

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0116
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER, 5 th District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Linda Reese Davidson
Merits Determination Date:	March 30, 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

The COMPLAINANT alleged that on January 16, 2005, at approximately 8:00 p.m., she was sitting on the front door step of her home located at LOCATION #1, N.E., when an MPD officer driving a patrol car parked in front of her house. The Complainant further alleged that SUBJECT OFFICER exited his vehicle, ran up the front steps, removed his gun from its holster, pushed the door open and entered the house. The Complainant alleged that her fiancé, WITNESS #1, walked out of a second floor bedroom and encountered SUBJECT OFFICER pointing a gun at him. The Complainant alleged that WITNESS #2, her three year old son, walked into the hall. SUBJECT OFFICER pointed his weapon at the child. When SUBJECT OFFICER realized that WITNESS #2 was a child, he turned his weapon back toward WITNESS #1. SUBJECT OFFICER is said to have looked into the other rooms and when he was satisfied that the other suspect was not inside the home, he placed his gun in the holster and arrested WITNESS #1.

The Complainant indicated that the above-cited activity stemmed from an incident that occurred earlier in the day [January 16, 2005]. WITNESS #1 and COMPLAINANT's neighbor, WITNESS #3 went to a nearby gas station in an effort to purchase "pit bulls from a woman." The time of the meeting had been previously set, but because the seller, subsequently identified as WITNESS #4, failed to appear, WITNESS #1 and WITNESS #3 returned to the meeting place

at 6:00 p.m. WITNESS #1 and WITNESS #3 returned to the premises at LOCATION #1, N.E., with the dogs. WITNESS #4 called the police and reported that her two dogs were stolen. She reported that she had arranged to meet the potential buyers at a nearby gas station. WITNESS #4's report indicates that she met with two men and they ran off with the puppies without paying her.

SUBJECT OFFICER responded to the radio call describing the theft of two puppies. The crime occurred at an Exxon station on New York Avenue. Also, the report described the suspects. SUBJECT OFFICER and his partner, WITNESS OFFICER #1, drove around the area looking for the suspects [and puppies]. SUBJECT OFFICER turned onto STREET #1, N.E., when he observed WITNESS #1 outside COMPLAINANT's residence with "two or three white puppies." In an interview conducted by an investigator from the Office of Police Complaints (OPC), SUBJECT OFFICER stated that, "the dogs matched the description of the dogs that had been reported stolen and WITNESS #1 matched the description of one of the suspects." SUBJECT OFFICER observed WITNESS #1 go inside of the house. SUBJECT OFFICER followed him inside of the home. The owner of the dogs, WITNESS #4, was driven to the Complainant's residence where she identified WITNESS #1 and WITNESS #3 as the men who stole her dogs. The two suspects were arrested for First Degree Theft.

II. EVIDENTIARY HEARING

Complaint examiner initially determined an evidentiary hearing would be required regarding this complaint however no evidentiary hearing was conducted because efforts to contact the Complainant were unsuccessful. Based on a subsequent review of OPC's Report of Investigation, complaint examiner later determined that the Report of Investigation presented no genuine issues of material fact in dispute, therefore no hearing was required. *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 December 4, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. The COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on February 2, 2005.
2. COMPLAINANT alleged that on January 16, 2005, SUBJECT OFFICER, Fifth District, harassed her and her family and used unnecessary or excessive force against her fiancé and her child.
3. COMPLAINANT alleged that on January 16, 2005, at approximately 8:00 p.m., she was sitting on the front door step of her home located at LOCATION #1, N.E.

4. A police officer, later identified as SUBJECT OFFICER, Fifth District, parked a patrol car parked in front of her house.
5. SUBJECT OFFICER indicated that he saw WITNESS #1 on the front steps of LOCATION #1, N.E., with dogs that matched the description of the stolen pit bulls.
6. SUBJECT OFFICER indicated that WITNESS #1 matched the description of one of the individuals suspected of stealing the dogs.
7. WITNESS #1 began to walk inside the house with the dogs.
8. SUBJECT OFFICER ordered WITNESS #1 to stop, but WITNESS #1 entered the house.
9. SUBJECT OFFICER followed the WITNESS #1 inside the house.
10. SUBJECT OFFICER entered the house; he removed his gun from its holster and with his weapon drawn, walked upstairs.
11. The complainant's fiancé, WITNESS #1, walked out of an upstairs room, when he saw SUBJECT OFFICER's weapon pointed at him.
12. WITNESS #2, the complainant's three year old son, exited a room located behind SUBJECT OFFICER. SUBJECT OFFICER turned and pointed his weapon at the child. When he realized that WITNESS #2 was a child, he turned the gun back towards WITNESS #1.
13. WITNESS #4, the owner of the dogs, was driven to the complainant's home. She identified her dogs, as well as identified WITNESS #1.
14. WITNESS #1 was arrested for First Degree Theft.

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

The fact that SUBJECT OFFICER entered the home without consent is undisputed. This area of the law is well settled. Absent exigent circumstances, SUBJECT OFFICER lacked the authority to enter the house. Notwithstanding the likelihood that WITNESS #1 would have disposed of the puppies before SUBJECT OFFICER had the opportunity to obtain a warrant, does not provide a sufficient basis for violating firm constitutional protections that are afforded to citizens. SUBJECT OFFICER was not alone. His partner was on the scene, in addition to several other officers that responded to the call and arrived at the scene. SUBJECT OFFICER as well as any of the other officers could have secured the premises until a warrant was obtained.

The author of the OPC Report of Investigation accurately cites the Supreme Court’s findings. It is worth repeating, “Case law is clear that an entry into a home to make a warrantless arrest with probable cause, ... without exigent circumstances, violates the Fourth Amendment.” SUBJECT OFFICER entered the home without first obtaining COMPLAINANT’s consent. SUBJECT OFFICER’s conduct amounts to harassment, in violation of MPD Special Order 01-01.

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.”

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

SUBJECT OFFICER unintentionally pointed his weapon at WITNESS #2. When he realized that WITNESS #2 was a child, he pointed his weapon back at WITNESS #1. SUBJECT OFFICER cannot be held liable under the Fourth Amendment for unintentionally using force against a person, *see* *Brower v. Inyo*, 593 U.S. Therefore, SUBJECT OFFICER when unintentionally pointing his gun at WITNESS #2, did not use force against him.

However, SUBJECT OFFICER did intentionally point his weapon at WITNESS #1. SUBJECT OFFICER, without consent, followed WITNESS #1 inside of the house. Because there were no exigent circumstances such as, WITNESS #1 posing an immediate threat to the safety of SUBJECT OFFICER, or WITNESS #1 making an attempt to flee, SUBJECT OFFICER created the condition which caused him to feel threatened, remove his gun from the holster, and point it at WITNESS #1. SUBJECT OFFICER used unnecessary or excessive force against WITNESS #1 in violation of MPD General Order 901.7.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Unnecessary or Excessive Force	Exonerated in part (pointing gun at complainant’s son, WITNESS #2); Sustained in part (pointing gun at WITNESS #1)

Submitted on March 30, 2007.

Linda Reese Davidson
Complaint Examiner