



## ***CLOSED CASE SUMMARY***

ISSUED DATE: SEPTEMBER 7, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0140

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

Named Employee #1

| Allegation(s): |   | Director's Findings               |
|----------------|---|-----------------------------------|
| # 1            | 15.180 – Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report                       | Not Sustained (Training Referral) |
| # 2            | 15.140 – Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions            | Not Sustained (Lawful and Proper) |
| # 3            | 15.140 – Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations | 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 failed to properly investigate a collision and inappropriately cited him. The Complainant further contended that the Named Employee's report was inaccurate.

### **SUMMARY OF INVESTIGATION:**

The Complainant was involved in a reported collision with another motorist. A third party called 911 because she did not see any impact and the other motorist was allegedly claiming that extensive damage had been caused to her car. The third party believed it possible that the other motorist was trying to scam the Complainant, who she characterized as "elderly." The other motorist also called 911. She reported a "hit and a scrape." She said that, while the scrape was minor, the Complainant was denying that he caused any damage to her vehicle and that he wanted the police to respond. Named Employee #1 (NE#1), an experienced traffic officer, was dispatched to the scene.

Upon arrival, NE#1 conducted an investigation into the incident. She spoke with the other motorist who showed NE#1 paint transfer on her bumper. NE#1 ran her finger on the paint and deemed it to be a new transfer. She then looked at the Complainant's front license plate and identified a scratch that ran along the bottom. She matched the white and blue paint from the license plate to the other motorist's vehicle. She spoke to the 911 caller who told her that she heard the Complainant's brakes and the cars skidding. She said that she "looked" but that there was "no kaboom." She then thought to herself that it was a close call. She was surprised that the other motorist was getting out of her vehicle when there was no impact. NE#1 told her that sometimes collisions occurred without an audible impact, especially when parts did not come off of the vehicle. NE#1 asked both parties for their licenses, registrations, and insurance information. The other motorist's insurance was expired, and NE#1 said that she would receive a citation



for that but could later contest it if she renewed her insurance. She then spoke to the Complainant who confirmed that he came to a stop sign and did not see the other motorist coming. He said that she was not coming fast.

NE#1 spoke to another officer and said that she believed there was impact and scuffing from the license plate. She gave the other motorist the citation for failing to have insurance. She then spoke with the Complainant and gave him a citation. She explained that it was because he had the responsibility to stop at the stop sign. She informed him that he could contest the citation in court and informed him what boxes to check. She asked if he had any questions regarding the citation and he said no.

NE#1 subsequently completed a Traffic Collision Report (TCR). In her report, she wrote that the 911 caller witnessed the incident from around 100 feet away, heard skidding, and then looked over but did not hear any impact. NE#1 documented that the 911 caller "didn't think the vehicles made contact." She documented that the other motorist said that she could not stop fast enough and was struck by the Complainant. NE#1 noted the paint transfer on the other motorist's vehicle and her belief that it matched the Complainant's license plate. She wrote that the Complainant "stated he did not see [the other motorist] approaching from the south." She further documented that the Complainant "stated he tried to stop but could not stop in time before making contact with" the other motorist.

NE#1's response to this incident was recorded on Body Worn Video (BWV); however, she failed to notify any of the involved parties that they were being audio or video recorded (that failure was sent back to the chain of command to be handled as a Supervisor Action).

The Complainant later filed a complaint with OPA. He alleged that NE#1's report contained false and inaccurate information and that she did not include information that was exculpatory to him, which resulted in him being found guilty when he tried to contest the citation.

As part of its investigation, OPA interviewed the Complainant. He reiterated his belief that NE#1 failed to properly investigate this matter and that her report was inaccurate. With regard to the inaccuracies in her report, the Complainant cited to the following:

- (1) NE#1's statement that "Driver 1 stated he tried to stop but could not stop in time before making contact with vehicle 2" was false as he never said this;
- (2) NE#1 failed to include exculpatory evidence in the report concerning the belief of both the Complainant and the 911 caller that the other motorist was attempting to scam the Complainant by falsely accusing him of hitting her car and causing damage his vehicle did not cause;
- (3) NE#1 failed to indicate that both he and the 911 caller denied that an accident occurred and that the 911 caller asserted that she viewed the incident and could confirm that this was the case; and
- (4) NE#1 incorrectly wrote that the Complainant caused a large dent to the other motorist's vehicle due to the impact of his Good to Go pass.

The Complainant also contended that NE#1 never told him that he was going to be cited, did not explain the citation to him, and told him to check one of two boxes on the citation, both of which indicated his acceptance of guilt.



The Complainant participated in a second OPA interview during which he was permitted to watch the BWV. The BWV did not show that NE#1 failed to explain the citation or required the Complainant to only sign the citation in a manner that would indicate his guilt. The Complainant, thus, moved away from those allegations. However, the Complainant continued to assert that NE#1's actions were not supported by the facts and that her report was inaccurate.

OPA also interviewed the 911 caller. She said that she was at the corner when she heard brakes squeal. She looked up and saw two vehicles stop suddenly. She said that she did not see them collide. She saw the other motorist get out of her car and inspect it. The other motorist accused the Complainant of causing a large dent to her vehicle and "significant damage." The Complainant denied doing so. The 911 caller photographed both vehicles and called 911 on the Complainant's behalf. She believed that she told the operator that she thought the other motorist was trying to scam the Complainant.

The 911 caller clarified that she could see both vehicles during the incident and that she knew that they did not collide because there was space between the vehicles. She further said that she would have heard the collision had it occurred. She stated that her opinion concerning the lack of a collision was much more definitive than what NE#1 wrote in the report. In this respect, she believed the report to be "false." However, she recognized that she did not provide this more detailed information to NE#1 because NE#1 did not ask her about it.

Lastly, OPA interviewed NE#1. OPA questioned NE#1 about the purported inaccuracies in her report. NE#1 said that she saw no evidence during her investigation that the other motorist was trying to "scam" the Complainant. She stated that she based her assessment and report on the evidence that was before her at the time. NE#1 claimed that her report accurately conveyed what was communicated by the 911 caller and she expressed her belief that the 911 caller would not have been able to conclusively see the collision from her vantage point. With regard to NE#1's memorializing what the Complainant told her concerning the accident, she stated that she paraphrased what he said. Ultimately, NE#1 asserted that her report was complete and that she had a lawful basis to cite the Complainant.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 – Allegation #1**

##### ***15.180 – Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report***

SPD Policy 15.180-POL-5 requires officers to document all primary investigations on a report. Those reports must be thorough, complete, and accurate.

In assessing NE#1's report, OPA does not disagree with her assessment of the facts and her decision to cite both drivers. The report was largely supported by the evidence and a number of the purported inaccuracies identified by the Complainant and the 911 caller were not found within. For example, NE#1 did not note in the report that the Complainant caused a large dent to the other motorist's vehicle from the Good to Go pass. Moreover, OPA finds that NE#1's portrayal of the 911 caller's recounting of the incident was largely consistent with the BWV. OPA does not interpret the 911 caller's statement on the BWV to be as definitive as what she later said at her interview.

The above being said, there were two respects in which the report was inaccurate and incomplete. First, OPA finds that the report did not completely accurately capture the Complainant's statement. While the report properly noted his claim that he could not see the vehicle, the Complainant did not tell NE#1 that he tried to stop but could not do so prior to striking the other motorist. While it was reasonable for NE#1 to paraphrase the Complainant, she should have



done so in a manner that was more closely aligned with what he said. Moreover, while it likely would not have changed her conclusion, it was a fairly significant element of the incident that should have been more accurately depicted in the report. Second, OPA believes that NE#1 should have included the information in the 911 and CAD calls about the belief that the other motorist was trying to “scam” the Complainant. While OPA agrees that it was not necessarily relevant given her investigation of the scene, it would have made her report more complete.

Ultimately, OPA believes that this is an outlier for NE#1. OPA has never had a case with her previously where she completed an incomplete and/or inaccurate report. This is significant given the pure volume of work completed by NE#1 each year. Moreover, the information that was lacking in the report would not ultimately have altered NE#1’s final conclusion and did not undercut the validity of her citations. This convinces OPA that retraining and counseling are the appropriate remedy and, as such, OPA recommends that this allegation be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1’s chain of command should review her report with her and discuss the issues identified by OPA. NE#1 should be reminded to do her best to complete more accurate and complete reports in the future, including reviewing BWV prior to doing so to assist her. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 – Allegation #2**

***15.140 – Collision Investigations 2. Officers Take Collision Reports for All Mandatory Reportable Collisions***

NE#1 properly completed a TCR for this incident and, as such, acted in compliance with this policy. The inaccuracy and incompleteness of the TCR is discussed above in the context of Allegation #1.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 – Allegation #3**

***15.140 – Collision Investigations 4. Officers Take Enforcement Action in Reportable Non-Felony Collision Investigations***

SPD policy 15.140-POL-4 requires officers to take enforcement action in reportable non-felony collision investigations. This includes issuing a citation to the at fault party when there is probable cause to do so.

Here, NE#1 determined that the Complainant was at fault. In reaching this determination, she considered that the Complainant, not the other motorist, was subject to the stop sign. She further observed that, in her opinion and in the opinion of the other officer, paint had transferred from the Complainant’s license plate to the other motorist’s bumper. While the 911 caller told her that she did not hear an impact or even see the cars collide, NE#1 believed that the 911 caller could not conclusively make that determination given her vantage point. Moreover, NE#1 determined that this did not outweigh the physical evidence of a collision.



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In assessing this same evidence – including watching the BWV, OPA believes that NE#1’s decision to issue the citation to the Complainant (as well as to the other motorist) was lawful and supported by the evidence. In reaching this decision, OPA notes that probable cause is not a particularly high legal standard and believes that the facts and information available to NE#1 were sufficient to meet her burden of proof. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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