COMPLAINANT to a police station loosened the handcuffs.
10. COMPLAINANT was transported to a police station and processed for disorderly conduct.
11. WITNESS #1 and COMPLAINANT asked to see a doctor, but the request was refused by SUBJECT OFFICER #1 and SUBJECT OFFICER #2, as well as the other officers at the police station. At the police station, COMPLAINANT told the officers she would go to the hospital after being processed.
12. Upon leaving the police station, WITNESS #1 and COMPLAINANT went to the hospital. A treating physician observed that COMPLAINANT had a small abrasion and bruising on her left shoulder and that she could not perform the full range of motion with that shoulder. The physician also observed small abrasions on both her wrists. In addition, the physician observed that WITNESS #1 had a slight tenderness in his left shoulder and wrist. They were both examined and discharged immediately. COMPLAINANT was prescribed Motrin and Flexeril, and WITNESS #1 was prescribed Ibuprofen.

#### **IV. DISCUSSION**

D.C. Code Section 5-1107(a) provides that "[the Office of Police Complaints] 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 . . . (2) use of unnecessary or excessive force . . ."

General Order 901.07 sets forth the MPD's policies regarding the use of force and incorporates the constitutional standards applicable to such use. See Graham v. O'Connor, 490 U.S. 386, 396 (1989). In general, the MPD's policy "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.” MPD General Order 901.07, Part II. The use of non-deadly force is permissible only to protect the officers or others from physical harm, to restrain or subdue a resistant individual, or to bring an unlawful situation safely and effectively under control. Id. at Part IV(C)(1). The decision to use force must be based on the danger posed by a subject confronted by the police and is based on the circumstances that the officer reasonably believes to exist. Id. at Part II. Officers are responsible for “weighing all other reasonable means of apprehension or defense before resorting to the use of force.” Id.

If force is necessary, officers must adhere to a continuum, employing escalating levels of force in response to resistant or dangerous individuals. MPD General Order 901.07, Part IV(A)(1). The levels include: (a) verbal persuasion, (b) hand control procedures, such as firm grip, escort or pain/pressure compliance holds, (c) protective weapons, including OC Spray or impact weapons such as tactical baton; and (d) deadly force. Id. While officers are not required to start at the lowest level, they are required to select “the appropriate level of force required by the circumstances.” Id. at Part II.

Officers are also required to intervene if they see other officers using excessive force, as long as they have a reasonable opportunity to do so. See e.g. Priester v. Riviera Beach, 208 F.3d 919, 924 (11<sup>th</sup> Cir. 2000); Mick v. Brewer, 76 F.3d 1127, 1136 (10<sup>th</sup> Cir. 1996); Koon v. Powell, 34 F.3d 1416, n.25 (9<sup>th</sup> Cir. 1994), aff’d and rev’d on other grounds, 518 U.S. 81 (1996); Thomson v. Boggs, 33 F.3d 847, 857 (7<sup>th</sup> Cir. 1994); O’Neil v. Krzeminski, 839 F.2d 9, 11 (2d Cir. 1988); Byrd v. Clark, 783 F.2d 1002, 1007 (11<sup>th</sup> Cir. 1986); Webb v. Hiykel, 713 F.2d 405, 408 (8<sup>th</sup> Cir. 1983); Bruner v. Dunaway, 684 F.2d 422, 425-26 (6<sup>th</sup> Cir. 1982); Putnam v. Gerloff, 639 F.2d 415, 423 (8<sup>th</sup> Cir. 1981); Byrd v. Brishke, 466 F.2d 6, 10-11 (7<sup>th</sup> Cir. 1972); see also Gregory v. District of Columbia, 957 F. Supp. 299 (D.D.C. 1997).

When officers use any level of force, they must conduct a visual and verbal check of the subject to ascertain whether the subject is in need of medical care. MPD General Order 901.07, Part V(A). They must summon medical assistance immediately if a person is physically injured in any way, complains of pain, or demonstrates life-threatening symptoms. Id. Moreover, officers booking an individual for arrest must examine the individual for bruises, cuts, or other injuries requiring medical attention and deliver them to the appropriate emergency hospital. General Order 201.26, Part I(D)(14), Exh. B.

In this case, SUBJECT OFFICER #1 used unnecessary or excessive force while bringing what he perceived to be an unlawful disorderly situation under control. Initially, he acted appropriately by asking COMPLAINANT to step off the bus, as apparently requested by the bus driver. However, when COMPLAINANT stepped back on the first step of the bus, instead of forcefully pulling her back down, the appropriate procedure would have been to request again that she step off the bus, using verbal persuasion, hand control procedures, a firm grip, or even a pressure compliance hold. Even if SUBJECT OFFICER #1 believed that COMPLAINANT’s request to be allowed back on the bus and her stepping back on the bus were acts of defiance, he had no reason to believe that she would aggressively resist arrest. She had cooperatively complied with the first request to leave the bus. Moreover, when she stepped back on the bus, she did so in part to urge WITNESS #1 to grab their belongings and leave the bus. In other

words, there was no objective basis for forcefully pulling her off the bus. This unnecessary or excessive force caused her to sustain minor injuries to her thumb and shoulder.

During the incident between SUBJECT OFFICER #1 and COMPLAINANT, SUBJECT OFFICER #2 was on the bus handling WITNESS #1 and did not have an opportunity to stop or in any way interfere with SUBJECT OFFICER #1's actions. By the time SUBJECT OFFICER #2 stepped down on the platform with WITNESS #1, COMPLAINANT was already restrained with her arms behind her back. It does not appear that SUBJECT OFFICER #2 deployed his baton or showed it to COMPLAINANT, as she alleged in the complaint and at the hearing. Although SUBJECT OFFICER #2 may have handed the handcuffs to SUBJECT OFFICER #1, he did not facilitate or participate in the use of unnecessary or excessive force against COMPLAINANT, as alluded to in the complaint.

Moreover, the record does not support a finding of unnecessary or excessive use of force by SUBJECT OFFICER #2 against WITNESS #1. SUBJECT OFFICER #2 asked WITNESS #1 to step off the bus. When WITNESS #1 declined, insisting that the disagreement was resolved and that COMPLAINANT and him should be allowed to travel in the bus, SUBJECT OFFICER #2 grabbed him by the wrist and pulled him off the bus. WITNESS #1 was cooperative from then on and SUBJECT OFFICER #2 did not use any further force. The medical records confirm that WITNESS #1 did not suffer any serious injury as a result, besides slight tenderness on the wrist and shoulder, treatable with Ibuprofen.

SUBJECT OFFICER #1 and SUBJECT Officer #2 did not unlawfully deny WITNESS #1 and COMPLAINANT medical assistance. Although COMPLAINANT requested medical assistance initially, she subsequently told the officers at the police station that she would go to the hospital when released. Her minor abrasions to her wrists and shoulder could reasonably have been viewed as not warranting an immediate trip to the emergency room. WITNESS #1 did not request at any time to be taken to the hospital. His minor injuries were also not severe or visible enough for the officers to feel prompted to drive him immediately to a hospital.

**V. SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER #1**

Allegation: Use of unnecessary or excessive force	Sustained
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**SUBJECT OFFICER #2**

Allegation: Use of unnecessary or excessive force	Exonerated
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Submitted on January 3, 2007.

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Irene Pantelis  
Complaint Examiner