

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CITIZEN COMPLAINT REVIEW**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0405
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 4th District
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Michael K. Lewis
Merits Determination Date:	December 2, 2003

Pursuant to D.C. Official Code § 5-1107(a), 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

In a complaint filed with the Office of Citizen Complaint Review (OCCR) on July 25, 2001, COMPLAINANT alleged that SUBJECT OFFICER harassed and used unnecessary force against him. On July 23, 2001, SUBJECT OFFICER followed COMPLAINANT into Lions Liquor Store at 3614 Georgia Avenue, N.W., grabbed him, pushed him face first through the closed doors of the store and forced him to the pavement. COMPLAINANT further alleged that during the incident, SUBJECT OFFICER used language that was insulting and demeaning in front of his daughter.

COMPLAINANT was released without arrest at the scene.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR'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 OCCR's Report of Investigation, and on the objections submitted by SUBJECT OFFICER on September 4, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 23, 2001, SUBJECT OFFICER observed from his patrol car what he believed to be an exchange of money for a small white bag taking place between Complainant and another man later identified as WITNESS #1.
2. SUBJECT OFFICER made a U-turn, told his partner, WITNESS OFFICER #1, that he believed that he had just observed a drug transaction, and parked the patrol car in front of Lion's Liquor Store [Lion's].
3. Complainant was walking away from SUBJECT OFFICER towards Lion's.
4. SUBJECT OFFICER yelled to COMPLAINANT to stop, and when Complainant continued into the store, followed him into Lion's.
5. In the store, SUBJECT OFFICER approached COMPLAINANT, ultimately grabbing him by the arm and neck and pushing him head first through the front doors of the store.
6. Once outside the store, SUBJECT OFFICER forced Complainant to the ground face first.
7. SUBJECT OFFICER did not search COMPLAINANT, nor did either officer search WITNESS #1.
8. COMPLAINANT was not arrested.
9. After a short while, Complainant was permitted to stand, and the officers departed.
10. Neither form PD 251 or form PD 76 was completed to reflect the stop of COMPLAINANT.

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].”

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.”¹

MPD General Order 304.10, Part I, Section B, No. 1 states “[i]f 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 the authority in any place in which he/she has a legal right to be.” [Emphasis in original]

MPD General Order 304.10, Part I, Section B, No. 2 states “[t]he term ‘reasonable suspicion’ is not capable of precise definition; it is more than a hunch or mere speculation on the part of the officer but less than the probably cause necessary to arrest. Reasonable suspicion is the combination of specific facts and circumstances which would justify a reasonable officer to believe that the person stopped had committed, was committing or was about to commit a criminal act.”

While any officer may detain any person based upon reasonable suspicion, SUBJECT OFFICER failed completely to follow-up with the one act that might have determined whether a crime had just been committed. That is, he did not search COMPLAINANT for the drugs he thought he had just seen transferred from one man to another. As both COMPLAINANT and WITNESS #1 freely stated that money had been transferred from Complainant to WITNESS #1, COMPLAINANT would have been the logical person to search for drugs. It is noteworthy, however, that WITNESS #1 also was not searched.

In short, SUBJECT OFFICER conducted a stop as he had the right to do. He did not, however, do anything to ascertain “whether or not probable cause exists to arrest.” He apprehended Complainant, physically removed him from Lion’s Liquors, forced him to the ground, and then released him. Under these circumstances, SUBJECT OFFICER’s stop and subsequent treatment of COMPLAINANT appears to be nothing less than harassment.

¹ The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of “harassment” contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

Use of Force

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

In this situation, SUBJECT OFFICER admitted that he pursued Complainant into Lion’s Liquors, physically removed him from the store and forced Complainant to the ground face down. SUBJECT OFFICER claims that Complainant resisted him, although he does not assert that he ever arrested Complainant. No witness substantiates SUBJECT OFFICER’s assertion that Complainant resisted, including his partner, WITNESS OFFICER #1. The only conclusion that can be drawn from the available evidence is that SUBJECT OFFICER used excessive force in removing Complainant from Lion’s Liquors and in placing him face down on the ground.

Insulting or Humiliating Language

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.”

Complainant asserts that SUBJECT OFFICER used derogatory language when addressing him. None of the witnesses, including Complainant’s friend, WITNESS #1, remembers hearing SUBJECT OFFICER use the language in question. Complainant refused the request of OCCR investigators to interview his daughter. The Complaint Examiner finds the evidence on this issue to be non-conclusive. In light of his findings on harassment and use of force, however, the Complaint Examiner has concluded that a hearing on the question of the language used by SUBJECT OFFICER is not warranted.

² The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR 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.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained
Allegation 3:	Insufficient Facts

Submitted on December 2, 2003.

Michael K. Lewis
Complaint Examiner