

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0289
Complainant:	COMPLAINANT
Subject Officer Badge No., District:	SUBJECT OFFICER, Fugitive Task Force
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning or Humiliating Language or Conduct
Allegation 3:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Linda Reese Davidson
Merits Determination Date:	December 23, 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 on May 7, 2002, COMPLAINANT of LOCATION #1, S.E., alleges that Metropolitan Police Department SUBJECT OFFICER, Fugitive Task Force (1) harassed him and (2) engaged in language or conduct that was humiliating, demeaning, and insulting. And, the complainant alleges that on May 3, 2002, SUBJECT OFFICER subjected him to (3) unnecessary and excessive force.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on November 19, 2003. The Complaint Examiner heard the testimony of (in order of appearance), COMPLAINANT, WITNESS #1, WITNESS #2, WITNESS OFFICER #1 and SUBJECT OFFICER. The following exhibit was introduced at the Hearing:

Complainant Exhibit 1: A Demonstrative Exhibit of the Intersection at Texas Ave. and
Chaplin St. in S. E. Washington, D.C.

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation and an evidentiary hearing held on November 19, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 25, 2002, COMPLAINANT and his nephew, WITNESS #1 went to the home of the subject officer's sister in an effort to help her move furniture. The subject officer is identified as SUBJECT OFFICER.
2. SUBJECT OFFICER's sister remains unidentified by name throughout the Report of Investigation.
3. SUBJECT OFFICER owned a power drill, which he valued at \$400.00.
4. The power drill was last seen at the home of SUBJECT OFFICER's sister, which is located in New Carrollton, Maryland.
5. SUBJECT OFFICER's power drill was dislodged from his sister's house.
6. COMPLAINANT and his nephew, WITNESS #1, were asked to help the subject officer's sister move furniture.
7. Upon discovering that the power drill was missing, SUBJECT OFFICER suspected that either COMPLAINANT or WITNESS #1 had stolen it.
8. There was no direct evidence neither cited in the Report of Investigation nor presented at the evidentiary hearing that proved COMPLAINANT or WITNESS #1 stole SUBJECT OFFICER's power drill.
9. SUBJECT OFFICER did not file a formal complaint with the Prince George's County Police Department.
10. SUBJECT OFFICER spoke with WITNESS #3, who owns a home improvement business. WITNESS #3 engaged COMPLAINANT to perform odd jobs on an as needed basis. On April 25, 2002, he engaged the complainant to help move furniture at the home of SUBJECT OFFICER's sister.
11. SUBJECT OFFICER informed WITNESS #3 that his power drill was missing.
12. SUBJECT OFFICER told WITNESS #3 that either COMPLAINANT or WITNESS #1 had stolen his power drill.
13. SUBJECT OFFICER directed WITNESS #3 to have the complainant contact him.
14. WITNESS #3 called COMPLAINANT, informed him of SUBJECT OFFICER's suspicions, and told him to call SUBJECT OFFICER.

15. COMPLAINANT called SUBJECT OFFICER and denied stealing the power drill. SUBJECT OFFICER asked, “ Do you know who I am? Do you know who I work for? I work for the Metropolitan Police Department. Do you know what I could do to you?” SUBJECT OFFICER threatened to “ kick his ass ” and called the complainant a “motherfucker.” SUBJECT OFFICER told COMPLAINANT that he needed to return the drill or reimburse him for it.
16. SUBJECT OFFICER called the COMPLAINANT’s family home. WITNESS #4, the mother of COMPLAINANT, answered the telephone.
17. SUBJECT OFFICER told WITNESS #4 that either COMPLAINANT or WITNESS #1 stole his power drill.
18. SUBJECT OFFICER spoke to WITNESS #5, the brother of COMPLAINANT. The subject officer told him that either COMPLAINANT or WITNESS #1 stole the power drill.
19. SUBJECT OFFICER told WITNESS OFFICER #1, his partner, that either COMPLAINANT or WITNESS #1 stole his power drill.
20. On behalf of SUBJECT OFFICER, WITNESS OFFICER #1 became involved in the matter.
21. On May 3, 2002, SUBJECT OFFICER and WITNESS OFFICER #1 drove to the home of COMPLAINANT, located at LOCATION #1, S.E.
22. SUBJECT OFFICER remained inside of the vehicle.
23. WITNESS OFFICER #1 approached the house and knocked on the door.
24. WITNESS #2, the brother of COMPLAINANT, answered the door.
25. WITNESS OFFICER #1 inquired as to whether COMPLAINANT resided at the location and asked whether the complainant was home.
26. WITNESS #2 informed WITNESS OFFICER #1 that the complainant was not home.
27. WITNESS OFFICER #1 then asked WITNESS #2 to provide identification, which would prove that he was not the complainant. WITNESS #2 complied with the request.
28. WITNESS OFFICER #1 left the house and returned to the vehicle.
29. While driving, SUBJECT OFFICER saw COMPLAINANT and WITNESS #1 at the intersection of Texas Ave. and Chaplin St., S.E.
30. In the absence of a specific law enforcement purpose, SUBJECT OFFICER stopped and questioned the complainant for approximately thirty minutes.

31. The investigators separated the two men. SUBJECT OFFICER spoke with WITNESS #1 and WITNESS OFFICER #1 spoke with the complainant.
32. Then, the investigators switched. SUBJECT OFFICER spoke with the complainant and WITNESS OFFICER #1 spoke with WITNESS #1.
33. SUBJECT OFFICER grabbed the complainant's face, bent him backwards (described as a 'smush'), resulting in the complainant hitting his head against the car. During the altercation, SUBJECT OFFICER said, "you're going [to] have my money by next week [or] I'm going to kick your ass. I'm going to hurt you bad."
34. The complainant agreed to pay the subject officer under duress.
35. During the altercation, the complainant injured his head and back.
36. The complainant did not seek medical attention for his injuries.
37. Both SUBJECT OFFICER and WITNESS OFFICER #1 testified that they visited the COMPLAINANT's family home, while on duty and in the absence of a specific law enforcement purpose.
38. Shortly after leaving the COMPLAINANT's family home, SUBJECT OFFICER observed the complainant at the intersection of Texas Ave. and Chaplin St. S.E.
39. In the absence of a specific law enforcement purpose. SUBJECT OFFICER stopped and questioned the complainant about the power drill for approximately thirty minutes.
40. SUBJECT OFFICER admitted that at the time he questioned the complainant, he was acting in an unofficial capacity.

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 allege abuse or misuse of police powers by such member or members, including... (1) Harassment (2) Use of language or conduct that is insulting, demeaning, or humiliating...(3) Use of Unnecessary or Excessive Force."

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

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.

The questions presented are (1) whether SUBJECT OFFICER abused and misused his position of authority for personal objectives? (2) And in the absence of a specific law enforcement purpose, he intended to bother, annoy, or otherwise interfere with COMPLAINANT's ability to go about lawful business normally. Reviewing the Report of Investigation, the official transcript from the November 19, 2003, hearing, and the evidence submitted, it is found that, in an effort to recover his missing power drill, SUBJECT OFFICER harassed COMPLAINANT.

SUBJECT OFFICER suspected COMPLAINANT of stealing his power drill immediately upon becoming aware that it was missing. Notwithstanding his strong conviction that COMPLAINANT was responsible for stealing his power drill, SUBJECT OFFICER never filed a formal complaint with the Prince George's County Police Department. Instead, SUBJECT OFFICER shared his personal opinions about COMPLAINANT with others. He spoke with COMPLAINANT's boss, WITNESS #3. WITNESS #3 is the owner of the home improvement business, in which COMPLAINANT was periodically employed. SUBJECT OFFICER informed WITNESS #3 that the power drill was missing and that one of his employees, COMPLAINANT, had stolen it. SUBJECT OFFICER shared his suspicions about COMPLAINANT with members of the COMPLAINANT's. And, he shared his suspicions with his partner, WITNESS OFFICER #1. WITNESS OFFICER #1 testified that, on behalf of his partner, he made an unofficial visit to the COMPLAINANT's family home. WITNESS OFFICER #1 testified that he intervened in the matter to avoid having the subject officer file formal charges against the complainant. When WITNESS OFFICER #1 arrived at the COMPLAINANT's family home, he inquired as to whether COMPLAINANT lived at the location. He inquired as to whether COMPLAINANT was home. He was told that the complainant was not home. WITNESS OFFICER #1 then requested identification from the individual who answered the door. The individual was later identified as WITNESS #2, the brother of COMPLAINANT. Having a member of the Metropolitan Police Department make accusations of theft about one to one's current employer, having family members subjected to phone calls from SUBJECT OFFICER in which he accuses COMPLAINANT of stealing, having a police officer appear at one's home, having family members reduced to identifying themselves in their own home, and being stopped, questioned and threatened in public, all done in the absence of a specific law enforcement purpose, would likely offend most citizens. SUBJECT OFFICER's actions clearly would "bother, annoy or otherwise interfere with a citizen's ability to go about lawful business," MPD Special Order 01-01, Part III, Section G.

In his July 2002 statement made to an OCCR investigator, SUBJECT OFFICER stated that he never called the COMPLAINANT's family home. He recalled only that he and COMPLAINANT had numerous conversations, but he stated that, COMPLAINANT always called him. However, at the hearing, SUBJECT OFFICER testified that, when he called the COMPLAINANT's family home, WITNESS #4 answered. WITNESS #4 indicated that the complainant was not home. SUBJECT OFFICER admitted telling WITNESS #4 that the complainant stole his drill. She told SUBJECT OFFICER that if he believed her son had stolen his drill, he should sue him. She said that she then handed the telephone to her other son, WITNESS #5.

During cross examination of the complainant, the subject officer, through his representative, argued that the allegation of using language that is insulting, demeaning, or humiliating during the April 25, 2002, telephone call, should be dismissed because the complainant failed to prove the content of the telephone call. He argued that if the complainant felt threatened by SUBJECT OFFICER's language, he would either have had a third party listen in on another line or taped the conversation. The complainant testified that no one else could have listened in on the conversation because there is only one telephone line in the house. He testified that during his conversation with the subject officer, other family members were in the same room and that they heard his responses. In closing arguments, however, UNION REPRESENTATIVE argued that all of the witnesses are related and that their testimonies are biased.

COMPLAINANT was in the precarious position of having an active member of the Metropolitan Police Department make accusations about him in public. SUBJECT OFFICER made the accusations to both COMPLAINANT'S employer and family members. COMPLAINANT testified that he has not worked for WITNESS #3 since the April 25, 2002, incident. The complainant was insulted, demeaned and humiliated by SUBJECT OFFICER's conduct. WITNESS #2 was reduced to showing identification, in his home, to an unannounced stranger. WITNESS #2 testified that he complied with the request only because WITNESS OFFICER #1 identified himself as a member of the Metropolitan Police Department. However, WITNESS OFFICER #1 testified that the visit was made while on duty, but in an unofficial capacity. Finally, On May 3, 2002, COMPLAINANT and his nephew, WITNESS #1 were approached by SUBJECT OFFICER and WITNESS OFFICER #1 at the intersection of Texas Ave. and Chaplin St., S.E. SUBJECT OFFICER had only moments ago left the COMPLAINANT'S family home. SUBJECT OFFICER testified that the inquiry with WITNESS #3, the telephone calls to the COMPLAINANT'S family home, and the thirty minute stop on May 3, 2002, were all conducted in an unofficial capacity, while on duty, and in the absence of a specific law enforcement purpose. District of Columbia Municipal Regulations (DCMR), Title 6A-202.7 states, " A member of the force while on duty shall devote his or her whole time and attention to the business of the department."

The complainant and his witnesses testified that SUBJECT OFFICER threatened him and cursed at him. In his Memorandum of Interview, WITNESS OFFICER #1, testified that he heard profanity coming from the direction of COMPLAINANT and SUBJECT OFFICER, but that he could not identify specifically who was cursing. Additionally, WITNESS OFFICER #1 testified that he thought that COMPLAINANT would file a complaint for use of language or conduct meant to insult, demean or humiliate.

Instead of filing a complaint and seeking resolution through appropriate legal channels, SUBJECT OFFICER went on a personal mission to expedite the process of either recovering his power drill or obtaining its monetary value. SUBJECT OFFICER failed to disclose to COMPLAINANT, WITNESS #3 and to any other member of the COMPLAINANT'S family, that in the absence of a specific law enforcement purpose, all inquiries surrounding the circumstances of the missing power drill were personal and unofficial. And, no one, including COMPLAINANT, was under an obligation to speak with him, and could have declined all

contact. Both COMPLAINANT and his relatives were deprived of the opportunity of making that choice.

SUBJECT OFFICER testified that he did not engage in behavior that violated any standard of conduct. However, his actions contradict his words. He engaged in a series of steps to maintain continuous contact with COMPLAINANT. He made contact with and openly discussed his suspicions with the complainant's current employer. He called the complainant's relatives. He had his partner visit the family home and the complainant was stopped and questioned in public.

The Complaint Examiner finds, by a preponderance of the evidence, that SUBJECT OFFICER violated MPD Special Order 01-01, Part III, Section G, and harassed COMPLAINANT.

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."

MPD General Order 201.26, Part I, Section C provides that "All (2) members shall be courteous, civil, and respectful to their superiors, associates, and other persons whether on or off duty... and orderly in their dealings with the public. (22) Members shall conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves and the department."

The question presented is whether the subject officer used language towards the complainant that was insulting, demeaning and humiliating. The Complaint Examiner finds that in SUBJECT OFFICER's effort to recover his power drill, he used language towards the complainant that was insulting, demeaning and humiliating. The complainant stated that on April 25, 2002, he called SUBJECT OFFICER. He alleges that SUBJECT OFFICER accused him of stealing his power drill. The complainant denied stealing the power drill. The complainant alleges that SUBJECT OFFICER threatened to 'Kick his ass,' and called him a 'motherfucker.' Further, he alleges that SUBJECT OFFICER made similar threats on May 3, 2002, when he stopped him at the intersection of Texas Ave. and Chaplin St., SE.

SUBJECT OFFICER was both persistent and relentless in his efforts to recover the power drill or to be reimbursed for it. In his 2002 Memorandum of Interview, SUBJECT OFFICER stated that he was upset about the missing drill. Also, he stated that when he first spoke with the complainant regarding the power drill, the complainant, "sounded guilty." In his Memorandum of Interview, SUBJECT OFFICER states that, during his telephone conversation with the complainant, both he and the complainant were angry. In response to a question regarding the May 3rd incident, WITNESS OFFICER #1 testified that he heard profanity coming from the direction where SUBJECT OFFICER and the complainant were standing but that he could not identify who was cursing. SUBJECT OFFICER was forthcoming in his admission of

feeling anger towards the complainant. However, despite his acknowledgement, he made little, if any effort to physically distance himself from COMPLAINANT. SUBJECT OFFICER never filed a formal complaint with the Prince George's County Police Department. One can only conclude that, SUBJECT OFFICER did not intend to recover his power drill through an orthodox channel.

The subject officer argues that the complainant's version of the incidents on April 25, 2002, and on May 3, 2002, are corroborated only by family members whose testimonies are biased and, therefore, should be given little weight. The subject officer argues that the complainant and his family members had time to rehearse their version of the incidents. While this may be the case, an identical argument could be made for the version of events offered by the subject officer. SUBJECT OFFICER and WITNESS OFFICER #1 are partners, giving them ample time to discuss all aspects of both their individual and collective recall.

The Complaint Examiner finds, by a preponderance of the evidence, that SUBJECT OFFICER violated MPD Special Order 01-01, Part III Section H and, MPD General Order 201.26, Part I, Section C, (2) and (22).

Use of unnecessary or excessive force, as defined by MPD General Order 901-07, Part II, states, "The policy of the Department is that an officer shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others."

"Application of the Use of Force Continuum for the MPD" provides additional written guidelines to MPD officers on the appropriate use of force. The guidelines state that, "the use of physical force by members of the MPD is limited to the following, (1) defending yourself or others from an actual or perceived attack (2) effecting the arrest or preventing the escape of a subject and (3) overcoming resistance.

Excessive or unreasonable force is defined in part as, "when the force is used that is improper in the context of the incident that is occurring." The rules governing the use of force generally all apply in situations where an officer is acting in an official capacity and where an arrest has been made or in the process of being made. In the matter before this forum, the rules governing the Use of Force, and the Use of Force Continuum, the training model that supports the progressive and reasonable force that may be applied by an officer in a level commensurate to the amount of resistance offered by a subject, are in this case, inapplicable. Therefore, Graham v Connor, 490 U.S. 386, 109 S. Ct. 1885, 104 L. Ed 2d 443(1989) and Tennessee v. Garner, 471 U.S. 1, 105 S.Ct.1694, 85 L. Ed 2d 1 (1985) have not been applied. SUBJECT OFFICER was on official duty at the time of the stop. However, the basis for the stop was not prompted by the subject officer's observation of the complainant engaged in unlawful conduct. There was no incident that needed to be brought under control; there was no threat to either officer; there was no threat to others.

During the stop, it is alleged that he used unnecessary and excessive force and used language that insulted, demeaned and humiliated the complainant. SUBJECT OFFICER approached and spoke with the complainant's nephew, WITNESS #1, and WITNESS OFFICER

#1, approached and spoke with the complainant. Then, they switched. SUBJECT OFFICER spoke with the complainant and WITNESS OFFICER #1 spoke with WITNESS #1. All parties testified that the conversation revolved around the circumstances surrounding the missing power drill. WITNESS OFFICER #1 testified that he did not see SUBJECT OFFICER use any force on the complainant. In his Memorandum of Interview, WITNESS OFFICER #1 said that while he did hear profanity, he could not testify as to who was actually cursing. Witnesses for the complainant, WITNESS #1 and WITNESS #2, both testified that SUBJECT OFFICER grabbed the complainant's face with his hand (hence the term 'smush'), and bent him backwards, which resulted in the complainant hitting his head against the car. The subject officer did not present any testimony, which indicates that the complainant offered any resistance during the altercation. Both WITNESS #2 and WITNESS #1, testified that during the altercation, SUBJECT OFFICER used inappropriate language. The complainant states that his head and back were injured during the altercation. However, the complainant never sought medical attention.

SUBJECT OFFICER initiated contact with the complainant. The subject officer did not approach the complainant in an attempt to bring an unlawful incident under control. SUBJECT OFFICER was not protecting himself, or others, from an impending danger created by COMPLAINANT. SUBJECT OFFICER was attempting to recover personal property that he believed COMPLAINANT had stolen. SUBJECT OFFICER was determined to confront the complainant. As stated earlier, SUBJECT OFFICER was convinced that the complainant had stolen his power drill. He admitted to being angry about it. However, instead of filing a police report with the proper authorities, he took definite steps towards confronting the complainant. SUBJECT OFFICER abused and misused his police powers when he stopped and questioned the complainant for thirty minutes.

The Complaint Examiner finds, by a preponderance of the evidence, that SUBJECT OFFICER violated MPD General Order 901- 07 Part II, used Unnecessary or Excessive Force against the complainant, COMPLAINANT.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained
Allegation 3:	Sustained

Submitted on December 23, 2003.

Linda Reese Davidson
Complaint Examiner