

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

FINDINGS OF FACT AND MERITS DETERMINATION

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| Complaint No.: | 04-0279 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER, 6 th District |
| Allegation 1: | Harassment |
| Allegation 2: | Insulting, Demeaning, or Humiliating Language or Conduct |
| Allegation 3: | Use of Excessive or Unnecessary Force |
| Complaint Examiner: | Turna R. Lewis |
| Merits Determination Date: | May 29, 2007 |

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly 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 alleged that on June 6, 2004, SUBJECT OFFICER (1) harassed her when he accused her of striking and damaging his police car and personal sport utility vehicle and directed her arrest for leaving the scene of a collision; (2) engaged in conduct that was insulting, demeaning or humiliating to her when he told that “her ass was going to jail;” and (3) used excessive or unnecessary force when he forcibly removed her from the vehicle she was driving, and slammed her on the trunk of the vehicle causing her physical injury.

II. EVIDENTIARY HEARING

In accordance with D.C. Mun. Regs., Title 6A, § 2117 *et seq.* the Complaint Examiner conducted a telephonic preliminary hearing conference. Both parties attended the preliminary hearing conference. Neither party was represented by counsel at the preliminary hearing conference. Both agreed to the hearing date of April 24, 2007. An evidentiary hearing was conducted regarding this complaint on April 24, 2007. The Complaint Examiner heard the testimony of SUBJECT OFFICER, WITNESS #1, WITNESS #2, WITNESS #3, WITNESS OFFICER #1, and WITNESS OFFICER #2. Complainant did not appear at the hearing and did

not provide a reason for her absence. COMPLAINANT previously identified WITNESS #4 as her sole witness. WITNESS #4 did not appear at the hearing and did not provide a rationale for her absence. The hearing proceeded in accordance with the Office of Police Complaints regulations and SUBJECT OFFICER presented his evidence.

SUBJECT OFFICER did not introduce any exhibits at the hearing. The Report of Investigation is entered into the record as Joint Exhibit 1.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and an evidentiary hearing conducted on April 24, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 6, 2004, Complainant was driving a friend's car, a late model Buick LeSabre, in the 200 block of Ascot Place, N.E., a one-way street. Tr. 69.
2. SUBJECT OFFICER's MPD-issued vehicle, a police cruiser, was parked on the right side of Ascot Place, N.E. and his personal vehicle, a Kia Sorrento, was parked on the left side of Ascot Place, N.E., both vehicles facing west. Tr. 69-70.
3. Complainant attempted unsuccessfully to park the car in a parking space on the left side of Ascot Place, N.E. in a space directly in front of SUBJECT OFFICER's Kia Sorrento. Tr. 69-70.
4. SUBJECT OFFICER, and WITNESS #1, his wife, were on their front porch talking to their next door neighbor WITNESS #2 when Complainant attempted to park. Tr. 13, 24 and 69.
5. SUBJECT OFFICER, WITNESS #1, and WITNESS #2 believed that COMPLAINANT damaged SUBJECT OFFICER's personal vehicle, a Kia Sorrento, and his MPD-issued police cruiser, as she attempted to park. Tr. 70.
6. Complainant was partially in the parking space when she hit the front of SUBJECT OFFICER's Kia Sorrento, and as she attempted to exit the parking space she came into contact with the MPD-issued police cruiser, parked on the right side of Ascot Place, facing north. Tr. 70.
7. SUBJECT OFFICER followed Complainant in his MPD-issued cruiser, an MPD marked vehicle, with the lights and sirens activated. Tr. At 71.
8. SUBJECT OFFICER followed Complainant into an alley on Evarts Street a few blocks away, parked the MPD-issued cruiser behind the car driven by Complainant, and ordered her to exit the vehicle. Tr. 71.

9. When Complainant refused to exit the vehicle SUBJECT OFFICER physically removed Complainant from the car and placed her on the back of the vehicle driven by Complainant, slamming her facedown into the trunk of vehicle. Tr. at 72.
10. After removing Complainant from the car, SUBJECT OFFICER contacted a MPD dispatcher using his MPD radio for assistance in a “priority.” Complainant was arrested at the scene and pictures were taken of SUBJECT OFFICER’s personal vehicle and the MPD-issued cruiser later that evening by a Crime Scene Search Officer. Tr. at 74, Exhibit 16 “Arrest/Prosecution Report,” dated June 6, 2004.
11. Complainant was arrested and charged with “Leaving after Colliding.” She was released on payment of a \$300.00 bond and scheduled to appear in court on June 9, 2004. Exhibit 16.
12. On June 8, 2004, two days after the incident, SUBJECT OFFICER completed a “Damage to Property Report”¹ and a PD 42 Incident Report. After completing these reports, SUBJECT OFFICER inspected his MPD-issued cruiser and personal vehicle, determining that the damage was minimal. SUBJECT OFFICER was able to repair his personal vehicle by pushing the molding up into the well of the undercarriage. There were no costs to repair the vehicles. Tr. at 75.
13. On June 9, 2004, Complainant appeared in court where the charges were “no papered” resulting in dismissal of the charge and refunding of the posted bond of \$300.00. Exhibit 34.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “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: (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].”

¹ The Office of Police Complaints Investigator attempted to obtain a copy of the Accident Package, which would have detailed the crime scene, an accounting of the damage, and pictures. Metropolitan Police Department was unable to locate the Accident Package. (Exhibit 32). Then-WITNESS OFFICER #6, provided a memorandum stating that the Sixth District’s administrative files did not contain an accident package related to this incident. (Exhibit 32, Memorandum dated July 5, 2006).

A. Harassment

In this matter, Complainant has alleged that SUBJECT OFFICER harassed her when he directed her arrest on June 6, 2004. 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.” The regulations governing the Office of Police Complaints further define harassment as “[w]ords, conduct, gesture or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD...so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise of enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OCP] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs, Title 6A, § 2199.1.

Relevant portions of MPD General Order 303, Part I.2.a., “Traffic Enforcement,” provide that “Traffic enforcement may be taken under the following circumstances:

- (1) By on duty uniformed members driving marked departmental vehicles; or
- (2) By off duty uniformed members driving marked departmental vehicles while participating in the department’s take home cruiser program; or
- (3) By on duty uniformed members of the Public Vehicle Enforcement Unit Traffic Enforcement Branch operating unmarked departmental vehicles; or
- (4) Members who are not in uniform or are in unmarked vehicles may take enforcement action only in the case of a violation that is so grave as to pose an immediate threat to the safety of others.”

MPD General Order (GO-OPS-301.04.) C. 5 “Motor Vehicle Take Home Program,” provides that “Members shall be in possession of their badge, identification folder, service pistol, as well as Department issued less-than lethal weapons (OC spray and ASP) whenever operating a take-home vehicle. (CALEA 26.1.1).”

Complainant was arrested on June 6, 2004, charged with “Leaving after Colliding,” and taken to the Fifth District facility for processing. (Exhibit 16). SUBJECT OFFICER admitted in sworn testimony that he asked that Complainant be charged. (Tr. at 80.) He further testified: “It was not my initial intent to charge her, but after that—that decision was not made solely upon me, but by the on-scene official.” (Tr. at 80). SUBJECT OFFICER admitted under oath that he followed Complainant in his MPD-issued police cruiser dressed in plainclothes, without his

badge and identification, activating the sirens and lights. (Tr. at 83). SUBJECT OFFICER admitted under oath that the positioning of the MPD-issued police cruiser behind the car driven by Complainant blocked her from exiting the alley because of the narrowness of alley at the intersection of Douglas and Evarts Streets. (Tr. at 82). SUBJECT OFFICER testified that he conducted a “pat down” search of Complainant before the arrival of responding MPD officers. (Tr. at 86-87). SUBJECT OFFICER admits that he later inspected the vehicles and determined that the damage was so minimal that no repairs were required.

WITNESS OFFICER #1 initially testified that she could not remember the events of June 6, 2004. (Tr. at 53). At the hearing WITNESS OFFICER #1 was provided a copy of her written statement given on April 22, 2005, and an opportunity to review to refresh her memory. After reviewing the statement WITNESS OFFICER #1 stated that it was an accurate reflection of her actions and observations. (Tr. at 55). WITNESS OFFICER #1 testified that she inspected SUBJECT OFFICER’s personal vehicle at his residence and the MPD-issued cruiser at the scene and saw no visible damage to either vehicle. (Tr. at 56-57, Exhibit 21). WITNESS OFFICER #1 testified that an official was called to the scene because SUBJECT OFFICER “was upset that his car was hit.” (Tr. at 58). In her written statement, WITNESS OFFICER #1 describes SUBJECT OFFICER as “constantly yelling at the complainant that she hit his cars and left the scene. He [SUBJECT OFFICER] was also yelling that he wanted the complainant to get locked up.” (Exhibit 21)

WITNESS OFFICER #2 testified that he and WITNESS OFFICER #1 responded to the MPD dispatcher’s call to assist an off-duty officer on June 6, 2004, but could not remember specific details. (Tr. at 16). WITNESS OFFICER #2 was provided his written statement memorializing his interview of April 22, 2005, and an opportunity to review at the hearing. After reviewing his written statement, WITNESS OFFICER #2 confirmed that the statement accurately reflected his actions and observations of the incident involving SUBJECT OFFICER and Complainant. (Tr. at 61). In his written statement WITNESS OFFICER #2 stated that he and WITNESS OFFICER #1 were not the arresting officers and that he did not know who made the decision to arrest Complainant. WITNESS OFFICER #2 stated in his written statement that he and WITNESS OFFICER #1 examined SUBJECT OFFICER’s personal vehicle, noting that there was a smudge on the tire, but no other damage, and that he could not recall the damage to the cruiser. WITNESS OFFICER #2 noted in his written statement that the damage to both vehicles was “minimal.” (Exhibit 19). WITNESS OFFICER #2 did not recall Complainant’s demeanor but noted that SUBJECT OFFICER was “upset” that his cars had been hit. (Exhibit 19).

The Arrest/Prosecution Report, dated June 6, 2004, was completed by WITNESS OFFICER #1. (Arrest/Prosecution Report (PD 163), Exhibit 16). WITNESS OFFICER #1, who resigned from the MPD, was unavailable for the hearing but provided a written statement on July 6, 2006. (Exhibits 14 and 15). In his written statement WITNESS OFFICER #1 stated that he responded to the scene. WITNESS OFFICER #1 stated that SUBJECT OFFICER told him that

Complainant hit a car and left the scene and that he "...wanted the complainant to be arrested." (Exhibit 14).

The evidence of record includes a written statement from WITNESS OFFICER #5, who did not testify at the hearing. WITNESS OFFICER #5's statement provides that he has known SUBJECT OFFICER for twenty years and describes him as "easygoing" and "professional" in his communications with Complainant. (Exhibit 22) WITNESS OFFICER #5's statement indicates that he was the first officer to respond to the scene and that he was present when other MPD officers appeared and left at SUBJECT OFFICER's request to look for his wife. WITNESS OFFICER #5's statement does not indicate how long he remained at the scene. WITNESS OFFICER #5's account that Complainant exited the car at SUBJECT OFFICER's directive contradicts SUBJECT OFFICER's testimony. (Exhibit 22, Tr at 71-72, 86-89) On that basis, I find that WITNESS OFFICER #5's statement is not credible. Further, based on WITNESS OFFICER #5's statement that he has known SUBJECT OFFICER for twenty years, his statement appears to be biased by his personal knowledge of SUBJECT OFFICER. I credit the statements of WITNESS OFFICER #4 and WITNESS OFFICER #1, whose statements reflected no personal knowledge of SUBJECT OFFICER. I credit the observations of WITNESS OFFICER #4 and WITNESS OFFICER #1 that SUBJECT OFFICER was visibly upset over the damage he thought Complainant had done, and that each heard him state that he wanted Complainant arrested.

To constitute harassment under the OPC regulations, SUBJECT OFFICER's actions must have subjected Complainant to "arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights...[or] den[ied] or impede[d] the person in the exercise or enjoyment of any right, privilege, power or immunity." D.C. Mun. Regs, Title 6A, § 2199.1.

The evidence of record shows that SUBJECT OFFICER blocked Complainant's car from exiting the alley so that she could not exit into the street. SUBJECT OFFICER then conducted a search of Complainant's person, detaining her until other MPD officers responded to his "priority" call. Officers in the alley further detained Complainant, handcuffed her and transported her to the Fifth District facility. WITNESS OFFICER #4 and WITNESS OFFICER #1 provided written statements that SUBJECT OFFICER repeatedly expressed his opinion that Complainant should be arrested. WITNESS OFFICER #1 served as the arresting officer. Based upon the statements and testimony of WITNESS OFFICER #1, WITNESS OFFICER #4, and WITNESS OFFICER #2, it is clear that SUBJECT OFFICER was angry at Complainant for what he perceived as a hit and run resulting in damage to his vehicles. SUBJECT OFFICER expressed his anger in the desire to have her arrested. SUBJECT OFFICER testified that the pursuit policy authorized pursuit when "...there is a point of immediate or threatened danger." (Tr. at 81). At the hearing SUBJECT OFFICER was asked: "And at the time [when you decided to follow Complainant] that you made a determination to pursue her [Complainant], did you think that she was an immediate threat?" SUBJECT OFFICER responded "no." This admission shows that he knowingly violated MPD General Order 303.I.2.a.(4) which provides that an

officer who is not in uniform and in an official vehicle may only take enforcement action when the violation is so grave as to pose an immediate threat to the safety of others. Nothing in the evidence of record indicates that Complainant posed an immediate danger to others or more importantly, that SUBJECT OFFICER viewed her actions as an immediate threat to the safety of others.

Plainly, SUBJECT OFFICER overacted and in doing so, violated MPD regulations, to wit: driving an MPD-issued cruiser while not in uniform engaged in hot pursuit where there was no immediate threat to the safety of others; subjecting Complainant to detention, search, and arrest when a ticket would have been appropriate; not providing his credentials when he stopped and searched her; and, requesting assistance from MPD as a “priority” when Complainant’s actions did not warrant priority action from MPD. By his own admission SUBJECT OFFICER did not assess the damage to the vehicles before engaging in pursuit of Complainant. The Complainant’s written complaint, her interviews with the Office of Police Investigator, and the arrest record indicate that she did not believe that she had damaged the vehicles. SUBJECT OFFICER admitted under oath that it was not until after Complainant’s arrest that he inspected the vehicles, determining that the damage to both vehicles was so minor that no costs were required to repair the vehicles. Based on the evidence of record and looking at the totality of the circumstances, I find that SUBJECT OFFICER’s actions constituted harassment of Complainant.

B. Insulting, Humiliating, or Demeaning Language

Complainant alleged that on June 6, 2004, SUBJECT OFFICER engaged in insulting, humiliating, and demeaning language when he told her that her “ass was going to jail today,” and later after she said that she had never been arrested, responded “good, cause your ass is going to today for hitting a police car.” SUBJECT OFFICER denies making the comments. Tr. at 91. Complainant did not attend the hearing. Complainant’s written complaint dated June 8, 2004, and Witness Statements of June 16, 2004 and July 26, 2004, constitute her testimonial evidence of record. Complainant confirmed her allegation that SUBJECT OFFICER told her that “her ass was going to jail today,” in the interview conducted on July 26, 2004. (Memorandum of Interview, dated July 26, 2004, Exhibit 3). None of SUBJECT OFFICER’s witnesses appeared on the scene until after the alleged exchange occurred, other MPD officers had responded to the scene, and were not able to provide any testimony relevant to this allegation.

WITNESS OFFICER #1, the arresting officer, stated in his statement that SUBJECT OFFICER was loud and angry, but he could not recall whether he used profanity or the specific language used. (Exhibit 14). WITNESS OFFICER #1 written statement that she observed SUBJECT OFFICER “constantly yell at Complainant” was not challenged at the hearing. (Exhibit 21).

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.”

Complainant and her witness did not appear at the hearing and thus the only testimony about what was said when no other witnesses were present was from SUBJECT OFFICER. Statements from WITNESS OFFICER #4, the arresting officer, and WITNESS OFFICER #1, who responded to the priority call, indicated that SUBJECT OFFICER was visibly upset and yelled at Complainant, but do not support the Complainant’s allegation that SUBJECT OFFICER engaged in slurs, “street talk,” words, or phrases that demeaned Complainant or language indicating a lack of respect for the law. Based upon the evidence of record, I find that the facts are insufficient to sustain the charge or to exonerate SUBJECT OFFICER.

C. Unnecessary or Excessive Force

Complainant alleges that SUBJECT OFFICER used unnecessary or excessive force when he physically removed her from the car she was driving, pulling her to the back of the car, and slammed her facedown onto the car trunk, causing contusions to her chest.

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 MPD General Order (GO-RAR-901.07) V. B. “Use of Force,” provides that “In determining what level of force to use, it is important to consider the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, and the suspect’s mental capacity. Only the minimum level of force needed to obtain control that the objectively reasonable officer would use in light of the circumstances shall be used.”

Based upon SUBJECT OFFICER’s own testimony, he forcibly removed the Complainant from her car. SUBJECT OFFICER testified that he “...pushed up on her...I still had my hand under her arm and I placed it in the small of her back and pushed her down—well pressed her down and I advised her to stay there until I utilized my radio.” (Tr. at 89). SUBJECT OFFICER further testified that he “...had to basically forcefully remove her from the vehicle and so I had to basically forcefully remove her from the car and place her on the rear of the car until I got some other assistance up there.” (Tr. at 89). SUBJECT OFFICER stated that the Complainant “kept, you know, crying and kept saying, you know, ‘why am I being stopped’ and ‘I didn’t hit your car’ and, you know, this is—she kept saying ‘this is crazy’ and, you know, ‘I didn’t do anything.’” (Tr. at 90-91).

² The Police Complaints Board, which is OPC’s governing body, promulgated regulations regarding OPC on August 30, 2002. See 49 D.C. Reg. 8347.

SUBJECT OFFICER testified that he did not believe that Complainant's actions constituted an immediate threat. Under MPD's pursuit policy, SUBJECT OFFICER's actions in pursuing Complainant violated MPD policy. Complainant presented no imminent danger, she had not committed a felony, and her actions did not indicate mental incapacity such that she presented a danger to herself or others. Under these circumstances, SUBJECT OFFICER's forcible removal of Complainant from her car and repeated pushing her to the trunk of the car constituted unnecessary or excessive force in violation of MPD Special Order 09-09, Part III, Section N.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

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| Allegation 1: Harassment | Sustained |
| Allegation 2: Insulting, Humiliating or Demeaning Language or Conduct | Insufficient Facts |
| Allegation 3: Unnecessary or Excessive Force | Sustained |

Submitted on May 29, 2007.

Turna R. Lewis
Complaint Examiner