



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 23, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0070

### **Allegations of Misconduct & Director’s Findings**

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Sustained
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional	Sustained
# 3	13.010 - Collisions Involving Department Vehicles 2. Officers Shall Document All Collisions Involving Department Employees	Sustained
# 4	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 5	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Sustained

**Imposed Discipline**

Termination of Employment
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***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 Employee struck a community member’s vehicle and left the scene without reporting the collision. It was further alleged that the Named Employee later denied striking the vehicle to the community members and again to his supervisor. Lastly, it was alleged that the Named Employee dispatched himself to the call concerning the hit and run and tried to convince the community members not to file a report.

### **SUMMARY OF INVESTIGATION:**

#### **A. The Hit and Run, 911 Call, and the Named Employee’s Response to the Scene**

A woman – referred to here as Subject #1 – called 911 to report that her car – a white Toyota Prius – had been involved in a hit-and-run accident. Her car, which was parked at the time, was struck by another vehicle that left the scene. The woman said that she did not see the accident occur but said that she saw a police officer park in front of her car, look at it, and then leave. A part of the call, the woman asked for an officer who had been in the vicinity of the car at the time the damage was first noticed to return to the scene.



Named Employee #1 (NE#1) volunteered to respond to the call. He arrived at the scene, exited his vehicle, and walked up to Subject #1's car. He inspected the car first looking at the driver's side and walking around the front. He then looked at the rear passenger side. When he was finished examining the car, he turned to his patrol vehicle and sat down inside. He ran the car's license plate number through his MDT system. He remarked out loud: "Alright, nobody's here." He then turned off his Body Worn Video (BWV).

Shortly thereafter, NE#1 activated his BWV. At that time, Subject #1 and a man – referred to here as Subject #2 – were standing outside of his patrol vehicle. He asked them, referring to their vehicle: "Can you show me where?" Subject #2, who was Subject #1's husband, pointed to the rear passenger area. Subject #1 asked NE#1: "Are you the officer that was here earlier?" NE#1 asked her to repeat the question and she did so. He then confirmed that he was. Subject #1 told him that she saw NE#1 looking at the car earlier. She said that her mother – referred to here as Subject #3 – opined that NE#1 was looking at the tabs that that maybe they were expired. She said that she then went to look at the car. NE#1 told her that he was looking for a Mercedes that did not have a license plate. NE#1 walked back over to the car and inspected the damage. He asked Subject #2 if he had insurance and Subject #2 said that he did. NE#1 asked Subject #2 about his insurance deductible.

NE#1 said to Subject #1 and Subject #2: "In cases like this, where there's no vehicle, no nothin', an accident report is for insurance." He told them that if he had a "car type" or "something like that, that'd be great, but with no car, no nothin', a report's not gonna...you have liability, so this is going to be out of your pocket anyways." Subject #2 appeared confused and NE#1 explained the difference between full coverage insurance and liability. NE#1 told them that, if they had the license of the vehicle that hit their car, the insurance would pay out. Subject #2 responded by telling NE#1 that Subject #1 was suspicious after she saw NE#1 near their car and that, when she came outside, she located the damage. NE#1 responded: "So you're saying a police officer hit you?" Subject #2 responded, "yeah," and NE#1 again confirmed that he was there earlier.

Subject #1 stated that she saw NE#1 "looking around." NE#1 explained that he: "came up here...[and] saw a car over here that looked like that Mercedes, right." He continued and stated the following: "I pulled up, I got out, and I'm looking, right?" Subject #1 responded: "Yeah, but you were looking around at the car as well." NE#1 agreed that he was and said that he was looking at the tabs. He stated further: "I can tell 'ya, I was here earlier, and I did not hit your car..." He offered to call his supervisor to the scene. Subject #2 again brought up the cost of the damage and that it was unfair for him to have to pay it out of pocket. NE#1 responded: "If we knew who hit you, then it would work that way." Subject #1 responded: "Do you understand where this, this kind of comes off weird?" She said that, while NE#1 said that he was looking for a black Mercedes, her car was a white Prius. NE#1 replied that he looked all around. He stated: "I pulled up, right? Got out 'cause I wanted to look over there and I wanted to look over here. And any car I pass, I look at. That's just what I do." He then asked them: "What would you like me to do for you guys."

Subject #1 told NE#1 that, after he got out of his patrol vehicle and looked at her car, he then back over to his patrol vehicle and checked the push bar on the front. She said that this was when she knew he hit her car. She said that his review of her car, followed immediately after his inspecting of the front of her car, "indicate[d] that it was a hit." She said that this made sense given where the damage was on the vehicles and based on the vehicles' positioning. NE#1 informed them that he would call his supervisor and returned to his patrol vehicle to do so.

NE#1 informed his supervisor, a Sergeant, over radio that Subject #1 and Subject #2 were alleging that their car was struck by an officer in a hit and run. He asked her to respond to the scene. He then called the Sergeant on her cell phone and told her that he was in the area earlier that day and that Subject #1 and Subject #2 asserted that they saw



him. He indicated that there was a black mark on their car and said that the damage was minor. He told the supervisor: "Of course I didn't hit it, but they're thinking 'cause I was in the area that I hit it." He then informed Subject #1 and Subject #2 that his supervisor was coming to the scene, as well as another officer who would investigate the incident.

### **B. The Sergeant's Investigation**

When the Sergeant arrived, she spoke to NE#1. He said that he was in the vicinity earlier that day looking for a Mercedes. He said that he got out of his patrol vehicle in that location because he had seen the Mercedes previously parked there. He indicated that he looked for the Mercedes and then left. He told the Sergeant that "these guys" saw him and they came outside. He stated that they then saw the damage and believed he struck their car. NE#1 also spoke with the other responding officer – referred to here as Witness Officer #1 (WO#1). WO#1 said to him: "Take a hit and run report and review your video. That's it. Sarge will figure that out." NE#1 asked: "They can review your video any time though?" WO#1 responded by saying "yeah." NE#1 asked: "Doesn't it have to be an event? Or can they go back?" They discussed it further and agreed that the video would have to be sent to the video unit.

The Sergeant and WO#1 looked at the damage and discussed the incident together. While NE#1 was standing nearby, WO#1 pointed to one of the areas of damage on the car and remarked: "You can't hit this without really knowing." The Sergeant agreed that whoever hit the car would have known that they did so. The Sergeant spoke with Subject #1, Subject #2, and Subject #3. Subject #3 told the Sergeant that she saw NE#1 looking at Subject #1's car. She called to Subject #1 to ask her if there was a problem with the car's registration. She then saw NE#1 check both vehicles, as if to inspect them for damage, and then drive away from the scene. Subject #1 said that she also viewed NE#1 inspecting the vehicles. Both Subject #1 and Subject #3 confirmed that NE#1 was the officer they observed.

The Sergeant took photographs of the damage to the car and NE#1's patrol vehicle. She further pulled her patrol vehicle – which was the same make and model as NE#1's – up to the rear of the car to see whether the push bar aligned with the damage area. It did. NE#1 measured the damage area on the car and determined that it was approximately 4 ¼ inches wide and approximately 22 ¼ inches off of the ground. The Sergeant then measured the push bar and determined that it was also 4 ½ inches wide and 22 ¼ inches off of the ground.

When the Sergeant returned to the precinct, she contacted SPD Information Technology about In-Car Video (ICV) that may have been recorded. SPD IT examined whether this was possible. The Sergeant also conferred with a supervisor from the Traffic Collision Investigation Section, who had no suggestions for further investigatory tasks that she could complete. Approximately 10 days later, she received ICV recorded by NE#1's patrol vehicle. From her review of the ICV, she believed that NE#1's patrol vehicle struck Subject #1's car. She accordingly made an OPA referral and this investigation ensued.

### **C. The In-Car Video**

The In-Car Video, which recorded for approximately 2 hours, showed NE#1 driving throughout South Seattle. At around 01:37:15 on the ICV, NE#1 pulled towards an intersection. He slowed and drove slowly past a street. Subject #1's Prius was parked on the curb in front of him and to his left. At 01:37:18, NE#1 again accelerated forward. The Prius was situated to his immediate left. At 01:37:23, NE#1 struck the right rear quadrant of the Prius with the front left side of his patrol vehicle. When the impact occurred, both NE#1's vehicle and the Prius visibly shook. NE#1 paused for a moment, reversed, and then immediately drove in front and around the Prius and stopped. NE#1's patrol vehicle



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remained in that location for approximately one minute before he moved the patrol vehicle further forward and to the left towards the curb. After around one more minute, NE#1 drove forward and left the scene.

#### **D. OPA's Intake and Criminal Referral**

OPA went to the Subjects' home and spoke with Subject #1 and Subject #2. Subject #3 declined to be interviewed. Subject #1 said that she was informed by Subject #3 that a police car was parked behind her car. She looked out of her window and saw the patrol vehicle pull up and park in front of her car. She said that she had a clear view onto the street from her residence. She told OPA that she saw the officer get out of his patrol vehicle and inspect the rear quadrant of her car and the front driver's side bumper of his car. She got dressed to go outside and speak with the officer and said that, when she exited her residence, the officer had already driven away. She looked at her car and noticed the damage to the area that the officer had been inspected. She immediately suspected that the officer had struck her car and left the scene. She noted that she saw no other cars drive by while she was watching the officer. She further said that, while she got dressed, Subject #3 continued to watch out of the window. She confirmed that, had another vehicle struck her car while Subject #3 was watching, Subject #3 would have told her that. Subject #1 said that she sent Subject #2 a photograph of the damage and he confirmed that it was not on the car previously. She told OPA that she called 911 to report the hit and run and the officer who came to the scene – NE#1 – was the officer she saw inspecting the vehicles. She accused him of hitting the car and he called his supervisor, who came to the scene and spoke with Subject #1.

Subject #2 said that he was not there at the time of the accident and when NE#1 originally examined the vehicles. However, he stated that he was present when NE#1 returned to the scene. His recitation of what occurred was consistent with the BWV of this incident.

OPA observed the view from the Subjects' window and confirmed that it was unobstructed and looked directly onto where the car was parked. OPA took a photograph that documented this.

OPA also reviewed the BWV for this incident, as well as the ICV from NE#1's patrol vehicle. OPA, like the Sergeant, concluded that NE#1 clearly struck Subject #1's vehicle. OPA further determined that NE#1 left the scene without reporting the collision or leaving his contact and insurance information on the car. Given this, OPA believed that NE#1 may have committed a crime and referred this case for criminal investigation.

#### **D. The Criminal Investigation**

The criminal investigation was conducted by a Sergeant assigned to SPD's Homicide Unit.

As part of that investigation, the Homicide Sergeant interviewed NE#1. The Homicide Sergeant noted in the Case Investigation Report (CIR) that, prior to doing so, he discussed the incident with NE#1 and showed NE#1 the ICV and photographic evidence. He then read Miranda warnings and commenced the interview. NE#1 described that he was driving while looking over his shoulder and came to a stop. At that point, he could feel his car moving so he hit his brakes while still looking over his shoulder. NE#1 told the Homicide Sergeant that, at this time, he did not think he struck the car. However, after being given the opportunity to see the evidence prior to his interview, he understood that he did do so. NE#1 told the Homicide Sergeant that he was looking over his shoulder because he was searching for the black Mercedes. He disclosed that he has significant hearing loss and usually wears hearing aids in both ears. However, during the incident, he had only one hearing aid in and was wearing his radio earpiece in his other ear.



The Homicide Sergeant also interviewed NE#1's Sergeant. She said that she believed NE#1 was being honest to her at the time of the incident when he stated that he did not know that he struck the car.

The Homicide Sergeant reviewed OPA's intake investigation. The Homicide Sergeant articulated opinions concerning some of the conclusions of fact reached in the intake by the assigned OPA investigation. The Homicide Sergeant also issued some subjective opinions concerning his interpretation of the evidence, the ICV, and the statements made by NE#1 and the Subjects.

## **F. OPA's Investigation**

### **1. Interview of the Sergeant and Attempted Interview of WO#1**

The Sergeant told OPA that she spoke to NE#1 who told her that he had been accused by community members of hitting their car. He told her that he was in the area looking for a stolen car and he got out of his patrol vehicle to look around. He said that he walked around the car but affirmed that he did not hit it. She further spoke to the Subjects. They informed the Sergeant that they were looking out of their window and they saw NE#1 walking around their car. They said that he then got back into his patrol vehicle and left. The Sergeant recalled that the Subjects said that they saw damage to their car. They felt that NE#1 had been looking at the damage.

The Sergeant stated that she spoke with WO#1 and directed him concerning the investigation of the collision. The Sergeant examined the Prius and observed the damage. She photographed the scene and the Prius. She also moved her patrol vehicle, which was the same make and model as NE#1's, to see whether the bumpers matched up. They did. She told OPA that she inspected the damage on the Prius and that it was possible that it was caused by the push bumper of a patrol vehicle. She noted a light color scuff on the bumper of NE#1's patrol vehicle but said that there did not appear to be paint transfer. She also indicated that there were other scuffs on the bumper.

OPA asked the Sergeant about her discussion with WO#1 and, specifically, their agreement that you could not have caused the damage to the Prius without knowing that you struck it. She explained that she was referring to the significance of the damage to the Prius. Given this, she did not feel that it was likely that it was a minor brush that would not be noticed by a distracted driver.

The Sergeant stated that she ensured that the ICV was pulled from NE#1's patrol vehicle. When she watched the ICV, she confirmed that NE#1 struck the Prius. The Sergeant noted that NE#1 suffered from a hearing deficit. However, she opined that, even had he not been able to hear the contact, he would have seen and felt the collision based on what appeared in the video. When asked whether she believed NE#1 was honest with her, she said that she did.

OPA attempted to interview WO#1; however, he had left the employ of SPD at that time and declined to participate in this investigation.

### **2. Interview of NE#1**

OPA lastly interviewed NE#1. He said that, earlier that day, he observed a black Mercedes without a license plate. He said that he turned around to follow the Mercedes, but he could not find it. He drove down South Morgan Street and he said that he thought he saw a dark car drive down Shaffer Avenue South. He told OPA that he glanced down Shaffer



but did not see the car. He stated that he rolled through the intersection, stopped his car, and then backed up to get a better angle. He then pulled forward, saw something to his left, and continued to pull forward. He explained that he got out of his patrol vehicle and walked to the intersection of Shaffer and Morgan. When he did not see anything, he got back into his patrol vehicle and left the area. He said that he later received a call concerning a hit and run. He responded to the scene and, upon arrival, inspected the damage to the car, a Prius. He asked the Subjects how he could help them. He said that the damage to the car was so minor that a report would not have helped them; however, he noted that he offered to complete the report if they wanted. The Subjects alleged during his investigation that he had struck their car. He said that he “immediately” stopped the investigation and called for a supervisor. The Sergeant and WO#1 arrived on scene and they took over the investigation.

After NE#1 provided his initial recitation of the events, OPA asked several follow up questions. OPA asked when he backed up his patrol vehicle. NE#1 said that his patrol vehicle was rolling forward and he could no longer see, so he stopped and reversed to get a better view. NE#1 did not recall that he told the Homicide Sergeant that he “slammed” on the brakes. He said that he applied his brakes in the intersection of Shaffer and Morgan and then hit the brakes when he realized that his patrol vehicle was rolling. During the interview, OPA showed NE#1 the ICV, which indicated that he did not apply his brakes while travelling through the intersection. He told OPA that he was looking over his right shoulder while rolling through. While NE#1 acknowledged that the video showed him striking the Prius, NE#1 said that he did not feel the impact. He said that he did not see the Prius shake and he did not hear an impact.

In response to OPA’s questioning about why he stopped abruptly at the moment his patrol vehicle struck the Prius and then backed up and immediately pulled forward. NE#1 explained that he drove through the intersection, thought he stopped, and then realized he was still rolling. He stopped, backed up, “quickly realized” that he was not going to “see anything” and then pulled forward.

NE#1 said that, after he pulled forward and stopped his patrol vehicle, he got out and walked to the middle of the intersection where he looked for the Mercedes. NE#1 said that he did not do anything else while outside of the patrol vehicle. He did not recall why he again pulled the patrol vehicle forward and what he was doing at that time.

OPA asked NE#1 why he did not make a U-turn and drive down Shaffer to look for the Mercedes rather than stopping the patrol vehicle and getting out on foot. He said that there was “no particular reason.” NE#1 recognized that, after he left the scene, he made a U-turn and proceeded back towards the Prius, with it now on his right, and slowed down as he passed. NE#1 could not explain why he slowed down at that time and said that he may have just been “looking.”

NE#1 said that he later learned of a reported hit and run. He said that he responded to the call because it was in his assigned district. NE#1 told OPA that, while he sometimes reads call updates, he did not do so here. NE#1 stated that he did not see the update at 1546 hours that requested the officer who had been at the scene earlier to return. NE#1 confirmed that he told Subject #1 that he had been at the scene earlier. He said, however, that this did not make him think that he might have struck the Prius.

NE#1 recognized that he was dispatched to a hit and run and that, given this, he was required by policy to take a report. OPA asked NE#1 why he asked Subject #2 about the car’s insurance deductible. NE#1 said that he asked everyone that question. When pressed on why the query was relevant, NE#1 said that the damage was minor, so he wanted to know the deductible. NE#1 was asked about why he told Subject #2 that a collision report would make no difference because he would still have to pay his insurance deductible and because he did not have the license plate for the suspect vehicle. NE#1 replied: “Because it was the truth.” When again asked whether he was required to take



a report for a hit and run, NE#1 said: "When requested to take a report, yes." OPA pressed NE#1 on the fact that he had previously stated that he was mandated by policy to do so. He replied that he was investigating a hit and run and that he would have completed a report if wanted by the Subjects. When asked whether he intended to complete a report for this incident, NE#1 said: "If [Subject #2] wanted one, yes."

NE#1 confirmed that, when he arrived on scene, he inspected the damage to the Prius. He said that it was consistent with being struck by the patrol vehicle's push bars. NE#1 was asked about telling Subject #1 that he was inspecting the Prius's tabs. NE#1 confirmed that he did so. When asked what drew his attention to the tabs, NE#1 said that he looked at them as he walked past. When queried on how he did so, NE#1 stated that he "looked at them." NE#1 told OPA that he was on the sidewalk walking past the Prius when he looked at the tabs. He said he looked at them for as long as it took him to walk by at a normal speed.

NE#1 said that, when he was initially at the scene, he did not inspect the rear right quadrant of the Prius or the front left of his push bar. When informed that the Subjects told OPA that they watched NE#1 do so, he indicated that their account was not true. OPA noted that, when he returned to the scene and Subject #1 twice asserted that he did so, NE#1 said "okay" twice but did not deny looking at the damage. He further told them that he was looking at the tabs. NE#1 said that he responded in this manner because he was planning on calling his supervisor. He said that, after this, he did so. OPA played BWV for NE#1 and showed him that, while he offered to call his supervisor at 04:09, he did not do so until 06:50. He said that he did not believe until that later time that the Subjects were accusing him of hitting the Prius.

While NE#1 acknowledged that he told the Subjects and the Sergeant that he did not hit the Prius, he stated that this was true because he did not know that he did so at the time. For this same reason, he contended that he did not violate the law or the SPD policies concerning reporting collisions, using his position for personal gain, and professionalism.

Lastly, NE#1 told OPA that he did not ask WO#1 whether ICV could be recovered from the patrol vehicle's hard drive but, instead, was telling WO#1 this. He said that he knew at that time that SPD Information Technology could pull the video.

### **3. OPA's Review of NE#1's Past Hit and Run Investigations**

Given NE#1's statements that he always discussed insurance deductibles with hit and run victims. NE#1 found two comparable hit and runs that NE#1 had responded to over the prior 12 months. In the first, NE#1 responded to a hit and run where there was minimal witness information. He did not query the victim about the insurance deductible and, indeed, told the victim's partner that the insurance information was not needed to complete the report.

In the second, NE#1 asked for the victim's driver's license and insurance information but did not ask any questions about the deductible. He did mention to the victim that, depending on her deductible, she may have to pay for the damage out of pocket.

In both incidents, NE#1 completed the report without asking either victim whether they wanted him to do so. He did not try to convince either victim not to complete a report or even suggest that it was an option.



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**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Ultimately, the fundamental question in this case is whether NE#1 knew that he struck the Prius at the time of the collision. If the answer is yes, it follows that he lied, violated the law, acted unprofessionally, and violated other Department policies. If no, some if not all of these allegations would be unfounded. When weighing the totality of the record and as explained more fully below, OPA concludes that the evidence clearly establishes that NE#1 knew he struck the Prius at the time he did so and, as such, when he denied this, he was dishonest to the Subjects, the Sergeant, the Homicide Sergeant, and OPA.

As a starting point, the ICV supports a conclusion that NE#1 was aware of the collision. When NE#1's patrol vehicle struck the Prius, both it and the Prius visibly shook. While the Homicide Sergeant subjectively opined that the vehicle shaking was normal for that make and model, OPA finds this unconvincing at best. First, the ICV recorded NE#1 applying his brakes, even quickly, on several occasions during a two-hour period. However, on none of those occasions did the patrol vehicle shake similarly to how it did when he struck the Prius. Moreover, a vehicle shaking from applying and even slamming on the brakes is significantly different than doing so after striking another car. Indeed, this is not rocket science. Anyone who has ever been in an accident can attest that hitting another car is a unique and noticeable feeling.

In addition, given the nature and scope of the damage to the Prius, OPA finds it unbelievable that NE#1 would not have been aware that he hit it. Notably, while inspecting the Prius at the scene, both the Sergeant and WO#1 agreed that whoever hit the Prius would have known that they did so due to the damage. The Sergeant repeated this at her OPA interview. Again, this was not a minor scrape. It was damage from the rear bumper to the right wheel well. NE#1 indicated, and other witnesses noted, that he suffered from hearing loss; however, even if he did not hear the collision – which seems unlikely given he was wearing at least one hearing aid at the time – he would have felt it as discussed above.

OPA further finds the accounts provided by the Subjects to be credible. They stated that they saw NE#1 inspecting the rear of their vehicle and then saw him look at his push bar. They said that he then looked up and down the street and, not seeing anyone, got back into his patrol vehicle and left. The Subjects told OPA that they were looking out of their window at the time and had an unobstructed view, which was confirmed by OPA. The Homicide Sergeant appeared to discredit their account because they said that they saw NE#1 stop his car behind them and then get out to inspect the damage while the ICV showed NE#1 reverse quickly then pull forward prior to stopping and getting out. However, OPA does not believe that the Subjects' accounts are necessarily inconsistent with the evidence when viewing them in context. Subject #1 said that NE#1 stopped behind her car, then drove forward and stopped again. The ICV showed NE#1 stop the vehicle once, stay parked for a minute, and then pull forward and stop again, prior to staying parked for a second minute.

OPA disagrees with the Homicide Sergeant's conclusion that the ICV established that NE#1 did not get out of the vehicle a second time. In support of his finding, the Homicide Sergeant points to movement of NE#1's patrol vehicle at the time he assumes the NE#1 enters and exits. This portion of the ICV has no sound. However, OPA reviewed





portions of the ICV that did have sound. Specifically, OPA watched the ICV at 00:46.18 – 00:46:23, during which NE#1 could be heard opening his car door, exiting his patrol vehicle, and shutting the door. Notably, the patrol vehicle did not move at all when he did so. As such, the Homicide Sergeant's conclusion is conjecture that is unsupported by the evidence.

OPA further notes that the Homicide Sergeant opined that the ICV conclusively established that NE#1 did not look at his push bumper as the Subjects' asserted. However, this is purely speculation. The ICV points outward in a cone and does not capture what occurs on the side of the vehicle. For example, at 01:04:13 of the ICV, NE#1 can be heard engaging in a discussion with a community member. NE#1 is by his front door at the time but he is not seen on the video. As such, it is entirely possible that NE#1 stood at the front door of his vehicle and looked at the left edge of his push bar. This would not have been captured by ICV.

Moreover, even if such minor inconsistencies were established, they do not undercut the Subjects' larger statement concerning NE#1's inspecting of the Prius and the patrol vehicle for damage. They were consistent in their account concerning how he did so. NE#1 told OPA that the Subjects simply made this information up. OPA finds this concept illogical. It makes no sense that the Subjects would not only falsify that they saw a police officer, all of people, hit the Prius and then inspect it for damage, but also further repeat this to a supervisor and to OPA, all without seeing the ICV prior to doing so and all while NE#1 was continually adamantly denying that he struck the vehicle. Certainly, if motives of the involved parties are examined, NE#1's motive to avoid the possible consequences for striking the Prius is more plausible than the Subject's motive in fabricating that he did so.

In determining NE#1's culpability, OPA places significant weight on his conduct during and after the collision. While NE#1 initially said that he slammed on his brakes while in the intersection, this was proven to be false. The ICV instead showed that he did not apply his brakes until he struck the Prius. The ICV then indicated that he quickly reversed, which would be consistent with someone who just struck a car, and then pulled forward virtually immediately thereafter. At his OPA interview, NE#1 said that he pulled forward because he realized that he could not see anything down Shaffer; however, this is simply implausible based on the video. His conduct is much more akin to someone striking a vehicle, pulling back to separate his car, and then driving forward.

OPA further notes that, after he returned to the scene and was accused by the Subjects of striking the Prius and inspecting it for damage, he said that he was in the vicinity of the damage because he was looking at the tabs. When asked about this by OPA, he said that he was walking at a normal speed down the sidewalk and he glanced over at the tabs while doing so. This is inconsistent with what he contemporaneously told the Subjects and, indeed, makes no sense. Looking at tabs while walking down the sidewalk is inconsistent with examining them while standing by the right quadrant, which would have been in the street. OPA also finds it significant that, when pressed by the Subjects about whether he was inspecting the damage, NE#1 repeatedly said "okay." He did not deny doing so.

OPA also finds it odd that NE#1 would get out of his patrol vehicle and look down Shaffer Avenue South on foot, rather than making a U-turn and driving down the street. Like other aspects of NE#1's account, this just does not make sense.

OPA similarly finds it odd that NE#1 would, under the circumstances of this case, discuss the Subjects' insurance deductible and try to convince them not to file a report. While NE#1 said that he always discussed insurance deductibles with hit and run victims, this was simply not supported by OPA's analysis of his past investigations. OPA



could find no evidence that he ever tried to convince other victims to not file reports based on their insurance deductibles.

One additional inconsistency buttresses OPA's conclusion that NE#1 was dishonest. He claimed to OPA that he volunteered to go to the hit and run because it was in his district. He further indicated that he did not look at the call updates and was unaware that the Subjects had requested the officer who had previously been in that location to return to the scene. However, this is disputed by the BWV, which indicated that the call was up on NE#1's MDT and showed him touch the screen.

As discussed above, there is an overwhelming amount of evidence establishing that NE#1 knew that he hit the car and then denied doing so. As such, OPA finds that he was knowingly and intentionally dishonest in violation of SPD policy. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***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.)

As discussed more fully above, OPA finds that NE#1 struck the Complainant's car and lied about doing so. Moreover, as detailed below, OPA finds that he violated the law when he left the scene and improperly attempted to convince the Subjects not to file a report concerning the hit and run.

OPA concludes that NE#1's conduct was unprofessional as it undermined the Subjects' confidence and trust in him and the Department. NE#1 put the Subjects in an untenable place and violated the expectations placed on him by both the community and the Department. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***13.010 - Collisions Involving Department Vehicles 2. Officers Shall Document All Collisions Involving Department Employees***

SPD Policy 13.010-POL-2 governs the documentation of collisions involving a Department vehicle. The policy requires that employees immediately notify a supervisor, remain at the scene, and complete mandated documentation.

While OPA finds that NE#1 knew he struck the Subjects' vehicle here, he left the scene and did not immediately notify a supervisor. Moreover, he did not contemporaneously complete the required paperwork. This violated Department policy and, as such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



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

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It was alleged that, when was involved in a hit and run, NE#1 engaged in a criminal act.

As discussed above, OPA referred NE#1's potential criminal conduct back to SPD for criminal investigation. OPA did so because it is prohibited from conducting criminal investigations by collective bargaining agreement. The Homicide Sergeant was assigned the case and conducted the investigation.

OPA has a number of concerns with the manner in which this criminal investigation was completed.

First, the Homicide Sergeant discussed the incident with NE#1 prior to beginning the recorded interview and showed him the ICV before asking any questions.

Second, the interview was rife with leading questions and even assertions of opinion by the Homicide Sergeant. This included the Homicide Sergeant asking NE#1: "Alright. The day of the incident, you were pretty confident you didn't hit that car?"; "Ok...and then in the video your car comes to a...jolting ya know...in...is that from stomping on the brakes? It seemed like it was"; and "...So you were looking over your shoulder. Is there any other reason maybe...maybe you...perhaps you didn't realize that at the time that you collided with the vehicle? Is there any physical issues you have that you would...had been mentioned to me?"

Third, the report contained a number of statements by the Homicide Sergeant, a number of which are discussed above, that appeared to be conjecture and unduly subjective.

Ultimately, however, OPA is not bound by the Homicide Sergeant's conclusions or the City Attorney's Office's decision to decline to prosecute this matter. OPA's investigations and findings are not governed by the beyond a reasonable doubt standard applied in the criminal context. The evidentiary standard OPA applies is substantially less stringent.

As explained more fully herein, OPA finds that NE#1 was aware that he struck the Subjects' vehicle. As such, when he left the scene without reporting the collision or leaving contact and insurance information, he violated the law. Specifically, he violated both RCW 42.56.010(1) and SMC 11.56.430. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain***

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.) This allegation was classified because of the belief that NE#1 may have used his position as a police officer to try to convince the Subjects not to file a report concerning the hit and run.



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As discussed above, OPA's review of prior hit and run investigations conducted by NE#1 indicates that, in no other case, did he try to convince the victims not to seek a report. Only here, where he indisputably hit the victim's vehicle and left the scene, did he do so. OPA finds it significant that, when asked whether he intended to provide a report to the Subjects, he replied that he would have if they asked for one. However, the policy is not discretionary in this respect. It requires that a report be completed, not that the report only be generated if requested.

OPA finds that NE#1's repeated advice to the Subjects to not seek a report and his statements to them concerning their insurance deductible evidences his intent to sway their decision-making. He knew or should have known that, given his authority as a police officer and the great power imbalance between him and the Subjects, this was improper. OPA concludes that his was purposed to prevent them from pursuing a report that could ultimately yield consequences for him. As such, OPA finds that he attempted to use his position for personal gain and, in doing so violated policy. OPA accordingly recommends that this allegation be Sustained.

Recommended Finding: **Sustained**