

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0237
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, Fourth District SUBJECT OFFICER #2, Fourth District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	May 8, 2008

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 OPC on April 18, 2005. The Complainant alleged that on April 16, 2005, two subject officers, SUBJECT OFFICER #1 and SUBJECT OFFICER #2, harassed the Complainant when the officers stopped him while he was walking home from work and arrested him for disorderly conduct. The Complainant further alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against the complainant during the arrest.

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 (ROI), the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 16, 2005, at approximately 12:30 a.m., while walking home after his shift at PLACE OF EMPLOYMENT, Complainant saw a police car chasing another vehicle in the 4000 block of 7th Street, N.W. The driver of the vehicle left the vehicle and traveled on foot.
2. A lookout for the suspect was broadcast.
3. Moments later, an MPD police cruiser driven by SUBJECT OFFICER #1, who was accompanied by SUBJECT OFFICER #2, pulled up and stopped beside Complainant.
4. SUBJECT OFFICER #1 got out of the cruiser and asked the Complainant, "Where are you coming from?"
5. Complainant initially did not answer, and after repeated questioning Complainant raised his voice and used profanity against the officers.
6. SUBJECT OFFICER #1 used force to detain the Complainant and bring Complainant to the ground. SUBJECT OFFICER #1 called for back up. Several MPD officers responded to the call. Complainant was held until the arrival of the additional MPD officers.
7. Complainant was arrested for disorderly conduct and placed in a transport vehicle.
8. After Complainant was placed in the transport vehicle, he was taken a few blocks away from the scene of his arrest to a place where the police had arrested the actual suspect.
9. The suspect was placed in the backseat with Complainant. Complainant was taken to the Fourth District police station for processing.
10. On April 18, 2005, Complainant was treated at the PLACE OF EMPLOYMENT for injuries suffered by his left shoulder, nose, neck, left eye, left knee, and multiple abrasions over his body.
11. On April 18, 2005, the Complainant filed a complaint with OPC.

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].”

A. Harassment

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

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.”

The Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by stopping Complainant as he walked home from work. Complainant was arrested for disorderly conduct.

Both subject officers were on a routine patrol when they heard a lookout report of their police radio. The lookout report stated that an automobile theft suspect had fled on foot in the area of McFarlane Middle School. The lookout was given over the radio for a black male in hospital fatigues. A few minutes after receiving the lookout, the subject officers observed Complainant walking in the vicinity of McFarlane Middle School. Neither SUBJECT OFFICER #1 nor SUBJECT OFFICER #2 indicated how the suspect’s physical description as broadcast over the radio matched Complainant’s description. Indeed, SUBJECT OFFICER #2 indicated in the MPD Form PD 163, Arrest/Prosecution Report for Complainant, dated April 16, 2005 (PD 163), that the subject officers made contact with the Complainant before any lookout had been broadcast. See Exhibit 12, PD 163, at 2. If it is true that the stop was based upon a lookout, the Complaint Examiner finds the only similarities between the description of the suspect and the Complainant is that both were African American males and wore hospital fatigues. Exhibit 6, Memorandum of Interview, SUBJECT OFFICER #1.

Both officers stopped Complainant and began to question him. It is likely that Complainant became agitated, raised his voice, may even have refused the subject officers requests for information and identification, or even attempted to flee. There is dispute as to when the Complainant became angry. The record does not contain a clear statement of the facts and thus does not make for a cogent and logical story. For example, the Subject Officers' statements indicate that the Complainant was agitated before the arrest was made; while, the Complainant indicates that he did not become angry until afterward. SUBJECT OFFICER #2's statement in the PD 163 that the subject officers did not I.D. the Complainant until after he attempted to flee the area, adds more confusion to the case. Id. Both the Subject Officers and the Complainant agree that he used a loud voice and became angry. Id.; Exhibit 2, OPC Statement of Complainant, dated April 20, 2005, (Complainant's OPC Statement) at 2. Despite the confusing events, the Complaint Examiner finds that the Complainant did not answer the police when questioned, fled from the police, and spoke in a loud voice with the police. Sometime during these events, both officers learned that Complainant was not the subject of the lookout and therefore was not the suspect. See Exhibit 5, OPC Statement of SUBJECT OFFICER #1, dated May 30, 2007, at 2; see also Exhibit 7, OPC Statement of SUBJECT OFFICER #2, dated May 16, 2007, at 1. This notwithstanding, the Complainant was never released from police custody.

The Complaint Examiner finds that the Subject Officers' arrest of the Complainant was harassment. The Subject Officers' initial stop of the Complainant may have been permissible; however, once the Subject Officers determined that the Complainant was not the suspect, the Subject Officers should have released the Complainant from custody. According to MPD General Order 304.15, "Member shall . . . ensure that the detention lasts no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays. If the officer determines that the reasonable suspicion was unfounded, he/she should explain this to the person detained." Exhibit 21, MPD General Order 304.15, Unbiased Policing. Absent a reasonable suspicion that the Complainant was engaged in any illegal activity or a reasonable suspicion that the Complainant matched the lookout description, the Complaint had no legal obligation to respond to police questions. See Exhibit 20, MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks, at 2. In fact, absent reasonable suspicion, "[w]here citizens, refuse, or cease to cooperate during a "contact," they must be permitted to go on their way, and the refusal to cooperate (or silence) cannot, itself, be used as the basis to escalate the encounter into a "stop." Id.

The Subject Officers did not indicate to the Complainant that he was a suspect that matched a lookout description and once they determined that he did not match the description, the Complainant was never released. Instead, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 allowed the situation to escalate. Ultimately, the Complainant was arrested for disorderly conduct. The Complaint Examiner finds that the Complaint's arrest was not legitimate.

D.C. Code Sec. 22-1321 defines disorderly conduct. It states, in pertinent part:

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons; (4) interferes with any person in any place by jostling against such person or unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbags; or (5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than \$250 or imprisoned not more than 90 days, or both.

Exhibit 20.

The Complainant was not obstructive or annoying to the Subject Officers who were improperly questioning, stopping, and arresting him. Neither did he make loud noises to a considerable number of people in the nighttime, as no officer reported that there was a crowd of people witnessing the Complainant's loud conversation with the Subject Officers. This case highlights the important fact that citizens need to know their rights when confronted by law enforcement and that they are not required to answer questions posed by law enforcement when they are engaged in completely lawful activities. It is absurd for any law-abiding citizen to be subject to arrest for disorderly conduct because the citizen gets upset with the police or fails to answer police questions when the citizen is not involved in any unlawful activities. In general, police are held to a high standard and must be courteous even when provoked. See MPD General Order 201.26, Part I, Section C.

The Complaint Examiner finds that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 arrested the Complainant with no legitimate law enforcement purpose. Given the facts and circumstance described above, the Complainant should not have been detained in police custody and should not have been arrested. Therefore, the Complaint Examiner determines that SUBJECT OFFICER #1 and SUBJECT OFFICER #2's conduct harassed the Complainant.

B. Excessive 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

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.”

Complainant alleged that he was flung on top of the police cruiser and that SUBJECT OFFICER #1 choked him. Complainant also alleged that he was flung onto the ground and that he was struck in the head, eyes, mouth, ribs, and that he was kned in the neck by SUBJECT OFFICER #1. SUBJECT OFFICER #1 denies having had any physical contact with the Complainant. Exhibit 5. SUBJECT OFFICER #2 stated that SUBJECT OFFICER #1 restrained the Complainant, and brought him to the ground, but did not strike the Complainant or use excessive force. Exhibit 7.

As discussed above, the story on both sides has been less than a model of clarity. The Complaint Examiner does not find the Subject Officers’ statements credible. However, the Complaint Examiner finds the Complainant’s April 18, 2005, medical records to be the most credible evidence of what happened to him on the morning of April 16, 2005. Complainant sought treatment for the injuries that he claims he suffered as a result of his encounter with the police. Exhibit 3. As documented in the medical report, there is no doubt that the Complainant suffered injuries and numerous contusions to his body, and those injuries were consistent with the Complainant’s and WITNESS #1’s descriptions of the force SUBJECT OFFICER #1 inflicted upon the Complainant during the incident. Given the facts presented, any injury to the Complainant would have been excessive and unreasonable under the circumstances. Neither SUBJECT OFFICER #1 nor SUBJECT OFFICER #2 indicated that Complainant was a threat or committing a severe crime. There was also no mention that Complainant was retaliating against the officers or otherwise resisting arrest. SUBJECT OFFICER #2 indicated in the PD 163 that the Complainant attempted to flee before he was identified. However, even if the Complainant was fleeing, the contusions suffered by the Complainant were not justified under these circumstances. There were no facts presented that required the officers to make an immediate decision to harm the Complainant. No force that would cause multiple contusions on the Complainant, under these circumstances, would have been appropriate. D.C. Mun. Regs., title 6A, § 2199.1. Thus, the Complaint Examiner determines that SUBJECT OFFICER #1 used unnecessary and excessive force upon the Complainant.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1, Fourth District

Allegation 1: Harassment	Sustained
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Allegation 2: Unnecessary/Excessive Force	Sustained
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SUBJECT OFFICER #2, Fourth District

Allegation 1: Harassment	Sustained
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Submitted on May 16, 2008.

ARTHUR D. SIDNEY
Complaint Examiner