

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0110
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER Seventh District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	November 14, 2005

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

The complainant filed a complaint with the Office of Police Complaints (OPC) on March 1, 2005. COMPLAINANT alleged that during the course of a traffic stop on January 17, 2005, the subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER, Seventh District, and MPD WITNESS OFFICER #1, Seventh District, harassed him and used unnecessary or excessive force against him.

Specifically, COMPLAINANT alleged that on the evening of January 17, 2005, while he was working as a deliveryman for Domino's Pizza, two MPD officers, later identified as SUBJECT OFFICER and WITNESS OFFICER #1, pulled him over in the 800 block of Alabama Avenue, S.E. SUBJECT OFFICER informed the complainant that he had been stopped for running a red light. COMPLAINANT disagreed that he had run a red light and vigorously protested the \$75 ticket he received. He also repeatedly requested to speak with a supervisor. COMPLAINANT alleged that in response to his demands to speak to a supervisor, SUBJECT OFFICER reached into the driver's window, grabbed his right wrist, ordered him to exit his car, and placed him under arrest without telling him why he was being arrested. SUBJECT OFFICER then handcuffed COMPLAINANT and escorted him to the police cruiser. COMPLAINANT also alleged that before being placed in an MPD transport vehicle, WITNESS OFFICER #1 shoved him against the cruiser and motioned as if he was preparing to hit

COMPLAINANT.¹ COMPLAINANT was transported to the Seventh District police station and processed for failure to obey a traffic enforcement officer. However, the Seventh District's watch commander, WITNESS OFFICER #2, ultimately released him without charge. A copy of the complaint is attached to the Report of Investigation as Exhibit 2.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC'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 OPC's Report of Investigation, and the objections submitted by SUBJECT OFFICER on October 3, 2005, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 17, 2005, while working as a pizza deliveryman for Domino's, COMPLAINANT was driving in the 900 block of Alabama Avenue, S.E., Washington, D.C., at approximately 5:15 p.m. He noticed a police cruiser with its emergency lights on following him, so he pulled over.
2. SUBJECT OFFICER approached COMPLAINANT's vehicle on the driver's side. SUBJECT OFFICER told COMPLAINANT that he had been stopped for running a red light.
3. COMPLAINANT repeatedly asked which red light he had run and demanded to speak to a supervisor. SUBJECT OFFICER refused to respond to COMPLAINANT's questions and requested to see COMPLAINANT's driver's license and registration, which COMPLAINANT willingly surrendered.
4. After returning to the police cruiser, SUBJECT OFFICER returned to the car and gave COMPLAINANT a Notice of Infraction (NOI), which carried a \$75 fine.
5. COMPLAINANT strenuously protested the ticket and continued to demand to see a supervisor. SUBJECT OFFICER did not respond verbally to his request to speak with a supervisor but instead reached into the driver's window and grabbed COMPLAINANT's

¹ Pursuant to D.C. Official Code § 5-1108(1), on September 13, 2005, a member of the Police Complaints Board dismissed the complainant's harassment and excessive force allegations against subject WITNESS OFFICER #1, concurring in the determination made by OPC's executive director. *See* Exhibit 1. Accordingly, only the allegations against SUBJECT OFFICER are at issue in this Findings of Fact and Merits Determination.

- right wrist. SUBJECT OFFICER then told COMPLAINANT that he was under arrest, but did not tell him why.
6. SUBJECT OFFICER released COMPLAINANT's wrist, opened the driver's door, and ordered COMPLAINANT to get out of the car.
 7. COMPLAINANT got out of the car. SUBJECT OFFICER handcuffed him and escorted him to the police cruiser. COMPLAINANT again asked to speak to a supervisor.
 8. At the Seventh District police station, COMPLAINANT was interviewed by watch commander, WITNESS OFFICER #2, who told him that no charges would be brought against him and that his arrest would be nullified.
 9. SUBJECT OFFICER refused to sign the statement he gave to the Office of Police Complaints.
 10. WITNESS OFFICER #2 told the investigator for OPC that there was no lawful basis for ordering COMPLAINANT to exit his car since the Officer had already completed the processing of the ticket for the red light.
 11. There is no evidence that COMPLAINANT posed a threat to SUBJECT OFFICER's safety.

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]."

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 OPC define harassment as "[w]ords, conduct, gestures 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 or enjoyment of any right,

privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] 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.

COMPLAINANT alleges that SUBJECT OFFICER harassed him by forcing him out of his car and arresting him without a lawful basis to do so. SUBJECT OFFICER contends that he ordered the complainant to exit his car because the complainant had become so agitated and verbally combative following his receipt of the red light NOI; SUBJECT OFFICER did not feel he could safely turn around and walk away from the complainant.

The evidence does not support SUBJECT OFFICER’s assertion that he ordered COMPLAINANT to exit his car because the complainant posed a threat to his safety.² SUBJECT OFFICER did not relate having observed any specific conduct, movements or threats by the complainant that would have caused SUBJECT OFFICER reasonably to believe that COMPLAINANT would harm him physically. On the contrary, the evidence shows that COMPLAINANT, despite being extremely upset and argumentative about receiving a \$75 traffic ticket, was relatively compliant. He handed over his license and registration when asked, he exited his car without any assaultive behavior, even after SUBJECT OFFICER had grabbed his wrist and unlocked and opened his car door, and he allowed himself to be handcuffed and searched without incident.

It appears that SUBJECT OFFICER ordered COMPLAINANT to exit his car because COMPLAINANT had become agitated and argumentative in response to being cited for allegedly running a red light. As WITNESS OFFICER #2 concluded, because the NOI had already been issued and because SUBJECT OFFICER had already returned the complainant’s license and registration to him, there was no lawful reason to order COMPLAINANT to exit his car. Moreover, as WITNESS OFFICER #2 pointed out, since SUBJECT OFFICER lacked a lawful reason to order COMPLAINANT to exit his car, SUBJECT OFFICER lacked probable cause to arrest COMPLAINANT.

² The credibility of SUBJECT OFFICER’S claim that he feared for his safety and the credibility of everything he reported in the written statement he furnished to OPC, are undermined not only by the evidence but also by his refusal to sign the statement. In refusing to sign his statement, SUBJECT OFFICER refused to certify that it is true and correct to the best of his knowledge and recollection. A reasonable inference is that SUBJECT OFFICER did not sign the statement because he was not truthful and did not furnish correct information during his interview. The Complaint Examiner does not credit the Subject Officer’s explanation that he did not sign it under the advice of the Fraternal Order of Police to protest the process. Were there errors in the witness statement, SUBJECT OFFICER could have noted such, made the corrections and then signed it as corrected; a blanket refusal to sign leads to the Complaint Examiner’s reasonable inference. That an OPC Investigator drafted a statement on behalf of the Subject Officer or any other witness is immaterial, so long as the facts in those statements capture what the witness related.

Furthermore, it is difficult to see how SUBJECT OFFICER could have thought it was proper to arrest COMPLAINANT in light of the clear language of MPD Special Order 96.10 which “clarifie[s] police authority in situations where a person fails or refuses to comply with the lawful order of a police officer in the course of directing, controlling or regulating traffic...” See Exhibit 11. MPD Special Order 96.10 incorporates by reference the “Failure to Comply” provision of the D.C. Traffic Regulations: “No person shall fail or refuse to comply with any *lawful* order or direction of any police officer ... invested with authority to direct, control, or regulate traffic...” 18 D.C.M.R. 2000.2 (emphasis added). MPD Special Order 96.10 also points out that violation of the Failure to Comply provision is a criminal offense that is punishable by issuance of an NOI, summary arrest, and prosecution in the D.C. Superior Court. Significantly, however, this Special Order states the following with respect to summary arrest:

In most circumstances, officers shall not summarily arrest a person who has violated the “Failure to Comply” provision. Only in a situation where the continued refusal creates a flagrant and immediate danger to the violator, other persons, or the motoring public, or interferes with ongoing traffic enforcement activities of the police, may an officer consider summary arrest. The decision as to whether to make a summary arrest under these circumstances shall be based upon the prudent judgment of the member whose order was refused. If it is determined that the circumstances are serious enough to warrant an arrest, members shall:

- a. Caution the person that continued refusal to comply with the officer’s order could result in the violator’s arrest; and
- b. Issue an appropriately completed NOI for “Failure to Comply,” a Superior Court charge, should an arrest become necessary.

Special Order 96.10 thus clearly instructs that arresting a person for violating the Failure to Comply provision should happen rarely. Even in the situations where officers are permitted to consider arrest, none of which were present in this case, Special Order 96.10 directs officers to first warn persons that arrest is possible to give them an opportunity to avoid summary arrest.

In arresting COMPLAINANT, SUBJECT OFFICER failed to comply with Special Order 96.10. SUBJECT OFFICER has a duty to know and follow MPD’s directives, which include all special orders. Failure to know and comply with these directives constitutes purposeful, knowing or reckless disregard of applicable standards. Moreover, SUBJECT OFFICER’s failure to comply with Special Order 96.10 caused COMPLAINANT to be subjected to arrest and detention. This prevented him from returning to his job in a timely manner and thus interfered with his ability to go about his lawful business normally. Accordingly, the Complaint Examiner concludes that SUBJECT OFFICER harassed COMPLAINANT.

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.”³

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs., title 6A, § 2199.1

COMPLAINANT alleges that SUBJECT OFFICER subjected him to unnecessary or excessive force by reaching into the driver’s window and grabbing his right wrist in order to force him to exit his car. SUBJECT OFFICER concedes that he reached into the complainant’s car and placed his right wrist in a wristlock, and he admits that he did so for the purpose of forcing COMPLAINANT to exit his car. However, SUBJECT OFFICER contends that he was authorized to employ this non-lethal hand control because at the time he believed that COMPLAINANT was resisting a lawful order.

As noted in the discussion of the complainant’s harassment claim, SUBJECT OFFICER did not have a legally valid reason to order COMPLAINANT to exit his car or to arrest him, and he should have known that. Even assuming that SUBJECT OFFICER had cause to believe he was acting properly in ordering the complainant to exit his car, it does not follow automatically that he was authorized to use a firm hand control to compel COMPLAINANT to exit his car. MPD’s Use of Force Continuum provides a range of options. The reasonableness of the option selected is determined by the degree of subject’s resistance and the surrounding circumstances.

In this case, although COMPLAINANT was upset and argumentative about the ticket, the evidence shows that he was not a physical threat. Both SUBJECT OFFICER and WITNESS OFFICER #1 admit that after SUBJECT OFFICER unlocked and opened the driver’s door of COMPLAINANT’s car, COMPLAINANT stepped out and allowed himself to be arrested, handcuffed and searched without incident. The evidence thus suggests that SUBJECT OFFICER could have tried verbal persuasion, the first level on the Use of Force Continuum, before resorting to the contact control he employed. Specifically, SUBJECT OFFICER could have told

³ The Police Complaints Board, which is OPC’s governing body, promulgated regulations regarding OPC 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.

COMPLAINANT before applying the wristlock that if he did not exit his car he would be arrested and that if he did not exit the car voluntarily he would be subjected to use of force. The evidence regarding how COMPLAINANT responded to other orders even while verbally protesting suggests he would have been responsive to verbal persuasion. Accordingly, the Complaint Examiner concludes that SUBJECT OFFICER used unnecessary or excessive force against the complainant by grabbing his wrist, in violation of MPD General Order 901.07.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on November 14, 2005.

ELEANOR NACE
Complaint Examiner