



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 8, 2020

CASE NUMBER: 2019OPA-0501

Allegations of Misconduct & Director's Findings

Named Employee #1		Director's Findings
Allegation(s):		
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee shined a flashlight in his face and stated that this conduct violated his rights. The Complainant further claimed that the Named Employee took this action based on the Complainant's race.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

During its intake investigation, OPA determined that the Named Employee repeatedly shined his flashlight in the Complainant's eyes in a manner that may have escalated their interaction. However, based on the circumstances of this case, OPA determined that this allegation was best handled as a Supervisor Action. Accordingly, it was referred to the Named Employee's chain of command and is not addressed below.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

On July 19, 2019, Named Employee #1 (NE#1) responded to the scene of an arrest related to an accident. The driver of one of the involved vehicles was being taken into custody. Another individual—the Complainant in this case—was standing by and filming the arrest using his cell phone camera. The Complainant appeared to know the arrested individual. Because it was dark, the Complainant's phone camera light was on. The Complainant was speaking with another officer and appeared to be very intoxicated. NE#1 approached and began interacting with them. For the next ten minutes and then again later, the Complainant and NE#1 got into an extended negative back and forth. This included the Complainant repeatedly shining the camera light in NE#1's face, NE#1 asking him not to do so, and NE#1 then shining his flashlight in the Complainant's face in response. It also included the Complainant repeatedly asking for NE#1's badge number, which NE#1 provided at least twice, as well as NE#1 remarking several times on the



Complainant's level of intoxication and making comments concerning drunk people. After NE#1 concluded his investigatory action at the scene, he returned to the precinct.

Later that evening, the Complainant went to the precinct to request information concerning this incident, including again asking for NE#1's badge number. The following day, the Complainant filed a complaint with OPA alleging that NE#1 treated him unfairly "due to race." This OPA investigation ensued.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

OPA finds insufficient evidence to establish that NE#1 shined his flashlight in the Complainant's face because of his race. Rather, the Body Worn Video (BWV) showed that NE#1 was attempting to demonstrate to the Complainant why the shining of light in an officer's face might be annoying and could impair the officer from carrying out investigative duties. While OPA does not believe that NE#1's demonstration, as well as his repeated discussion of the Complainant's intoxication, was effective and the best course of action under the circumstances, it is not evidence of bias.

Further, while the Complainant unquestionably had the right under SPD policy and law to film the arrest and request information from officers, he was not permitted to impede officers in the performance of their duties as he did here. When the Complainant shined his light in officers' eyes, repeatedly attempted to debate whether they had probable cause for effectuating the arrest, and moved into a public roadway requiring officers to address his behavior, his conduct went beyond observation and arguably rose to the level of obstruction. Moreover, his actions posed a risk to himself and others.

Given the above, OPA concludes that the Complainant was not treated differently because of his race. To the contrary, his treatment by officers during this incident was based on his harassing and obstructing them in their enforcement of the law. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**