



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 19, 2019

CASE NUMBER: 2018OPA-0013

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle	Not Sustained (Training Referral)
# 3	13.010 - Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision	Not Sustained (Inconclusive)

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 struck her with his SPD vehicle, which he drove recklessly, as she and others were passing through an intersection just after midnight on New Year’s Day 2018. The Complainant further alleged that the Named Employee then drove away from the scene of the accident without stopping.

ADMINISTRATIVE NOTE:

This case was submitted to the OPA Auditor for review on two separate dates prior to the expiration of the 180-day deadline. The Auditor requested more investigation in response to each of those submissions, but the additional investigation that was recommended was either not completed or completed after the expiration of the 180-day deadline due to heavy workloads. As such, the Director’s Certification Memo is being issued after the expiration of the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

STATEMENT OF FACTS:

At approximately two minutes after midnight on New Year’s Day in 2018, Named Employee #1 (NE#1) was traveling westbound on East Union Street in his police vehicle when he approached the intersection of 11th Avenue. NE#1 was traveling solo and was on his way to assist as a backup officer on a call of an accident that happened nearby. At that time, NE#1 encountered a group of individuals hugging in the middle of westbound East Union Street. NE#1 sounded his vehicle’s air horn as he approached the group. NE#1’s emergency lights were not activated at the time of this encounter. The group separated in response to NE#1’s approaching vehicle and the sound of its air horn. After separating, all but one of the group members moved in the direction of the west side of the street, which was on the passenger’s side of NE#1’s vehicle. The remaining individual moved slightly east toward the driver’s side of NE#1’s vehicle, but he remained in the street near its center markings. NE#1 then drove through the opening left by



the group and continued westbound on East Union Street. What happened during and shortly after NE#1 drove through the opening is what is at issue in this investigation.

In the Complainant's on-scene statement to SPD and subsequent interview with OPA, she alleged that NE#1 struck her with his vehicle, which knocked her to the ground and injured her. The Complainant further alleged that NE#1 slowed down after hitting her but then drove away, in an obvious effort to flee from the scene of the accident. Though the Complainant's recollection of what transpired differed in her initial statement and subsequent interview with OPA, she was consistent in claiming that NE#1's driving leading up to the point of contact was reckless in that it was at a relatively high rate of speed. The Complainant was also consistent in stating that she believed that NE#1's actions in slowing down his vehicle after the Complainant fell to the ground is evidence that NE#1 recognized what he did. The Complainant stated that she believed that NE#1's subsequent action in then driving quickly away from the area is evidence of his effort to flee the scene of an accident.

The witnesses to the incident were relatively consistent in their on-scene statements to SPD and subsequent interviews with OPA. They stated that the Complainant was struck by NE#1's police vehicle as he drove past the Complainant. At least one of the witnesses reported seeing NE#1's passenger's side view mirror making contact with the Complainant, which ultimately resulted in her falling to the ground. After the Complainant fell to the ground, nearly all of the witnesses reported believing that NE#1 recognized what he did because they saw NE#1 bring his vehicle to a near stop seconds later and then quickly drive away from the scene. The witnesses' estimates of how fast NE#1 was driving when this incident occurred ranged from "a couple" to "60" miles per hour.

One of the witnesses provided a copy of a cellphone video that she recorded from the rooftop of a six-floor building, located across the street from the scene. The witness was filming the New Year's Eve celebration that was taking place on the street. The video captured much of what took place in this incident, albeit from a distance above and on the opposite side of where the Complainant was potentially struck by NE#1's vehicle. OPA analyzed the video in its entirety and repeatedly viewed the point where contact may have been made as well as the movement of NE#1's vehicle prior to and after the point when the Complainant is seen on the ground. Though brief moments of the incident are not captured, the video was helpful, though there are issues of clarity related to its graininess, image stability and focus. That said, in the video, NE#1's vehicle's approach, passing, and departure are captured. Sound is also captured as part of the video. Most of it is the voice of the videographer/witness, but the vehicle's airhorn is heard as it approaches the group. The vehicle's brake lights are seen going on and off and it approaches the group at what can be objectively described as a slow rate of speed. As the vehicle begins to pass, the Complainant, whose back appears to be toward the passenger side, is seen moving in a backward direction. It is unclear from the vantage point of the video what triggered that apparent backward motion since that area is blocked from view. Subsequent to the vehicle passing, the Complainant is seen on the ground. NE#1's vehicle moves slightly to right side of the street side and slows down. Its brake lights are temporarily illuminated, before it is proceeds westbound. The departure speed is unclear, but it is not at a high rate of speed. Some of the individuals from the group appear to motion in the direction of NE#1's vehicle with their arms as the NE#1's vehicle is seen proceeding westbound. No one is seen running in the direction of NE#1's vehicle at the time of or immediately after the contact. OPA also did not explicitly see actions that could be described as individuals slapping or purposely hitting NE#1's vehicle with their hands as the vehicle passed by them; however, it is important to note that the actions of the male on the driver's side may have resulted in some contact. Additionally, since some of the actions of the civilians on the passenger's side were blocked from view, there may have also been some purposeful contact made by one or more of them that was not captured by the video.



NE#1's vehicle had In-Car Video (ICV) activated and that video was analyzed by OPA. NE#1's ICV captured nearly all of what happened from the point that NE#1's vehicle approached the intersection and the group through to the point of an unrelated accident call he was on his way to when this incident occurred. However, this incident occurred during the buffering stage and, as such, there is no audio. The ICV shows NE#1's vehicle as it approaches the group in the center of the westbound lane of East Union Street. NE#1 clearly slows down as he approaches the group of civilians. The group is seen separating and NE#1 moves his vehicle forward. A male is seen making celebratory-type motions on NE#1's driver's side as the vehicle moves slowly forward. The other civilians, who included the Complainant, is briefly seen moving toward the opposite side of the street and disappears from the view of the ICV on the passenger side of NE#1's vehicle. After none of the civilians are present in the ICV, NE#1's vehicle moves slightly to its right and slows to a near stop and then proceeds westbound. The rate of speed at which NE#1 drives his vehicle does not appear to be unusually fast. NE#1 does not pass any of the civilian vehicles that he briefly follows behind before arriving to the scene of the unrelated accident. After arriving at that location and exiting his vehicle, NE#1's actions appear normal, and he never says or does anything to suggest that he was preoccupied or distracted. The ICV also offers a rearview perspective. That video is very grainy and in black and white. From that camera's vantage point, an image is seen falling to the ground after NE#1's vehicle passes. In OPA's analysis of the front and rear viewing of NE#1's ICV, there was nothing that demonstrated one way or another when or if the Complainant was struck by NE#1's vehicle. Additionally, there was also no way to determine when or if anyone slapped or otherwise used their hands to purposely contact NE#1's vehicle as it passed by.

OPA obtained the GPS tracking information associated with NE#1's vehicle. That information showed that NE#1 slowed his vehicle to a speed of 1 mph as he approached and passed through the opening made by the group. It also showed that NE#1 accelerated his vehicle to 12 mph as he began exiting the area. As was previously stated, NE#1's vehicle is not seen accelerating quickly at any point thereafter and is seen following at a safe distance behind the flow of civilian vehicles as NE#1 continues along his westbound path in the direction of the unrelated accident scene.

NE#1 was interviewed by OPA. NE#1 told OPA that he had no idea that his vehicle may have made contact with the Complainant as he made his way through the intersection. NE#1 stated that he was on his way to the scene of an unrelated accident when he encountered the group of New Year's revelers. As he approached them, NE#1 stated that he used his vehicle's airhorn to alert them to his presence and desire to continue along his way. NE#1 stated that he slowed down to a crawl and moved cautiously through the opening the group made in response to his presence. When doing so, NE#1 recalled hearing some in the group yelling, "Happy New Year." NE#1 also heard noises that suggested that some of them also hit his vehicle with their hands as part of their holiday celebrations. After passing through the intersection and the group, NE#1 acknowledged slowing down after hearing additional sounds, which he believed were additional hand strikes to his vehicle. In slowing down, NE#1 stated that he looked through his rearview mirror and saw the male continuing to wave his hands in the similar manner that he was doing when NE#1 approached, and NE#1 recalled hearing more sounds of people yelling, "Happy New Year." NE#1 stated that he proceeded westbound to his destination because he did not see anything to suggest that anyone had purposely done something to damage his vehicle. NE#1 added that he never heard or saw anyone trying to get his attention as if there was something wrong. The first time that NE#1 knew that anything was wrong was when he heard that someone was apparently hit at that intersection by a police vehicle. NE#1 initially assumed that the group moved back into the street and that it involved a different police vehicle. NE#1 reported that he was surprised when he heard his vehicle's number being called out over the radio as the involved vehicle, and he immediately returned to that location.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If, as the Complainant alleged, NE#1 struck her with his vehicle and then knowingly and willingly fled the scene of the accident, it would have violated State law and SPD policy.

There is no disputing the fact that the Complainant ended up on the ground at or about the same time NE#1 drove his vehicle past her. The Complainant and witnesses claim that NE#1 struck the Complainant with his vehicle and knocked her to the ground, though their accounts of how that happened are substantively different. The Complainant alleged that NE#1 struck her as she was just stepping of the sidewalk and that NE#1 was driving fast and with apparent disregard when he struck her. The witnesses, as it relates to this point, said that this incident took place in the street as the group of civilians, which included the Complainant, were making their way across the road. One of the witnesses, who claimed to have actually seen the contact, reported that the Complainant was struck by NE#1's side view mirror as the vehicle passed.

The recollection of that witness and others of how fast NE#1's vehicle was traveling as it approached and passed by was wide-ranging; however, based on the available video and GPS evidence, OPA determined that NE#1 was driving slowly as he approached and moved past the group of civilians and that this took place in the roadway. Additionally, it is also apparent that the Complainant was not in the process of stepping off the curb as she described. OPA agrees that the third-party video, when played at full speed, leaves the impression that the Complainant must have been struck by NE#1's vehicle as she ends up on the ground just as the vehicle passes. Yet, in OPA's frame-by-frame examination of the video, the Complainant appears to be falling backwards as NE#1's vehicle passes. OPA believes that that apparent movement offers another possibility of what may have caused the Complainant to make contact with NE#1's vehicle.

That being said, in order to sustain this allegation, OPA must prove by a preponderance of evidence that NE#1 knew that he struck the Complainant with his vehicle and then made the conscious decision to flee the scene in order to avoid being caught.

Though NE#1's actions in slowing down after the Complainant fell to the ground appeared unusual and suggested that he may have had detected that something happened, his explanation is plausible when viewed in concert with all of the other available evidence. Moreover, NE#1's actions as he proceeded to the unrelated accident call cannot be described as speeding away from the scene of an accident, and his manner and actions as captured by his BWV in the minutes following this incident were measured and balanced and were not consistent with what would be expected from someone who had just made a conscious decision to flee the scene of his own accident.

I also found it plausible that NE#1 may have believed that the sounds he heard were people slapping his vehicle. However, I also recognize the OPA Auditor's concern that the third-party video does not appear to support that any such hand slaps or hits to NE#1's vehicle actually occurred.



Additionally, NE#1 appropriately followed policy and training when he engaged his ICV at the scene of the unrelated accident, which he arrived at less than a minute after driving from this alleged incident. Had NE#1 intended to avoid detection and minimize available video evidence of what took place, NE#1 could have delayed engaging his ICV by a few minutes and the only video evidence that would have been available would have been the third-party video.

Ultimately, as explained above, the evidence is simply insufficient to prove or disprove the Complainant's allegations. Stated differently, OPA cannot prove by a preponderance of the evidence that NE#1 knew that he struck the Complainant with his vehicle and then deliberately fled the scene. As such, I recommend that this allegation against NE#1 be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

13.030 - Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle

SPD Policy 13.030-POL-2 states that officers are responsible for the safe operation of their police vehicles and that they are not relieved of the obligation to drive with due regard for the safety of all persons.

Based on OPA's review of the evidence, it appears that there were additional precautions that NE#1 could have taken in this incident that would have ensured that he safely passed through a group of individuals who he believed were intoxicated. For example, even though NE#1 appeared to drive his vehicle at an appropriate rate of speed, he could have taken extra time to make sure that all of the individuals sufficiently cleared the roadway before he proceeded through. This was particularly the case given that he was not responding to an exigent scene.

However, I do not find that this warrants a Sustained finding. Instead, I find that NE#1 would benefit from additional training and, as such, OPA recommends that NE#1 receive the following Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning SPD Policy 13.030-POL-2 and, specifically, concerning how the policy pertains to an officer's obligation to drive with due regard for the safety of all persons. He should further receive counseling concerning this incident from his chain of command. This retraining and any associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

13.010 - Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision

SPD Policy 13.010-TSK-1 requires that all collisions shall be investigated by a traffic or patrol unit, or the traffic collision investigation squad.

As discussed above, I find the question of whether NE#1 was aware that he had been involved in a collision to be inconclusive. As such, I further cannot definitively determine that NE#1 acted contrary to this policy when he did not immediately stop and ensure that the incident be investigated. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

OPA CASE NUMBER: 2018OPA-0013

Recommended Finding: **Not Sustained (Inconclusive)**