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**Issued Date:** DECEMBER 11, 2023

**From:** Deputy Director Bonnie Glenn on Behalf of Director Gino Betts Jr.  
Office of Police Accountability

**Case Number:** 2021OPA-0092

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

#### **Named Employee #1**

1. **Allegation #1:** 5.001 Standards and duties section 11. Employees will be truthful and complete in all communication
    - a. **Finding:** Sustained
  2. **Allegation #2:** 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy
    - a. **Finding:** Sustained
  3. **Allegation #3:** 12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes
    - a. **Finding:** Sustained
  4. **Allegation #4:** 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations
    - a. **Finding:** Sustained
  5. **Allegation #5:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional.
    - a. **Finding:** Sustained
- **Proposed Discipline:** Termination
    - **Imposed Discipline:** Termination

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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.**

**Administrative Note on Proposed Findings:**

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

**Executive Summary:**

It was alleged that Named Employee #1 (NE#1) drove a vehicle under the influence, fled the scene of a collision, and sexually assaulted Community Member #1 (CM#1). It was also alleged NE#1 failed to report his misconduct and, instead, attempted to cover up his misconduct by concealing his involvement in the hit-and-run, pressuring CM#1 to lie to the police, and using police databases without legitimate purpose.

**Administrative Note:**

On November 29, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

**Summary of the Investigation:**

On February 12, 2021, CM#1 reported to SPD officers that she and NE#1 met at a restaurant for dinner and drinks on February 9, 2021. CM#1 reported that, thereafter, NE#1 sexually assaulted her and drove away from a motor vehicle collision while intoxicated. The Complainant—an SPD Supervisor—responded to the scene and spoke with CM#1. The Complainant forwarded the criminal allegations to the chain of command. That same day, SPD placed NE#1 on administrative leave and opened a criminal investigation. The Complainant also filed an internal Blue Team complaint with OPA. OPA's administrative investigation was paused during the pendency of the criminal charges.

The criminal investigation was assigned to Investigator #1, a detective in SPD's Sexual Assault and Child Abuse Unit. After it was completed, the criminal case was referred to the King County Prosecuting Attorney's Office (KCPAO). KCPAO evaluated the case for charges of Rape in the Second Degree and Rendering Criminal Assistance in the Third Degree. KCPAO declined prosecution for these felony allegations and referred the case to the Seattle City Attorney's Office (SCAO) to evaluate potential criminal traffic offenses.

SCAO charged NE#1 with Driving Under the Influence. SCAO and NE#1 entered into a deferred prosecution agreement, which was approved by the municipal court on October 18, 2023. The municipal court case is deferred for five years. Under the terms of the deferred prosecution, NE#1 acknowledged and the Court found, among other things, that admissible evidence against NE#1 would be, "sufficient to support conviction on these offenses."

OPA commenced its administrative investigation. During its investigation, OPA reviewed the Blue Team complaint, Investigator #1's criminal case file, the Declination Memorandum from KCPAO, and the documents associated with the municipal court case, including the deferred prosecution documents. OPA also interviewed NE#1.

### **1. Blue Team Complaint**

The Complainant submitted an internal Blue Team complaint to OPA on February 18, 2021. The Complainant wrote she responded to a suspicious circumstance call when requested by the primary officer, Witness Officer #1 (WO#1). The Complainant wrote the call involved a "possible assault" and "vehicle accident."

At the scene, WO#1 informed the Complainant that there was a "possible sexual assault," and the suspect was NE#1, an SPD officer. The Complainant documented speaking to CM#1 and her roommate, Community Member #2 (CM#2). The Complainant's investigation was recorded on Body Worn Video (BWV).

CM#1 said she went to a restaurant (Restaurant) with NE#1 for dinner and drinks. CM#1 said she was friends with NE#1 and had hung out with him approximately four to five times in the past two years, but was not dating. CM#1 said she met NE#1 through Community Member #3 (CM#3), who is her friend and NE#1's cousin. CM#1 stated she had two margaritas, then went to the bathroom. CM#1 stated there was a third margarita waiting for her when she returned. CM#1 said she took two sips of the third margarita, after which she had no further memory until NE#1 woke her up in a hotel room. CM#1 said she had a high tolerance for alcohol and that two drinks would not have affected her this way.

CM#1 stated NE#1 woke her up in a hotel room, telling her to speak with CM#2, who was on the phone. CM#1 described being confused. CM#1 said NE#1 told her they were in a motor vehicle accident and that she had been driving. According to CM#1, NE#1 told her he saw her head "go back" and then they smashed into a parked car. CM#1 said NE#1 told her he moved her from the driver's seat to the passenger seat, then drove several blocks away, stopped, and called a Lyft to take them to a hotel (Hotel).

CM#1 and CM#2 described texting throughout the night. CM#1 told CM#2 she was drinking and would text her later to pick her up. CM#2 said she woke up at 4:30am and "felt something was off," because CM#1 had not returned home and had not called. CM#1 and CM#2 stated this was out of character for CM#1.

The next day, CM#2 "pinged" CM#1's phone to a "junk yard." CM#2 went to the junk yard and observed the vehicle CM#1 was in the night before (Vehicle). CM#2 said she saw CM#1's purse and phone in the Vehicle. CM#1 stated she only had her identification the next day. CM#1 stated her only injuries were soreness and pain in her right side and right shoulder.

CM#1 said she communicated with the Hotel manager, who told her the night clerk observed a disoriented woman enter the hotel. The Hotel manager told CM#1 he reviewed the hotel video and

also observed a disoriented woman enter with a male. The Hotel manager said the woman did not know where she was, could not stand on her own, and was “hanging on the arm” of the male. CM#1 reported that she learned she and NE#1 had switched rooms at the Hotel. According to CM#1, NE#1 informed her she had gotten sick but told CM#3 that CM#1 peed the bed. The hotel manager confirmed to CM#1 that they switched rooms and the Hotel staff had to change the sheets, but he did not state there was vomit. CM#1 reported she awoke fully clothed but was not wearing socks, and that the clothing was dry and did not smell like urine. CM#1 stated she saw NE#1 in boxer shorts and that there was a damp towel in the room, though NE#1 denied showering.

CM#1 stated she learned NE#1 told his uncle—CM#3’s father—that he and CM#1 had sex. CM#1 stated she did not remember having sex with NE#1, would not have had sex with him, and would not have gone to a hotel with him. CM#1 stated she did not feel like she had sex, but she reported it was uncomfortable urinating.

CM#1 also reported that NE#1 urged her to report the vehicle accident and had “coached” her on what to say to the police. Specifically, NE#1 wanted to “stay out of it” to avoid being placed on administrative leave or losing his job. CM#1 reported that NE#1 wanted her to say that she was alone in the car and had jerked the wheel. CM#1 also said NE#1 told her to say she did not call on the night of the accident because she is Black and fearful of the police.

## **2. SPD Criminal Investigation**

Investigator #1 conducted a thorough investigation that was summarized in a sixty-five-page Case Investigation Report (CIR). Investigator #1 visited the Restaurant, the Hotel, collision site, and tow yard. Investigator #1 contacted multiple witnesses, canvassed for—and located—corroborative video, and conducted twelve audio-recorded interviews. One of these interviews was with NE#1. CM#1’s clothing was taken as evidence, CM#1 was examined by a Sexual Assault Nurse Examiner (SANE), and a Sexual Assault Kit (SAK) was completed and tested. NE#1 also obtained and executed multiple search warrants, specifically for NE#1’s phone information and documentation from the Hotel.

### **a. CM#1 Statements**

On February 12, 2021, Investigator #1 met CM#1 at the hospital where the SAK was being completed. CM#1 provided information consistent with the Blue Team report and a brief timeline. CM#1 stated she believed she was at the Restaurant with NE#1 from about 5:12pm to 8:53pm, which she provided based on the GPS in her cell phone. CM#1 recalled texting CM#2 that she felt funny and might need a ride home. CM#1 stated she and CM#2 had a practice of texting their location to the other if they had been drinking too much in order to facilitate a ride home. CM#1 agreed to have her phone data downloaded by SPD.

Investigator #1 conducted an audio-recorded interview with CM#1 on February 18, 2021. During their interview, another SPD detective extracted data from CM#1’s cell phone with CM#1’s consent. During the interview, CM#1 stated the following:

CM#1 knows NE#1 through CM#3. CM#3 is CM#1's best friend and NE#1's cousin. CM#1 and NE#1 have only spent time together about six times, sometimes together and other times in group settings. CM#1 communicated with NE#1 through text, phone calls, and sometimes over Instagram. CM#1 said she and NE#1 are friends and have never had a romantic or sexual relationship. However, CM#1 stated that CM#3 once told her NE#1 was attracted to her. CM#1 said she had never been interested in NE#1 romantically and NE#1 never said he wanted to be more than friends.

On February 9, 2021, NE#1 texted CM#1 in the morning asking her if she wanted to get Mexican food. The two made arrangement to meet at the Restaurant. CM#1 stated the only thing she ate that day was a small lunch, consisting of a chia yogurt at about 1:00pm.

CM#1 arrived at the Restaurant at about 5:15pm. She drove the Vehicle and parked in front. NE#1 was already at the Restaurant and drinking a margarita. CM#1 ordered a margarita. CM#1 ordered a cheese quesadilla and another margarita. CM#1 stated at about 7:57pm, she felt the alcohol affecting her, so she texted CM#2 and shared her location to arrange a ride.

CM#1 said NE#1 ordered her another margarita. CM#1 said she drinks a lot, so three drinks would not usually affect her badly. CM#1 took "two sips" of the third margarita, then went to the bathroom, then took another sip when she returned to the table. CM#1 stated she lost her memory after that. CM#1 said that her cell phone GPS data showed she left the Restaurant at about 8:53pm.

CM#1 stated the next thing she remembers was a very short memory of NE#1 telling her they needed to change rooms. CM#1 also stated she noticed her socks and shoes were off her feet. She also stated she recalled standing up and leaving the room.

CM#1 stated her next memory was NE#1 giving her his cell phone at about 7:30am. CM#1 said she took the phone and spoke to CM#2, who yelled at her for making her worry all night. CM#2 also told CM#1 that the Vehicle had been towed. CM#1 was confused.

CM#1 said she was fully clothed when she woke up. CM#1 said the waist of her pants seemed "stretched out" and not tight, as they were before. CM#1 did not have her purse, cell phone, or other belongings with the exception of her identification. CM#1 noticed a wet towel in the room, so she asked NE#1 if he had showered, which he denied. CM#1 stated neither her clothing nor hair were wet. NE#1 was in boxers and his clothes were folded on a table or desk.

CM#1 said that NE#1 told her about the night before. NE#1 said CM#1 was drunk and drove the Vehicle. NE#1 said he was with her and saw her head rolled back, like she had passed out. NE#1 said they then hit a parked car. NE#1 told CM#1 that, after the accident, he pulled her over the center console into the passenger seat, then drove them away. NE#1 then parked the Vehicle and ordered a Lyft to take them to the Hotel. NE#1 told CM#1 she got sick and vomited in the hotel

room, causing them to switch rooms. NE#1 told CM#1 he did not want to get into trouble, no one could know he was in the car with her, or else he could lose his job.

CM#1 said she saw NE#1 on the phone with someone asking for advice.

CM#1 said she and NE#1 then took a Lyft to NE#1's car. NE#1 said he was still drunk and asked CM#1 to drive. CM#1 recalled NE#1 stating his body and wrists were sore from the accident. As CM#1 drove by the Restaurant, NE#1 said he did not want to be seen or caught on video. The two drove to the tow yard and NE#1 asked CM#1 not to pull into the yard or park too close. CM#1 went into the tow yard to discuss how to release the Vehicle. The two then got breakfast at a small restaurant. CM#1 said NE#1 left twice to go to the bathroom.

CM#1 and NE#1 then drove to CM#1's residence. CM#2 was there, and CM#1 and CM#2 discussed the events. CM#2 was suspicious of NE#1 and did not want NE#1 at the house. CM#1 said she called her boyfriend, who asked CM#1 if she was okay and asked her if she had been raped or assaulted, which CM#1 denied as CM#1 did not feel as though her body had recently had sex.

CM#1 bought an over-the-counter drug test, which did not indicate the presence of any drugs in her urine.

CM#1 recovered her property from the tow yard. She observed damage to the Vehicle on the front right side, including blue paint transfer. CM#1 also noticed the driver seat was further back than she would have had it and her property was dumped on the floor in front of the passenger seat. CM#1 said this was odd as she always placed her purse in the back seat. CM#1 also said she noticed an undisturbed water bottle and ash tray in the center console, which CM#1 said was inconsistent with NE#1's statement that he pulled her over the center console.

CM#1 spoke to CM#3. According to CM#1, CM#3 told her that NE#1 said he could not be mentioned in the accident report, and that CM#1 should say she dropped her water, reached down to pick it up, and that this is what caused the accident. Also according to CM#1, CM#3 told her NE#1 said to explain her delayed report as based on her fear of the police because she is multiracial.

CM#1 also said she spoke to the Hotel manager, who told her she was "not in good shape" when she came to the hotel and could not stand.

CM#1 said she spoke to CM#3's father (Community Member #4 or CM#4). CM#4 is a former police officer. CM#1 and CM#4 spoke over the phone, and CM#1 told CM#4 what she remembered. CM#4 asked CM#1 if she had sex with NE#1, which CM#1 denied. CM#4 told CM#1 to call the police and tell them whatever she thought was the right thing to say.

CM#1 said CM#3 called her a short time later. CM#3 said CM#4 said he talked to NE#1, who said he had sex with CM#1. CM#1 said she started crying as she had no memory of having sex with

NE#1, would not have consented to having sex with him, and would not have been able to consent.

CM#1 said she decided to call the police and tell the truth after speaking with CM#2.

Investigator #1 noted CM#1 made the police report, cooperated in the investigation, provided an audio-recorded statement, and consented to having her phone reviewed and information extracted.

#### **b. CM#2 Statements**

Investigator #1 spoke with CM#2 at the hospital on February 12, 2021. CM#2 confirmed that she was texting with CM#1 on February 9 and that she and CM#1 had a practice of texting their locations to each other when they were drinking. CM#2 agreed to have her phone data downloaded by SPD.

On February 17, 2021, Investigator #1 conducted an audio-recorded interview with CM#2. Investigator #1 noted CM#2's statement was consistent with CM#1's statement. CM#2 knew CM#1 was drinking and needed a ride home because CM#1 texted her location to CM#2. When CM#2 did not hear from CM#1, she checked CM#1's phone location and noticed it was stationary near the intersection of Broadway East and East Denny Way. CM#2 did not believe she would be able to locate CM#1 in that area of town at that time.

CM#2 went to sleep, waking up early the next morning. CM#2 observed CM#1 was not home. CM#2 saw CM#1's phone was now located at a tow company. CM#2 went to the tow company and saw the Vehicle, which was damaged, with CM#1's property inside. CM#2 was worried and contacted CM#3, family, friends, and started contacting local hospitals and jails without success.

CM#2 received NE#1's phone number from CM#3. CM#2 called NE#1, who answered. CM#2 demanded to speak to CM#1. CM#2 described CM#1 as sounding confused. CM#2 noted this sort of behavior would be completely out of character for CM#1. CM#2 also noted CM#1 would not drink and drive, especially as there was already a plan for CM#2 to pick CM#1 up.

#### **c. CM#3 Statement**

CM#3 provided the following information to Investigator #1. CM#3 stated CM#1 is her "best friend" and NE#1 is her cousin. CM#3 owns the Vehicle and had loaned it to CM#1 to use while CM#3 was out of the country. CM#3 said NE#1 told CM#1 that they were in an accident in the Vehicle. CM#3 reported that the Vehicle is a BMW.

CM#3 said CM#2 told her that CM#1 had not come home and the Vehicle had been damaged. CM#3 gave NE#1's phone number to CM#2 so that CM#2 could call him. CM#3 stated both CM#1 and NE#1 had provided their accounts of the evening to her, and some of the facts did not match. Specifically, NE#1 told CM#3 that CM#1 "peed" on herself, necessitating a room change. CM#3

said she could not deal with the situation because of her job, so she asked her father (Community Member #4 or CM#4) to call both CM#1 and NE#1 to figure out what happened.

#### **d. CM#4 Statement**

CM#4 provided an audio-recorded statement to Investigator #1. CM#4 stated he is a retired police officer. CM#4 stated he called NE#1 when he heard CM#3 could not reach him. CM#4 told NE#1 to check if the Vehicle had a warrant as it may have been involved in a hit and run. CM#4 said NE#1 told him he was at work on a call and could not check the license plate at that time. CM#4 said NE#1 called him back later and said there were no warrants for the Vehicle or for CM#3.

CM#4 said he asked NE#1 what happened. NE#1 said he helped CM#1 to a hotel. CM#4 said he confronted NE#1 about driving the Vehicle and NE#1 said he was not driving. NE#1 just continually said he “helped” CM#1 to a hotel. CM#4 said he told NE#1 that he could be in trouble for leaving the scene of the collision or a DUI, and that NE#1 needed to report what happened. CM#4 said he told NE#1 that if he were driving his prints would be on the wheel. CM#4 said NE#1 responded to that by saying, in sum and substance, that the car was towed and the chain of custody was broken.

CM#4 said he asked NE#1 if he had sex with CM#1. CM#4 recalled NE#1 responding, “later on.”

CM#4 said he also spoke with CM#1. CM#1 told CM#4 the last thing she remembered was taking a sip of her margarita at the Restaurant and that her next memory was waking up at the Hotel. CM#1 denied being injured. CM#1 told CM#4 she was worried about filing a police report and saying she was driving the Vehicle because she was not sure that was true and she did not want to file a false police report. CM#1 stated she did not remember having sex with NE#1.

#### **e. NE#1 Statement**

Investigator #1 conducted an audio-recorded interview with NE#1 over the phone.

NE#1 stated he and CM#1 drank a lot of alcohol at the Restaurant and, after that, the alcohol made all the decisions. NE#1 said CM#1 stated she could drive and, because he did not want to risk his career, he knew he could not drive. NE#1 stated he saw CM#1’s head go back shortly before the Vehicle collided with a parked car. NE#1 said he told CM#1 to get out of the car. NE#1 said he exited and checked the parked vehicles to make sure they were not occupied. NE#1 said he then told CM#1 they had to leave and he then drove the Vehicle about four blocks and parked. NE#1 stated he did not remember how CM#1 moved from the driver’s seat to the passenger seat.

NE#1 said he called an Uber to take them to the Hotel. NE#1 said the only person he knows in Seattle was his girlfriend and it “would have been a terrible idea” to go home to her. NE#1 said he had body soreness the next day. NE#1 said he did not remember asking if CM#1 had any injuries. NE#1 stated he had a minimum of seven or eight alcoholic drinks.



NE#1 recalled, on arriving to the Hotel, he was feeling intoxicated, fearful, and “pissed.” NE#1 said when they arrived in the room, CM#1 slept in the bed and he slept on the couch. NE#1 recalled sleeping for five or six hours, waking up, then going to the bed because the couch was not comfortable. NE#1 stated CM#1 had urinated “everywhere.”

NE#1 said he went downstairs around 3:45am to change rooms. NE#1 said he woke CM#1 up and she took a shower. NE#1 said CM#1’s clothes were wet with urine. NE#1 said CM#1 walked to the new room in a towel and carrying her clothing. NE#1 said he showered at the new room, then went to bed. NE#1 said CM#1 was naked in bed.

NE#1 said he was laying next to CM#1 and then he started “touching on her,” which caused CM#1 to wake up. NE#1 said CM#1 was “intimate” with him. NE#1 described CM#1 as alert at this point, and that CM#1 was moaning and “being a woman.” NE#1 said it was not “scary or anything,” and that CM#1 gave him a “seductive look,” and they had sex. NE#1 said this was several hours after they were drinking, and that CM#1 was not extremely intoxicated anymore. NE#1 stated CM#1 was not just laying passed out or asleep. NE#1 described CM#1 physically and verbally reacting to him. Specifically, NE#1 recalled CM#1 stating “right there,” and moving with him. NE#1 said they had sex for about ten minutes before he became nauseous from alcohol. NE#1 was asked if he thought CM#1 would be in a “sexy mood” after peeing on the bed. NE#1 said she took a shower in between and she was up and moving around. NE#1 described CM#1 as “jolly” and talking to him. NE#1 could not remember anything CM#1 was saying.

NE#1 said they both fell asleep again. NE#1 said, when he woke up, CM#1 was saying, “oh crap, oh crap, oh crap.” NE#1 said they were sexually touching but not having sex the next day. NE#1 specified this meant they were laying naked together and he thought they were touching and rubbing each other. NE#1 speculated CM#1 was stating “oh crap” because she was trying to remember how they arrived at the Hotel.

NE#1 stated when they talked the next morning, CM#1 stated the last thing she remembered was being at the restaurant. NE#1 stated he did not tell CM#1 about having sex because, “I don’t think she ever asked me.” NE#1 stated he and CM#1 woke up completely naked together and she did not ask him about sex. NE#1 stated he spoke to friend the next day, but NE#1 refused to provide the name of the friend to protect the friend’s “professional safety.”

NE#1 stated he and CM#1 took an Uber from the Hotel to his car. NE#1 stated he was not feeling well, so CM#1 drove. NE#1 stated they went to get breakfast, then drove to her house, where NE#1 said he took a nap.

NE#1 said he told CM#1 to report the collision. NE#1 stated he did not want any involvement and he told her she needed to report that she struck parked cars. When asked what CM#1 was going to say about why the accident happened, NE#1 responded, “the reason why.” NE#1 elaborated, “I mentioned that...I told her that she was going to have to...I mean, she asked me for advice and I told her that I didn’t really have any advice for her...I told her to say, I mean she said she was going to say...I just went along with what she told me she was going to say. I never really told

her.” NE#1 said CM#1 told him she was going to tell the police she did not report the collision at the time because she was afraid of the police. NE#1 said he thought CM#1 was going to say she reached down for something or got distracted. NE#1 said he told CM#1 she should just call and report the collision.

#### **f. Restaurant Staff**

Investigator #1 spoke with staff at the Restaurant.

One staff member recalled NE#1 and CM#1 being present at the Restaurant because they were drinking high-end tequila in a mixed drink, which was unusual.

The Restaurant manager recalled the night of the incident. He said the male and female stood out to him because they were ordering high-end sipping tequila but then drinking it in a mixed drink. He stated the two were at the Restaurant for several hours. He recalled each having four drinks. He described the female as very unsteady on her feet, noting she did not fall but was “tumbly.” He said the female appeared more tipsy than the male. He said it was “obvious” the two were dating, noting she was hugging him and they kissed when they went outside.

Investigator #1 requested the Restaurant owner preserve surveillance video from February 9, 2021. Investigator #1 noted the importance of the video, her concern it could be lost, and offered to have a video technician assist. Ultimately, the Restaurant owner did not preserve the video before it automatically deleted. Investigator #1 spoke to Restaurant owner, who reviewed the video. The owner reported the video did not show anything, so he did not save it. The owner then stated a snow storm occurred and caused him not to email Investigator #1. He checked the live video feed and stated the video would not have recorded the area where NE#1 and CM#1 sat, other than showing their outlines. He also said the video would have showed them walking in and out of the Restaurant.

The Restaurant owner stated he was not working on the night of the incident. However, he stated that he spoke to NE#1 and CM#1’s server. This second-hand information was that NE#1 kept making comments about how “cute” CM#1 was, CM#1 was unsteady on her feet, CM#1 dropped her belongings and had a difficult time picking them up, and that CM#1 appeared to become intoxicated very quickly.

#### **g. Hotel Staff**

Investigator #1 spoke with staff at the Hotel and received their written Hotel reports.

One member of the hotel cleaning staff stated he cleaned the first room NE#1 and CM#1 were in. He said the sheets were balled up and he did not see what kind of biohazard was inside. When he picked the sheets up, he could feel they were “soaked” with liquid and were heavier than usual.

The Operations Director stated she was working the front desk on February 9, 2023, when a man and woman entered at about 9:00pm. She wrote the female lost her balance and fell at the entrance, and the male helped her up. She described the male and female as “happy, giddy, and looked to be a couple.” She wrote security approached the two and provided them with water. She wrote that the female had trouble keeping her balance and leaned on the male for support. She checked them in at 9:19pm. She described the female as hanging on the male, hugging him, rubbing him, and rubbing her “hind end on the counter.” She later provided an audio recorded interview to Investigator #1. This statement was consistent with her written statement, but she elaborated that, on reviewing the security video, she now thought the female was using the male for stability as opposed to being affectionate.

The Overnight Manager reported encountering NE#1 at the front desk on February 10, 2021 around 3:30am. He wrote that NE#1 said his friend did not make it to the bathroom on time. He wrote he assumed this meant vomit. He wrote NE#1 stated his friend was currently showering and asked if they could change rooms. He wrote that the room change was accomplished.

A Security Guard wrote he observed an African American male and “mixed African American female” enter the Hotel lobby around 9:14pm on February 9, 2021. He said both individuals were stumbling and the male appeared to be holding up the female. He wrote the female appeared more intoxicated than the male, and he saw her legs buckling with every step. He wrote he smelled alcohol on the two people, and the female fell at the entrance. He wrote the male said, “she is fine, just drunk.” He wrote he got them both water. He wrote the female drank the water and was talking and laughing with the male. He wrote he later saw the female struggling to stand up, with her knees buckling and holding onto the male for support.

#### **h. Collision Witnesses**

One witness to the collision reported he was in his apartment with his headphones on, but still heard a smashing sound outside. He reported a black sedan hit a blue car, causing the blue car to hit a white car. The witness said the blue and white car were legally parked. He said the black sedan drove away and he could not see inside the black sedan as the windows were possibly tinted.

A second witness said she was in her apartment when she heard a loud crash. She looked out and saw a black BWV had just struck a parked vehicle, which then struck another vehicle. She said the occupants remained inside the BWV as if they were deciding what to do. She said the BWV then sped off before stopping one block away. She said both occupants got out and yelled at each other. She described both voices as male voices. She said both occupants then got back into the car, she believed into the same seats they were in before and drove away. She said she took video and photographs. She said the BMW came back around later and slowly drove by the accident scene.

A third witness said she was in her living room when she heard a crash and crunching sounds outside. She saw a black sedan, possibly a BMW, a few feet behind some parked cars. The black sedan had struck the parked cars and was stopped. The sedan then sped off before stopping at the next intersection. She said her fiancé said the driver and passenger were switching seats.

A fourth witness—the third witness’s fiancé—stated he was watching television when he heard a loud boom. He said he saw a black vehicle, possibly a BMW, hit a parked car, which pushed that car into another parked car. He said the driver pulled away quickly, then stopped at the next intersection. He said it looked like somebody had “switched around,” as he saw a person running around the car. He could not see if the person was male or female. He said it was dark and the incident was fast. The car then drove away.

#### **i. Other Witness Statements**

Investigator #1 also spoke to several other witnesses.

On March 8, 2023, Investigator #1 spoke to NE#1’s girlfriend. She stated she was still dating and living with NE#1. She said she knew NE#1 was out with a female who was involved in a traffic accident and she was now accusing him of sexual assault. NE#1 told her that he went out with CM#1, was drinking, and did something stupid. She said she saw NE#1 crying the next day after work, but NE#1 would not tell her what was going on other than to say sorry and that he was going to lose everything. She said she had never seen NE#1 this upset. She also said, around February 14, NE#1 told her that his badge had been taken and he got in trouble for something he did not do. She said NE#1 told her he and CM#1 were both drunk, CM#1 was driving and got in an accident, and he was accused of “unconsensual sex.” She said NE#1 admitted he had sex with CM#1. She said NE#1 will not talk to her anymore about what happened. She said NE#1 did not tell her he was in the car with CM#1 and paid for the Hotel room.

Investigator #1 also spoke with a police officer from another department who stated he knew NE#1 from their previous employment in an out-of-state police department. The officer said NE#1 called him early in the morning to tell him he was involved in a hit and run. NE#1 told the officer, “I messed up. I messed up.” The officer said NE#1 told him he got drunk with his cousin’s friend, she drove away, then got in a car accident. NE#1 told the officer he got in the driver side and drove the car away. The officer asked NE#1 why he did that and NE#1 responded he did not know why, he was so drunk. The officer encouraged NE#1 to take responsibility. The officer stated he could hear a female in the background stating she was “screwed.” The officer said he and NE#1 spoke for the next few days, and NE#1 told him he was accused of “unconsensual sex” with the female. The officer said NE#1 told him he had sex with the female the next day and they were “sloppy drunk.”

#1 spoke to another SPD officer that NE#1 had called. The SPD officer said NE#1 called him panicked and said he was in an accident. The SPD officer recalled telling NE#1 that he did not want to know anything, did not want to be involved, and NE#1 should contact either a guild representative or an attorney.

Investigator #1 also spoke to another of CM#1's friends. She said on the day of the incident, CM#1 told her she was going to a "meeting" with CM#3's cousin. She said CM#1 told her the meeting was about starting a new business, and she offered to give CM#1 a ride afterwards, if necessary. She said she received voice and text messages from CM#1 later stating that NE#1 was not talking about business but was, instead, getting drunk. She recalled CM#1 saying the two were drinking margaritas and CM#1 stated she might need a ride later. She said she got a voicemail later from CM#1 that was completely incoherent. She said CM#1 later told her, "I fucked up. I really fucked up." She said CM#1 told her she drove drunk and crashed CM#3's Vehicle. She stated she was "baffled" by this as it would be so out of character for CM#1. She stated she thought CM#1 had possibly been drugged. She also said CM#1 told her she woke up with her clothes on, but her socks and shoes were off. She said CM#1 did not take her socks off anywhere, so found this strange. She said CM#1 told her that CM#1's tight pants were loose. She said she went with CM#1 to get a urine test, but the test showed normal results around 5:00pm or 6:00pm on February 10, 2021. She said she froze the urine, but later lost power and threw the urine away.

#### **j. Text Messages**

Investigator #1 received about five pages of text conversations between CM#1 and CM#2. These corroborated their recollection of their communication on February 9, 2021.

CM#1 texted CM#2 at about 7:57pm asking, "Can you see my location[?]" CM#2 texted back a screenshot of CM#1's location at the Restaurant. CM#1 stated she was drunk. CM#1 wrote, "My client is a bougie drinker." CM#2 asked if CM#1 was safe. CM#1 responded confirming the first name of her "client" was NE#1. CM#1 stated again that she was "drunk." About one minute later, CM#2 wrote, "I can come get you later don't drive." CM#2 then texted CM#1 at about 11:17pm, 12:10am, and 12:12pm without any text response from CM#1 until about 12:47pm on February 10, 2021.

Investigator #1 also reviewed text messages between CM#2 and CM#3 as well as a photograph CM#2 took of the Vehicle at the tow yard.

#### **k. 9-1-1 Calls**

Investigator #1 located three unique computer aided dispatch (CAD) call reports related to this incident. Investigator #1 located five call reports in total, but one was a duplicate and another was an earlier collision call that Investigator #1 was able to determine was unrelated.

Call #1 was related to multiple 9-1-1 called on February 9, 2021 at about 8:55pm. Witnesses reported that a black sedan, possibly a BMW, struck a parked car, which then collided with another parked car. The black sedan then left the scene. One witness told the 9-1-1 dispatcher that the driver and passenger had swapped seats before leaving the area.

Call #2 was from February 10, 2021 at about 2:37am. An officer located a black BMW sedan near the intersection of Broadway East and East Denny way, about two blocks from the scene of the collision in Call #1. The BWV was registered to CM#3. The Vehicle was parked illegally in a bus lane.

Call #3 was CM#1's 9-1-1 call on February 12, 2021. The details of this call were documented in the Blue Team report.

### **I. NE#1 Computer Access Videos**

Investigator #1 pulled the log of NE#1's SPD computer access. On February 12, 2021, at 12:27am, NE#1 used his SPD computer to run the license plate for the Vehicle. Three minutes later, NE#1 ran CM#3's name and date of birth in his SPD computer.

### **m. Videos**

Investigator #1 recovered a video from a light rail station near the intersection of Broadway East and East Denny Way. A King County Sherriff's Deputy reviewed the video and informed Investigator #1 that the video depicted a black car pulled up around 9:01pm, then a male exited the driver side and a female exited the passenger side. The Deputy said the two then walked away. Investigator #1 reviewed the video and confirmed the female appeared to be CM#1 and she appeared unsteady on her feet.

Investigator #1 reviewed the video and photographs received from one of the 9-1-1 callers. One of the photographs showed the passenger-side door was open. The video showed the black sedan stopped at an intersection with the driver side door open. The door then closed and the vehicle drove away.

Investigator #1 reviewed Hotel security video. It showed NE#1 and CM#1 arrive. CM#1 appeared unsteady. NE#1 and CM#1 then stood very close with their arms around one another. A video in the lobby showed CM#1 and NE#1 walk inside. CM#1 appeared unsteady on her feet and she fell to the ground. NE#1 assisted CM#1 to her feet and assisted CM#1 with walking. CM#1 swayed back and forth. Investigator #1 noted that, "[a]t times, it appeared [NE#1] was holding [CM#1] so she would not fall." Investigator #1 also wrote that there were times on the video when CM#1's head was laying on NE#1, with CM#1's arm hanging straight down and "limp." Investigator #1 opined that CM#1 could be "passed out."

### **n. Restaurant Bill**

The Restaurant owner provided NE#1 and CM#1's bill from February 9, 2021.

4 Casa Amigos Blanco	\$42.00
Make Margarita	
4 Casa Amigos Blanco	\$30.00
1 Tamarindo Margarita	\$11.00
1 Street Tacos	\$16.00
Shimp	
1 Quesadillas Fritas	\$15.00
ADD Meat\$	
Xtra asada	
1 Guacamole	\$8.00
1 Side Fish Taco	\$6.00
4 Don Julio 1942	\$82.00
Make Margarita	
4 Don Julio 1942	\$70.00
Subtotal	\$280.00
Tax	\$28.31
Total	\$308.31

NE#1's and CM#1's bill from the Restaurant

### 3. KCPAO Declination Memorandum

KCPAO declined to prosecute the felony charges in this case. KCPAO stated the “case is being returned because it is legally insufficient,” and noted the case was also returned for review in municipal court.

KCPAO considered the case for sexual assault charges, specifically Rape in the Second Degree. KCPAO noted this occurs when the victim is, “incapable of consent due to physical helplessness or mental incapacity.” But KCPAO noted that, at the time of the intercourse, the State would need to prove that the suspect knew, or should have known, that the victim was not capable of consent. KCPAO analyzed the law noting that “alcohol-induced amnesia” or “black out” “does not make that person per se incapable of consenting to sexual intercourse.” KCPAO reasoned this was because a person could “outwardly manifest normal cognitive behavior” even while blacked out.

KCPAO analyzed the evidence, noting that CM#1 stated she had no recollection after starting to drink her third drink at the Restaurant until the next morning, except for a vague memory of switching rooms. A SAK completed three days later detected semen in CM#1's underpants and a “low level of male DNA was obtained.” No male DNA was detected on genital swabs. KCPAO noted that NE#1 and CM#1 had, between them, seventeen shots of alcohol at the Restaurant. The two exited the restaurant around 9:00pm, were in a vehicle accident, then went to the Hotel. Video at the Hotel showed both CM#1 and NE#1 were moving as if they were intoxicated, although CM#1 “did appear more intoxicated than [NE#1] as she relied on his body for balance and support on numerous occasions.” The pair checked into the Hotel around 9:20pm, and the

next known event was around 3:30am, when the room switch occurred. NE#1 stated the two had sex after this, and that CM#1 was verbally and physically responsive to the sexual intercourse.

KCPAO concluded that the State would not be able to establish that CM#1 was incapable of consent at the time of the sexual activity beyond a reasonable doubt. Noting that there was evidence CM#1 was intoxicated when she entered the hotel lobby, there was no evidence as to CM#1's level of intoxication when the sexual activity occurred as "the exact time is not known."

#### **4. Municipal Court Case**

NE#1 was charged with DUI in Seattle Municipal Court by the City Attorney's Office. NE#1's case is currently deferred for five years during the term of a Deferred Prosecution. OPA reviewed the petition for deferred prosecution and Court order granting the petition.

In his petition, NE#1 acknowledged that the conduct charged was the result of or caused by "substance use disorders," and noted he understood "the court will not accept a petition for deferred prosecution from a person who sincerely believe that they are innocent of the crimes(s) charged." NE#1 agreed that the facts reported in the police reports were admissible and were sufficient to support conviction.

In the Court order granting the petition, the court found that NE#1 stipulated the police reports would be admissible and would be sufficient to support conviction. The court placed NE#1 on a period of active probation with the Seattle Municipal Court Probation Department.

#### **5. OPA Interview – NE#1**

OPA interviewed NE#1 on November 8, 2023. The interview was compelled under the authority of the Chief of Police and under penalty of discipline. NE#1's compelled statement was entitled to *Garrity* immunity. NE#1 voluntarily waived his right to a Guild representative and agreed to proceed without representation.

NE#1 stated he did not have "much" independent recollection of the events of February 9, 2021, because he "was so intoxicated." NE#1 stated he "got into a car with a drunk individual. She crashed it." NE#1 stated he then moved the car. NE#1 admitted the "drunk individual" was CM#1, but denied knowing her last name despite being friends with her for "a couple years."

NE#1 stated he and CM#1 went to a restaurant in a neighborhood NE#1 uncertainly guessed was, "Capitol Hill, I guess." NE#1 recalled buying "Don Julio margaritas," estimating he had "six to eight." NE#1 could not recall whether that was him individually or between the two of them. NE#1 guessed they each had three to five margaritas. NE#1 guessed they arrived between "6:00 and 8:00." NE#1 estimated they stayed "an hour or two." NE#1 described his relationship as "just friends."

NE#1 said he was "extremely intoxicated" after drinking at the Restaurant. NE#1 stated he was not drinking much at the time and that he was taking "workout stuff that intensifies alcohol." NE#1 stated the "workout stuff" was creatine. NE#1 described CM#1 as "having the time of her life,



positive, jolly.” NE#1 stated CM#1 was “walking on her own, moving around on her own, cracking jokes and talking on her own.” NE#1 estimated he and CM#1 were “on the same level” of intoxication.

NE#1 stated, after leaving the restaurant:

[CM#1] walked – she drove the vehicle – got in the car and she moved the vehicle on her own. She – she did not appear to me to be – if only I’m giving you what I remember – intoxicated (inaudible) I guess she – I felt, you know, that it was okay for her to drive, but once again, it probably wasn’t the best decision for me to make at that time because I was not sober. So I got in the car with her I guess because I felt that she could drive at the time from what I would believe was okay, but my diagnosis of her obviously wasn’t smart at the time.

NE#1 said he was in the passenger seat for the collision. NE#1 recalled, after the collision, he checked to see if anyone was in the vehicle that CM#1 struck. NE#1 said he did not recall seeing anyone in the area of the vehicle. NE#1 said he told CM#1 to move over and then he moved the car. NE#1 described CM#1 as being “jolly” after the collision. NE#1 said he felt “a little bit of fear at the time.” NE#1 explained this as knowing that he was close to the East Precinct at the time and thinking, “Man, I’m in – I’m near my coworkers.” When asked if CM#1 was injured, NE#1 responded CM#1 was “in this unfazed, jolly state the whole time.” NE#1 stated he felt sore the next day.

NE#1 said he could not remember why he drove away from the accident scene, stating, “I’ve been thinking about that same question you just asked for three years. I don’t know.” When asked to recall his decision-making or communication to switch seats with CM#1, NE#1 stated he could not remember, claiming, “Fear is the only thing I can tell you. I can’t remember any communication. I just tell you I remember being scared. That’s all I remember is fear.” NE#1 was questioned whether, as a law enforcement officer, fear made him respond in ethical or unethical ways. NE#1 stated his ethics are “very straight,” but he was “completely off that evening” due to the alcohol.

NE#1 was asked why he did not call 9-1-1. NE#1 responded, “that’s a great question. This is what – exactly what should have been done, but I just can’t answer you truthfully after \$300 worth of alcohol.” NE#1 also speculated that CM#1 may have been taking narcotics as he has seen her smoke marijuana before and the Vehicle smells like marijuana “all the time.” NE#1 guessed the Vehicle smelled like “fresh” marijuana.

NE#1 said, after the collision, he drove the Vehicle a “block or two.” NE#1 said he stopped, for reasons he could not recall, and got an Uber to go to the Hotel. When asked why he thought to call an Uber but not 9-1-1, NE#1 responded, “fear...[of] making contact with coworkers.” NE#1 also stated his recollections were, “just probably ... telling you is what I believe was my thinking at the time.”

NE#1 said he could not recall the decision to go to the Hotel. NE#1 stated, “I’m pretty sure I probably got scared to go home or scared to take her to my house. That would have been a

terrible idea. I'm just giving you what I believe would not have been smart for me to do." NE#1 clarified it would have been a "terrible idea" to go home because he had a girlfriend at home. NE#1 also stated CM#1 had a boyfriend at the time of the incident. NE#1 stated it probably only took about ten to fifteen minutes to get to the Hotel. NE#1 described CM#1 as being "jolly" in the Uber, and that the two of them were "having a great time." When asked what that meant, NE#1 stated, "I remember just kind of still being in (inaudible) still thinking, you know, something was telling me something wasn't right about what I was doing, but I just kept moving." NE#1 said CM#1 was treating him like he was her "boyfriend" and she was "in a great mood." NE#1 stated he did not remember anything about arriving at the Hotel. NE#1 said he just remembered being in the Hotel and getting the room. NE#1 said, from what he remembered, he paid for the Hotel room. NE#1 said he could not remember asking for a specific type of room. NE#1 said, in the Hotel room, CM#1 went to sleep fully clothed in the bed, and he went to sleep on the love seat. NE#1 said they were asleep for about four or five hours. NE#1 said he then woke up, touched the bed. NE#1 said he woke CM#1 up to tell her she peed in the bed. NE#1 said CM#1 "started that jolly stuff again and got up." NE#1 said he told CM#1 that he wanted to get some sleep in the bed, but it was wet. NE#1 said he went to get another room. NE#1 said CM#1 peed in her clothes, then took a shower, and put on a towel.

NE#1 said he could not recall whether he called or went downstairs to request a new room. NE#1 said CM#1 "might have" carried her wet clothes to the new room. NE#1 said he took a shower as soon as they got to the new room, and he was "feeling a little bit better now." NE#1 said CM#1 was "not out of it or anything." When asked to clarify, NE#1 said CM#1 was "just laying down with the towel over her." NE#1 said he laid down next to CM#1. NE#1 stated he may have only been wearing his boxers. NE#1 could not clarify that decision, despite having just said that he was feeling better at this point in time.

NE#1 said he was attracted to CM#1, who he described as "beautiful." NE#1 said he thought CM#1 was attracted to him, which she communicated to him "through feel that night." When asked to clarify, NE#1 said CM#1 was "arm grabbing and stuff."

NE#1 said, as he laid next to CM#1, he "might have passed out for a couple hours." NE#1 stated the next morning, he still could not "remember much at all," but stated CM#1 was "being responsive verbally and physically to me being behind her." NE#1 said he was laying behind CM#1. NE#1 said CM#1 was "active" and "wasn't out cold or anything like that. She – she was responsive." When asked for specifics of CM#1's responsiveness, NE#1 recalled CM#1 saying, "right there," while they were having sex, and that CM#1 was moving around. NE#1 described CM#1's movements as "sexual movements," which he specified was "touching, feeling ... private parts." NE#1 stated, at this point, CM#1, "was asking questions. She wasn't – she was no longer in that jolly mood that she was in hours before." NE#1 said he could not recall CM#1 saying anything else besides "right there." NE#1 also said CM#1 was "changing positions on her own." NE#1 stated CM#1 described different sexual positions he said CM#1 changed into, "on her own." NE#1 said he was, "just following along."

NE#1 said he and CM#1 woke up the next day fully naked. NE#1 said CM#1 did not “panic.” NE#1 said CM#1 just asked what hotel they were at. NE#1 said he was panicking about moving the car. NE#1 said CM#1 was helping him relax, invited him to her residence to take a nap and “figure this out.” NE#1 said they stayed in the Hotel room for about thirty to forty-five minutes as they tried to figure out what happened. NE#1 said CM#1 woke up naked and put her clothes—which the night before were wet with urine—back on the next morning. NE#1 said he could not remember CM#1’s clothes smelling like urine or whether they were wet or dry. NE#1 said he and CM#1 did not discuss having sex the next day, even though he said they were sitting next to each other naked for about forty minutes.

NE#1 stated he told CM#1 she crashed the Vehicle and should report it. NE#1 denied pressuring CM#1 in any way. NE#1 said he did not report the collision out of “fear.” When asked what he feared, NE#1 responded, “the current situation I’m in.” When asked what the difference would be for him whether she reported it or whether he reported it, NE#1 said he “knew” he was “going to have to report it.” NE#1 elaborated, “I just knew that it was too late for what I’ve done. I knew in my mind that she was at fault for that collision, but that I also was at fault for moving that vehicle. And I knew that I would have to come face to face with my precinct captain. I knew it. I just knew it. I knew it. That’s what I was so scared of at the time.” NE#1 said he did not call to report the incident at that point out of, “shame.” NE#1 said he, “assumed that it was too late.” NE#1 said the only thing he recalled in terms of the discussion to report the collision was that CM#1 would report that, “she crashed the vehicle.” NE#1 was asked, “did you ask her to leave you out of the reporting of the collision?” NE#1 responded, “I think I might have told her, ‘Don’t mention – don’t mention me being in it.’” NE#1 said he had “no idea why” he would say this, despite admitting he was not intoxicated at that point in time. NE#1 said he was in “panic mode.” NE#1 stated everyone he talked to told him to report himself. NE#1 described himself, stating, “I consider myself the most clear-cut person at all time, most ethical decision maker in every group.” Still, when asked why he did not report himself, NE#1 responded, “fear, stupidity.”

NE#1 said, after leaving the Hotel, he and CM#1 picked up his car and she drove to breakfast. NE#1 said he was, “feeling like crap,” so he laid back in the passenger seat. NE#1 said, after breakfast, they went back to CM#1’s residence and he took a nap. When prompted, NE#1 also recalled going to the impound lot, but could not remember what the sequence of events was.

NE#1 recalled going home the next morning. NE#1 said he did not speak to his girlfriend about being out the night before. NE#1 said he spoke to her about it after he was put on administrative leave.

NE#1 stated that he ran CM#3’s Vehicle and CM#3’s information in his computer to find out if there was a report filed. NE#1 stated he wanted this information before filing a report on his involvement. NE#1 stated he could take the report and then identify himself as “the person involved.” NE#1 was asked why he would need a report to do that. NE#1 responded, “I don’t know what I was thinking.” NE#1 acknowledges he knew it was an ACCESS violation to run CM#3’s information without legal purpose.

## **Analysis and Conclusions:**

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

#### **5.001 Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication**

It was alleged that NE#1 pressured CM#1 to lie to the police concerning his involvement in the collision and hit-and-run.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. Under the SPOG CBA, Article 3.1, there is an “elevated standard of review” for termination cases “where the alleged offense is stigmatizing to a law enforcement officer.” This elevated standard is specified as, “more than preponderance of the evidence.” *Id.* Dishonesty “relating to the administration of justice,” is presumptively a termination case. *See id.* Dishonestly is defined as, “intentionally providing false information, which the officer knows to be false, or intentionally providing incomplete responses to specific questions, regarding facts that are material to the investigation.” *Id.* Dishonesty must be, “more than mere inaccuracy or faulty memory.”

Here, NE#1 pressured CM#1—both directly and through CM#3—to leave him “out” of her report to the police regarding the collision and hit-and-run. This was materially dishonest, plainly involved the administration of justice in connection with a hit-and-run investigation, and NE#1 was aware of the dishonesty. No honest report of the collision—to include how the Vehicle came to be illegally parked several blocks away—could be made without including NE#1. Moreover, CM#1 could not file any honest report of the collision because all her information came from NE#1 because she had no independent recollection of the event due to her intoxication.

During his OPA interview, NE#1 was vague, evasive, and repeatedly failed to volunteer relevant information until pressed to do so. This was particularly apparent concerning this issue. NE#1 repeatedly stated he did not pressure CM#1 and only told her to report the collision. However, when pressed, NE#1 admitted, “I think I might have told her, ‘Don’t mention – don’t mention me being in it.’”

As discussed below, NE#1 had higher obligations, under both law and policy, to affirmatively report his own involvement in this crime. But at a basic level, NE#1 was obligated not to encourage another person—who was relying on him as her source of information about what occurred while she was blacked out—to file a false police report. OPA is particularly troubled that NE#1 was encouraging CM#1 to accept legal responsibility for a misdemeanor hit-and-run because he was scared to suffer the professional ramifications for his own actions.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

It was alleged that NE#1 committed, among other crimes, DUI, rendering criminal assistance in the third degree, and rape in the second degree.

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

It is beyond dispute that NE#1 committed DUI. See Seattle Municipal Code 11.56.020. NE#1 repeatedly referenced how intoxicated he was after leaving the Restaurant and, at the very least, drove the Vehicle for at least two blocks after the collision. Under the terms of his deferred prosecution agreement, NE#1 has acknowledged his guilt for this crime. CM#1 and others suggested during this investigation that NE#1 may have been driving the Vehicle prior to the collision as well. CM#1 raised several points of circumstantial evidence suggesting as much, most importantly her recollection that NE#1 complained of injury to his wrists the day after the collision. While this is plausible, CM#1 has no actual memory of NE#1 driving, NE#1 has consistently denied being the driver prior to the collision, and at least one of the collision witnesses believed he saw the driver and passenger switching seats—which would at least partially corroborate NE#1’s account. Ultimately, OPA cannot conclude that NE#1 also drove prior to the collision. Ultimately, this is not material to OPA’s actual finding as it is beyond dispute that NE#1 drove while intoxicated *after* the collision. This allegation could be sustained for this reason alone.

OPA also finds by more than a preponderance of the evidence that NE#1 committed rendering criminal assistance in the third degree. See RCW 9A.76.090. For definition of “rendering criminal assistance,” see RCW 9A.76.050. Here, accepting NE#1’s version of events as true, CM#1 committed a DUI, which necessarily would have been discovered had CM#1 or NE#1 called the police after the collision. Instead of summoning the police, NE#1 transported CM#1 and the Vehicle away from the scene of the collision to avoid discovery or apprehension. It is also possible NE#1 had an obligation under RCW 46.52.040 to report the collision if CM#1 was “physically incapable of making the required accident report,” required by RCW 46.52.010. NE#1 told Investigator #1 and others that he saw CM#1’s head “go back,” prior to the collision. It is possible CM#1 was passed out at this juncture and, through her intoxication, physically incapable of making the required accident report. If NE#1 was required to make this report and, instead, drove away, he potentially could have committed an unattended hit-and-run. Ultimately, it is inconclusive whether CM#1 was physically incapable of making the report at that time. This portion of this allegation is sustained.

Ultimately, for reasons similar to those articulated by the KCPAO, OPA cannot conclude by more than a preponderance of the evidence that NE#1 committed rape in the second degree. OPA recognizes that its burden of proof is significantly lower than what KCPAO would need to prove the offense at a criminal trial. However, even evaluating the issue at a preponderance standard, there is no way to determine the time of the alleged rape or, relatedly, circumstantial evidence to

sufficiently evaluate the credibility of NE#1's claims that CM#1 verbally and physically expressed consent. CM#1 denies having any recollection of the alleged rape or, for that matter, any events between being in the Restaurant and waking up in the Hotel the next morning. NE#1 admitted—and DNA and other evidence corroborated—that NE#1 and CM#1 had sexual intercourse at some point between about 9:30pm on February 9, 2021, and about 7:30am on February 10, 2021. This portion of this allegation is inconclusive.

Accordingly, OPA recommends the allegations for DUI and rendering criminal assistance in the third degree be Sustained. On December 13, 2023, a Discipline Meeting was held with NE#1's chain of command. OPA agreed to specify the allegations that were sustained.

Recommended Finding: **Sustained**

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

#### **12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes**

It was alleged that NE#1 used ACCESS for an illegitimate purpose.

SPD Policy 12.050-POL-2 states that: "Inquiries through ACCESS, or any other criminal justice record system, are only to be made for legitimate law enforcement purposes."

NE#1 admitted that he used ACCESS to run CM#3's Vehicle, name, date of birth for no legitimate purpose. In addition, he used ACCESS to see if a police report had been filed. This was corroborated by NE#1's ACCESS records.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

It was alleged NE#1 failed to report his misconduct when required to do so.

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. SPD Policy 5.002-POL-6.

At the very least, NE#1 knew that he committed DUI and drove the Vehicle away from the scene of a collision. Both actions were crimes and constituted serious misconduct. See SPD Policy 5.002-POL-5 (defining serious policy violations to include "potential criminal violations of law").

NE#1 had an obligation to report this behavior to either a supervisor or OPA. Instead, NE#1 worked a full shift on February 11, 2021, while continuing to communicate with CM#1, and running CM#3's information to determine whether anyone else had filed a report concerning the collision and hit-and-run. Even when he received an order to report to his Captain, NE#1 did not self-report, instead he communicated concern to friends, telling one that it was possible he was just being called in to receive notice of a requested transfer.

OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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

### **5.001 - Standards and Duties 10. Employees Will Strive to be Professional**

It was alleged that NE#1 was unprofessional and engaged in behavior that would undermine public trust.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. SPD Policy 5.001-POL-10. The facts underlying all of the above findings—dishonesty, law violation, misuse of police computer systems, and failing to report serious misconduct—would each, independently constitute unprofessionalism and tend to undermine public trust in NE#1 and the Department. For this reason alone, OPA could Sustain this allegation.

Separately, NE#1's entire course of conduct in relation to this case—from February 9, 2021, through his OPA interview—has been unprofessional.

In plain terms, NE#1 went out for dinner and drinks with a friend—under the pretense of a business meeting—and proceeded to drink in public to the point of severe intoxication. NE#1 and CM#1 drank seventeen shots of tequila between the two of them over the course of about two-and-a-half hours. NE#1 and CM#1 left the Restaurant, and NE#1 decided to be a willing passenger of CM#1, despite knowing that CM#1 was intoxicated. The two were then involved in an alcohol-affected collision significant enough to cause multiple 9-1-1 calls from uninvolved onlookers. NE#1 got in the driver's seat and drove off. NE#1 then had sex with CM#1 when there was evidence to suggest her capacity to consent was then, or had very recently been, legally questionable. NE#1 attempted to have CM#1 report the collision but leave him "out" of it. NE#1 ignored the consistent advice he received from family and friends to report his misconduct, instead attempting to wait it out and determine whether a report was made—leading OPA to conclude NE#1 was attempting to evaluate the reported information to determine how best to minimize his own professional exposure.

NE#1 has shown a similar lack of transparency about his misconduct with concerned individuals in his personal life, appearing to provide only controlled snippets of information. OPA also found

NE#1's responses in his interviews with both Investigator #1 and OPA to be vague, closed off, and—at times—nonsensical in his lack of candor. Particularly in his OPA interview, with *Garritty* immunity from any criminal repercussions, NE#1 continued to state he could not remember the answers to questions that, on further questioning, he actually remembered significant information (e.g. telling CM#1 not to mention him in her report; the sequence of events around the time of switching hotel rooms) or notably specific information (e.g. the amount of the bill at the Restaurant; what drink he ordered; CM#1 falling asleep on the bed, while NE#1 took the couch).

OPA is also troubled by the fact that NE#1 appeared, at almost every stage of this incident and investigation, to minimize his responsibility and allow others to take the fall. NE#1 allowed CM#1 to drive, despite knowing she was drunk, because it would not be his career on the line. After the two got in a collision—in a borrowed vehicle—NE#1 fled rather than suffer the embarrassment of his coworkers learning he was the passenger in a vehicle involved in a drunken collision. NE#1 also painted a picture of the evening where CM#1 was acting “jolly” and, in his characterization, leading the course of events from the Restaurant, to collision, to Hotel, to bedroom, to sexual intercourse, to breakfast, and to her apartment. Not only did objective video evidence significantly call NE#1's characterization into question, NE#1 avoided recognizing his own agency in this situation. Finally, NE#1 encouraged CM#1 to file an incomplete report with the police, leaving her alone to explain the hit-and-run aspect of the collision.

The most notable exception to NE#1's overall failure to accept accountability was his willingness to enter a deferred prosecution agreement in his DUI case. OPA also commends NE#1's willingness to accept the role of alcohol in his misconduct and engage with programs addressing this issue.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**