

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0113
COMPLAINANT:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Harassment
Allegation 2:	Language or Conduct
Allegation 3:	Unnecessary or Excessive Force
Complaint Examiner:	Turna R. Lewis
Merits Determination Date:	February 17, 2010

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 SUBJECT OFFICERS #1 and #2 harassed him when they used unnecessary or excessive force against him. COMPLAINANT also alleges SUBJECT OFFICER #2 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating. COMPLAINANT claimed that on January 15, 2005, he was standing in front of a building near his apartment smoking a cigarette when SUBJECT OFFICER #2 approached him and told him to put his out his cigarette. COMPLAINANT claimed that SUBJECT OFFICER #1 punched him and he suffered a nosebleed and a broken nose. COMPLAINANT alleges SUBJECT OFFICER #2 insulted and demeaned him, stating "...put the cigarette out or I'm going to knock your bitch ass out" and "lock his ass up, he likes to hit police." COMPLAINANT claimed that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by not taking him to the hospital or informing other members of the Metropolitan Police Department (MPD) that he (COMPLAINANT) needed to go to the hospital and not ensuring that he was taken to the hospital; and by stopping him without cause.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on December 30, 2009. The Complaint Examiner heard the testimony of COMPLAINANT, and WITNESS #1, his father, and Respondents SUBJECT OFFICER #1 and SUBJECT OFFICER #2. The Report of Investigation and attached exhibits were introduced into the record.

Attached Exhibits

- Exhibit 1: OPC Formal Complaint, COMPLAINANT, received Feb. 15, 2005.
- Exhibit 2: OPC Statement of COMPLAINANT, March 23, 2005.
- Exhibit 3: Memorandum of Investigative Activity (MOIA) for COMPLAINANT, June 21, 2007.
- Exhibit 4: MPD Form PD 119: Statement of COMPLAINANT, Jan. 15, 2005.
- Exhibit 5: MPD Form 313: Arrestee's Injury/Illness Report (COMPLAINANT), Jan. 15, 2005.
- Exhibit 6: Greater Southeast Hospital Medical Records for COMPLAINANT, Jan. 16, 2005.
- Exhibit 7: OPC Statement of WITNESS #2, March 15, 2007.
- Exhibit 8: OPC Statement of WITNESS #1, June 21, 2007.
- Exhibit 9: MOIA for WITNESS #1, June 21, 2007.
- Exhibit 10: OPC Statement of SUBJECT OFFICER #1, Jan. 9, 2007.
- Exhibit 11: Memorandum of Interview (MOI), SUBJECT OFFICER #1, Jan. 9, 2007.
- Exhibit 12: MPD Form PD 251/252, Incident-Based Event Report, Jan. 15, 2005.
- Exhibit 13: MPD Form PD 163, Arrest/Prosecution Report, Jan. 15, 2005.
- Exhibit 14: MPD Form 901-e: Use of Force Incident Report, SUBJECT OFFICER #1, Jan. 15, 2005.

- Exhibit 15: MPD Form 119: Statement of SUBJECT OFFICER #1, undated.
- Exhibit 16: MPD Form 119: Statement of SUBJECT OFFICER #1, April 5, 2005.
- Exhibit 17: OPC Statement of SUBJECT OFFICER #2, March 29, 2007.
- Exhibit 18: MOI, SUBJECT OFFICER #2, March 29, 2007.
- Exhibit 19: MPD Form 901-e: Use of Force Incident Report, SUBJECT OFFICER #2, Jan. 15, 2005.
- Exhibit 20: MPD Form 119: Statement of SUBJECT OFFICER #2, March 3, 2005.
- Exhibit 21: MPD Form 119: Statement of SUBJECT OFFICER #2, April 5, 2005.
- Exhibit 22: OPC Statement of WITNESS OFFICER #1, May 2, 2007.
- Exhibit 23: MPD Form 313: Arrestee's Injury/Illness Report (WITNESS OFFICER #1), Jan. 15, 2005.
- Exhibit 24: OPC Statement of WITNESS OFFICER #2, March 28, 2007.
- Exhibit 25: OPC Statement of WITNESS OFFICER #3, May 9, 2007.
- Exhibit 26: OPC Statement of WITNESS OFFICER #4, May 3, 2007.
- Exhibit 27: OPC Statement of WITNESS OFFICER #5, May 3, 2007.
- Exhibit 28: OPC Statement of WITNESS OFFICER #6, May 9, 2007.
- Exhibit 29: OPC Statement of WITNESS OFFICER #7, June 20, 2007.
- Exhibit 30: MPD Force Investigation Team (FIT) Report, April 22, 2005.
- Exhibit 31: United States Attorney Office, Declination Letter, May 1, 2006.
- Exhibit 32: MPD General Order 901.07, Use of Force.
- Exhibit 33: Application of the Use of Force Continuum for MPD, November 2000.
- Exhibit 34: D.C.Code § 5-1111(d) (2001).

- Exhibit 35: D.C. Mun.Reg. tit.6A, § 2114.5 (2002).
- Exhibit 36: MPD Special Order 01-01, Harassment.
- Exhibit 37: D.C. Mun. Regs. tit. 6A, § 2199.1 (2002).
- Exhibit 38: MPD General Order 502.7, Medical Treatment and Hospitalization for Prisoners.
- Exhibit 39: MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks.
- Exhibit 40: MPD General Order 201.26, Duties, Responsibilities and Conduct of Members of the Department.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and an evidentiary hearing conducted on December 30, 2009, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 15, 2005, at approximately 1:30 p.m., COMPLAINANT was standing in front of a building in the 2300 block of Pitts Place S.E. smoking when SUBJECT OFFICERS #1 and #2, dressed in plainclothes, appeared with other MPD police officers.
2. At the time of the incident, SUBJECT OFFICERS #1 and #2 were assigned to the Seventh District MPD Focus Mission Unit, whose function was to target neighborhoods and individuals involved in the sale of illegal narcotics.
3. At the time of the incident, SUBJECT OFFICERS #1 and #2 were in plainclothes as part of the arrest team charged with arresting a suspect in a "buy-bust operation" in the area of the 2300 block of Pitts Place S.E., near COMPLAINANT's apartment.
4. The arrest team was searching for three black males, two who witnessed
5. the sale of illegal narcotics sold to an undercover MPD officer and the suspect, described as a light-skinned black male wearing a black jacket.
6. COMPLAINANT and other individuals were blocking the entranceway to the building SUBJECT OFFICERS #1 and #2 were attempting to enter for the purposes of searching and arresting the suspect in the "buy-bust operation."

7. SUBJECT OFFICERS #1 and #2 directed COMPLAINANT, who wore a black jacket, and other individuals to move from the entranceway to the building. COMPLAINANT and the other individuals refused to move.
8. COMPLAINANT assumed a combative stance, and SUBJECT OFFICER #2 approached COMPLAINANT from the front and SUBJECT OFFICER #1 used a "leg takedown" procedure to physically remove COMPLAINANT from the entranceway, which resulted in COMPLAINANT falling face-down to the ground. SUBJECT OFFICER #1 arrested COMPLAINANT for assault on a police officer (APO).
9. COMPLAINANT was bleeding from the face and requested medical treatment. An ambulance was called and a paramedic treated him. The treatment consisted of wiping the blood from COMPLAINANT's face.
10. COMPLAINANT was taken to the Seventh District Police Station where his arrest was processed. While there, he requested medical treatment and was taken to Greater Southeast Hospital on January 16, 2005 at approximately 2 a.m. He was diagnosed with a fractured nose a doctor and prescribed antibiotics and pain medication and told to return in 2 days.
11. An x-ray of COMPLAINANT's nose taken on January 18, 2005, at Greater Southeast Hospital determined that he did not suffer a fracture of his nose. To date, COMPLAINANT has not received any further medical treatment for injuries to his nose.
12. COMPLAINANT was unaware the x-ray and radiology report determined he did not suffer a fracture of his nose.
13. MPD investigated the use of force by SUBJECT OFFICERS #1 and #2 and a report was issued on April 15, 2005 which found SUBJECT OFFICERS #1 and #2's use of force ("leg takedown") was justified and in compliance with MPD policy.
14. The U.S. Attorney's Office issued a letter declining criminal prosecution of the subject officers in correspondence dated May 4, 2006.

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].”

Allegation of Harassment

COMPLAINANT alleges that he was harassed when: 1) he was detained and arrested by SUBJECT OFFICERS #1 and #2 without cause, and 2) SUBJECT OFFICERS #1 and #2 denied him medical treatment by refusing to take him to the hospital when he initially requested it at the scene of his arrest. 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.”

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.” MPD General Order 502, Part I, section A “Medical Treatment” provides that “persons held in departmental confinement facilities who claim a need for medical treatment due to any injury or disease shall be immediately transported to D.C. General Hospital for examination and treatment.” As applied to this matter, Respondents are charged with harassing COMPLAINANT because they did not arrange to transport him to the hospital at the time of his arrest.

Neither COMPLAINANT’s own testimony nor the documentary evidence supports his claim that the SUBJECT OFFICERS did not respond to his request for medical treatment. COMPLAINANT testified an ambulance arrived on the scene and he received treatment from a paramedic who “wiped my nose off and said, no, sir, you’re all right, you don’t need to go.” (TR at 19) COMPLAINANT contends he did not receive more extensive treatment because the police officers directed the paramedic not to provide treatment. However, nothing in the record supports his claim a paramedic denied him appropriate treatment at the direction of the MPD officers or that the paramedic at the scene did not provide appropriate treatment. The paramedic was not in the chain of command of MPD officers and was not subject to job discipline or loss by refusing an MPD directive. Further, the paramedic has an ethical duty to provide appropriate medical treatment. Nothing in the record supports COMPLAINANT’s assertion that the paramedic refused to provide him appropriate medical treatment or to transport him to the hospital due to persuasion or orders from MPD officers.

At the Seventh District Station, WITNESS OFFICER #1 completed an “Arrestee’s Injury/Illness Report” on January 15, 2005, which was signed by WITNESS OFFICER #8 (Exhibit No. 5). The “Arrestee’s injury/Illness Report” states COMPLAINANT received medical treatment from the paramedic at the scene. At COMPLAINANT’s request, an MPD officer drove him to Greater Southeast Hospital where he was examined and then returned to the

station. The objective medical evidence, an X-ray and radiology report, taken on January 18, 2005, concluded COMPLAINANT did not have a broken or fractured nose. (Exhibit No. 6).

With respect to COMPLAINANT's second allegation of harassment, he alleges the SUBJECT OFFICERS did not have probable cause to stop and arrest him. MPD General Order 304-10 defines a "stop" as "the temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person. A stop occurs whenever an officer uses his/her authority to compel a person to halt, remain in a certain place, or to perform some act (such as walking to a nearby location where the officer can use a radio or telephone). If a person is under a reasonable impression that he/she is not free to leave the officer's presence, a "stop" has occurred. The basis for a "stop" is based on reasonable suspicion that "... a member reasonably suspects that a person has committed, is committing, or is about to commit any crime, the officer has the authority to stop and detain that person for the purpose of determining whether or not probable cause exists to arrest. The officer may exercise that authority in any place in which he/she has a legal right to be" (Exhibit No. 39).

SUBJECT OFFICERS #1 and #2 were part of an arrest team responsible for searching for a suspect who had just sold illegal narcotics to an undercover MPD police officer in the 2300 block of Pitts Place S.E. (TR¹ at 40, 53). The arrest team was immediately dispatched to search the area after the drug buy occurred. The arrest team was looking for a light-skinned black male wearing a black jacket and two other black males who witnessed the illegal sale of narcotics. COMPLAINANT, a light-skinned black male wearing a black jacket and blue jeans, was standing with two other black males in front of 2346 Pitts Place S.E. The SUBJECT OFFICERS maintain they approached COMPLAINANT and the other two males for identification, to ascertain if they had participated in or witnessed the illegal sale of narcotics (TR at 40-41). COMPLAINANT wore a black jacket.

Based upon the reasonable officer standard enunciated in MPD Order 304-10, relevant factors in determining whether a citizen stop is reasonable includes timing of the stop and its proximity to the crime, and whether the officers have a description of the suspect. In order to determine whether the SUBJECT OFFICERS acted reasonably in the stop of COMPLAINANT, one must look at the totality of the circumstances. The relevant uncontested facts are that COMPLAINANT and his two friends were in close proximity to the location of the crime, three individuals were involved in the crime, COMPLAINANT fit the physical profile of the suspect, including wearing a black jacket. In a statement provided on June 21, 2007, WITNESS #1, COMPLAINANT's father corroborated the SUBJECT OFFICERS' testimony that COMPLAINANT was wearing a black jacket at the time of his stop and arrest (Exhibit No. 9). COMPLAINANT disputes wearing a jacket, which I do not find credible since the incident occurred on January 15, 2005. The Arrest Report, completed on January 15, 2005 by SUBJECT OFFICER #1, described the suspect as a light-complexioned black male wearing a black jacket (Exhibit No. 13).

¹ TR refers to the hearing transcript.

Under these circumstances, the officers had probable cause to approach COMPLAINANT to determine if he was the suspect or a witness. COMPLAINANT stated he was on the porch of the apartment building located at 2346 Pitts Place, S.E. COMPLAINANT's own testimony that he told SUBJECT OFFICER #2 he would put the cigarette out, "but you can't touch me," indicates that COMPLAINANT did not respond to the Officers and continued to block the entranceway (TR at 14). I find credible the SUBJECT OFFICERS' testimony that COMPLAINANT assumed a combative stance indicating he would physically fight the officers. Neither the SUBJECT OFFICERS nor COMPLAINANT testified that COMPLAINANT physically fought the SUBJECT OFFICERS. Based upon the testimony of the SUBJECT OFFICERS and COMPLAINANT, it appears that the SUBJECT OFFICERS took control of COMPLAINANT to gain entrance into the building and prevent a physical assault. The SUBJECT OFFICERS use of the "leg takedown" maneuver, which stunned and surprised COMPLAINANT prevented further escalation of COMPLAINANT's combative stance to a physical assault and removed him from blocking the entranceway. Based on the evidence of record, the SUBJECT OFFICERS had probable cause to stop and detain COMPLAINANT to determine if he was a suspect or witness to the illegal narcotics sale, which had just occurred.

COMPLAINANT alleges that his arrest for "assault on a police officer" was unjustified. D.C. Official Code defines assault on law enforcement officers, to include MPD officers. The pertinent section provides the basis for arresting a person "... (b) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 180 days or fined not more than \$1,000, or both..." (D.C. Official Code § 22-405 (b) (2001). COMPLAINANT's own testimony in which he admits he told the SUBJECT OFFICERS he would put out his cigarette, but that the officers could move not him provides the rationale for his arrest. COMPLAINANT knew the SUBJECT OFFICERS were on official business and knew they wanted to enter the building as part of an official police investigation. COMPLAINANT assumed a combative stance, as described by the SUBJECT OFFICERS, whose testimony I credit, and continued to block the entranceway until he was removed by the "leg takedown" maneuver.

MPD policy "Application of the Use of Force Continuum for the MPD" provides in part III, Use of Force is limited to: "1) Defending yourself or others from an actual or perceived attack; 2) Effecting the arrest or preventing the escape of a suspect; and 3) Overcoming resistance" (Exhibit No. 33). Here, the SUBJECT OFFICERS credibly testified that COMPLAINANT's stance was combative and threatening. The SUBJECT OFFICERS were attempting to enter the building, and COMPLAINANT blocked the entranceway, demonstrating resistance (TR at 41, 53). There was probable cause to arrest him as COMPLAINANT's words and physical behavior was reasonably interpreted as threatening to the officers and impeded and interfered with an official police investigation. Based upon the evidence of record, the totality of the circumstances, the arrest complied with the law and SUBJECT OFFICER #1 had reasonable cause to arrest COMPLAINANT.

Allegation of Unnecessary and Excessive Force

COMPLAINANT alleges that the SUBJECT OFFICERS engaged in unnecessary and excessive force when he was hit in the face by SUBJECT OFFICER #2 and slammed to the ground by Officer SUBJECT OFFICER #1, using the “leg takedown” maneuver. The SUBJECT OFFICERS deny hitting COMPLAINANT in the face and maintain the leg takedown was justified because COMPLAINANT assumed a combative stance when the SUBJECT OFFICERS approached him.

MPD General Order – 901.07 (effective October 7, 2002) sets the standard for determining whether an officer uses excessive force: “the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (Exhibit No. 32) MPD General Order 901.7, Part II states, “[T]he policy of the Department is... that an officer shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” (Exhibit No. 32)

COMPLAINANT testified he and two males were standing in the entranceway of 2346 Pitts Place, S.E. when they were approached by the arrest team. COMPLAINANT testified SUBJECT OFFICERS #1 and #2 approached him and directed him to move and told him to put out his cigarette. (TR at 14) COMPLAINANT testified he agreed to put his cigarette out, stating to the SUBJECT OFFICERS that they could not touch him. COMPLAINANT testified that he was then punched in the face by SUBJECT OFFICER #2. (TR at 14) COMPLAINANT testified a neighbor, WITNESS #2 witnessed the incident. OPC was unable to locate WITNESS #2 and she did not testify at the hearing. In a statement provided to OPC on March 15, 2007, WITNESS #2 stated she was on the front steps of her apartment and observed three police officers in uniform approach COMPLAINANT and two other men and tell them to move. As the officer pushed COMPLAINANT, WITNESS #2 calculated she was approximately ten feet away from COMPLAINANT and the officer. WITNESS #2 statement indicates that as COMPLAINANT began to move, an officer began to push him and the push caused COMPLAINANT to sit down on one of the steps the men said “something,” and then they began to move. WITNESS #2’s statement indicates COMPLAINANT asked her to get his father and that she walked to WITNESS #1’s apartment. WITNESS #2 does not indicate that she saw the leg takedown or that she saw an officer hit COMPLAINANT in the face (Exhibit No. 7). COMPLAINANT’s witness, WITNESS #1, testified a neighbor, WITNESS #2 informed him that COMPLAINANT was involved in an altercation with the police and was arrested. WITNESS #1 testified he did not witness the incident and could not confirm whether his son was hit by SUBJECT OFFICER #2 in the face or whether SUBJECT OFFICER #1 performed the leg takedown maneuver because he was at his apartment. WITNESS #1 testified his assessment of what happened was based upon information received by WITNESS #2 (TR at 31-32).

SUBJECT OFFICER #1 testified he and SUBJECT OFFICER #2 were part of an arrest team looking for an individual involved in an illegal narcotics sale. SUBJECT OFFICER #1 testified he, SUBJECT OFFICER #2, and other members of the arrest team approached COMPLAINANT and two other black males standing in front of an apartment building located at 2346 Pitts Place, S.E.. Both SUBJECT OFFICERS testified they asked COMPLAINANT and the two other individuals to move, and that COMPLAINANT assumed a combative stance. (TR at SUBJECT OFFICER #1 testified COMPLAINANT's combative stance appeared to "ready himself for a strike or a progression towards the officers who were on the scene." (TR at 42, 54,) At that time, SUBJECT OFFICER #2 approached COMPLAINANT from the front and SUBJECT OFFICER #1 performed a leg takedown to gain control of COMPLAINANT so officers could enter the building.

COMPLAINANT and the SUBJECT OFFICERS present contradictory accounts of the incident. COMPLAINANT alleges he was hit and slammed to the ground without provocation. The SUBJECT OFFICERS contend that COMPLAINANT assumed a combative stance that justified the use of force. Looking at the totality of the circumstances, I find the SUBJECT OFFICERS' actions reasonable—they were in search of a suspect in a "buy-bust operation." The illegal sale of narcotics occurred in the 2300 block of Pitts Place, S.E., near 2346 Pitts Place, S.E., where COMPLAINANT was at the time of the incident. Time was of the essence, since the illegal sale of narcotics had just occurred and the suspect was believed to be in the area, and the COMPLAINANT appeared to block the SUBJECT OFFICERS' attempts to enter the building to search for a suspect.

Allegation of Insulting, Demeaning, or Humiliating Language or Conduct

MPD General Order 201.26, Part I, Section C, No. 1 states: "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 alleges that when the members of the arrest team approached him, SUBJECT OFFICER #2 told him to put his cigarette out and "...if you don't put the cigarette out I am going to knock your bitch ass out." (TR at Both SUBJECT OFFICERS deny using profanity or any abusive language with COMPLAINANT. (TR at 43, 55) There are no other witnesses to corroborate either the COMPLAINANT's or the SUBJECT OFFICERS' version of the incident. Based upon the totality of the circumstances, as described above, I do not find credible COMPLAINANT's testimony.

The Complaint Examiner finds, based on a preponderance of the evidence of record, that the allegations are unfounded.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1 and SUBJECT OFFICER #2.

Allegation 1:	Unfounded
Allegation 2:	Unfounded
Allegation 3:	Unfounded

Submitted on February 17, 2010.

Turna R. Lewis
Complaint Examiner