



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 14, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0622

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.260 - Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions	Not Sustained (Lawful and Proper)

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

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee conducted an inadequate investigation into a collision.

SUMMARY OF INVESTIGATION:

The Complainant stated that she was involved in a serious car accident. She claimed that she was “nearly” killed as a result of the accident and that she required treatment in a hospital emergency room. She expressed her concerns with the investigation that Named Employee #1 (NE#1) conducted into the collision. She alleged that NE#1’s investigation was deficient in the following respects: (1) he did not cite the other motorist who was driving recklessly and well in excess of the posted speed limit (estimated by the Complainant to be 60 mph in a 30 mph zone); (2) he did not perform field sobriety tests on the other motorist who the Complainant believed was potentially intoxicated; (3) he did not find the other motorist to be at fault, despite the evidence suggesting that this was the case; (4) he, instead, found the Complainant to be at fault based on an “improper stop,” even though there were no witnesses to this; (5) he did not interview two witnesses who provided her with assistance immediately after the collision; and (6) he failed to cite the other motorist for not having proof of insurance. This OPA investigation ensued.

As part of its analysis of this incident, OPA reviewed the report completed by NE#1. OPA also watched the Body Worn Video (BWV) that fully captured NE#1’s investigation of the collision and the actions he took.

The BWV indicated that NE#1 arrived on the scene and began trying to locate witnesses to what occurred. He could not find anyone who saw the accident, with all of the on-scene witnesses either only hearing the collision or arriving after the fact. NE#1 further verified that both motorists were alone in their vehicles. He spoke with the other motorist while a second officer interviewed the Complainant. Both the Complainant and the other motorist had suffered injuries and were receiving medical attention. The other motorist had difficulty answering NE#1’s initial questions and repeatedly told NE#1 that he was in shock. As NE#1 was talking to the other motorist, the backing officer came over and said that the Complainant had neck and back pain. The backing officer stated that he did not see any evidence of



criminal conduct on either driver's part at that time. The backing officer further stated that he did not see any suspicious items (drug paraphernalia/alcohol) in either vehicle.

NE#1 got identifying information from the other motorist and asked for documentation of his insurance. NE#1 walked away and examined the other vehicle. At that time, the Complainant was sitting in the passenger seat and was being inspected by medics. NE#1 returned to his patrol vehicle and ran the other motorist's information through his MDT. He walked back to the other motorist and asked again for his insurance documentation.

NE#1 discussed the collision with another officer. He said that he did not suspect that either driver was DUI. They mentioned that the Complainant was being placed on a stretcher and being transported to the hospital to treat her neck and back pain. A medic confirmed that it did not appear that she had any broken bones. The medic also provided the officers with more details concerning the Complainant's account of what occurred. The medic specifically stated that the Complainant recalled being struck from the side by the other motorist who she described as driving 60 mph. Prior to the Complainant being transported from the scene, another trauma assessment was completed and she was found to be stable with no obvious broken bones or deformities.

In his report, NE#1 concluded, based on his investigation, that the other motorist was driving down 125th Street when the Complainant pulled out from 33rd Avenue. At that point, the vehicles collided. NE#1 noted that the Complainant had a stop sign and, as such, the other motorist had the right of way. Given this, he determined that the Complainant failed to yield. NE#1 documented that the other motorist provided his insurance company but not his policy number. OPA could find no indication that NE#1 issued a citation to either driver.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.260 - Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions

SPD Policy 15.260-POL-2 requires that officers take collision reports for all mandatory reportable collisions. Inherent in this policy is the requirement that officers conduct a sufficient investigation to allow for the drafting of the reports.

Based on a review of the BWV, OPA finds no indication that NE#1 conducted a deficient investigation. In reaching this finding, OPA addresses each of the Complainant's concerns with the investigation in turn.

First, NE#1 did not cite the other motorist for driving above the posted speed limit because he had no evidence, other than the Complainant's account, that this was the case. No one else witnessed the accident and both the Complainant and the other motorist were alone in their vehicles at the time.

Second, NE#1 concluded, based on his observation of the other motorist from close proximity, that there was no evidence that he was DUI. Given this, NE#1 would have had no legal basis to perform field sobriety tests. Contrary to the Complainant's contention, conducting field sobriety tests is not a standard practice during all collisions. Indeed, they constitute a seizure that must be based on reasonable suspicion of intoxication. NE#1 found that this did not exist here and OPA cannot say that this was an unreasonable conclusion after reviewing the BWV.



Third and fourth, the totality of the evidence did not establish that the other motorist was at fault. Without witnesses and given NE#1's examination of where the parties were driving from at the time, NE#1 drew the reasonable inference that the Complainant, who did not have the right of way, failed to yield. This was based on the fact that the Complainant had a stop sign in front of her and the other motorist did not. NE#1 did not need independent witnesses to establish this. Notably, this conclusion did not eliminate the possibility that the other motorist was speeding.

Fifth, while the Complainant is correct that NE#1 did not interview the witnesses who provided assistance to the Complainant immediately after the collision, those individuals, even from the Complainant's recitation of the facts, did not witness the collision and had no relevant information concerning who was at fault. As such, the lack of interviews did not cause the investigation to be inconsistent with policy.

Sixth, the BWV indicated that the other motorist did not have his insurance information readily available; however, there was no basis to conclude that he was uninsured. In fact, the other motorist stated affirmatively that he did have insurance and provided the name of his insurance company. Moreover, there is no SPD policy or law that OPA is aware of requiring that NE#1 issue a citation to the other motorist for failing to have his insurance policy number on hand. This was a matter completely within the discretion of NE#1.

Ultimately, OPA understands that the Complainant is frustrated with the investigation conducted by NE#1. OPA further understands that she believes that the other motorist is at fault and that NE#1 failed to recognize this. However, when evaluating NE#1's investigation against SPD policy, OPA does not conclude that it was improper. The one area in which NE#1 fell short was that he should have provided more information in the report concerning the accounts conveyed by the parties. Specifically, OPA believes that he should have noted the Complainant's statement that the other motorist was driving 60 mph. However, while this would have been optimal and would have made the report more complete, this is aspirational and not an explicit requirement of policy.

As NE#1 complied with policy during this incident, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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