



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 17, 2020

CASE NUMBER: 2019OPA-0525

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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 Employees were unprofessional towards him.

ADMINISTRATIVE NOTE:

During his OPA interview, the Complainant asserted his belief that the officers' conduct was based on the fact that he practiced Juggaloism, which he characterized as a religion. He said that the officers were aware that he was a Juggalo because he had an Insane Clown Posse t-shirt on and was playing their music at the time. OPA's investigation revealed no indication that Juggaloism was recognized as a religion. To the contrary, there was ample evidence suggesting that, instead, it was viewed by law enforcement as a gang. Given this, even if the Named Employees knew that the Complainant was a Juggalo – which there is absolutely no evidence of – it is not a protected class. As such, SPD's biased policing policy was inapplicable to this case and this allegation was not classified for investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

On the date in question, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were investigating a potential DUI. While conducting field sobriety tests on the driver, the Complainant, who was not involved in the traffic stop, walked by the Named Employees. At that time, the Complainant who was playing music loudly and was walking from south to north. Shortly thereafter, the Complainant, still playing music, again walked by the Named Employees, this time traveling from north to south. The Complainant walked by the Named Employees a third time. When he did so, NE#1 said to the Complainant: "Do you have somewhere else to be?" The Complainant stopped his music and



replied: "I am doing neighborhood watch." NE#2 said to him: "Turn that music down. You are in violation of the noise ordinance." The Complainant responded: "How am I in violation of the noise ordinance?" NE#2 retorted: "Turn the fucking noise down. You're in violation of the noise ordinance." The Complainant began to say "excuse me" and, while unclear from the Body Worn Video (BWV), it appeared that NE#1 told the Complainant to continue walking away. The Complainant said something about his father working for the DEA and calling his father. NE#1 stated: "Call him. Call him."

The Complainant walked to the other side of the street and remained in view of the officers. NE#1 shined his flashlight at the Complainant. NE#1's flashlight began operating in strobe mode while pointed at the Complainant. The Complainant said: "I have seizures. Please stop that." From a review of the BWV, NE#1 appeared to chuckle after the Complainant made that statement. He also turned off his flashlight. NE#1 remarked to NE#2: "He didn't have a purpose. I don't know if he was trying to be combative or what..." NE#2 replied: "Oh yeah. He just wanted to get a little spark out of us." The Named Employees concluded their law enforcement duties, turned off their BWV, and left the scene.

The Complainant later initiated this complaint with OPA. He asserted that the Named Employees "verbally abused" and "assaulted" him. The Complainant further alleged that NE#1 improperly shined his flashlight at him and could have caused him to suffer seizures. This investigation ensued.

As part of its investigation, OPA reviewed the BWV for this incident. OPA also conducted interviews of the Complainant, NE#1, and NE#2. The Complainant reiterated his allegations against the officers. The Complainant asserted that the officers were rude to him and that it was unnecessary for NE#1 to use his flashlight in the manner he did.

NE#1 told OPA that the Complainant's actions were distracting to both him and the driver who was the subject of the field sobriety tests. NE#1 said that he was concerned with the Complainant's behavior and was worried that he would continue to escalate. NE#1 stated that he pointed his flashlight at the Complainant and acknowledged that it was in strobe mode. He said that this was not intentional, and that the flashlight had been left in strobe mode when he last used it. He denied putting the flashlight into strobe mode to purposely annoy or antagonize the Complainant. NE#1 stated that, as soon as the Complainant identified as epileptic, he turned off the flashlight. NE#1 did not have a clear explanation for why he then laughed at the Complainant.

NE#2 said that he was NE#1's cover officer during this incident. NE#2 explained that, in that role, he was not only watching NE#1, but also the driver and the passenger in the vehicle. He recalled being concerned by the Complainant's behavior. NE#2 specifically described the Complainant repeatedly walking back and forth and nearing them. NE#2 told OPA that he also noticed that the Complainant had recognizable gang tattoos and was shirtless and playing loud music at 3:45 a.m., which, in NE#2's experience, was out of the ordinary. In reflecting on this incident, NE#2 said that he would not have used profanity when addressing the Complainant's behavior and, instead, would have simply advised the Complainant to stay a safe distance away from the officers as they conducted their investigation.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity



directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

In evaluating this case, OPA had concerns with NE#1’s use of the strobe function of his flashlight towards the Complainant and then laughing when the Complainant said that he could suffer a seizure. OPA believed that this behavior was unnecessary and served to escalate the incident. Similarly, OPA was concerned with NE#2’s use of profanity towards the Complainant, which OPA found to be rude and aggressive. However, OPA does not believe that the Named Employees’ conduct warrants Sustained findings and, instead, recommends retraining. OPA reaches this conclusion based on the fact that both officers were candid at their OPA interviews and recognized that this was not an optimal contact. This was especially the case with NE#2, who acknowledged that he could have handled this incident differently and explained how he would address similar situations in the future. Moreover, neither Named Employee has been previously disciplined for professionalism. As such, OPA recommends that this allegation be Not Sustained – Training Referral against both officers. This being said, the Named Employees should be on notice that future similar conduct may result in recommended Sustained findings.

- **Training Referral:** NE#1 and NE#2 should be counseled regarding this incident and be reminded of the Department’s professionalism policy and the expectation that they remain calm and respectful with subjects, even when those subjects engage in behavior that may be frustrating. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (*see* Named Employee #1, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**