



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 12, 2019

CASE NUMBER: 2018OPA-0919

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 6	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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	Not Sustained (Lawful and Proper)
# 8	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 (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Lawful and Proper)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 6	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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	Not Sustained (Lawful and Proper)



	Under Arrest, and State the Reason for the Arrest As Early as Practical	
# 8	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 (Unfounded)

Imposed Discipline

Oral Reprimand

Named Employee #3

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

Named Employee #4

Allegation(s):		Director's Findings
# 1	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Lawful and Proper)

Named Employee #6

Allegation(s):		Director's Findings
# 1	13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk	Sustained

Imposed Discipline

Oral Reprimand

Named Employee #7

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

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:

This incident stemmed from a traffic stop for speeding that eventually led to two arrests. The driver was arrested for DUI and the passenger, the Complainant, was arrested for obstruction. The Complainant alleged that the Named Employees stopped the driver because he is Black. It was further alleged that the Named Employees engaged in a number of policy violations when they pulled the Complainant from a vehicle and arrested her. Specifically, it was alleged that the Named Employees: lacked probable cause to arrest the Complainant; failed to inform the Complainant that she was under arrest as early as practical; failed to de-escalate prior to using force; used excessive force; used unnecessary force; acted unprofessionally; failed to ensure the safety of a detainee during transport; and unnecessarily drove with increased risk when transporting a detainee. Lastly, it was alleged that the Named Employee #5, the Named Employees' Sergeant, failed to properly screen the arrests and investigate the allegations associated with the other Named Employees.

SUMMARY OF INVESTIGATION:

This investigation ensued after it was referred to OPA by an SPD Lieutenant following his review of the underlying incident. During that review, the Lieutenant identified multiple issues, which were investigated by OPA and are discussed below.

A. The Incident

General Offense Report Summary

Named Employee #3 (NE#3) initiated a traffic stop after viewing an SUV passing by him at a high rate of speed. Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #4 (NE#4) followed behind to assist in the traffic stop. After the driver failed to promptly pull over, NE#3 and NE#1 went over their public-address systems to inform the driver to stop his vehicle and for the occupants to place their hands on the dashboard.

NE#3 noted in his report that, after approaching the SUV, he immediately smelled "the odor of intoxicants" on the driver. NE#3 also reported that the passenger, the Complainant, was belligerent and verbally acting out in response to the traffic stop, thus causing the driver to divert his attention from NE#3. NE#3 noted that the Complainant was told multiple times to be quiet and was warned that if she continued to impede NE#3's traffic stop investigation, she could be arrested for obstruction. Per NE#3's report, he ordered the driver to exit the SUV and to relocate to the front bumper of his patrol vehicle for officer safety reasons and to begin a DUI investigation. NE#3 also noted that prior to moving away from the SUV with the driver, NE#3 informed the Complainant to remain in the SUV. He further told her that, if she decided to get out, she would have to leave the area.



NE#3 reported, that while in his patrol vehicle investigating the DUI, he saw the Complainant moving around inside the SUV. He further documented that NE#1 informed him that she had moved to the driver's seat and locked the doors. NE#3 also reported seeing the Complainant briefly exit and re-enter the vehicle two times before NE#1 and NE#2 ordered her to exit the SUV. After she failed to comply, NE#3 reported that he observed NE#1 pull on the driver's door of the SUV to open it, but saw the Complainant was pulling the door closed from inside the SUV. NE#3 also reported that NE#1 and NE#2 extracted the Complainant from the SUV and placed her under arrest for obstruction because her actions were hindering the traffic stop. NE#3 reported that NE#1 and NE#2 further took this action because the Complainant refused to cease acting in a belligerent manner and did not leave the area.

NE#3 reported that the Complainant was combative after she was removed from the SUV, and that NE#1 and NE#2 took her to the ground to gain control of her. NE#3 wrote that, while on the ground, the Complainant resisted being placed into handcuffs, and that he assisted the other officers in taking her into custody. After the Complainant refused to walk on her own to the patrol vehicle, she was carried there by NE#1, NE#2, NE#4, Named Employee #6 (NE#6), and another unnamed officer. NE#3 noted that the Complainant kicked NE#6 multiple times during the process of taking her into custody. NE#3 wrote that once inside the patrol vehicle used to transport the Complainant, she damaged the interior door by kicking it. A Sergeant screened the Complainant's arrest and an officer from SPD's DUI squad responded to the scene to complete the DUI investigation of the driver. Named Employee #5 (NE#5) was the Sergeant who later screened the DUI arrest.

In-Car and Body Worn Video

The following is a summary of details that OPA identified in its review of the In-Car Video (ICV) and Body Worn Video (BWV).

After NE#3 approached the SUV, he and another officer gave additional orders to the occupants to keep their hands on the dashboard. The Complainant responded by yelling that her hands were on the dashboard. NE#3 responded by telling her to do so again and warned that if she did not, she would be asked to exit the SUV. NE#3 then introduced himself and began to conduct the traffic stop. After asking the driver for his registration and license, the Complainant started asking NE#3: "Are we allowed..." Even though the tone of the Complainant's voice was not aggressive or raised, NE#3 responded: "keep your mouth shut." NE#1 then warned the Complainant that if she impeded NE#3's investigation that she would be removed from her car and arrested for obstruction. NE#3 attempted to keep the driver focused on getting his license and registration, but he ultimately decided to have him exit the car and continue his investigation at his patrol vehicle, which was approximately a car length behind the SUV. After the driver was back at NE#3's vehicle, NE#3 had NE#4 stay with the driver, while NE#3 entered his patrol vehicle to obtain information concerning the driver and the SUV. During that period, NE#3 learned, among other things, that the Complainant was the registered owner of the SUV and that she had a couple warnings of assault on officers on her record. NE#3 called that information out over the radio.

In the meantime, NE#1 and NE#2 stood by the SUV and began engaging in a back-and-forth communication with the Complainant. Examples of the ongoing communication between NE#1, NE#2, and the Complainant are listed below:



NE#1 – BWV (approximate video time stamp)

- 03:30:** NE#1 says to the Complainant “If you keep impeding our investigation, I’m going to take you out of the car and place you under arrest, so you need to shush.” The Complainant asks what she would be arrested for and NE#1 tells her that he already told her, “Obstruction.” The Complainant followed by telling him he should look at RCW, but is cut off by NE#1 who states, “RCW, you should be quiet.” The Complainant persists and suggests he look at the RCW. NE#1 holds up his finger and “shushed” her and tells her this is not how to conduct herself in a traffic stop, and that she should be quiet.
- 05:13:** NE#1 states, “Just relax OK? Why are you acting like that? Tone it down. Cause you are out of control. You’re out of control.” The Complainant tells NE#1, “He is a black man driving” and it is a bunch of white people stopping him. NE#1 responds, ‘So you’re saying we stopped him because he is black.’ The Complainant responds, “Absolutely.” NE#1 told her that he will have a supervisor come out. She said she wasn’t asking for a supervisor. NE#1 tells her, “We’re going to take you out of the car, OK? Why don’t you get out of the car? This isn’t your car. We’re going to have a sergeant come out. This isn’t your car. You’re out of control.” (laughs)
- 06:00:** NE#1 repeats that it isn’t her car and a supervisor is coming out. The Complainant tells NE#1, “It is” and calls him a “fucking rookie.”
- 06:37:** NE#1 tells NE#2 that he thinks they need to get her out of the car, but that it was going to turn into something. Several civilians are watching from the sidewalk.
- 08:16:** NE#1 responds to the Complainant’s allegation of “confirmation bias” by telling her she was “acting like a child.” He then asks, “How old are you?” NE#1 tells the driver who was sitting on NE#3’s patrol vehicle, “We’re not egging her on,” and that “she’s out of control.” NE#1 adds that, “There’s no egging on.”
- 09:32:** NE#1 tells NE#2 not to talk to the Complainant anymore. The Complainant responds with profanity toward NE#1.
- 12:35:** NE#1 discusses with NE#3 that the Complainant locked herself inside the car, the possibility of an arrest, the possibility of her driving off, the possibility of breaking out the windows, and of obtaining a spike strip.
- 14:29:** NE#1 tells NE#2, ‘I think we’re to the point where we...’ NE#2 responds, ‘Yeah.’

NE#2 – BWV (approximate time stamp)

- 03:26:** NE#2 says, “All right, you don’t need to cop an attitude.”
- 04:25:** NE#2 whispers to NE#3, “She’s got... (unintelligible)” The Complainant interjects, “I got what?” NE#2 responds, “I wasn’t talking to you. What is your deal? What’s your problem?”
- 05:38:** NE#2 says to the Complainant, “Just to let you know, you’re being audio and video recorded.” The Complainant displays her middle finger at NE#2. NE#2 responds, “Middle finger. Awesome. Great way to act like an adult.” The Complainant turns toward him and argues, “Great way to make your parents proud.” NE#2 responds, “I am. Would your parents be proud of how you are acting?” He repeats, “Would your parents be proud of how you are acting?” NE#2 tells the Complainant not to reach down while appearing to keep his flashlight focused on the Complainant’s face.
- 08:06:** An argument about why NE#2 is flashing his light at her. NE#2 says, “I’m trying to calm you down. That’s a technique.” She responds that he wasn’t going to calm her down. NE#2 shines his flashlight into the vehicle as the Complainant removes her jacket. The Complainant yells that NE#2 didn’t have a warrant to look in the vehicle. The Complainant yells that he was trying to make himself look better by speaking calmly. NE#2 tells her, “I get that you’re high or drunk or something.” The Complainant responds about that being his assumption and evidence of “confirmation bias.”



10:35: NE#2 tells the Complainant, "I can talk all I want ma'am. I can talk. You can talk. We all can talk. Sure, he's my fuck buddy. Sure, he's my fuck buddy. You got me. You got me real good. Are you cold ma'am. Why are you shaking? She's got me on video. I'm done. I'm done. You're shaking. I can see your hands shaking. (flashlight still on her face)

12:00: NE#2 states out loud and in response to a racial slur and other things she says about another officer, "Ah, she called you a chink. She says you eat dogs. That's racist. That's weird. She's talking about confirmation bias that we're racist, yet she was blatantly bias."

At an early point in NE#1, NE#2, and the Complainant's back-and-forth, the Complainant alleged that it appeared that the driver was stopped by the officers because the driver is Black. As time progressed, NE#1 walked over to NE#3, who was still inside his patrol vehicle, and discussed his concern that the Complainant had rolled up the SUV's windows and locked herself in. During that discussion, the Complainant could be seen climbing over the center console from the passenger's seat and into the driver's seat. NE#3 reacted to what took place and expressed his concern to NE#1 that the Complainant might drive off. NE#1 quickly returned to the vicinity of the SUV and talked to NE#2 and NE#4 about getting a tool out of the back of one of their patrol vehicle to potentially break out the car windows. The Complainant then opened the driver's side door of the SUV and asked the driver about what was taking place. Within minutes thereafter, the Complainant briefly exited the car twice. Each time, the Complainant remained within the opening of the driver's door and promptly retreated inside the SUV as NE#1 and NE#2 moved in her direction. At that point, NE#3 was still inside of his patrol vehicle and was using his MDT. NE#3 appeared to be waiting for an officer from the DUI unit to arrive to process the driver. After the Complainant exited the SUV again, she looked down at her cellphone and yelled back to the driver: "What's going on?" The driver responded by telling her that he does not know. Of note and just moments earlier, the driver expressed his belief to NE#4 that NE#1 and NE#2 appeared to be "egging on" the Complainant. The driver also noted that someone just needed to calm the Complainant down.

Following the Complainant's last exit from the vehicle, NE#1 told NE#2 that he believed they were "at that point." They then both converged on the driver's side door of the SUV. The Complainant, who appeared to see what was about to happen, retreated back into the SUV and yelled: "Get the fuck away from me." NE#1 grabbed the door and used one of his legs as leverage to pull the door from the Complainant's control and to open it. Just prior to and while that took place, NE#1 and NE#2 ordered the Complainant to exit the vehicle. NE#1 then took the Complainant out of the SUV in a standing position and ordered her to place her hands behind her back. NE#2 immediately assisted in the process of getting her handcuffed. The Complainant responded by yelling questions about why they were taking this action. Named Employee #5 (NE#5), who was the other Named Employees' Sergeant, approached NE#1 and NE#2 as they removed the Complainant from the SUV. NE#1 told the Complainant to stop resisting and told her that, if she did not, she would be taken to the ground. NE#5 turned away from this activity and moved to the front of NE#3's vehicle where the driver was standing with NE#4. The driver began to move in the direction of the Complainant but was stopped verbally by NE#4 and NE#5.



The Complainant struggled with NE#1 and NE#2. NE#3 exited his patrol vehicle and ran over to assist NE#1 and NE#2 with their arrest of the Complainant. The Complainant yelled out to the driver that she was not doing anything but recording what was taking place. She further claimed that NE#1 and NE#2 were mad about that she did so. After the Complainant was handcuffed, NE#1 told her that she was under arrest for obstruction. The Complainant responded by saying that obstruction is when you are physically in the way and that her conduct here was not obstructing them. The Complainant had a cut on her forehead and was crying and saying that she was just checking on the driver. NE#1, NE#2, NE#4, and Named Employee #6 (NE#6) began taking steps to get the Complainant into a patrol vehicle, but she refused to comply. As the officers attempted to carry her over to the patrol vehicle, the Complainant began resisting and kicked at NE#6. NE#6, who sustained multiple kicks to his lower body by the Complainant, told her: "You do not kick an officer." As a result, the Complainant was taken to the ground again. One of the officers told the Complainant that she was now going to jail for a felony assault. The Complainant continued to struggle with the officers. Seattle Fire Department personnel arrived on scene and attempted to evaluate the Complainant; however, they determined that she was too combative and uncooperative to render aid safely.

The officers were eventually able to carry the Complainant into the backseat of a patrol vehicle. After assisting in guiding her in from the opposite side of the vehicle, NE#4 closed the door. When he did so, the door appeared to strike the Complainant in the head. While in the rear of the vehicle, the Complainant was not secured by a seatbelt. Shortly after being closed in the back of the patrol vehicle, the Complainant began kicking at the rear driver's side door and window. The Complainant yelled and screamed as NE#6 was getting into the driver's seat and as he began the transport. The patrol vehicle's lights and sirens were activated throughout the transport. At various points along the way, the Complainant screamed and kicked at the back of NE#6's seat. The Complainant also pointed out that she was not secured by a seatbelt and complained about the way NE#6 was driving. The Complainant then went silent and put her head down for brief periods of time. Near the end of the transport, the Complainant's head appeared to be on or near the floorboard, which was the position she was in when they arrived at the jail.

B. Interviews

The Complainant

The Complainant stated that when the officers approached the SUV, she and the driver were ordered to put their hands on the steering wheel and dashboard. The Complainant does not know whether the officers perceived that the driver was not complying initially when he did not pull over, but she noted that they had difficulty finding a place to pull over. Shortly after the primary officer approached the driver's side, the Complainant stated that he ordered the driver out of the SUV. The Complainant stated that she moved over to the driver's seat to get a better view of what was taking place between the driver and the officer. Shortly thereafter, the Complainant stated that she opened the driver's door and stepped one foot out and asked the driver if everything was ok. The Complainant recalled hearing an officer yell back at her to stop interfering with his police work. The Complainant recalled that an officer told her that if she did so again, she would have to leave the area. The Complainant recalled verbally belittling and cussing at one of the younger looking officers who was present. The Complainant stated that she guessed that she decided to do that to "stir the pot." The Complainant stated that she recalled opening the driver's side door again to check on the driver because she felt that everything was moving too slowly. The Complainant stated that the next thing she recalled seeing was an officer "charging" in her direction and then being "yanked" from the car and thrown to the ground.



She recalled there being two or three officers involved in trying to “subdue” her. The Complainant recalled being told by one of the officers that she was going to be charged with assault because of her actions. She stated that she was ultimately thrown into the back of a patrol vehicle and transported to jail without being secured by a seatbelt.

The Complainant specifically recalled being driven to jail by NE#6, and stated that he did so recklessly. The Complainant said that she thinks that she was treated too aggressively at the scene and during transport and that those officers should be held accountable. The Complainant told OPA that she had scrapes on her body, face, and knees because of what took place during this incident. The Complainant noted that she did not appreciate being surrounded by that many male officers and believed that it contributed to her overall negative response to the Named Employees. The Complainant believed that there should be more sensitivity on the part of male officers when it comes to engaging with females. The Complainant stated that she would like to see the officers who were involved face discipline and attend training. In terms of her allegation of biased policing, the Complainant told OPA that she reacted to what transpired during the traffic stop, but if the officers pulled them over for speeding and did not see who was driving then she thinks that bias may not have played any role in the traffic stop.

The Driver – attempted interview by OPA

The driver in this incident declined to provide a statement to OPA. Thus, he was not interviewed as part of this investigation.

SPD Interview of the Driver

The driver did, however, provide a statement to NE#5 during the SPD investigation into this incident. He told NE#5 that he did not think that the Complainant was uncooperative and that she was just a passenger during this incident. The driver stated that the Complainant was upset by things taking place with him. Nothing of additional substance pertaining to this issue was raised by the driver. The driver indicated he had concerns about bias, though it was unclear whether he was speaking about this incident or some other one.

Civilian Witnesses

Civilian Witness #1 (CW#1) recalled the Complainant complaining to one of the officers about his shining a flashlight in the Complainant’s eyes. CW#1 believed that escalated the situation a little and could have been done without antagonizing the Complainant. CW#1 noted that it seemed to go from a DUI traffic stop of the driver to the Complainant having multiple male officers forcing her to the ground. CW#1 believed that “none of that seemed to be a necessary outcome,” and that no steps were taken by the police to de-escalate the situation. CW#1 stated that the Complainant “was definitely being boisterous and loud,” but said that she did not appear to be interfering with the officers’ ability to detain and question the driver. CW#1 noted that had the officers left the Complainant on her own she would have continued to be obnoxious but stated there was no indication that she would have been anything more than that.



Civilian Witness #2 (CW#2) believed that the Complainant was not cooperating with the officers, so they asked her to get out of the car. CW#2 did not think that the car was running at that time. CW#2 recalled that the Complainant was yelling throughout this incident and saying things about the officers being racist. The CW#2 believed that the Complainant was acting in a manner that suggested she was possibly on drugs or intoxicated. When the officers put handcuffs on her, CW#2 recalled that she dropped to the ground and was screaming. CW#2 did not see everything that took place during this incident, but from her perspective the officers did not use excessive force. CW#2 noted that the Complainant did not want to go to the squad car, and she thought that the officers were just doing their job. CW2 stated that she did not see any of the officers say or do anything that was unprofessional. She added that if the Complainant would have cooperated with the officers, instead of “freaking out from the very beginning,” she would have been fine.

Named Employee #1

NE#1 stated that he could not see the race or ethnicity of the driver and that the driver was stopped because of speeding.

NE#1 confirmed that he is a Crisis Intervention Team (CIT) trained officer. He stated that a CIT officer should attempt to establish a rapport with someone in crisis and to de-escalate if possible. NE#1 stated that, from what he witnessed with the Complainant, she was either heavily intoxicated or in mental crisis. NE#1 told OPA that he did not believe he spoke in a manner that was belittling to the Complainant. NE#1 stated that when he told the Complainant that she was acting like a child, NE#1 was hopeful that it might get the Complainant to take a step back and understand that her behavior was out of line. NE#1 noted that he did not curse or call the Complainant any names, but that it is still his job to be authoritative and to take control of the scene. NE#1 added that he was not letting her dictate what happened. NE#1 recalled telling the Complainant to be quiet. He did so because all of what she was doing in yelling and talking was interrupting what was taking place with the driver and the traffic stop. NE#1 noted that he never told the Complainant to shut up.

In terms of the arrest for obstruction, NE#1 stated that the Complainant was taken into custody because she was “intentionally refusing to leave the scene of an active investigation after being told to do so.” NE#1 told OPA that the Complainant received an initial warning from NE#3, and that the law does not require multiple warnings. NE#1 stated that NE#3 told the Complainant that if she got out of the car, she would have to leave. NE#1 stated that the Complainant got out of the car multiple times and had every opportunity to leave, but she did not. NE#1 stated that each of the three times the Complainant got out of the car, she was distracting NE#3 from processing the driver for the traffic stop. NE#1 also referenced that he could have taken the Complainant out of the car earlier based on the holding in *State v. Mendez*. NE#1 explained to OPA that, under *Mendez*, the officers’ safety during a traffic stop is paramount. As such and given that the Complainant had access to the keys to the SUV and was in a volatile mental state, the officers’ safety was a serious concern here. NE#1 reiterated that if the Complainant drove off, the public and the officers would have been in danger. NE#1 stated that he was determined not to let that happen. NE#1 stated that he knew that the keys were still in the ignition because the Complainant could roll down both windows at the same time. Ultimately, and to minimize that potential, NE#1 had NE#2 put spike strips in front of the vehicle.



In terms of the force used, NE#1 told OPA that the Complainant resisted immediately and ignored commands. NE#1 warned the Complainant that she would be taken to the ground if she continued to resist his and NE#2's attempts to get her into handcuffs, but the Complainant ignored that warning. NE#1 believes that the Complainant sustained a cut to her forehead because she was squirming around on the ground as she continued to resist. NE#1 stated that he and the other officers gave her every opportunity to comply, but she fought against them nearly every step of the way.

Named Employee #2

NE#2 stated that he could not see the race or ethnicity of the driver and that the driver was stopped because of speeding.

NE#2 stated that he noticed that the Complainant was very agitated from the start of the incident, and that there was a strong smell of alcohol coming from the SUV. Based on the way the Complainant acted during this incident, NE#2 was under the impression that she was intoxicated or on drugs. NE#2 stated that he did not think the back and forth conversation that took place between NE#2 and the Complainant was arguing. When the Complainant brought up NE#2's parents and whether they would be proud of NE#2, he, in return, asked whether her parents would be proud. NE#2 stated that his approach in that exchange was a technique that he hoped would give her some sense of reality. NE#2 explained that he thought that it might get her to settle down and to think that maybe she was acting irrationally. NE#2 recalled speaking to the Complainant in a calm tone of voice. He believed that, by doing so, he was engaging in de-escalation. NE#2 told OPA that he did consider ignoring the Complainant and recalled there being some periods of silence. NE#2 stated that he did not initiate much of the conversation that took place. In terms of his use of his flashlight, NE#2 recalled pointing it in the direction of the Complainant but stated that he never shined it in her eyes. NE#2 stated that the primary reason for using it was to keep an eye on the Complainant's movements, as well as to make sure that she did not have any weapons. NE#2 also noted that it was dark outside and that he was concerned that the Complainant might decide to get into the driver's seat and attempt to drive away.

In terms of the arresting the Complainant for obstruction and removing her from the SUV, NE#2 stated that NE#1 issued a warning to the Complainant at the outset that, if she kept interrupting NE#3's investigation of the driver, = she would be arrested for obstruction. NE#2 also recalled that NE#3 told the Complainant that she would have to leave if she stepped out of the vehicle. NE#2 stated that the Complainant got in and out of the car two or three times during this incident before he and NE#1 made the decision to arrest her. NE#2 also stated that they were very concerned that the Complainant might decide to drive away and they were paying close attention to that possibility. NE#2 explained that he placed spikes by the front wheels of the SUV in anticipation of the possibility that the Complainant may attempt to drive away. NE#2 recalled seeing the Complainant grab the keys from the ignition so he knew that she had the ability to start and attempt to drive off in the SUV.



When NE#1 and NE#2 went around the car after she exited it for the second or third time, NE#2 stated that the Complainant was told to get out of the SUV. NE#2 recalled that the Complainant attempted to close the door and it turned into a tug-of-war over the door between NE#1 and the Complainant. NE#2 believes that he and NE#1 told the Complainant to get out of the car six or seven times before NE#1 grabbed her arm and removed her. NE#2 stated that he and NE#2 had to take the Complainant to the ground to get her into custody because she was resisting. NE#2 recalled that the Complainant was told she was under arrest shortly after she was outside the car and in custody. NE#2 stated that he asked the Complainant if there was anything they could do to get her to walk and sit in the back of the patrol car, but she remained non-compliant the entire time. NE#2 and three other officers tried to put the Complainant into the patrol car, but she responded by kicking NE#6. At that point, The Complainant was taken to the ground again, and NE#2 told her that she was now under arrest for felony assault for kicking an officer. Ultimately, the Complainant was placed into the back of the patrol car, and she was driven to jail.

Named Employee #3

NE#3 conducted the stop of the SUV. He noticed when it passed him at a high rate of speed. NE#3 was unable to see through the SUV's windows, so he had no idea who was driving it. NE#3 stated that he did not know the driver's ethnicity until he established contact with him at the vehicle's driver's side window. NE#3 noted that the driver was cooperative throughout the traffic stop. After NE#3 ran the driver's name through the system, NE#3 discovered that he did not have a valid driver's license. NE#3 also suspected that he was under the influence, so he requested a DUI officer to come to the scene. NE#3 stated that it was the Complainant who made the allegation of bias, not the driver. NE#3 denied that bias had anything to do with his decision to initiate a traffic stop of the SUV, and that he did so based on how the SUV was driven. NE#3 also said that the driver's ethnicity did not influence any of the decisions he made during his investigation of this incident.

Named Employee #4

NE#4 responded to this incident as a backing officer. Upon arrival, NE#4 stated that he stood with the driver while NE#3 conducted his traffic stop investigation. NE#4 heard some of the exchange between NE#1, NE#2, and the Complainant, but he was not focused on the details as his attention was on the driver. After the Complainant was arrested by NE#1 and NE#2, NE#4 assisted them and NE#6 in taking her into custody. He also assisted in getting her placed into the back of one of the patrol vehicles. In doing so, NE#4 explained that he ran around to the other side of the patrol vehicle, opened the door, leaned across, and held onto the Complainant by the insides of her elbows in a manner that was unlikely to cause any injury. NE#4 said that he then scooted her backwards across the seat until she was completely inside. NE#4 stated that he had no idea that he struck the Complainant's head with the door when he closed her inside the patrol vehicle. NE#4 reported that he first learned that this happened when he received his OPA complaint. NE#4 stated that he had no intent to do so and that, had he known that this happened, he would have checked on her and called for a supervisor. NE#4 stated that the Complainant was not secured in the back of the patrol vehicle by a seatbelt because she was still too combative and assaultive towards officers. After assisting in getting the Complainant into the patrol vehicle, NE#4 helped to clear the scene. He was not involved in transporting the Complainant to jail.



Named Employee #6

NE#6 heard over radio that NE#3 needed an additional unit to block the path of the involved vehicle. Accordingly, when he arrived, he parked facing the SUV. When NE#6 came to the scene, he heard the commotion between the Complainant and the other officers. At that point, the Complainant was being taken into custody and NE#6 assisted the other officers in doing so. NE#6 tried to de-escalate the situation after the Complainant was in handcuffs and on the ground by helping the Complainant get her shoe on. The Complainant called him "Mr. Wong," which he considered to be a racial slur since that is not his name. Later and after the Complainant refused to stand, NE#6 stated that he assisted in carrying her to the patrol vehicle, but she freed her leg and kicked NE#6 in the groin and elsewhere. Ultimately, the Complainant refused to listen to anyone, including representatives of SFD who arrived to assist her with some injuries she had. After the Complainant was placed in the back of NE#6's patrol vehicle, he transported her to jail. Prior to doing so, NE#6 stated that the Complainant tried to kick out the partition inside of NE#6's patrol vehicle. NE#6 stated that she was not placed into a seatbelt prior to transport because it was not feasible to do so because of her on-going assaultive actions. NE#6 noted that SPD used to have a standing order with AMR to transport combative people like the Complainant for SPD, but AMR no longer transports detainees for non-medical reasons. NE#6 also stated that his squad did not have a transport wagon and obtaining a shackle was not feasible because nobody in patrol had one. NE#6 stated that he decided to transport the Complainant to jail with his emergency lights and sirens activated because he believed it might prevent further injury. NE#6 explained that the Complainant might injure herself if she continued kicking the partition out. While NE#6 was driving, the Complainant continued to kick and "then somehow, she decided to lay down." NE#6 stated that when she did so she put herself in a position where she was partially on the floor. When asked if the Complainant was stuck there, NE#6 stated that he did not believe so. NE#6 acknowledged that being in that position created a potential danger to her, but he continued to hear her making noises. NE#6 also stated that he did not believe it was safe to pull over to attempt to put her back on the seat. NE#6 added that he drove the speed limit or slower because he knew he had a detainee in the back and noted that the Complainant was not injured during transport.

Named Employee #5

NE#5 showed up at the scene of this incident in response to a call for supervisor about a bias complaint. NE#5 stated that, prior to her arrival, she recalled hearing over the radio that the officers on scene were worried that the Complainant might drive away. NE#5 also recalled hearing the DUI officer at the scene recommending that officers should place spike strips in front of the vehicle's tires. NE#5 stated that she heard a lot of screaming in the background of the radio transmissions.

When NE#5 arrived, she saw NE#3 with the driver and that NE#1 was dealing with the Complainant. Shortly thereafter, NE#5 saw NE#1 and NE#2 pull the Complainant out of the SUV. NE#5 stated that the Complainant was screaming, resisting, and uncooperative. NE#5 recalled that the officers tried to explain to the Complainant that she was under arrest and to place her hands behind her back. NE#5 recalled that the Complainant was taken to the ground and handcuffed. After that occurred, NE#5 noticed that the Complainant had a cut on her forehead. She determined that she needed to investigate the officers' use of force as a Type II use. NE#5 stated that she returned to her patrol vehicle to get her camera. NE#5 stated that she returned to the scene and started taking pictures of the Complainant, but the Complainant started screaming at NE#5 and calling him names. After recognizing that the Complainant appeared to get angrier in response to NE#5 taking pictures of her physical condition, NE#5 stopped



doing so to de-escalate the situation. NE#5 noted that SFD was dispatched to the scene to address the Complainant's injuries, but they left shortly after arriving because the Complainant was so unruly.

In terms of the bias complaint, NE#5 stated that she did not have time to ask the Complainant questions about it because she never calmed down. NE#5 ultimately submitted the bias complaint to OPA because she was unable to speak to the Complainant. Another Sergeant attempted to interview the Complainant at the jail, but the Complainant was placed in isolation and was unavailable. NE#5 spoke with the driver at the Precinct and he told NE#5 that he wanted to be included as part of the OPA referral.

NE#5 stated that she completed a Type I use of force for the complaint of pain from handcuffing that was made by the driver. NE#5 noted that the night of the incident was very busy and that she also responded to another incident that involved a use of force. NE#5 stated that another Sergeant assisted in screening this incident, which included the above-mentioned attempt to interview the Complainant.

Regarding the arrest of the Complainant, OPA asked NE#5 about whether she heard anything from civilian witnesses that led her to believe that NE#1 and NE#2 had violated a policy or were involved in any misconduct that should have been referred to OPA. NE#5 responded by that some witnesses stated that they believed the officers could have done a better job.

NE#5 stated that the officers screened their arrest of the Complainant with NE#5. In terms of whether they had probable cause to arrest her for obstruction, NE#5 stated that the Complainant was moving around inside the SUV and that she was considered a "safety hazard." NE#5 recalled that NE#1 and NE#2 warned the Complainant that they were going to arrest her for obstruction if she did not stop engaging in that conduct. NE#5 stated that: "We don't really know what weapons or what her intentions are once she gets in the driver's seat." NE#5 conveyed that she factored all of that into her screening of their arrest. NE#5 stated that she did not have any concerns about possible policy violations by the officers that night. NE#5 stated that a Lieutenant later reviewed the arrest with her and that they discussed policy and the law as it pertained to obstruction. She told OPA that the Lieutenant did not give her the impression that the officers lacked probable cause to arrest the Complainant for that offense.

In terms of transporting the Complainant to jail, NE#5 stated that the officers told her that they were going to expedite her straight there. NE#5 noted that there was no transport officer and it was not feasible to get a van. NE#5 also recalled the other on-scene Sergeant saying, while all this was going on, that he would head to the jail. NE#5 stated that she was not aware of there being any issue identified at the time that the Complainant's head was hit by the patrol vehicle's door when she was placed inside.

C. Additional Relevant Documentation

Lieutenant's Written Review

The Lieutenant who reviewed this incident filed an internal complaint with OPA. The Lieutenant wrote that, instead of de-escalating the Complainant, NE#1 and NE#2 appeared to engage in an unnecessary verbal argument with the Complainant that escalated the situation. The Lieutenant also called into question the probable cause that NE#1 and NE#2 claimed they had to arrest the Complainant. He specifically noted that she did not appear to intentionally and physically interfere with the traffic stop or officer or refuse to cease an activity or behavior that created a risk of



injury to any person when ordered to do so by a public officer. The Lieutenant identified that the closest warning that was given to the Complainant was when NE#2 told her that she “better not drive.” The Lieutenant also found that, after forcing the door of the SUV open, NE#1 and NE#2 gave the Complainant commands to, “get out of the car.” However, he noted that they never told her anything about what she was doing that could lead to her arrest. He further stated that the officers did not tell the Complainant that she was under arrest and their basis for taking that action until after she was in handcuffs, which the Lieutenant believed was not as early as practical.

With regard to the propriety of the use of force, the Lieutenant found that it was necessary, reasonable, and proportional. However, the Lieutenant identified that NE#4 hit the Complainant in her head with the patrol door when he closed her inside the back of the patrol vehicle. He noted that he was unsure that NE#4 had any idea that his action resulted in the Complainant being hit. Lastly, the Lieutenant agreed with the assessment of NE#6 that the Complainant was too combative to safely seatbelt her into the back of the patrol vehicle, but he questioned NE#6’s decision to transport her while driving with his emergency lights and sirens activated.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.

NE#1 asserted in his OPA interview that he had probable cause to arrest the Complainant based on SMC 12A.16.010(A)(5). Specifically, he believed that the Complainant violated the law when she intentionally refused to leave the scene of an investigation of a crime: (1) while the investigation was in progress; and (2) after being requested to leave by a public officer. NE#1 stated that the probable cause was buttressed each time the Complainant stepped out of the vehicle, because she received a warning at the beginning of the incident that, if she exited the SUV, she would be required to leave the area. NE#1 also argued that the actions of the Complainant presented safety concerns and that he could have removed the Complainant from the SUV for those reasons as well.

Though it may have been preferable for a final warning to be issued the Complainant prior to her arrest, OPA agrees with NE#1 that such a warning was not required by law.

OPA further agrees that, based on the Complainant’s repeated conduct, there was probable cause supporting her arrest under SMC 12A.16.010(A)(5). Notably, OPA finds that the Complainant’s quick exits from and retreats back into the vehicle suggest an intentional effort to remain at the scene counter to a direct order to the contrary, instead of, as the Complainant alleged, the desire to wait at the scene for a more complete answer to her questions. While the referring Lieutenant was correct that the arrest was not justified under either SMC 12A.16.010(A)(1) or (3), those were not the bases cited by the officers.



For these reasons, I 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 #2

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 the stop of the driver was based on the driver’s race. However, the evidence in this case established that NE#3 initiated the stop of the driver based on on-viewing the SUV driving along the roadway at nearly twice the posted speed limit. There is insufficient evidence in the record establishing that any of the Named Employees knew what the driver’s race or ethnicity was at the time of the stop.

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 #1 - Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based on my review of the evidence, I find that the force used by the Named Employees was consistent with policy. Given that they had probable cause to arrest her, the officers took control of the Complainant’s arms and began to place her into handcuffs when she began fighting against them and resisting their efforts. The Complainant’s ongoing physical resistance was fully captured by Department video. The force used to subdue her, which was minimal, was reasonable under the circumstances and given the lawful purpose of the officers. The force was further necessary to take the Complainant into custody and I do not believe that there was a feasible alternative to that force available to the officers. Lastly, the force was proportional to the threat posed by the Complainant. Notably, she kicked NE#6 several times, causing him physical harm. While it is unfortunate that the Complainant may have sustained a cut to her forehead in this struggle, there is no evidence supporting a finding that this injury was the result of excessive force.



For these reasons, I 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 - Allegations #4

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

SPD Policy 8.200-POL-2 states that force is prohibited: “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

The majority of the physical contact between the Complainant and the officers took place after she was handcuffed. During that period, the Complainant refused to comply with the officers’ orders, forced herself down to the ground in defiance, and assaulted NE#6 by kicking him multiple times in his legs and groin. The officers responded proportionally to the resistance they faced and appeared to properly modulate their response to the Complainant, whose behavior and actions appeared to spiral out of control. After close and critical scrutiny, I find that the officers’ use of force on the restrained Complainant was necessary, reasonable, and proportional under the circumstances and, as such, did not violate this policy.

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

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

Named Employee #1 - Allegation #5

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

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

NE#1 responded to the immediate aggressive posture the Complainant took at the outset of this traffic stop by focusing on maintaining control of the situation. NE#1 showed awareness and offered appropriate backup during a stop that began with a heightened level of concern given the driver’s failure to immediately pull over. Additionally, as the officers began their initial contact with the SUV, the occupants made a number of movements inside their vehicle that added to the uncertainty of the stop.

NE#1’s early communications with the Complainant were direct and specifically focused on addressing her interruptions and the potential impact of her statements on NE#3’s investigation of the driver. However, during the pendency of the stop, he deviated from that approach by making statements such as: “how old are you”; and “you’re acting like a child.” OPA recognizes that, during the incident, the Complainant acted erratically and made numerous offensive statements; however, OPA is concerned that NE#1’s comments may have served to escalate an already high-stress and emotional situation. In reaching this conclusion, OPA does not find that NE#1 violated this policy. That being said, OPA believes that NE#1 would benefit from a further debriefing of this incident to discuss some of the comments that he made and to strategize about ways in which he could have better handled a difficult community member. As such, OPA issues NE#1 the below Training Referral.



- **Training Referral:** NE#1's chain of command should review the video of this incident with him and, specifically, the portion that concerns his interaction with the Complainant. NE#1's chain of command should counsel him concerning alternative approaches that he could have used with the Complainant to de-escalate her and should further counsel him on some of the same he made that appeared to agitate her unnecessarily. This training and any associated counselling should be documented and this documentation should be memorialized in an appropriate database.

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

Named Employee #1 - Allegation #6

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

This allegation was classified against NE#1 and NE#2 based on the belief that their statements to and interactions with the Complainant may have served to improperly escalate this incident. However, given that this issue is fully addressed in the discussion on professionalism, this find that this allegation is duplicative. For that reason, I recommend that it be removed as against both NE#1 and NE#2.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #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."

When NE#1 and NE#2 took the Complainant into custody, they did not identify themselves at that time or immediately inform the Complainant of the reason for her arrest. As such, they technically acted contrary to this policy. However, under the circumstances of this case, it does not appear that strict compliance with the policy was practical for two main reasons. First, OPA has previously found that only the primary officer is required to introduce himself to the involved parties, even if it is preferable that all officers do so. Second, the Complainant was informed multiple times that she could be arrested and was given the reasons why. Thus, she was well aware why she was placed under arrest.

For these reasons, and based on the unique circumstances of this case, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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



Named Employee #1 - Allegations #8

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

NE#1 and NE#2's monitoring of the Complainant while she sat in the vehicle and their observing of her ongoing activity did not amount to a *Terry* stop. Notably, the Complainant was never told that she was required to remain in the vehicle and, to the contrary, was directed to leave the scene. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1 and NE#2.

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

Named Employee #2 - Allegations #1

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 indicated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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

For the same reasons as indicated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as indicated 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 - Allegations #4

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

For the same reasons as indicated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #5

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

Based on OPA's review of the record, NE#2's comments towards the Complainant and overall conduct during this incident were unprofessional.

Specifically, NE#2 engaged in a negative back-and-forth with the Complainant that served no legitimate law enforcement purpose and only further agitated and escalated the Complainant. The following are examples of NE#2's unprofessional statements: referencing whether the Complainant's parents would be proud of her; repeatedly reiterating to the Complainant her statement that NE#1 and NE#2 were "fuck buddies"; parroting her pejorative statements to NE#1; orally opining that, based on the Complainant's conduct, he got that she must be "high or drunk or something"; and continually shining his flashlight at her and, when she objected to that, telling her that it was a form of de-escalation.

Fundamental to OPA's finding that NE#2 violated policy during this incident was the fact that, at no point, did he take any accountability for his conduct during this incident. To the contrary, NE#2 asserted during both of his interviews that the above behavior was appropriate and constituted de-escalation. However, based on OPA's review of the Department training on de-escalation, the language of the policy itself, and numerous de-escalation cases, OPA finds this assertion to be meritless. Ultimately, had NE#2 accepted responsibility and demonstrated how he would approach this situation differently in the future, OPA likely would have recommended a Training Referral. However, given the record available to OPA and the position taken by NE#2, OPA sees no other path than to recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #6

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as indicated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #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 indicated above (see Named Employee #1, Allegation #7), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #2 - Allegations #8

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 indicated above (see Named Employee #1, Allegation #8), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegations #1

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

For the same reasons as indicated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegations #1

11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property

SPD Policy 11.020-POL-1 states that officers will take reasonable steps to ensure the safety of a detainee in their custody.

When NE#4 assisted in placing the Complainant into the back of the patrol vehicle in advance of her being transported to jail, he appeared to strike the Complainant in the head when he closed the door. During his OPA interview, NE#4 stated that he had no idea that this occurred. NE#4 further detailed the steps he would have taken had he realized that this happened, which included immediately checking on the Complainant and calling for a supervisor.

Based on OPA's review of the evidence, it appears evident that the door struck the Complainant by mistake. Supporting this determination is the fact that ICV captured NE#4 carefully guiding the Complainant into the backseat before closing the door. There is no evidence on the video of any ill intent by NE#4 or any motive for him to have purposefully shut the door on her head to harm her. While the door striking her head was unfortunate, OPA finds that NE#4 actions were consistent with those of a reasonable officer. Moreover, he clearly understood the severity of the situation at his OPA interview and ably articulated his understanding of the policy and the requirements placed on him. Based on his OPA interview, I have no doubt that he will be careful not to let this occur again in this future.

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

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



Named Employee #5 – Allegation #1

6.10 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release

SPD Policy 6.010-POL-5 states that sergeants must screen all arrests prior to the booking of an arrestee. The policy further requires sergeants to conduct a screening any time an individual is detained and placed into handcuffs. (SPD Policy 6.010-POL-5.) Implicit in this policy is the requirement that sergeants must also screen an un-arrest situation.

The evidence shows that NE#5 screened the arrest of the driver and the Complainant. NE#5 received assistance from another Sergeant as NE#5 had another use of force scene to process later that same evening. The assisting Sergeant went to the jail and attempted to interview the Complainant. As such, NE#5 performed her duties with the assistance of another Sergeant, which is permissible and within policy.

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

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

Named Employee #5 – Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

Though this OPA investigation stemmed from a referral of potential issues that were identified by the Lieutenant who screened this incident following NE#5's review, there is insufficient evidence to find that there was a deficiency on NE#5's part to identify potential policy violations. In reaching this decision, OPA notes that the Lieutenant's review was, by definition and function, a more detailed review of the incident and included the review of an extensive amount of video. To the contrary, NE#5's review was significantly narrower in scope.

In a perfect world, NE#5 would have caught and addressed the issues identified by the Complainant – particularly the concerns regarding the officers' professionalism. However, OPA does not believe that the failure to do so violated the policy as written. Notably, NE#5 did address the one potential policy violation that she was made aware of when she referred the Complainant's bias allegation to OPA.

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

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



Named Employee #6 – Allegation #1

13.030 - Emergency Vehicle Operations 2. Officers May Drive in an Emergency Response Only When the Need Outweighs the Risk

SPD Policy 13.030-POL-2 states that officers may drive in an emergency response only when the need outweighs the risk. The policy further states that: “The preservation of life is the highest priority.” (SPD Policy 13.030-POL-2.)

NE#6 explained that, due to her ongoing assaultive behavior, he made the decision not to seatbelt the Complainant in the rear of the patrol vehicle. He then activated his vehicle’s emergency lights and siren and engaged in emergency vehicle operations from the scene to the King County Jail. NE#6 stated that he tried to be careful during his transport of the Complainant. He further explained to OPA that his driving was necessitated by the circumstances of this case and that the risk of harm to the Complainant and others was outweighed by the need to get her to the King County Jail. As part of that explanation, NE#6 referenced the challenges that officers face in light of the fact that AMR no longer assists in transporting detainees for non-medical reasons.

While I understand NE#6’s reasoning, I disagree with his conclusion that the benefits of getting the Complainant to the jail outweighed the risk of emergency driving. First, I find that there was no exigency that required NE#6 to engage in emergency vehicle operations at that time. While the Complainant kicked at the car during the beginning of the transport, she stopped doing so; however, NE#6 continued to engage in emergency driving. Moreover, she was not suffering from any significant medical condition or self-harming. Second, while his speeds were not excessive, NE#6 drove through multiple red lights, including at large intersections, and into oncoming lanes of traffic. While these maneuvers may not have been dangerous for NE#6, given that he was wearing a seatbelt and had an airbag, the Complainant was unsecured in the back of the vehicle and had no access to an airbag. As such, she could have been catastrophically injured had NE#6 gotten into an accident. Moreover, she was handcuffed at the time, which substantially limited her ability to brace and protect herself.

In reaching the determination that this conduct was impermissible, OPA reviewed SPD Policy 16.030, which governs civilian riders in Department vehicles. That policy prohibits officers from engaging in emergency vehicle operations when a civilian rider is in the car and, in those, circumstances, the rider has signed a waiver, has a seatbelt on, and is sitting in the front seat with access to a seatbelt. As such, it follows that, absent demonstrable exigency, it is inappropriate to engage in emergency vehicle operations with a handcuffed arrestee who is secured in the rear of a patrol vehicle.

Ultimately, the risk to the Complainant, even accepting that NE#6’s emergency driving was competent, was simply too great. Moreover, the risk of liability to the City and the Department had she been injured as a result of NE#6’s conduct would have been astronomical. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #7 – Allegation #1

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

During OPA's intake investigation, it was unclear as to whether there was one additional unknown officer who engaged in unprofessional conduct. As such, this allegation was alleged against an unknown employee. During its full investigation, OPA identified all involved employees and believes that this allegation is no longer necessary. As such, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**