



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 17, 2025

FROM: INTERIM DIRECTOR BONNIE GLENN  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0347

### Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)	Not Sustained - Unfounded

*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:

On February 8, 2021, Named Employee #1 (NE#1) provided information to Witness Officer #1 (WO#1), who applied for a warrant to search Community Member #1's (CM#1) car. Specifically, NE#1 told WO#1 that he saw a clear plastic bag in the driver's side door pocket, which he suspected contained cocaine. Following a hearing, a King County Superior Court judge (Judge #1) found that NE#1's observation about the bag constituted a "reckless disregard for the truth." It was alleged that NE#1 was dishonest about his observations of the clear plastic bag.

### ADMINISTRATIVE NOTE:

On January 10, 2025, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### SUMMARY OF INVESTIGATION:

#### **A. OPA Complaint**

On July 26, 2024, the Pierce County Prosecuting Attorney's Office informed OPA that NE#1 had been added to its potential impeachment list. Additionally, that office provided OPA with a court ruling that served as the rationale for NE#1's inclusion on that list.

OPA investigated the complaint by reviewing the computer-aided dispatch (CAD) call report, police reports, in-car video (ICV), photographs, search warrant documentation, and court documents. OPA also interviewed NE#1 and the chief deputy of the King County Prosecuting Attorney's Office (KCPAO).

#### **B. Police Reports and In-Car Video (ICV)**

##### Named Employee #1's and Witness Officer #1's Police Reports

NE#1 and WO#1 prepared police reports, documenting the following:



WO#1 had known CM#1 for about 21 years and recognized him as a gang member with an extensive criminal record, including multiple narcotics and firearms convictions. CM#1 was awaiting trial on four felony investigations. On February 8, 2021, SPD Gang Unit detectives established probable cause to arrest CM#1 for unlawfully possessing a firearm, stemming from CM#1's alleged involvement in a shootout and his status as a convicted felon. SPD detectives, along with deputy marshals, organized and executed an arrest operation.

Officers observed CM#1 leaving the apartment of CM#1's girlfriend (Girlfriend #1) and approaching his car. CM#1 then "opened the driver's door to the vehicle and appeared to be doing something in relation to the driver's door pocket." After closing the door, CM#1 returned to Girlfriend #1's apartment and subsequently came out with Girlfriend #1 and two young children. Girlfriend #1 took the driver's seat of CM#1's car, CM#1 took the passenger's seat, and the children took the rear seats. Girlfriend #1 drove to another apartment to drop off the children before proceeding to her workplace. Upon arrival, CM#1 and Girlfriend #1 exited the car. CM#1 then approached the "open driver's door" as if intending to drive away. Officers converged and arrested CM#1 "standing in the open driver's door area."<sup>1</sup> WO#1 documented the following:

*After [CM#1's] arrest, [NE#1] walked up to the open driver's door and was able to look clearly into the driver's door pocket where he had observed [CM#1] making motion to earlier. [NE#1] observed a clear plastic baggy in the door pocket. The baggy was in the shape of a ball and contained a whitish substance inside. Based on his 19 plus years of law enforcement experience, [NE#1] recognized this style of packaging to be consistent with narcotics packing and believed the substance inside to possibly be crack cocaine.*

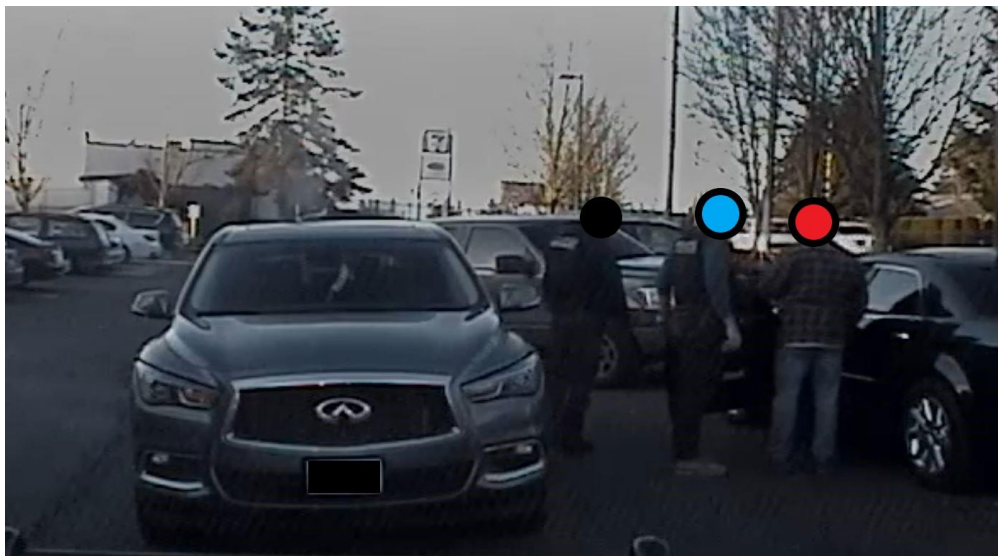
NE#1 documented his observations as follows:

*I arrested [CM#1] near the open driver's side door. In the pocket of the driver's side door I saw what appeared to be a clear plastic baggie containing a white substance. I believed, based on my training and experience, that the baggie was cocaine. A similar baggie containing cocaine had been found at the scene of the shooting [CM#1] was involved in. I have made hundreds of arrests involving cocaine in my police career. I communicated this information to [WO#1], who was at the scene and investigating [CM#1] on a different matter.*

#### In-Car Video

There were no recordings of the events described above. However, the ICV from a patrol car stationed near CM#1's car recorded the events following CM#1's arrest. It recorded CM#1 being placed in the rear of the patrol car, where he declined WO#1's request to search his car. NE#1 approached the closed driver's side door of CM#1's car, opened it, briefly leaned toward the door pocket, stood upright, and pointed at the suspected cocaine bag. WO#1 approached the door. Again, NE#1 briefly leaned toward the door pocket and then stood upright. A discussion ensued between NE#1 (blue) and WO#1 (red):

<sup>1</sup> WO#1 testified in a court hearing that he was not present when CM#1 was arrested. WO#1 said he arrived on scene several minutes after CM#1's arrest.



*CM#1's black car, with its driver's side door open, is positioned on the right*

WO#1 briefly leaned toward the door pocket and then stood upright. NE#1 closed the door. This entire interaction—from opening to closing the door—lasted about 40 seconds.

Witness Officer #1's Police Report

WO#1's police report continued:

CM#1's car was secured while awaiting a search warrant. WO#1 applied for the warrant, which was granted by a King County Superior Court judge.<sup>2</sup> During the warrant's execution, WO#1 found a firearm with bullets in the magazine, along with cocaine, in the glovebox. WO#1 also found cocaine in the ashtray.

WO#1 photographed the suspected cocaine bag while it remained undisturbed in the driver's door pocket:

<sup>2</sup> WO#1's warrant application mirrored the information presented in his police report. WO#1 signed the application on the same day as CM#1's arrest, and the judge subsequently approved it.



WO#1 subsequently described the suspected cocaine bag as follows:

*The possibl[e] narcotics spotted in the driver's door pocket turned out to be a plastic baggy wadded into a ball with a white latex glove beneath. The effect of the baggy being wadded with the glove underneath gave the appearance that it contained an amount of an unknown white material, reminisce[nt] of narcotics and their common packaging.*



After completing the search, WO#1 established probable cause to arrest and charge CM#1 for unlawfully possessing a firearm and violating the Uniform Controlled Substances Act.

### **C. CrR 3.6 Motion<sup>3</sup> and *Franks* Hearing<sup>4</sup>**

On October 20, 2021, a CrR 3.6 and *Franks* hearing was held before Judge #1, a judge different from the one who approved the search warrant.

#### Named Employee #1

NE#1 testified about his extensive experience in investigating hundreds of narcotics cases. NE#1 said his initial assessment of whether an item is a narcotic involves observing its packaging and the substance's color. NE#1 said narcotics are typically found in clear plastic bags that are crumpled around the substance and secured with a knot at the top. NE#1 said the quantity of the substance can range from small to large, and the substance's color can affect its visibility. NE#1 said many narcotics are either white or black in color. NE#1 said people often store narcotics in cupholders, gloveboxes, the sides of doors, or concealed spaces like ashtrays.

NE#1 testified that, before CM#1's arrest, CM#1 leaned toward the driver's side door and "mess[ed] around in the door." NE#1 said, after CM#1's arrest, NE#1 looked in the open door area and "could see in the driver side door pocket, there was a like a clear plastic bag with like a white substance in it or it looked like it was in it." NE#1 testified that the "reflection of the packaging" and "what's around it and behind it" created the perception of a white substance within the bag. When Judge #1 inquired about the basis for NE#1's suspicion that the "substance" was cocaine, NE#1 replied, "The packaging and the fact that I thought there was something was white in that packaging." NE#1 testified, "I don't remember seeing the rubber glove," acknowledging that visibility was "not great" due to the "early morning light."

NE#1 testified that he closed the driver's side door while awaiting a search warrant but opened it solely to demonstrate to WO#1 its position to recreate how he had observed the suspected cocaine bag, thereby aiding WO#1 in drafting the warrant. NE#1 acknowledged that he viewed the bag on two separate occasions but estimated his total viewing time to be several seconds. NE#1 said his suspicion did not dispel after his second viewing. NE#1 testified that his probable cause determination was based on his first viewing, not his second viewing. NE#1 maintained that he did not open the door to reinforce his probable cause.

#### Witness Officer #1 (WO#1)

WO#1's testimony was consistent with that of NE#1. WO#1 testified, "[NE#1] told me he saw a cellophane baggy wadded up kind of in a ball and a white substance in it that he believed could a been narcotics." WO#1 described NE#1 as "very illustrative," noting that NE#1 opened the door and explained how it was opened and what he observed. However, WO#1 testified, "But I have no recollection of looking in that door pocket." WO#1 said he did not see a white glove when he looked at the door pocket. WO#1 said he documented NE#1's observations in his warrant application. WO#1 said the white glove positioned beneath and beside the suspected cocaine bag suggested the presence of a white substance within the bag. WO#1 maintained that the information in his affidavit was neither inaccurate nor misleading based on his knowledge at that time.

<sup>3</sup> A CrR 3.6 motion is a suppression hearing in which a defendant seeks to exclude physical, oral, or identification evidence from trial. See CrR 3.6(a).

<sup>4</sup> A *Franks* hearing allows a defendant to challenge the veracity of information an officer presents in an affidavit used to secure a search warrant. See *Franks v. Delaware*, 438 U.S. 154 (1978). The defendant must show, among other things, a "false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit." *Id.*



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**D. Written Findings of Fact and Conclusions of Law on CrR 3.6 Motion to Suppress and *Franks* Hearing**

Judge #1 found, among other things, insufficient probable cause to search CM#1's car based on information about the suspected cocaine bag but ultimately upheld the warrant based on a different legal ground.

Judge #1 also found that NE#1's claim of failing to notice the white latex glove lacked credibility based on WO#1's photographs depicting the fingers of the white glove. Additionally, referencing WO#1's photographs, Judge #1 noted that the wadded plastic bag did not exhibit a whitish hue, appeared to be a clear plastic bag, and contained no powder. Judge #1 expressed skepticism about a seasoned law enforcement officer, experienced in narcotics investigations, observing the door pocket without noticing the white glove. Judge #1 concluded, "It is more than mere negligence to look directly at the source of a "whitish" color and claim not to see it. This is a reckless disregard for the truth." Judge #1 considered it illogical for a reasonable officer to observe a door pocket for a prolonged period and claim to have seen a whitish substance that was nonexistent, yet simultaneously fail to notice a clearly visible white latex glove that contributed to the whitish appearance of the wadded plastic bag.

**E. OPA Interviews**

Named Employee #1

On October 31, 2024, OPA interviewed NE#1. NE#1 said Judge #1 did not hear about CM#1's criminal history, including CM#1's alleged involvement in the shootout. During their investigation into that incident, officers found a clear plastic bag containing cocaine on the ground where CM#1 was believed to have been present, raising suspicions that CM#1 was involved in drug dealing. NE#1 said CM#1 had multiple narcotics convictions. NE#1 said he considered these facts as he observed the wadded plastic bag in the door pocket. NE#1 said he was not asked about prior investigations into CM#1 during the hearing. NE#1 said he was unaware that the *Franks* hearing was intended to challenge his credibility, mistakenly believing it to be a CrR 3.6 hearing. NE#1 said, had he been aware, he would have elaborated on other facts informing his probable cause determination, including CM#1's criminal history.

NE#1 said he received training on various drug types and packaging methods. NE#1 said he investigated and observed many drug transactions, leading to hundreds of arrests. NE#1 described seeing a bag resembling a sandwich bag that was wadded and appeared lighter and thinner than a Ziploc bag. NE#1 said the bag in the door pocket was akin to the one found at the shootout scene. NE#1 said he may have spent a minute or two viewing the door area when it was initially opened, but he did not dedicate the entire time viewing the door pocket, as he was also viewing the interior of the car. NE#1 denied seeing a white latex glove in the door pocket during both viewings. NE#1 said the glove was irrelevant and maintained that even if he had seen it, he would have still believed there was cocaine in the bag.

NE#1 said probable cause was a probability, meaning he was not expected to be correct every time. NE#1 acknowledged being mistaken in previous probable cause determinations. NE#1 said the possibility that the bag did not contain cocaine did not undermine his probable cause determination. NE#1 said he properly reported observations he believed to be true, even if they later proved to be false. NE#1 said he did not conceal his mistake.

Chief Deputy of the King County Prosecuting Attorney's Office

On December 18, 2024, OPA interviewed KCPAO's chief deputy. He expressed concerns about Judge #1's rulings, particularly in cases relying heavily on officer observations. He said when Judge #1 is assigned to cases involving a significant amount of officer observations, KCPAO files an affidavit to change the judge. He said KCPAO is comfortable





with Judge #1 presiding over criminal cases where KCPAO has abundant evidence for prosecution. He said Judge #1 was relatively new to criminal law at the time of the hearing.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 – Allegation #1**

***5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)***

It was alleged that NE#1 was dishonest about his observations of the contents inside the clear plastic bag.

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

Under the Seattle Police Officers' Guild Collective Bargaining Agreement (SPOG CBA), a sustained complaint involving dishonesty "relating to the administration of justice" carries a presumption of termination. SPOG CBA article 3.1. In such cases, dishonesty 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 means "more than mere inaccuracy or faulty memory." *Id.* For termination cases where "the alleged offense is stigmatizing to a law enforcement officer," an "elevated standard of review (i.e. – more than preponderance of the evidence)" applies. *Id.*

This allegation is unfounded. OPA found insufficient evidence supporting this allegation, even when evaluated under the lower preponderance standard rather than the elevated standard of review as specified in the SPOG CBA. NE#1's observation about the suspected cocaine bag was reasonable when considered under the totality of the circumstances. NE#1 had considerable experience in narcotics investigations and was familiar with CM#1, who had an extensive criminal record that included narcotics convictions. CM#1 was allegedly involved in a shootout during which a bag of cocaine was found. Before CM#1's arrest, NE#1 observed CM#1 approaching his car without a white latex glove, meaning NE#1 had no basis to believe that CM#1 possessed white latex gloves. NE#1 then observed CM#1 leaning toward the driver's side door and "mess[ing] around in the door." After CM#1's arrest, under "early morning light" conditions that limited visibility, NE#1 saw a wadded plastic bag in the door pocket that appeared to contain a white substance, failing to recognize a white glove located beside and beneath the bag.<sup>5</sup> The packaging style was consistent with that of other narcotics, including the one found at the shootout scene. A second viewing did not dispel NE#1's belief that the bag contained cocaine. NE#1 said he did not observe the bag for a prolonged period, estimating that his total viewing amounted to only a few seconds. Collectively, these facts supported NE#1's probable cause determination, even though he was mistaken. As NE#1 rightly noted, probable cause does not need to definitively establish guilt or eliminate the possibility of innocence. It merely requires a reasonable probability based on the totality of the evidence.

In the present case, OPA finds the importance of the glove only became apparent in retrospect. Also, its visibility was obscured due to the way it was crammed into the door pocket. Moreover, NE#1's attention was directed toward the suspected cocaine bag rather than the glove, and NE#1 did not observe the door pocket for a lengthy amount of time. Even if NE#1 had identified it as a glove, there was no reason for him to recognize its significance. While the glove may

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<sup>5</sup> In the photographs of the door pocket, OPA notes that the only portions of the glove that are recognizable appear to be a finger and, perhaps, a thumb. These are not immediately recognizable as a latex glove, especially when viewed without the benefit of magnification.



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have had explanatory value after the fact, it would not have been perceived as exculpatory at the scene, especially under conditions differing from those when WO#1 photographed the door pocket.<sup>6</sup> Although NE#1 was mistaken in his belief that the bag contained cocaine, it is difficult to conclude that he acted dishonestly or with reckless disregard for the truth by failing to recognize the glove or, if seen, consider that the glove's color and position might have accounted for the bag's whitish appearance. Furthermore, it would be unreasoned for NE#1 to lie about observing a suspected cocaine bag only to have that lie exposed when WO#1 photographed the door pocket. When evaluating the evidence without the benefit of hindsight, OPA finds that NE#1's failure to notice the glove was credible and did not constitute dishonesty.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained – Unfounded**

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<sup>6</sup> Even reviewing the photographs of the door pocket that were taken afterwards, OPA finds that it would not be unreasonable to perceive a white or whitish hue to the bag, especially without the benefit of magnification. It also appears the photographer may have used some kind of illumination to take the photograph.