



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 5, 2018

CASE NUMBER: 2017OPA-1283

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Inconclusive)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves	Not Sustained (Training Referral)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Sustained
# 6	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Sustained
# 7	6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical	Not Sustained (Training Referral)
#8	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)
#9	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Training Referral)
#10	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
#11	5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing	Allegation Removed
#12	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
#13	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
#14	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
#15	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)



## CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-1283

#16	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
-----	--	---------------------------

**Imposed Discipline**

2 Day Suspension

**Named Employee #2**

Allegation(s):	Director's Findings
# 1 6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Inconclusive)
# 2 6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3 6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained (Lawful and Proper)
# 4 6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves	Not Sustained (Training Referral)
# 5 6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Training Referral)
# 6 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Sustained
# 7 6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical	Not Sustained (Training Referral)
#8 6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Lawful and Proper)
#9 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
#10 5.140 - Bias-Free Policing 4. All Employees Share Responsibility for Preventing Bias-Based Policing	Not Sustained (Unfounded)
#11 5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
#12 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
#13 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
#14 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

**Imposed Discipline**

Written Reprimand



**Named Employee #3**

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Allegation Removed
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Allegation Removed
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Allegation Removed
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves	Allegation Removed
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Allegation Removed
# 6	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Allegation Removed
# 7	6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical	Allegation Removed
#8	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Allegation Removed
#9	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
#10	5.140 - Bias-Free Policing 4. All Employees Share Responsibility for Preventing Bias-Based Policing	Not Sustained (Unfounded)
#11	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
#12	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

**Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 5.140-PRO-1 Handling a Bias-Based Policing Allegation	Not Sustained (Lawful and Proper)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Training Referral)
# 4	6.010 - Arrests 6. Screening Sergeant Will Approve Report	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:**

It was alleged that the Named Employees engaged in various misconduct that arose out of the stop, detention, and arrest of the Complainant.

**ADMINISTRATIVE NOTE:**

At the discipline meeting in this matter, the allegations herein were discussed with the Named Employees' chain of command. While the chain of command agreed that the evidence supported all of OPA's recommended findings, it requested that OPA reconsider two of those findings. Specifically, the chain of command asked that OPA evaluate changing Allegation #2 for Named Employee #1 and Allegation #4 for Named Employee #4. After a robust conversation, OPA agree to change these proposed Sustained findings to Training Referrals.

With regard to Allegation #2 against Named Employee #1, it is undisputed that he violated this policy. NE#1 took actions that elevated the Terry stop of the Complainant into an arrest and he did so in the absence of probable cause for that arrest. However, as flagged by the chain of command, this conduct is already captured by the Sustained findings in Allegation #5, which concerns NE#1 inappropriately compelling identification from the Complainant during the Terry stop and thus converting it into an arrest, and in Allegation #6, which concerns the arrest without probable cause. As such, even though NE#1 acted contrary to this policy, it is unnecessary to also sustain this allegation.

With regard to Allegation #4 against Named Employee #4, the chain of command explained that it was possible that he had truly completed the form but the Versadex system had, in some way, malfunctioned. The chain of command noted that Named Employee #4 had not failed to comply with this policy in the past and wished to give him the benefit of the doubt in this case. As indicated below, when applying a preponderance of the evidence standard, I find it more likely than not that Named Employee #4 simply failed to complete the sergeant's arrest screening report in this case. That being said, and while I believe that the evidence supports sustaining this allegation, I instead issue Named Employee #4 a Training Referral and counseled him to take steps to ensure that he does not commit such an error again in the future.

OPA accordingly amended this DCM for the first time, changing the recommended finding for Named Employee #1, Allegation #2, as well as the finding for Named Employee #4, Allegation #4.

At the Loudermill hearing for both Named Employee #1 and Named Employee #2, both officers contended that Allegation #4 was duplicative. This allegation concerns SPD Policy 6.220-POL-5, which requires officers conducting a Terry stop to take reasonable steps to be courteous and professional, including identifying themselves. After further review of this matter, including discussions at the Loudermill, I agree that the language concerning professionalism in this policy captures the same conduct that was addressed in SPD Policy 5.001-POL-10

Named Employee #1 reiterated his statements from the OPA interview that he did not recall whether he gave his name and the basis for the stop to the Complainant. He stated, however, that the Complainant knew who he was after looking at his nametag and, accordingly, it was unnecessary to then provide his identifying information. At his Loudermill, Named Employee #2 recognized that while he did not identify himself, he thought that it was the obligation of the primary officer, not him, to identify himself at the outset of the stop and to provide the reason for the stop. He further stated that he now makes a point to do so. I do not find this interpretation to be unreasonable, even if it is not reflected by the plain language of the policy.

As such, I amend this DCM for the second time. In doing so, I recommend reversing Allegation #4 against both Named Employee #1 and Named Employee #2 from a Sustained finding to a Training Referral.



---

**STATEMENT OF FACTS:**

**1. Overview**

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) initiated contact with the Complainant, who was sitting on a low concrete wall. During this contact, which developed from a Terry stop to an arrest, it was alleged that the Complainant had possession of a blue bag that the officers believed did not belong to him. As a result of the police contact, the Complainant made a number of allegations of misconduct. These allegations were relayed to the officers' supervisor, Named Employee #4 (NE#4), who responded to the scene. NE#4 spoke with the Complainant, screened his arrest, and ultimately referred his allegations of misconduct to OPA.

OPA initiated this investigation into the Named Employees' conduct. As a general matter, it was alleged that NE#1, NE#2, and NE#3 detained the subject without reasonable suspicion, extended that conduct for an unreasonable amount of time, inappropriately required identification, and arrested the subject without probable cause to do so. It was further alleged that these officers engaged in a possible violation of law during their search of the Complainant and that all of the officers failed to report the Complainant's allegations of misconduct to a supervisor. Both NE#1 and NE#2 were alleged to have been unprofessional. Lastly, NE#1 was alleged to have engaged in dishonesty and to have used force against the Complainant when prohibited.

NE#4 was alleged to have failed to properly screen the arrest report and to have failed to conduct a Bias Review as required by policy when the subject complained he was the victim of profiling.

**2. General Offense Reports**

**a. NE#1's Report**

NE#1 authored the main General Offense Report ("GOR"). NE#1 wrote that he observed the Complainant sitting with a blue denim bag. He reported that he "knew" the bag belonged to a female he had interacted with an hour earlier in the same general location. NE#1 wrote that this female had a medical emergency and had to be transported to the hospital. NE#1 stated that he left the scene before the female was transported and NE#1 speculated that she "must have left her bag." NE#1 indicated that the Complainant was not present at the time the officers made contact with the female or when the officers summoned aid for her.

NE#1 wrote that he made contact with the Complainant to investigate whether he had violated SMC 12A.08.100, which governs "Appropriation of Lost or Misdemeanor Property." NE#1 stated that he informed the Complainant of the basis for the stop and asked for his name. NE#1 indicated that the Complainant provided his first name, "but refused to provide his last name." NE#1 reported that the Complainant appeared to be wearing a backpack containing hammers. When asked, the Complainant stated that the hammers were for "framing." NE#1 wrote that he informed the Complainant that he was being detained and asked him to remove his backpack. The Complainant initially refused but NE#1 stated that he was able to "de-escalate" and talk the Complainant into placing his backpack onto the ground. NE#1 reported that due to loud traffic, he had difficulty hearing the Complainant.

NE#1 stated that he asked the Complainant multiple times to put out the lit cigarette he was holding. NE#1 asserted that this lit cigarette was a potential weapon that could be used to burn him or be thrown at his face and cause him



---

to “flinch.” NE#1 asked the Complainant to put out his cigarette multiple additional times but he did not do so. NE#1 reported that he stood in close proximity to the Complainant to “stop or mitigate any potential threat” against himself or other officers. NE#1 also stated that the Complainant was sitting on a short wall and could easily stand up and charge” NE#1 or the other officers. NE#1 reported that his leg “brushed against” the Complainant.

NE#1 stated that he asked the Complainant his last name and the Complainant responded, “Don Lee.” NE#1 repeated this back to the Complainant and the Complainant again stated that this was his last name (the Complainant’s last name is Donnelley). NE#1 reported that he believed that the Complainant was giving him a false first and last name.

NE#1 wrote that the Complainant told him that the bag he was sitting next to belonged to his girlfriend. He refused to divulge his girlfriend’s name. NE#1 stated that he also spoke to a woman who worked at a business on Aurora Avenue. She told NE#1 that she observed the bag left at the scene and saw that the Complainant “grabbed it” and moved the bag to where he was sitting when he was later contacted by the police. NE#1 reported that he later pulled surveillance video and saw that it recorded the Complainant taking the bag.

NE#1 stated that he again asked the Complainant for his name but could not hear him very well over the traffic. NE#1 wrote that the Complainant refused to give him name when asked again, but agreed to do a fingerprint scan. The Complainant asked to speak with a supervisor and NE#4 was summoned to the scene. NE#1 reported that NE#4 asked the Complainant for his name and the Complainant refused to provide it. NE#1 wrote the following: “Since I could not determine if [the Complainant] was in legal possession of the property I arrested [the Complainant] for Appropriation of Lost or Misdelayed property.”

**b. NE#2’s Report**

NE#2 reported that he “assisted in detaining the Complainant “who appeared to be in possession of a bag which we had observed earlier with another individual.” NE#2 stated the he was the cover officer while NE#1 contacted the Complainant. NE#2 wrote that he tried to identify the Complainant verbally and with a fingerprint ID. NE#2 reported that the subject “refused both.” NE#2 wrote that he assisted NE#1 in taking the Complainant into custody.

**c. NE#3’s Report**

NE#3 reported that he “provided cover” when NE#1 made contact with the Complainant. NE#3 stated that it was his understanding that the Complainant was not cooperating with officers. NE#3 became aware that the Complainant wanted to speak with a supervisor and NE#3 contacted NE#4. He then saw NE#1 arrest the Complainant and assisted in the search incident to arrest.

NE#3 wrote that he spoke to employees of the business on Aurora Avenue who reported that they had observed the Complainant “walking and hanging around the front of the business.” He reported that the employees stated that, at one point, the subject “picked up a bag that he did not arrive with and walked off southbound.” The employees told NE#3 that they had video of the incident that they would email to NE#1.



---

### **3. Video of the Incident**

#### **a. Department Video**

The substance of the officers' BWV and In-Car Video is comprehensively detailed in pages 10 through 15 of the Case Summary attached to OPA's casefile.

#### **b. Surveillance Video**

OPA reviewed three surveillance videos taken from the business where the woman left her bag. The first video records the officers' contact with the woman, which occurred approximately one hour before their interaction with the Complainant. Notably, the woman and her bag are not captured on this video. The video shows the officers' arrival at the scene and their interaction with someone, who OPA presumes is the woman. The video depicts the Seattle Fire Department (SFD) arriving and then an ambulance. A female then walks into the view of the camera and stands in front of the business. She speaks with one of the officers for a period of time. SFD departs the scene and, at the time the video ends, the ambulance is still there.

The second and third videos show the Complainant in the vicinity of the business. The first video, which is approximately four and a half minutes in length, shows the Complainant walk near the doorway and pick something up. The item appears to be a bag. The video does not show him walking away with the bag. The second video, which is less than two minutes, shows the Complainant pick up a bag and walk from the scene. OPA cannot definitively determine that this is the bag that was possessed by the woman or later found with the Complainant.

### **4. OPA Investigation**

Pursuant to the Complainant's request, NE#4 initiated an OPA investigation on his behalf. The Complainant alleged that: there was no legal basis for his detention and arrest; the officers were biased against him due to his status as an unsheltered individual; dishonesty on the part of NE#1; rudeness and unprofessionalism on the part of NE#1; force used by NE#1 in the form of NE#1 poking the Complainant in the chest and stepping on his foot; and NE#1 "touching his penis" during the search of the Complainant's person.

OPA then initiated its investigation into this matter. OPA's investigation included, but was not limited to, reviewing the documentation generated by the officers, the Department and surveillance video, and the bag found in the Complainant's possession. OPA further interviewed the four Named Employees and one witness officer. As detailed more fully below, OPA attempted to interview both the Complainant and the woman. OPA interviewed two other civilian witnesses who were employed by the business on Aurora Avenue.

### **5. Named Employee Interviews**

#### **a. NE#1's OPA Interview**

NE#1 stated that earlier on the date in question, he and NE#2 were riding together on Aurora Avenue when they came upon a woman who was suffering a medical incident. NE#1 stated that they called medical assistance for her and she



---

was being loaded into or was inside the ambulance when NE#1 and NE#2 left the scene. NE#1 indicated that the woman had several bags with her. NE#1 stated that he did not see the Complainant at that time.

NE#1 told OPA that approximately one hour later saw the Complainant sitting on a low wall. He had a “denim beach bag” with him that looked similar to the bag that NE#1 had observed with the woman. NE#1 stated that the bag was “unique.” NE#1 believed that it was not the Complainant’s bag and he, NE#2, and NE#3 made contact with the Complainant. NE#1 acknowledged that he first told the Complainant that he had seen him flagging the officers down. However, he admitted to OPA that he never actually saw that and it was only told to him by NE#2. NE#2’s raising of the flagging to NE#1 was what initially put NE#1’s attention onto the Complainant. NE#1 further acknowledged that he did not raise the Complainant’s possession of the bag until around one minute into the contact.

NE#1 stated that almost immediately upon approaching the Complainant, he perceived some officer safety issues, including a lit cigarette and the positioning of the Complainant’s feet that suggested to NE#1 that the Complainant might try to run. NE#1 described himself as “chill” and “sociable” at the inception of the contact. The Complainant asked why he was being contacted, but NE#1 did not immediately provide that information due to the traffic on Aurora and the perceived officer safety issues. NE#1 said that he asked the Complainant what his name was and the Complainant provided his first name. NE#1 stated that, during his interaction with the Complainant, the Complainant made frivolous allegations towards him. He told OPA that he countered those accusations with “tough” talk. NE#1 denied that any of his statements to the Complainant rose to the level of unprofessionalism.

NE#1 stated that the contact was a Terry stop at its inception. He believed that he had reasonable suspicion that the bag did not belong to the Complainant and had a lawful basis to further investigate this. NE#1 recognized that the Complainant told the officers to call “Janine,” but confirmed that he did not do so. He did not know if any of the other officers did so either. NE#1 asserted that this was not done due to the officers’ other responsibilities surrounding the Complainant’s arrest. NE#1 agreed that it was possible that such a conversation with “Janine” could have either strengthened or vitiated probable cause to arrest.

NE#1 asserted that the Complainant made contradictory statements during his detention. As an example, NE#1 stated that the Complainant first told them that his name was “Ryan” and then told NE#1 that it was instead “Don Lee.” NE#1 stated that they later learned that “Ryan Donnelley” was the Complainant’s name, but NE#1 still contended that it was contradictory evidence at the time. NE#1 also contended that the Complainant alternatively claimed that the bag belonged to both him and his girlfriend.

NE#1 denied that he exceeded the scope of the Terry stop. NE#1 denied that he required the Complainant to provide his identification and stated that they were just giving the Complainant more “opportunities” to provide accurate information. NE#1 later contended that the demand for the Complainant’s identification was merely a “ruse.” Lastly, NE#1 told OPA that, even if the demand for identification turned the stop into a de facto arrest, they had probable cause. NE#1 agreed that the Complainant was probably under arrest at the time of the demand for identification. NE#1 stated that the Complainant was detained for approximately 33 minutes. He stated that probable cause to arrest was developed about halfway through and that 15 minutes was a reasonable length to detain someone as a matter of law.

NE#1 contended that there was probable cause to arrest the Complainant for misappropriation of the bag. He stated that the statement from the female witness was the most significant evidence that pushed reasonable suspicion to





---

probable cause. NE#1 told OPA that he did not identify himself at the time of arrest, but stated that the Complainant read his name off of his uniform and he provided the Complainant with his serial number. NE#1 told OPA that the Complainant was read Miranda warnings by another officer.

NE#1 denied that the detention or arrest of the Complainant was based on bias. When asked about why he told the Complainant that he was profiling him, NE#1 explained that he was profiling the Complainant for his criminal behavior. NE#1 did not report the allegation of profiling to a supervisor and did not believe that he was required to do so based on his reading of the policy. While a supervisor eventually came to the scene, NE#1 stated that he was not called there based on the Complainant's profiling allegation.

NE#1 told OPA that he did not use any force during the initial contact. He mentioned that he "brushed up" against the Complainant once. He stated that he did so when he moved closer to the Complainant. He told OPA that he moved closer both because of the noise of the traffic and to mitigate any potential threats to his person, including the threat he perceived from the lit cigarette. He also touched the Complainant to let him know that he was speaking directly to him. NE#1 used de minimis force to handcuff the Complainant. Lastly, NE#1 stepped on the Complainant's shoe. While NE#1 did not initially recall that the Complainant complained of pain during the handcuffing, he heard the complaint and his response to the complaint when watching his BWV. He stated that he would have reported this to a supervisor. NE#1 stated that he did not use force to punish or retaliate against the Complainant or because the Complainant was verbally confrontational towards him.

NE#1 denied touching the Complainant in an inappropriate or unlawful way during the search incident to arrest. He stated that he searched the Complainant's groin area, but that he did so to ensure that there were no weapons secreted there. He indicated that this was his practice when conducting such searches. NE#1 believed that the Complainant's allegation concerning the search was made in the presence of NE#4.

Lastly, NE#1 denied engaging in dishonesty when he conveyed what the female witness told him to his fellow officers. He explained that he relayed generalities that were based on his perception of what was said to him. He did not believe that it was materially inaccurate.

#### **b. NE#2's OPA Interview**

NE#2 stated that he and other officers were riding southbound on Aurora when he observed the Complainant "flipping" him off. He also recounted observing a bag sitting next to the Complainant that he believed belonged to the woman that the officers had interacted with earlier that day. He, NE#1, and NE#3 then made contact with the Complainant. NE#2 recalled that the woman who had possessed the bag went to the hospital and, when she was transported, she did not want to bring the bag with her. NE#2 suspected that it was because she had drugs in the bag.

NE#2 stated that the interaction started as a social contact but that it elevated in a Terry stop very shortly thereafter when he notified NE#1 about the bag. NE#2 stated that he saw the bag before the contact. When asked why, if the bag was the basis for the reasonable suspicion it was not mentioned until over one minute into the stop, NE#2 stated that he was not sure that NE#1 was aware of the bag, and, when NE#1 did not address it, NE#2 brought it up. NE#2 stated that, during this incident, NE#1 was the primary officer. NE#2 asserted that he participated somewhat in the interaction, and that NE#3 was the cover officer and had virtually no interaction with the Complainant.



---

NE#2 indicated that he had reasonable suspicion to believe that the Complainant had taken property that did not belong to him. NE#2 told OPA that the Complainant gave conflicting information concerning the ownership of the bag – saying both that it belonged to him and to his girlfriend. NE#2 acknowledged the Complainant was not present when the woman was taken to the hospital, but speculated that the Complainant looked inside the bag and figured out that it belonged to a woman. With regard to the Complainant identifying the owner of the bag as his girlfriend “Jenene,” NE#2 stated that he had also previously said her name, suggesting that the Complainant was just repeating this. NE#2 stated that, based on his understanding, no one went to the hospital to verify whether “Jenene” had given the Complainant permission to take possession of the bag. NE#2 told OPA that it was possible that the bag had been abandoned, but NE#2 said that he “was going by what was [the Complainant’s] intent regarding the bag.” NE#2 further explained that he was “going on the intention that [the Complainant] wants this bag for his own personal use and he has no intention to turn it over to [NE#2] for finding loss property.”

When asked whether the repeated requests and demands for the Complainant’s name were permissible under the policy, NE#2 stated his belief that they were. He further stated that when NE#1 told the Complainant that he was not leaving until he provided his identification, that transitioned the Terry stop into an arrest. However, in NE#2’s opinion, there was probable cause to arrest before that point.

When asked about probable cause at his OPA interview, NE#2 asserted that there was probable cause for theft. He then modified his answer to state that he was approaching probable cause for misappropriation of property.

NE#2 said that the Complainant also gave inconsistent names. He stated that NE#1 told him that the Complainant said his name was “Dory” and “Ryan.” OPA discussed the Complainant’s referring to himself as “Don-Lee” and whether it was possible that he was saying that his last name was “Donnelley” but the officers misheard him to be saying “Don Lee.” NE#2 agreed that it was possible. NE#2 stated that the officers learned that the Complainant’s name was “Ryan Donnelley” when they were at the precinct. He stated, however, that probable cause did not dissipate at that point.

When asked whether he was professional during this incident, NE#2 stated that he could always be more professional. He acknowledged that he failed to provide his name and identify himself as a SPD officer at the time of the initial contact. He believed that NE#1 told the Complainant at the beginning of their interaction that he was being audio and video recorded. NE#2 stated that he could not speak to NE#1’s professionalism, even though he agreed that some of NE#1’s comments were not the “best things” that could have been said.

OPA asked NE#2 about NE#1’s recounting of the statement made by the female witness concerning the ownership of the bag. NE#2 told OPA that he believed that NE#1 accurately stated the generalities of what the female witness said.

NE#2 stated that he did not recall seeing anything other than de minimis force used on the Complainant. He did not recall NE#1 pushing up against the Complainant, but stated that there could have been incidental contact. NE#2 told OPA that he could not speak for why NE#1 felt the need to get close to the Complainant.

NE#2 told OPA that he did not report any of the Complainant’s allegations of misconduct to a supervisor. However, he was aware that a supervisor – NE#4 – came to the scene and believed that other officers may have informed NE#4



---

of what was said. NE#2 also indicated that it was his recollection that some of the allegations of misconduct were made in the presence of NE#4.

**c. NE#3's OPA Interview**

NE#3 said that he was with NE#1 and NE#2 when one of them indicated that they were going to make contact with the Complainant. NE#3 did not recall the initial reason for why they wanted to make contact. NE#3 did not recall seeing the Complainant motion towards or flag down the officers prior to that time. He further did not know what type of contact this was going to be. NE#3 stated that he had a very limited role in the stop and his assignment was to provide cover for NE#1 and NE#2, which he did.

NE#3 stated that he was not initially aware that the Complainant was in possession of the bag. He did not have an answer for OPA's question concerning why the bag was not referenced until over one minute into the stop. He was on the earlier call dealing with the woman and, when the bag was mentioned, he looked at it and thought that it could have been the bag that was in her possession.

NE#3 estimated that the time from when the Complainant was stopped until the time he was formally arrested and handcuffed was between 20-30 minutes. While NE#3 agreed that this was an excessive amount of time for a Terry stop, he stated that the officers may have developed probable cause to arrest during that time. He stated that he believed that they had probable cause for false reporting and "possible theft or procurement" of the bag. He believed that probable cause was developed in the first seven to 10 minutes of the interaction. He pointed to when the officers said to the Complainant that he was now false reporting. NE#3 stated that he did not recall the officers demanding or requiring that the Complainant provide his name. NE#3 agreed that repeated demands for identification would convert a Terry stop in a de facto arrest. He did not recall NE#1 telling the subject that he could not leave until he provided his name.

NE#3 stated that he was professional and courteous at all times during his interaction with the Complainant. When asked whether NE#1 was professional, NE#3 said that he did not know. He referenced NE#1's sarcastic tone and stated that someone could interpret that as being unprofessional; however, NE#3 stated that he did not know how the Complainant took it.

NE#3 was asked about NE#1's statement to other officers recounting NE#1's conversation with the female witness. NE#3 indicated that he believed that NE#1's statement was consistent "for the most part." While NE#3 stated that it was not "word for word" the same, NE#3 believed it to be mostly accurate.

NE#3 thought that the Complainant was arrested for false reporting and possession of stolen property. NE#3 recalled that this charge was changed to misappropriation of property when the officers later discussed the arrest at the precinct with NE#4. NE#3 was not present for the conversation during which the Complainant provided an allegedly false name. He further did not know when the officers definitively determined the Complainant's name. NE#3 told OPA that he had never made an arrest for misappropriation of property. He did not know if the officers ever tried to confirm with the woman that the Complainant had misappropriated her bag or taken it without her permission.



---

NE#3 stated that he did not engage in biased policing, but confirmed that he heard the Complainant make that allegation when he reviewed his BWV. He recalled hearing the Complainant complain of a number of other things during the stop. NE#3 eventually called a supervisor to the scene at NE#2's request.

NE#3 recalled that the Complainant made a complaint of pain when he was being handcuffed and alleged that his groin was touched during the search incident to arrest. NE#3 did not witness NE#1 push against the Complainant early in the stop. He did not observe anything other than de minimis force used against the Complainant. NE#3 did not witness anything unprofessional or unlawful with regard to the search.

**d. NE#4's OPA Interview**

NE#4 was the assigned supervisor. He heard a request for a finger print scanner over the radio and he brought the scanner to the location. When he arrived, he spoke with NE#1 who told him that he had a suspect who he believed had stolen a bag. NE#1 told NE#4 that a woman from a previous incident had left the bag behind. NE#1 told NE#4 that they were "checking out" the Complainant's possession of the bag. NE#4 stated that he was told that the Complainant had given two different names and his identity was in doubt. NE#4 believed at the time of his arrival at the scene that the officers had probable cause to arrest the Complainant for possessing the bag.

NE#4 spoke with the Complainant. The Complainant alleged that NE#1 had touched him without his consent and that this constituted assault. The Complainant also stated that NE#1 had gotten spittle on him. Lastly, the Complainant told NE#4 that the charges against him were made up, that the officers were unprofessional and harassing towards him, and that he was subjected to bias and profiling based on his unsheltered status. The Complainant asked to file an OPA complaint. NE#4 filed an OPA complaint on his behalf.

NE#4 stated that he screened the Complainant's arrest at the scene. He recalled completing the arrest screening template, but could not find it when he checked. He stated that, if he failed to complete the template as it appeared he did, it was "on" him.

**6. Witness Officer Interview**

OPA interviewed one witness officer who was also present during this incident. The witness officer stated that, when he arrived at the scene, the Complainant had already been detained and was either not providing his name or had given conflicting names. The witness officer recounted that, eventually, the Complainant was arrested and he helped transport the Complainant to the precinct.

The witness officer stated that it was his understanding that the Complainant was detained for wearing someone else's backpack. The witness officer stated that he believed that the Complainant was arrested for false reporting. Specifically, he thought that this charge was based on the fact that the Complainant provided different names to officers. The witness officer stated that, pursuant to NE#2's request, he read the Complainant Miranda warnings after the Complainant was arrested.

The witness officer told OPA that the Complainant alleged that had been subjected to biased policing. The witness officer did not witness any bias on the part of the involved officers. The Complainant also alleged that NE#1 had touched him, stepped on his foot, and that NE#1's spittle had landed on him when they were talking. The witness



---

officer did not believe that any of this conduct rose to the level of excessive force. Lastly, the witness officer contended that he did not view any unprofessional conduct on the part of the involved officers.

## **7. Attempts to Interview the Complainant**

OPA attempted to locate the Complainant in order to interview him. OPA first called the phone numbers it had for the Complainant and left voice mails. OPA later determined that the home phone number was incorrect. OPA also sent a letter to the Complainant's last known address; however, the Complainant did not respond to that letter. At one point, OPA was able to determine that the Complainant was incarcerated at the King County Jail. OPA emailed the Complainant's attorney to request access for an interview. The attorney indicated that he would reach out to the Complainant to determine if an interview could be set up. Ultimately, this was unsuccessful and, as such, OPA was unable to discuss this matter with the Complainant.

## **8. Civilian Witness Interviews**

OPA spoke to two of the civilians employed by the Aurora Avenue business. The female employee stated that she observed officers interact with and then get medical attention for a woman. The female employee recounted that the woman had a blue bag sitting next to her and the female employee believed that bag belonged to the woman; however, the woman denied that the bag was hers. The woman ultimately left the bag behind. The female employee stated that she saw the Complainant try to take the bag that did not belong to him and observed the police questioning him. The female employee did not see anything concerning during the interaction between the officers and the Complainant. The female employee stated that she and other employees wanted to point out to the officers that the bag did not belong to the Complainant.

The male employee recalled seeing a woman who was sitting outside of his business. He stated that she appeared to be impaired or sick. She was approached by police and was later transported from the scene in an ambulance. He stated that he saw that a blue bag remained where the woman had been sitting. The male employee spoke to the ambulance driver and let the driver know about the bag. He was informed that the woman said that she did not want to take the bag and that it should be left at the scene. He then saw the Complainant walk over and take the bag. The male employee did not hear the conversation between the Complainant and the officers. The male employee reported that he did not see anything that he believed to be abnormal during the officers' interaction with the Complainant.

Lastly, OPA also made a number of attempts to track down and interview the woman who had initially been in possession of the bag. Those attempts, which included phone calls, letters, and a site visit, were unsuccessful.

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegation #1**

#### ***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to



---

investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)

The officers’ account as to why they initiated the Terry stop of the Complainant is, at points, internally inconsistent. NE#1 stated the following: “The first thing I notice about [the Complainant] was that he had a denim beach bag. That was the same beach bag that I’d observed the female with who had the medical crisis a short time earlier.” NE#1 stated that the bag was so “unique” that it “stood out like neon lights” to him. He stated that he observed the bag while riding his bicycle on the other side of Aurora Avenue. This was the case even though, as documented by the video, the bag was on the ground near the Complainant’s legs. For his part, NE#2 stated that the contact was initiated because the Complainant “flipped” the officers off. However, NE#1 denied seeing the Complainant flag them down or flip them off. NE#1 told OPA that he noticed the Complainant and first paid attention to the bag because NE#2’s comments drew his attention to the Complainant. However, on the BWV, when the Complainant says to NE#1 that he is “the one with the problem,” NE#1 responds: “But you were flagging me down when I was riding by.”

It is curious that the unique nature of the denim bag was the basis for the Terry stop in NE#1’s mind but that he did not mention the bag until over one minute into the detention. Notably, the first things the officers were recorded saying to the Complainant were a comment concerning the tools in the Complainant’s backpack, which he describes are used for framing, and then a request for the Complainant’s name.

When they began to question him concerning the ownership of the bag, the Complainant stated that it belonged to his girlfriend. He initially did not provide her name but told the officers that they could review video and see who he was with. He then told the officers to call “Jenene” – his girlfriend – about the bag. The Complainant later told the officers that he was bringing his girlfriend’s bag back to his home because she was sick. However, the officers performed virtually no investigation into these assertions. This was the case even though they knew from their previous activity that the woman had disclaimed ownership of the bag.

Ultimately, the officers contended that they had reasonable suspicion to investigate the Complainant’s possession of stolen property. This was the case even though they had not spoken to the victim and had no evidence to prove that the bag was actually stolen or to establish the Complainant’s intent. That being said, the standard for reasonable suspicion is significantly lower than that for probable cause. While I have serious questions about the validity of the stop, I cannot definitively say that, based on the information known to the officers at the time, they did not have a lawful basis to stop and detain the Complainant in order to investigate this matter fully. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

I note that I find that this detention was limited in time as it ended approximately two minutes after the initial stop when NE#1 told the Complainant that he was not allowed to leave unless he provided his identification. At that point, the detention became an arrest. As explained more fully below, I do not find that this arrest was supported by probable cause.



---

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

**Named Employee #1 - Allegation #2**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

SPD Policy 6.200-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant."

I find that the prolonged nature of the detention, the repeated requests and demands for identification, the ordering of the Complainant to take off his backpack and put out his cigarette, and the multiple statements by NE#1 that the Complainant was not going anywhere unless he provided his identification were actions that elevated the Terry stop to a functional arrest. For this to have been permissible, there must have been probable cause for the Complainant's arrest. As discussed below, I find that there was not.

That being said, and as discussed in the Administrative Note section above, I find that this conduct is already subsumed in the Sustained findings for Allegation #5 and Allegation #6. For that reason, and while the evidence supports also sustaining this finding, I find it unnecessary to do so in this case. Instead, I issue NE#1 a Training Referral.

- **Training Referral:** NE#1 should receive training concerning SPD 6.220 generally, and, specifically, the provision that concerns those actions that can convert a Terry stop into an arrest. NE#1 should be counseled by his chain of command regarding how the actions he took in this case elevated the stop of the Complainant into an arrest and that he did so when there was no probable cause to effectuate that arrest. He should be instructed to more closely adhere to this policy in the future. This training and associated training should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time***

SPD Policy 6.220-POL-4 requires that officers limit Terry stops to a reasonable amount of time. It instructs that "subjects may only be seized for that period of time necessary to effect the purpose of the stop" and further states that "officers may not extend a detention solely to await the arrival of a supervisor."

While the Complainant was detained in this matter for over thirty minutes, I do not have to reach the question of whether this exceeded the duration of a valid Terry stop. This is the case because I find that that the Terry stop was converted to an arrest as soon as NE#1 first told the Complainant that he could not leave until he provided his identification. This occurred approximately two minutes into the stop.



---

Were this not the case, I would have significant concerns with the duration. However, for the reasons indicated above, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves***

SPD Policy 6.220-POL-5 requires that, during a Terry stop, officers will take reasonable steps to be courteous and professional. The policy further states that: “When reasonable, as early in the contact as safety permits, officers will inform the suspect of the following: The officer’s name; The officer’s rank or title; The fact that the officer is a Seattle Police Officer; The reason for the stop; That the stop is being recorded, if applicable.”

As discussed above, I find that the courtesy and professionalism aspect of this policy is duplicative of the allegations under SPD Policy 5.001-POL-10, which are already recommended Sustained against both NE#1 and NE#2.

With regard to the requirement that the officers identify themselves, NE#1 told OPA that normally he will introduce himself and provide the reason for the stop early in his interaction with a subject; however, NE#1 stated that he did not recall what he did here because there were some “safety issues” that made him concerned. Specifically, NE#1 asserted the following: the Complainant had a lit cigarette; his feet were “planted” in a way that made NE#1 suspicious that he would run; and he had a “heavy” backpack on that was open and a jacket that looked like it could conceal weapons. From my review of the video, these safety concerns were simply unwarranted and unreasonable under the circumstances. Moreover, even if these concerns were arguably reasonable, they quickly dissipated when the Complainant did not actually present any threat. However, NE#1 never identified himself to the Complainant or provided his title. He did not divulge the basis for the stop until over one minute into their interaction and only disclosed the fact that he was recording the Complainant when the Complainant wanted to verify that their interaction was being captured on camera.

At his Loudermill hearing, NE#1 appeared to confirm that he did not provide his identification to the Complainant at the inception of the stop. He stated that the Complainant knew who he was because the Complainant looked at NE#1’s badge and read NE#1’s name back to him.

Regardless of whether the Complainant read his name off of his badge, NE#1 was obligated to provide that information to him. Moreover, he was required to do so at the inception of the stop, not over a minute after it took place. The failure of NE#1 to do so here constituted a technical violation of policy. However, given that a number of findings are already recommended Sustained and given that NE#1 expressed a willingness to learn from this incident at his Loudermill hearing, I reverse my previous recommended Sustained finding on this allegation. I now recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the elements of this policy and, specifically, the requirement that he identify himself on a Terry stop. NE#1 should be informed by his chain of command that the failure to do so here constituted a technical violation of policy and he should be





---

counseled to ensure he complies with this policy moving forward. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #5**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

SPD Policy 6.220-POL-6 holds that “officers cannot require subjects to identify themselves or answer questions on a Terry stop.” While officers are entitled to request this information, they cannot mandate it.

Here, NE#1 requested and then demanded the Complainant’s identification repeatedly during their interaction. At the outset, the Complainant identified himself as “Ryan.” This was his real first name. The officers then asked for his last name, and he repeated “Donnelley.” This was the Complainant’s legal last name. The staccato manner in which the Complainant stated his last name made it sound like “Don-lee.” NE#1, without asking any follow up questions, assumed that the Complainant was giving a false name.

Approximately two minutes into their interaction, NE#1 told the Complainant: “you are not free to leave and you’re not going to leave until we identify you.” Later in their interaction, and after errantly believing that the Complainant had given a false or inconsistent name, NE#1 told him: “guess where you’re not going, anywhere until you tell us your name.” Immediately prior to making this statement, both NE#1 and NE#2 indicated that the Complainant was being held for suspicion of theft, not that the Complainant was actually under arrest. This suggests that the officers believed at the time that they were conducting an ongoing Terry stop.

Based on the above, it violated policy when, during a Terry stop, NE#1 threatened the Complainant that he could not leave the location unless he provided his identification. This was tantamount to a requirement to provide identification. As such, I recommend that this allegation be Sustained as against NE#1.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #6**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

As referenced above, I find that the Complainant’s detention turned into a functional arrest at the first time that NE#1 told the Complainant that he was not free to go unless he provided his name and identification. This occurred at approximately two minutes into the stop. Notably, this was agreed to by NE#2 during his OPA interview. As such, for the Complainant’s arrest to have been valid, there needed to be probable cause at that time to arrest him for



---

possession of stolen property (which was the initial charge) and false reporting. I find that there was not probable cause for either offense.

With regard to the false reporting charge, the Complainant did, in fact, provide his actual name to the officers. When they asked him for his first name, he said "Ryan." When they asked him what his last name was, he said "Donnelley." He pronounced it as "Don-lee," which NE#1 took to be a false name. Notably, NE#1 never asked any follow up questions concerning this, such as: is "Don-lee" your last name? Had he done so, he could have quickly determined that the Complainant provided his identity when asked. Moreover, they later learned that this was his real name at the precinct. As such, even assuming that they did believe in good faith that they had been given a false name by the Complainant, the probable cause for this charge dissipated once they realized that he had provided accurate information.

Moreover, with regard to the possession of stolen property charge, there was no evidence that the bag was stolen. Further, the officers made no attempt to verify with the woman that the Complainant did not have the right to possess the bag. This was the case even though the Complainant said that the woman was his girlfriend, indicated that he had been with her earlier, stated that he was bringing the bag back to his house because the woman was sick, and told the officers to call her. In addition, the officers knew that the woman had purposefully left the bag behind when she left for the hospital.

Even with regard to the charge of misappropriation of lost property, the officers did not have probable cause to establish the elements of this crime. Most notably, the officers could not prove, absent information from the woman, that the Complainant knew that the property had "been lost or mislaid." Instead, the Complainant contended that he was in possession of his girlfriend's bag and was bringing that bag back to their home. Further, the officers knew that the woman had purposefully abandoned the bag and thus knowingly abdicated any interest that she had in it. As such, it is unclear how they could ever establish that it was lost or mislaid.

Probable cause exists where an officer has sufficient facts to lead a reasonable person to conclude that there is a probability that a subject is involved in criminal act. Such facts simply did not exist here for either offense. As such, and for the reasons stated above, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #7**

***6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical***

SPD Policy 6.010-POL-2 requires that, "when taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical." As discussed more fully above, the officers did not identify themselves at the inception of the stop and, in fact, never formally identified themselves.

At the time that the Complainant was formally taken into custody, NE#1 was talking to NE#2 about the Complainant "lying" about his name and stated that "our best case is...to arrest him and take him in." At the time they were



---

having this conversation, the Complainant stood up, turned around, and placed his hands behind his back. As such, the officers never actually informed the Complainant that he was under arrest and of the charge of arrest.

While I find that these failures were technically in violation of policy, I recommend a Training Referral instead of a Sustained finding for several reasons. First, the failure of the officers to properly identify themselves is already captured by the Sustained finding in Allegation #4. Second, the fact that the Complainant immediately stood up and placed his hands behind his back suggested that he knew the purported reasons for his arrest, even if he disagreed with their validity.

- **Training Referral:** NE#1 should receive retraining concerning the elements of SPD Policy 6.020-POL-7 and, specifically, the requirements that, upon arresting a subject, he identify himself, formally inform the subject that he is under arrest, and provide the basis for the arrest. His failure to do so here was in technical violation of policy. NE#1 should be counseled by his chain of command to more closely adhere to the requirements of this policy in the future. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #8**

***6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights***

SPD Policy 6.010-POL-3 requires that arrestees be read their Miranda warnings “as soon as practical” after being taken into custody

Here, the Complainant was formally taken into custody approximately 30 minutes after being initially stopped. However, as discussed above, I find that his detention was elevated into an arrest just minutes after he was detained when he was told that he could not leave until and unless he provided identification. As such, Miranda warnings arguably should have been read to the Complainant at that time – particularly given that the officers continued to repeatedly question the Complainant. That being said, a reasonable officer could read the policy as only requiring Miranda warnings at the time a subject is taken into custody. In that scenario, Miranda warnings would not have been needed until the Complainant was handcuffed.

Here, pursuant to NE#2’s request, the witness officer read Miranda warnings to the Complainant. The witness officer stated that he did so when the Complainant was seated in the rear of his patrol vehicle and before the Complainant was transported from the scene. This occurred only minutes after his formal arrest.

Based on the above, I find that the officers complied with this policy. First, I do not find it contrary to the explicit requirements of the policy that Miranda warnings were not read until after the Complainant was formally placed under arrest. Second, while the officers certainly could have read the Complainant his rights at the time he was handcuffed, I do not find it unreasonable that they waited to do so until he was secured in the patrol vehicle. While I note that it would have been best practice to have read Miranda warnings to the Complainant at an earlier time, I ultimately recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1 and NE#2.

Recommended Finding: **Not Sustained (Lawful and Proper)**



---

**Named Employee #1 - Allegation #9**

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

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.*)

The Complainant alleged that he was profiled and harassed by the officers and, most notably, by NE#1. NE#1 denied profiling the Complainant or engaging in biased policing towards him. NE#1 stated that, instead, he took law enforcement activity against the Complainant solely based on the belief that the Complainant unlawfully possessed the blue bag.

From my review of the record, and while I have concerns with significant aspects of both the stop and the arrest of the Complainant, I do not believe that it was premised on bias. This conclusion was made more difficult, however, by NE#1’s own words. Significantly, when the Complainant first contended that he was being profiled, NE#1 stated in response: “Am I profiling you? Yeah, I am. Is that a problem?”

At his OPA interview, NE#1 claimed that he made this statement in order to cut off this line of communication with the Complainant. He further asserted that he was profiling the Complainant, but that he was profiling him for his “criminal conduct.”

As discussed below, I find this statement to have been unprofessional. I further find that it reflected poorly on NE#1 and created the possibility that he was, in fact, engaging in biased policing. While I do not conclude that he was, that this question was close is, in and of itself, problematic. For these reasons, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning his statement to the Complainant that NE#1 was profiling him. Even if the evidence did not conclusively establish biased policing, these statements could give the perception that such conduct occurred in this instance. NE#1 should be instructed by his chain of command to avoid making such statements in the future and that his comments in this case reflected poorly both on him and the Department. This training and counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #10**

**5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing**

SPD Policy 5.140-POL-5 requires that Department employees call a supervisor in response to allegations of biased policing.

As indicated by NE#4 at his OPA interview, he came to the scene based on the officers’ request for a fingerprint scanner, not because he was called to the scene to investigate the Complainant’s allegation of bias. When he



responded to the scene, NE#4 recalled that he learned of the bias allegation, but did not identify who told that information to him. At his interview, NE#1 stated that he did not report the allegation of profiling to NE#1 and that he did not feel that he was required to under the policy. NE#4 later spoke with the Complainant who reiterated the allegation.

Not only did NE#1 fail to request a supervisor to come to the scene to investigate the allegation of profiling, he never informed NE#4 of this allegation. While this was a clear violation of policy, I find that a Training Referral is the more appropriate finding. I reach this conclusion based on the fact that the allegation of bias was ultimately investigated by NE#4 and reported to OPA, as well as because I already recommend that Allegation #12, below, be Sustained against NE#1.

- **Training Referral:** NE#1 should be retrained as to the elements of SPD Policy 5.140-POL-5 and, specifically, the requirement that he notify a supervisor to come to the scene where a subject makes an allegation of bias. Here, he did not do so. NE#1's chain of command should counsel him to more closely comply with this policy in the future. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #11**

***5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-6 requires that: "Where there has been an allegation of bias-based policing, the investigating supervisor will complete a Bias Review Blue Team entry to document the circumstances of the allegation and steps that were taken to resolve it." This section of the policy does not impose a documentation requirement upon the officer who the bias allegation was made against. As such, this allegation was wrongly classified against NE#1 and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #12**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations***

Based on my review of the video, there is no evidence that NE#1 informed NE#4 of the allegations of misconduct made by the Complainant. During his OPA interview, NE#1 stated that he did not report the complaint of profiling and that, under his interpretation of policy, he was not required to do so. He further did not report the allegations that he was harassing the Complainant, the Complainant's allegation of assault, the Complainant's complaint of pain and allegation of force, or the Complainant's assertion that NE#1 spat at him while they were talking.

While the complaints concerning the force were made in NE#4's presence and a reasonable officer could have believed that NE#4 heard those complaints and it was unnecessary to also report them, the others were not. NE#1 had an obligation to report them and his failure to do so violated policy. As such, I recommend that this allegation be Sustained.



---

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #13**

***8.200 - Using Force 2. Use of Force: When Prohibited***

While SPD Policy 8.200-POL-1 provides for when the use of force is permitted, SPD Policy 8.200-POL-2 details when it is prohibited. Most notably for purposes of this case, force may not be used: “To punish or retaliate”; or “Against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function.”

Here, NE#1 used force when he, as alleged by the Complainant, pushed his body against him during their interaction. He used force again when he applied handcuffs to the Complainant and the Complainant complained of pain.

With regard to the initial use of force, I find it to have been body positioning in order to intimidate the Complainant rather than a reportable use of force. While I find this to be concerning, this conduct is addressed in the Sustained finding for Allegation #14, below. With regard to the use of force during the handcuffing, I do not find that this force was prohibited under this policy. It did not appear to have been used to punish or retaliate against the Complainant, instead it was meant to handcuff him and take him into custody. It also did not appear to have been used solely because of the Complainant’s statements towards the officers.

For these reasons, while I find aspects of NE#1’s conduct to have been concerning, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #14**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

SPD Policy 5.001-POL-9 instructs that SPD employees shall strive to be professional at all times. It further states the following: “Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” Officers “will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.”

NE#1’s behavior during virtually the entirety of interaction with the Complainant was unprofessional. At the outset, NE#1 did not identify himself or give the basis for why he was stopping or detaining the Complainant. When the Complainant questioned the basis for the stop, NE#1 grew aggressive. He leaned down towards the Complainant and, at one point, pushed his body towards him. While NE#1 contended that he did so to hear the Complainant due to the loud traffic and because he was trained to move closer to dispel a threat, I find this explanation to be unbelievable and actually contrary to NE#1’s training and common sense. I find it much more likely that he did so to intimidate the Complainant. This appears clear to me from my review of the video. This behavior continued through the stop and detention.



---

NE#1 further made a number of statements that, standing alone, constituted unprofessionalism. Included among these were: when he told the Complainant that he was profiling him; when he asked the Complainant if he wanted him to call a “wambulance”; when he repeatedly asked the Complainant if he was playing the victim; stated that his complaints were “adorable”; told him that he was “just another criminal on Aurora”; stated that he “really wanted to take” the Complainant to jail; laughed at the Complaint in a demeaning fashion; and refused to call a sergeant and dismissively told the Complainant that sergeants were at the precinct doing paperwork. NE#1 treated the Complainant dismissively and rudely throughout their interaction. Moreover, his conduct and statements served to escalate the events.

For these reasons, I find that NE#1’s conduct and demeanor towards the Complainant in this case were simply unacceptable and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #15**

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

When NE#1 spoke with the female witness, he asked her if she had previously seen the Complainant with the bag. She stated: “No, it was a woman I think that sat down on the corner with it.” NE#1 asked if the bag belonged to the woman. The female witness responded: “Well we think it was it showed up when she showed up.” NE#1 returned to where the Complainant was being detained and told the other officers: “So now we have a witness, she says that’s definitely not his bag and it definitely does belong to the woman who was here earlier.”

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communication. This allegation was classified here because of the manner in which NE#1 relayed a comment made by the female witness to fellow officers. Specifically, NE#1 was alleged to have engaged in dishonesty because the female witness was not definitive that the bag belonged to the woman, but NE#1 characterized the witness’s statement as definitive to his fellow officers.

When asked about this apparent inconsistency at his OPA interview, NE#1 stated that his recounting of the female witness’s account was a “generalization” and was based on the totality of the circumstances known to NE#1 at the time. NE#1 stated that he was paraphrasing the female witness but that he did not believe that she was being ambiguous about who owned the bag.

Based on my review of the record, I find that the information conveyed by NE#1 to his fellow officers was not entirely accurate. It suggested that ownership was conclusively known and verified by the female witness when it was not that clear. That being said, and due to the higher quantum of evidence required to prove this allegation, I cannot conclusively determine that this was dishonesty in violation of SPD policy. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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



---

**Named Employee #1 - Allegation #16**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy, and Department policy.

While I find aspects of the Terry stop effectuated by NE#1 were improper and that there was insufficient probable cause to arrest the Complainant, that conduct is dealt with in other allegations. I interpret this allegation to refer to the claim made by the Complainant that his genitals were touched during the search.

NE#1 searched the Complainant incident to arrest while NE#3 held his arm. NE#3 stated that he did not witness anything unprofessional during the search. NE#3 further stated that, based on his experience, it was not uncommon to search the groin area of a suspect for weapons and/or drugs.

NE#1 stated that, while he patted down the Complainant's groin area, he did so to verify that he had no weapons on him. He stated that he did not do anything that was unprofessional or inappropriate during the search. Moreover, even though I find that there was insufficient probable cause to arrest the Complainant, once the officers made the decision to do so, they were permitted to search him.

While I can understand the Complainant's concern and annoyance with being searched in the groin area, I do not find it to have been either illegal or improper. I reach this conclusion based both on my review of the officers' statements and on the video, which shows a pat frisk consistent with the officers' accounts.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1, NE#2, and NE#3.

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

**Named Employee #2 - Allegation #1**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #2 - Allegation #2**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

As discussed above (see Named Employee #1, Allegation #2), I find that NE#1's conduct – which including repeated requests and demands for identification, multiple statements that the Complainant could not leave until identification was provided, orders to the Complainant to remove his backpack and put out his cigarette – elevated





---

NE#1's detention to a functional arrest. Moreover, as explained below, I conclude that there was not sufficient probable cause supporting that arrest.

I find that NE#1, not NE#2, was primarily responsible for this. However, I note that NE#2 did not appear to see any issue with NE#1's actions either at that time or after the fact. For these reasons, while I do not believe it necessary to issue a Sustained finding as against him, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should be retrained concerning the elements of SPD Policy 6.220-POL-3 and, specifically, be reminded that certain actions can transform a Terry stop into an arrest. Moreover, NE#2 should be counseled that, where that occurs, the arrest must be supported by probable cause. That was not the case here. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves***

At his OPA interview, NE#2 admitted that he did not identify himself to the Complainant at the outset of the stop. From my review of the video, there is no evidence that NE#1 ever stated that he was a Seattle Police Officer or told the Complainant that he was being audio and video recorded. Moreover, the officers, including NE#2, did not tell the Complainant that he was being stopped on suspicion of being in possession of stolen property until over a minute into the stop. This was in technical violation of policy.

I initially recommended that this allegation be Sustained against NE#2 as he admittedly did not introduce himself. However, at his Loudermill hearing, NE#2 recognized that while he did not identify himself, he thought that it was the obligation of the primary officer, not him, to do so at the outset of the stop and to provide the reason for the stop. He further stated that he now makes a point to identify himself, regardless of whether he is the primary officer.

I do not find NE#2's stated confusion to be necessarily unreasonable. There is a valid question of whether every officer involved in a Terry stop is required to provide identification or, in the alternative, whether it is only required of the officer initiating the stop and primarily interacting with the subject. In some respects, the former, broader interpretation seems illogical and unworkable. For example, if six officers were involved, even tangentially, in a Terry



---

stop, would each of the officers be required, in turn, to provide their name and rank? I do not think that this is what the policy contemplates, but I will leave this to the Department to determine. Indeed, the Department is currently considering revisions to SPD Policy 6.220 and it may want to evaluate a change to this section.

Regardless, given the valid questions raised by NE#2 at his Loudermill hearing, I no longer recommend that this allegation be Sustained on this ground.

Similarly, as discussed above, as well as in the context of NE#1, I already recommend that the allegation under SPD Policy 5.001-POL-10 be Sustained against NE#2. As such, I find it unnecessary to also sustain the courtesy and professional aspect of this policy.

For these reasons, I amend my finding. I instead issue the following Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning the elements of this policy and, specifically, the requirement that he identify himself on a Terry stop. While NE#2 appears to have already modified his behavior in this regard, his chain of command should ensure that this is the case. If so, no further action need be taken by the chain of command. This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegation #5**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

As discussed above, I find that NE#1 improperly required the Complainant to provide his identification during the Terry stop. While NE#2 also asked the Complainant for his identification on a number of occasions, unlike NE#1, I do not find that NE#1 demanded it.

As such, I do not recommend that this allegation be Sustained as against NE#2. I note, however, that NE#2 did not seem to have any problem with NE#1's statements, either at the scene or during his OPA interview, and did not seem to understand that they violated policy. Accordingly, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** Named Employee #2 should receive additional training concerning the elements of SPD Policy 6.220-POL-6 and, specifically, the prohibition on requiring a suspect to provide identification during a Terry stop. It should be explained to him by his chain of command how NE#1's actions in this case were in violation of policy. This retraining and counseling should be documented and that documentation should be maintained in an appropriate database.

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



---

**Named Employee #2 - Allegation #6**

**6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest**

While NE#1 directed that the formal arrest of the Complainant be effectuated, I find that NE#2 was equally involved in the investigation and decision-making that led to this action. As such, I find that he holds equal responsibility for the arrest of the Complainant, which I conclude lacked probable cause.

For this reason, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #7**

**6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical**

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should receive retraining concerning the elements of SPD Policy 6.020-POL-7 and, specifically, the requirements that, upon arresting a subject, he identify himself, formally inform the subject that he is under arrest, and provide the basis for the arrest. His failure to do so here was in technical violation of policy. NE#2 should be counseled by his chain of command to more closely adhere to the requirements of this policy in the future. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegation #8**

**6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights**

For the same reason as stated above (see Named Employee #1, Allegation #8), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #9**

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

As discussed in the context of NE#1 above (see Named Employee #1, Allegation #9), I do not believe that the Named Employees engaged in biased policing. This is the case even though I think that the stop of the Complainant was questionable and the arrest of the Complainant was not legally supported. Ultimately, even if incorrect, I find that the officers based their law enforcement actions on the Complainant's perceived conduct, not on him being a member of any protected class.



---

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

**Named Employee #2 - Allegation #10**

***5.140 - Bias-Free Policing 4. All Employees Share Responsibility for Preventing Bias-Based Policing***

SPD Policy 5.140-POL-4 states that all Department employee share a responsibility for preventing biased policing.

As discussed more fully above, while I have significant concerns with the language used by NE#1 concerning profiling, I do not find that any of the officers engaged in biased policing in this instance. As I find that no biased policing occurred, I recommend that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

**Named Employee #2 - Allegation #11**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

As discussed above, NE#4 responded to the scene based on a request for a fingerprint scanner, not because he was notified of the complaints of bias.

NE#2 stated that he may have told NE#4 about the bias allegation later at the precinct, but was not definitive on this issue. He further stated that he did not believe that he said anything while at the scene. NE#2 also indicated that he was not sure if any other officers told NE#4 of the bias allegation while at the scene.

Even though I find that this failure to report constituted a technical violation of policy, given that NE#4 did become aware of the misconduct and referred this matter to OPA and because I recommend that Allegation #12 be Sustained against NE#2, I conclude that a Training Referral is the appropriate finding here.

- **Training Referral:** NE#2 should be retrained as to the elements of SPD Policy 5.140-POL-5 and, specifically, the requirement that he notify a supervisor to come to the scene where a subject makes an allegation of bias and that he independently report the allegation of bias to a supervisor. Here, he did not do so. NE#2's chain of command should counsel him to more closely comply with this policy in the future. This retraining and associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegation #12**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations***

NE#2, like NE#1, failed to inform NE#4 of the allegations of misconduct made by the Complainant. Most notably, NE#2 failed to tell NE#4 that the Complainant alleged that he had been profiled, harassed, and that NE#1 had



---

assaulted him. Moreover, while NE#2 contended that he may have reported some of these allegations to NE#4 at the precinct, he could not conclusively state that he did so.

SPD Policy 5.002-POL-2 required that these allegations be reported. The failure to do so was contrary to policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #13**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

During the vast majority of the officers' interaction with the Complainant, NE#1 drove the conversation. As discussed above, I find that NE#1's demeanor, statements, and physical conduct were unprofessional and violated Department policy. I do not believe that NE#2's behavior was as egregious as NE#1's; however, I still conclude that NE#2 was unprofessional towards the Complainant. While I am concerned with a number of NE#2's statements, I am even more troubled by his overall approach towards the Complainant.

The following are some of the statements made by NE#2 that I believe were unprofessional and inappropriate: in response to the Complainant's assertion that he was being subjected to an invalid stop and detention, NE#2 stated: "since you're an expert in this, what's it called when an officer gives you a lawful order and you don't comply with it"; when the Complainant asked a question in response to his exchange, NE#2 responded: "you don't answer a question with a question" and "that's not how communication happens sir"; when the Complainant stated something concerning NE#1 being "in shape," NE#2 said "good job bro" and began laughing with NE#1.

As discussed above, I also find NE#2's general approach towards the Complainant to have been dismissive. For example: NE#2 repeatedly laughed with NE#1 and at the Complainant concerning the Complainant's statements and NE#1's responses thereto and was sarcastic concerning the Complainant's assertion that he felt threatened by the officers.

These statements and NE#2's demeanor were gratuitous and simply unnecessary. The officers already had all of the power in this situation. The Complainant was sitting on a wall while surrounded by multiple officers. He clearly felt mistreated and bullied. He had been told on several occasions that he was not free to go and, as discussed above, he had functionally been arrested. SPD Policy 5.001-POL-9 prohibits officers from using language or engaging in acts that are contemptuous or disrespectful against any person. I find that NE#2's behavior and statements here were contemptuous and disrespectful towards the Complainant and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #14**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

For the same reasons as stated above (see Named Employee #1, Allegation #16), I recommend that this allegation be Not Sustained – Unfounded.



---

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

**Named Employee #3 - Allegation #1**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

I find that NE#3 acted virtually entirely as a cover officer in this case. He had limited if not non-existent interaction with the Complainant and did not play any significant role in the Complainant's detention. Indeed, the Complainant, himself, stated that NE#3 was the only officer who was not harassing, profiling, or mistreating him. For these reasons, I recommend that the allegations concerning the Terry stop and arrest of the Complainant all be removed as against NE#3.

Recommended Finding: **Allegation Removed**

**Named Employee #3 - Allegation #2**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3- Allegation #5**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***



---

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 - Allegation #6**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 – Allegation #7**

***6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 – Allegation #8**

***6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights***

For the same reasons as stated above (see Named Employee #3, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #3 - Allegations #9**

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

For the same reasons as stated above (see Named Employee #2, Allegation #9), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #10**

***5.140 - Bias-Free Policing 4. All Employees Share Responsibility for Preventing Bias-Based Policing***

For the same reasons as stated above (see Named Employee #2, Allegation #10), I recommend that this allegation be Not Sustained – Unfounded.



---

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

**Named Employee #3 - Allegation #11**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

NE#3 stated that he inferred by NE#4's presence at the scene that the Complainant's allegations, including the complaint of bias, had been reported. NE#3 did not, himself, report this to NE#4. While NE#3 is correct that NE#4 eventually learned of the bias allegation, NE#3 was not clearly aware of that at the time. SPD Policy 5.140-POL-5 placed on NE#3 the independent obligation to report bias to a supervisor. Accordingly, he was required to convey this information to NE#4 even if he believed that another officer may have already done so. At the very least, he should have verified with NE#4 or his fellow officers that this allegation had been relayed.

While I find that this failure to report constituted a technical violation of policy, given that NE#4 did become aware of the misconduct and referred this matter to OPA and due to NE#3's largely tangential involvement in the incident, I conclude that a Training Referral is the appropriate finding here.

- **Training Referral:** NE#3 should be retrained as to the elements of SPD Policy 5.140-POL-5 and, specifically, the requirement that he notify a supervisor to come to the scene where a subject makes an allegation of bias. Here, he did not do so. NE#3's chain of command should counsel him to more closely comply with this policy in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #3- Allegation #12**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

For the same reasons as stated above (see Named Employee #1, Allegation #16), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #1**

***5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing***

SPD Policy 5.140-POL-7 concerns a supervisor's requirements when conducting a preliminary inquiry into an allegation of biased policing. This policy discusses when a Bias Review is appropriate versus an OPA complaint. The policy explicitly directs that: "If the person making the allegation [of bias] asks that the matter be referred to OPA then the reviewing supervisor shall refer it using the Complaint Blue Team entry, rather than the Bias Review Blue Team entry." The Complainant Blue Team entry is synonymous with an OPA complaint.

Here, NE#4, as the reviewing supervisor, was told by the Complainant that the Complainant wished for an OPA complaint to be initiated. As such, NE#4 made an OPA complaint instead of completing a Bias Review. This was consistent with policy and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper.





---

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #4 – Allegation #2**

***5.140 - Bias-Free Policing 5.140-PRO-1 Handling a Bias-Based Policing Allegation***

SPD Policy 5.140-PRO-1 set forth the specific responsibilities for supervisors when handling biased policing allegations. As is set forth in SPD Policy 5.140-POL-7, this policy also explains that where the subject wishes to file an OPA complaint, the supervisor will complete a Complaint Blue Team entry instead of a Bias Review. NE#4 did so here and, as explained above, he acted consistent with this policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #4 – Allegation #3**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

SPD Policy 5.002-POL-2 directs that Department employees, including supervisors, will assist any person who wishes to file an OPA complaint. Here, NE#4 documented the Complainant's allegations of misconduct and referred them to OPA in a Complaint Blue Team entry. He told OPA that he further provided the Complainant with a business card containing OPA's phone number.

While not classified for investigation in this case, I have serious concerns with NE#4's professionalism during his interaction with the Complainant. He appeared annoyed at the outset because he was required to return to the precinct to retrieve the fingerprint scanner and then bring it to the scene. I am curious why he felt that way given that this was his job to do so. He began his conversation with the Complainant by telling him that he was required to return to the precinct which delayed his arrival. When the Complainant then asked if he could talk to NE#4 outside of the presence of the four officers surrounding him, NE#4 refused. When the Complainant indicated that he was afraid of the officers, NE#4 responded that this was "tough" and indicated that there was probable cause to arrest the Complainant for two charges. He further stated to the Complainant that no one had hit him, but it was unclear how he knew this given that he had not yet asked the Complainant what occurred.

While NE#4 ultimately took the Complainant's complaint and passed it on to OPA, he showed virtually no interest in what the Complainant was saying and provided no empathy. I find that this conduct and demeanor fell well below the standard for sergeants expected by both the Department and the community. I find it compelling that during his interaction with the officers, the Complainant repeatedly asked for a sergeant to come to the scene. Even though he felt bullied, harassed, and profiled by the officers, he still felt that a sergeant would bring reason to the situation and potentially remedy the harms that he suffered. That did not happen here.

Ultimately, though I find that NE#4 complied with the elements of the policy, I recommend that he receive Training Referral based on his lack of professionalism while screening the Complainant's allegations of misconduct.



- 
- **Training Referral:** NE#4 should be counseled concerning his demeanor during his interaction with the Complainant. He should be informed by his chain of command that the Department's and community's expectation is that he will treat those he interacts with respectfully and with empathy, regardless of his annoyance with the situation or his belief of the merit of what they are stating. This is particularly the case where an individual is making a complaint of misconduct against officers. NE#1 failed to meet these expectations in this case. This counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #4 - Allegation #4**

***6.010 - Arrests 6. Screening Sergeant Will Approve Report***

SPD Policy 6.010-POL-6 requires that the sergeant responsible for screening an arrest approve the general offense report. The policy also states that: "The screening sergeant will complete the screening supplemental for the GO."

During OPA's investigation, the screening supplement could not be located. NE#4 told OPA that he recalled screening the arrest and completing the screening supplement; however, even NE#4 could not locate the document in the Versadex system. NE#4 speculated that it could have been a system problem and that, while he created the document, it was lost or misplaced due to no fault of his own.

While NE#4 opined that the absence of the screening supplement was caused by a system failure, there is no evidence supporting this assertion. I find it more likely that he failed to complete the document. As such, and applying a preponderance of the evidence standard, I conclude that NE#4 failed to comply with the requirements of this policy.

That being said and as discussed in the Administrative Note section above, I recommend that NE#1 receive a Training Referral as opposed to a Sustained finding.

- **Training Referral:** NE#4 should be counseled by his chain of command concerning the lack of an arrest screening report in this case. He should be informed that he, at his chain of command's request, received the benefit of the doubt in this instance but that, in future cases, the unexplained absence of an arrest screening report will likely result in a Sustained finding. NE#4 should take steps to ensure that this situation does not occur again. This counseling should be documented and this documentation maintained in an appropriate database.

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