

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0054
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	August 4, 2017

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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 filed a complaint with OPC on November 9, 2016. Complainant alleged that on November 8, 2016, SUBJECT OFFICER harassed him when he unlawfully arrested Complainant for blocking passage to a convenience store.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon 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. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based upon a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 8, 2016, at approximately 6:00 p.m., Complainant went to A SUPERMARKET CORNER STORE, located at A STREET IN NW DC, to play the lottery and returned home.

2. Later, at approximately 8:20 p.m., Complainant returned to the SUPERMARKER CORNER STORE to check his lottery tickets and converse with WITNESS, the owner of the store. Afterward, Complainant left the store and stood outside in front of the store. Two doors formed the entrance to the store but only the right door was operable. Complainant stood in an area where no one's passage into the store would have been blocked and stood near a "lottery" sign which was approximately four or five feet to the left of the non-working, left door.
3. SUBJECT OFFICER approached Complainant by turning off his motorcycle and allowing it to cruise noiselessly down the hill in an attempt to surprise Complainant.
4. Subject Officer said to Complainant, "Told ya'll not to be out, didn't I tell you not be out here." In response, Complainant smirked at Subject Officer. Subject Officer then said, "Oh you think it's funny?" and proceeded to arrest Complainant for blocking passage.
5. Subject Officer did not ask the Complainant to move along before arresting him because it was Subject Officer's understanding that a move along order remains in effect and that an MPD officer can arrest a person based upon a prior warning.
6. Complainant had no prior interactions with Subject Officer.
7. The case before D.C. Superior Court involving Complainant was "no papered."

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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; . . ."

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as "words, 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: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity."

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. tit. 6A, § 2199.1.

D.C. Code § 22-1307 defines blocking passage as, “It is unlawful for a person, alone or in concert with others to crowd, obstruct, or incommode: ...the entrance of any public or private building or enclosure...and to continue to resume the crowding, obstructing, or incommoding after being instructed by a law enforcement officer to cease the crowding, obstructing, or incommoding.”

Complainant had just exited SUPERMARKET CORNER STORE, after checking lottery tickets and conversing with owner, WITNESS, when Subject Officer arrived. Subject Officer turned off the motor of his motorcycle to coast in an attempt to surprise Complainant. Subject Officer approached Complainant and said, “Told ya’ll not to be out, didn’t I tell you not be out here.” Complainant smirked and Subject Officer said, “Oh you think it’s funny?” and proceeded to arrest Complainant.

Complainant Examiner finds credible the statements by Complainant, WITNESS, and even Subject Officer, that Complainant was not blocking passage to the SUPERMARKET CORNER STORE but was standing to the left, at least four feet from the entrance and not in front of the working right door. Subject Officer acknowledged in his interview with OPC that he did not see anyone’s passage blocked by Complainant at the time of arrest. Subject Officer’s statement was also substantiated by WITNESS who stated that Complainant was standing in front of the “lottery” sign which was four or five feet away from the entrance to the store.

Subject Officer told OPC in his interview that he told Complainant earlier in the week to disperse from standing in front of the SUPERMARKET CORNER STORE. Subject Officer also told OPC that he changed his arrest report to reflect that he told Complainant to cease blocking passage to the SUPERMARKET CORNER STORE’s entrance earlier in the same day that Subject Officer arrested Complainant. Subject Officer told OPC that his supervising MPD officer ordered him to make the change in the arrest report. However, Subject Officer’s statements to OPC that he told Complainant to cease blocking passage earlier in the week or earlier in the same day are unavailing because these statements are not credible and even if they were, they would not make Complainant’s arrest lawful for several reasons. First, Subject Officer did not issue a citation requiring Complainant to refrain from blocking passage to the SUPERMARKET CORNER STORE. Second, Subject Officer did not make any notation in his arrest records or notes that he ordered the Complainant earlier that day or on other occasions to refrain from blocking passage. These facts combined cast doubt on Subject Officer’s credibility. Third, even if Subject Officer gave Complainant a warning to move away from the corner store entrance days before, or even earlier that day, such a warning would have been too far removed from the arrest for it to have been adequate warning. See State v. Kemp, 429 So. 2d 822 (Fla. Dist. Ct. App. 1983) (review of loitering statute found to be constitutional because it required reasonable notice by a police officer to move along). Fourth, Subject Officer’s supervising MPD officer requested that Subject Officer include in his arrest report that Subject Officer warned

Complainant to refrain from blocking passage earlier that day to strengthen Subject Officer's determination that he had probable cause to make the arrest. Even with Subject Officer's change to the arrest report, that he warned Complainant earlier in the day, it was not sufficient to put Complainant on notice hours later that he needed to comply and refrain from blocking passage to the corner store. Subject Officer would have needed to give a warning and a reasonable opportunity to comply before arresting Complainant – a warning earlier in the day would not suffice. Complainant should have been afforded reasonable notice and an opportunity to comply. Subject Officer, by his own admission, did not issue a contemporaneous warning for Complainant to cease blocking passage but tried to surprise Complainant by turning his motorcycle engine off and coasting to Complainant before arresting him. Thus, because there is no evidence that Complainant actually blocked passage, and even if he had been, he was not adequately warned by Subject Officer to move before he was arrested, the Complaint Examiner sustains OPC's determination that SUBJECT OFFICER harassed Complainant in violation of D.C. Code §5-1107 and MPD General Order 120.25 when Subject Officer arrested Complainant for blocking passage without probable cause.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
---------------------------------	-----------

Submitted on August 4, 2017

ARTHUR D. SIDNEY
Complaint Examiner