OIG | OFFICE of the INSPECTOR GENERAL

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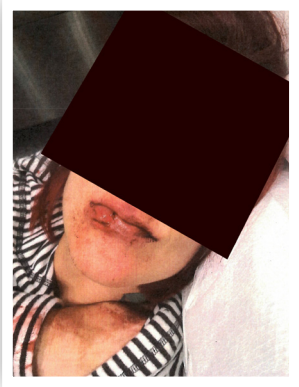
OIG No. 20–03 | Sentinel Case | June 15, 2020

The Department Refused to Take Disciplinary Action Against an Officer Despite Evidence That Suggested He Punched His Girlfriend and Slammed a Truck Door on Her Hand, Which Cut Off Part of Her Thumb

The Office of the Inspector General (OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Pursuant to California Penal Code section 6133, the OIG reports semiannually on its monitoring of these cases. However, in some cases, where there are compelling reasons, the OIG may issue a separate public report; we call these *Sentinel Cases*. The OIG may issue a Sentinel Case when it has determined that the department's handling of a case was unusually poor and involved serious errors, even after the department had a chance to repair the damage. This Sentinel Case, No. 20–03, involves departmental executives, despite a preponderance of the evidence, refusing to take disciplinary action against an officer who punched his girlfriend and then slammed a truck door on her hand, completely severing a portion of her thumb at the first joint.

On December 15, 2018, the officer and his girlfriend engaged in a verbal altercation at her apartment complex. The following narrative is based on statements the girlfriend made after the incident occurred: The girlfriend was outside, talking on the phone with her mother, when the officer exited her apartment. The girlfriend ended the call with her mother and followed the officer, who was walking toward his truck, and the couple began screaming at each other. According to the girlfriend, the officer punched her in the face, causing her lip to bleed. She approached the officer as he entered his truck, pleading with him to "talk things out." The girlfriend reported she had her hand on the truck door when the officer forcefully slammed the door on her hand. The girlfriend stated she passed out briefly and regained consciousness to find that her thumb, bloodied and maimed, was now missing the entire tip, down to the first joint. According to the girlfriend, the officer was fleeing the scene in his truck, driving at a high rate of speed through the parking lot, leaving her screaming, battered, and bleeding. As the officer waited for the automatic gate to open so that he could drive out of the parking lot of the apartment complex, the girlfriend yelled, "My thumb is gone!"



The girlfriend on the night of the altercation: the injury to her lower lip.

A neighbor heard the disturbance, emerged from his apartment, and found the girlfriend walking to the apartment building from the parking lot with a big cut on her lip and bleeding from her mouth. The girlfriend stated that the officer had punched her in the face and slammed a truck door on her hand. While the girlfriend called 9-1-1, the neighbor searched for the missing portion of her thumb.

Fire department personnel arrived first and medically treated the girlfriend. The police also responded to the apartment complex. They found the girlfriend with her clothes covered in blood. Her lower lip was cut and actively bleeding. Her left thumb was in a bandage. The police took photographs of the girlfriend's injuries.

The police searched for and found the severed portion of the girlfriend's thumb in the apartment complex's parking lot. Emergency personnel transported the girlfriend to the hospital, but medical staff there could not reattach the severed portion of the girlfriend's thumb as it had been cut off at the joint. She did, however, receive approximately half a dozen stitches for her split lip.

The officer returned home that night and took photographs of his own hands. Meanwhile, the police tried to contact the officer, but he did not answer the phone.

The next day, on December 16, 2018, the police arrested the officer at the prison where he was, and continues to be, employed. The police inspected the officer's truck and found trace amounts of blood in the door jamb of the front driver's-side door. The officer reported that on the previous night, he saw his girlfriend as he opened the front driver's-side door of the truck, grabbed the inside door handle and slammed the door shut, and she fell to the ground. The officer admitted that he continued to drive away even after his girlfriend fell.

The district attorney filed felony charges of domestic violence and mayhem against the officer. The court held a preliminary hearing, at which the girlfriend testified. After evaluating the evidence, including the girlfriend's testimony, a superior court judge found that the district attorney met the burden of proof and held the officer to answer on the charges. The judge concluded that the evidence in this case would lead a reasonable person to believe in, and conscientiously entertain a strong suspicion of, the defendant's guilt (*People* v. *San Nicolas* (2005) 34 Cal.4th 614, 654).

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Meanwhile, the department initiated an internal investigation into the girlfriend's allegations against the officer. Among other investigative activities it conducted, the Office of Internal Affairs interviewed the girlfriend and the officer. On May 23, 2019, the officer lied to the Office of Internal Affairs when he denied that he punched his girlfriend and slammed a truck door on her hand.

After the investigation had concluded, the officer's hiring authority, a warden, reviewed all the case materials, including the report, the photographs the police took, and the interview recordings, and evaluated the evidence. On August 6, 2019, the warden sustained allegations that the officer battered his girlfriend and that the officer lied to the police and to the Office of Internal Affairs. The warden did not sustain the mayhem allegation. The warden decided to dismiss the officer from his employment with the department. The department attorney, who also evaluated the evidence, supported the warden's decisions to sustain the battery and dishonesty allegations against the officer and to dismiss him.

On September 10, 2019, a predeprivation hearing, called a *Skelly* hearing, was held. The *Skelly* officer heard a presentation by the officer's attorney and, based on the presentation, concluded there were inconsistencies in the girlfriend's statements and that the officer "presented himself humbly, very confident in his demeanor, and body language was agreeing [*sic*] with the statements of his legal representation." The *Skelly* officer recommended the warden withdraw the disciplinary action. By the time of the *Skelly* hearing, a new warden had replaced the original warden as the hiring authority.

The girlfriend's bandaged thumb.

The new warden, without consulting the OIG, adopted the *Skelly* officer's recommendation and withdrew the disciplinary action against the officer. The prison's employee relations officer subsequently notified the OIG. Upon learning of the decision, the OIG immediately contacted the new warden, who affirmed his decision to withdraw the disciplinary action. The OIG attorney asked the new warden for his thoughts on how the officer's girlfriend sustained the egregious injuries. The new warden responded, "I don't know. I was not there." The new warden then blamed the girlfriend and speculated that she could have tripped and fallen. The department attorney, who had supported the previous warden's decision to sustain the allegations and dismiss the officer, then opined that she no longer believed the department could prove its case.

The OIG disagreed and elevated the decision multiple times to three different departmental executives: an associate director, a deputy director, and a director. (*To elevate a decision* means to appeal that decision to a higher level of authority.) Departmental executives concluded the department could not prove it was more likely than not that the officer battered his girlfriend, and then lied about it to outside law enforcement and to the Office of Internal Affairs. Departmental executives noted there were no third-party witnesses to the incident, it was a "he said/she said" situation, there were inconsistencies in the girlfriend's statements, and, after criminal charges were filed, the girlfriend had sent an email message to the officer stating she could no longer recall exactly how she sustained the injuries that night; this emailed message caused the district attorney to ultimately dismiss the criminal charges.

The girlfriend after receiving stitches for her split lip.

The OIG disagrees with the department's decision to take no disciplinary action in this case. On the date the event took place, the girlfriend consistently reported to a neighbor, to 9-1-1, and to the police that the officer punched her and slammed the door on her hand. She had injuries that supported her version of the events. She suffered a split lip, for which she received multiple stitches. She lost part of her thumb. Photographs documented the injuries. A neighbor who was willing to testify told outside law enforcement and the Office of Internal Affairs that he heard the officer and the girlfriend arguing, heard the "screeching of tires" as the officer sped out of the parking lot, and observed the horrendous injuries the girlfriend suffered.

The above facts are those a superior court judge relied upon to hold the officer to stand trial on felony charges of domestic violence and mayhem. The above facts are those a warden reviewed to sustain allegations the officer battered his girlfriend, and lied about it to the police and to the Office of Internal Affairs. The above facts are those a warden used to support his decision to dismiss the officer. And the above facts are those a department attorney should present to the State Personnel Board in pursuing disciplinary action against the officer. Instead, the department is taking no disciplinary action at all.

The warden who originally reviewed this case and made findings was correct in determining there was a preponderance of evidence needed to prove the allegations in a hearing, and it was more likely than not that the officer had engaged in misconduct. This same warden correctly recognized the importance of protecting the integrity of the department and the absolute requirement that its peace officers be held to the highest standards of ethical behavior. Unfortunately, the department is not always willing to strenuously support these critical standards and values. This is one of those cases. The OIG disagrees. OIG

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STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION GAVIN NEWSOM, GOVERNOR

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May 27, 2020

Mr. Roy Wesley
Office of the Inspector General
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Dear Mr. Wesley:

The California Department of Corrections and Rehabilitation (the Department) submits this letter in response to Sentinel Case Report 20-03. Thank you for the opportunity to review and comment on the draft report.

The Department has reviewed the draft Sentinel Report prepared by the Office of the Inspector General (Report number 20-03). The Department does not believe that the Sentinel Report fully and accurately captures the facts underlying the proposed discipline of the Department's Correctional Officer. 1, 5, 6, 7, 8, 9, 10

Demonstrably absent from the report are the facts that support the Hiring Authorities' decisions to not sustain the allegations against the Officer. While the report correctly characterizes the issue as a "he said, she said," it leaves out the credibility of the parties and why one of the parties was credible and one was not; this credibility determination was the basis for the Department's decision. The draft report also does not reflect that throughout the Executive Review process the Hiring Authorities reviewed all the evidence available to each of them, weighed it, and found that the complaining witness was not credible.[1] Ultimately, the OIG's criticism of the Department's executives results simply from the OIG choosing to believe one of the complaining witness's multiple versions of events; this does not demonstrate any failure by the Department's executives. 1

The Department does not dispute that the complaining witness, , was injured. She sustained a cut to her lower right lip. Further, the tip of her thumb was severed in the driver-side door of the Officer's truck when she tried to open/keep open the door to the truck as the Officer was trying to close the door so that he could leave. Exactly how sustained her injuries is at issue in this case. 2

[1] Additional evidence was made available throughout the Executive Review process. For example, the body-cam footage was obtained prior to the Executive Review before the Deputy Director, and the Preliminary Hearing transcript and email discussed below were obtained prior to the Executive Review before the Director.

The OIG's comments begin on page 7.

Both parties were drinking alcohol that evening at an event. The Officer had approximately 3 vodka and red bulls over a 5-6 hour period. [redacted] had approximately 5-6 double vodkas over the same period. When they returned to her home, the Officer retired to her bedroom, while she went outside and called her mother. After a period of time, the Officer decided that he was finished with their relationship, packed up his few belongings, and departed the apartment. 3

The Officer's version of the events that transpired thereafter was consistent each time he told it and was consistent with the physical evidence. According to the Officer, he left [redacted] apartment with his bags. He got into his truck when he saw [redacted] running towards him when she was just a few feet from the truck. He was attempting to close his driver's side door while [redacted] was attempting to keep the door open and prevent him from leaving. He pulled the door shut. He explained that when he pulled the door shut he felt some resistance, which he believed was [redacted] pulling the door again. The resistance turned out to likely be her thumb being stuck in the door. She then fell to the step board of his truck or the pavement. When the Officer was later informed that [redacted] had an injury to her lip, he believed that when she fell at the side of his truck was when she struck her face. He left the scene. He explained that he did not speed out of the parking space, but after waiting for the parking lot gate to open, may have sped out of the gate. Pictures of his hands showed no injuries. The Officer maintains [redacted] must have injured her lip after her thumb was severed striking her mouth on the step board of the truck or the ground. He steadfastly denied striking her in the face. 4 5 6

[redacted], however, has offered several different versions of events. Her versions are not consistent with one another and do not match the physical evidence, and, under oath, denied the events as detailed by the responding police officers (stating that she did not make statements attributed to her). Furthermore, she admitted her memory of the alleged punch is blurry and that she does not recall if it was his fist that injured her face. 7 8

A few days after the event, [redacted] wrote an email to the Officer wherein she stated she did not recall what happened from the time she approached the truck until she saw him again at the gate. She specifically stated "I'm not sure it was your hand that hit me." She went on to state that she assumed that he was part of her injuries based just on "the way you speed [*sic*] away." She further informed the Officer that she didn't "support the charge" against him, and would contact the District Attorney, who would likely drop the charges because of her lack of certainty. 7

In addition to the email, [redacted] has offered three versions of what happened:

Version 1. [redacted] told the responding police officer that as she was walking across the parking lot when the Officer turned and punched her in the face. She then followed him to the

truck and fought with him over closing the driver's side door. When the door closed it sliced her thumb and she fell to the ground.

Version 2. At the preliminary hearing, [redacted] testified under oath that the Officer left with one bag, came back to get his second bag and she followed him down. She further testified that both the punch and the struggle over the door occurred at the truck, but happened at the passenger side door not the driver door. She further testified at the preliminary hearing that she lost consciousness and did not have any idea how her thumb was injured. In fact, she testified unequivocally that she did not tell the responding officer that she was holding the driver's door open, and that her thumb got slammed in the door when the Officer closed it.[2] 7

Version 3. During her OIA interview, [redacted] testified that the Officer left her home with two bags, and that she carried one of the bags down, following him. During her interview, she could not recall which side of the vehicle she was on, but believed it was the passenger side because she was on the ground near the tree (which would have been on the passenger side) when she "came to." And when she came to she was missing her thumb and was covered in blood. 8, 9 10

It should also be noted that the neighbor did not witness any of the interaction between [redacted] and the Officer, and, instead, just heard the Officer's vehicle speed away and heard [redacted] yelling "[redacted] come back" to the Officer.[3] 11

Furthermore, the OIG's inclusion of the Court's decision at the preliminary hearing is misleading. A preliminary hearing does not include all evidence. In addition, the Court utilized a standard of "reasonable cause to believe" that the offenses occurred, and the Court failed to articulate why it believed this standard had been met. (Even with the Court's determination, the District Attorney subsequently declined to proceed with the case.) The Department must prove that the misconduct occurred by a preponderance of evidence. 11

[redacted] injuries were certainly serious, and the images of the injuries to her thumb are gruesome. However, those facts alone are insufficient to demonstrate by a preponderance of the evidence (not a mere "suggestion") that the Officer struck her in the face or intentionally 11

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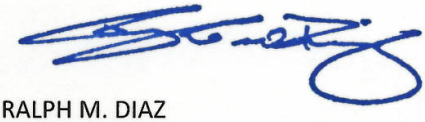
[2] At the preliminary hearing the responding officer testified that [redacted] told him that she was holding the driver's side door open and when the Officer pulled the door shut, her thumb was slammed in the door. He further testified that she did not ever inform him that she had lost consciousness.

[3] [redacted] claims that she was yelling that the Officer had injured her thumb; the neighbor did not testify that hear heard any statements beyond "[redacted] come back."

caused the injury to her thumb. The Department had to make a credibility determination. Finding that [redacted] was not credible left the Department without a preponderance of evidence to sustain the allegation against the Officer. 12

The Department holds its peace officers to the highest standards of ethical behavior, and takes these matters seriously. If you have further questions, please contact me at (916) 323-6001.

Sincerely,



RALPH M. DIAZ
Secretary

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COMMENTS

OFFICE OF THE INSPECTOR GENERAL'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION

To provide clarity and perspective, we are commenting on the California Department of Corrections and Rehabilitation's (hereinafter referred to as the department) response to our Sentinel Case No. 20-03. The numbers below correspond with the numbers we have placed in the margin of the department's response. The department contends the Sentinel Case does not fully capture the facts underlying the discipline of the officer in this case. We submit the facts contained in the Sentinel Case are comprehensive and have been verified for accuracy.

1. The department contends that the OIG did not address credibility in this case; this assertion is incorrect. Credibility can be determined by a multitude of factors: corroboration, body language, demeanor, and so forth. We weighed not only the credibility of the girlfriend and the officer, but also found corroboration in the physical injuries suffered by the girlfriend and the statement of the girlfriend's neighbor, and determined that the girlfriend's initial statements to law enforcement and to her neighbor on the night of the incident are the most reliable. The department tends to give undue credence to its officers (see **OIG Sentinel Case No. 20-01**, in which the department disregarded credible inmate testimony and chose to believe the self-serving statements of its officers; and **OIG Sentinel Case No. 20-02**, in which the department dismissed statements from its own department attorneys and employee relations officer and, again, chose to believe the self-serving statements of its officer).

   The officer in this case had every reason to be untruthful. Not only was the officer's job potentially at risk, but he also was subject to criminal prosecution. The injuries the victim suffered are not consistent with the officer's version of events. The officer also fled the scene. His behavior of fleeing the scene is circumstantial evidence of his consciousness of guilt. In addition, on the evening of the incident, when the police attempted to call the officer and speak with him regarding the incident, he did not answer the call.

   The department completely ignores the fact that the original warden on the case not only believed the girlfriend and sustained the allegation that the officer battered his girlfriend, but also added two additional allegations against the officer. The original warden added a dishonesty allegation against the officer for lying to outside law enforcement and for lying to the Office of Internal Affairs.

2. The department has no problem minimizing the victim's injuries, referring to the laceration on her lip, which required multiple stitches, as just a "cut" and describing the permanent disfigurement of her thumb as just the "tip" of her

thumb being severed, when, in actuality, her thumb was severed to the first joint. The department is blaming the girlfriend, who is the victim, in this case.

3. The department contends that the officer drank three alcoholic beverages, and the girlfriend allegedly consumed double that amount. The department does not make any reference as to the source of this information. However, after again reviewing the evidence in the case, it appears that the department obtained this information from the officer's interview with the Office of Internal Affairs. The department chooses to believe the officer's self-serving statements regarding how much alcohol he and the girlfriend consumed despite the fact that, on the night of the event in question, he and the girlfriend attended a business event for her employer in which she was responsible for the event and had hosting responsibilities. Both parties admitted to consuming alcohol. However, the actual amount of alcohol imbibed by the officer or the girlfriend was never independently confirmed.

4. The department asserts that the officer was consistent with his version of the events regarding the incident in question. However, just because someone is consistent with his or her story does not make the story true. The department has conflated repetition with validity. It is also worth noting that the officer did not wait for the police to arrive on the night in question, and he did not answer the phone when the police attempted to speak with him that same night. The officer had plenty of time to formulate his version of events by the time he was briefly interviewed by the police on the following day. The officer also had more than five months to think about what he was going to say during his interview with the Office of Internal Affairs.

5. The department inaccurately recounts the officer's version of events. The department asserts that the officer was attempting to close the door when he was approached by his girlfriend who kept the door open in order to prevent him from leaving. However, the officer actually stated that he had already entered his vehicle and shut the door when his girlfriend approached and opened his driver's side door. The officer alleged the vehicle was actually running. If this is true, the officer could have driven away at any point. The officer stated he refused to speak with his girlfriend and admitted in his Office of Internal Affairs' interview that, after she opened the door and asked to speak with him, he "slammed" the door shut.[1] The officer claimed he felt a "nudge" when he first began to close the car door.[2] The Office of Internal Affairs' special agent asked for clarification in regard to what the officer meant by "nudge." The officer explained he felt some light resistance when he attempted to pull the door shut, as if she "had a handle" on the door, and he "ripped" it out of her hand.[3] The special agent specifically asked him if he felt the resistance when the door tried to close against the frame of the car and the

1. Office of Internal Affairs' interview of officer, time stamp, 16:36.
2. Office of Internal Affairs' interview of officer, time stamp, 16:41.
3. Office of Internal Affairs' interview of officer, time stamp, 18:19.

officer stated, "No," that it was in the beginning.[4] During the interview, the officer claimed he opened the door again because he saw his girlfriend sitting on the ground next to his vehicle.[5] He claimed he asked her if she was okay and that she got up and ran away, back into her apartment.[6]

The officer maintained he did not observe any injuries or see any blood. However, when the police arrived on scene, the girlfriend was covered in blood, her lip was actively bleeding, and her thumb was severed.[7]

6. At one point in the interview, the officer speculated as to how the girlfriend sustained the injury to her lip.[8] His ***guess*** was that she fell forward when he ripped the car door out of her hand, and she hit her lip on the side of his truck. He repeatedly indicated that he didn't know, that it was an assumption, and that it was his "guess." When the Office of Internal Affairs' special agent questioned the officer regarding the girlfriend's severed thumb, the officer had no idea. He could not even begin to formulate a response.[9] This is not reasonable or credible. The girlfriend's severed portion of her thumb was found in the parking lot. The officer admitted to "slamming" his truck door shut, yet he vehemently denied any knowledge regarding the manner in which his girlfriend's thumb was severed.

   The department determined that the officer's pure speculation was credible, instead of statements made by the girlfriend on the night in question: that she was punched in the face and that the officer slammed his truck door on her thumb. The girlfriend did not have time to think about what she was going to say to her neighbor or the police that night. The girlfriend was at her most vulnerable moment when she told her neighbor that she was struck in the face by her boyfriend, the officer. At the time she made this statement, she was actively bleeding from her mouth, and what was left of her thumb was bleeding as well. It is reasonable to assume she was in a considerable amount of pain. The OIG contends that on the night in question she was telling the truth.

7. The department points out the fact that the girlfriend made inconsistent statements. The department is correct—the girlfriend did make inconsistent statements and subsequently contacted the district attorney, informing that entity she did not "support the charge" against the officer. What the department fails to acknowledge is that the girlfriend was a ***victim*** of ***domestic violence***. Unfortunately, the sad reality is that domestic violence victims have a propensity to recant. Recanting refers to the act of trying to take back or withdraw a prior statement. "False statements in domestic violence cases are a significant problem and considered an epidemic with an estimated 50 to

4. Office of Internal Affairs' interview of officer, time stamp, 18:00–32.
5. Office of Internal Affairs' interview of officer, time stamp, 18:38.
6. Office of Internal Affairs' interview of officer, time stamp, 20:02–04.
7. Police Department Crime/Incident Report, officer's report narrative, p. 3 of 5.
8. Office of Internal Affairs' interview of officer, time stamp, 35:44–36:08.
9. Office of Internal Affairs' interview of officer, time stamp, 37:33–50.

90 percent of domestic violence victims recanting."[10] That the girlfriend recanted her statements should not negate what she initially told the police on the evening of the incident, which included that she desired prosecution. The girlfriend's statements to the police on the night in question and her express desire for prosecution should be the statements given the most weight.

8. The department points out the girlfriend admitted her memory of the alleged punch was "blurry" and that she later stated she lost consciousness. It is puzzling the department never thought to put the two together—specifically, the possibility that the girlfriend's memory was "blurry" because she, in fact, lost consciousness on the night in question. The department never even considered that perhaps on the night in question, when the girlfriend was speaking to the police, she may not have even realized she had lost consciousness. It is plausible that, upon further reflection, after the shock of the night's events had worn off, she may have realized that she did, in fact, lose consciousness. Furthermore, it is reasonable to infer that the girlfriend did not anticipate getting punched in the face. Therefore, it is valid for her, literally, to have not seen the officer's fist coming toward her face.

9. The girlfriend's interview with the Office of Internal Affairs occurred on May 15, 2019. This interview occurred five months after the incident in question. It is natural for some of the irrelevant details, such as how many bags the officer carried out or whether she carried a bag down to his car, to have been forgotten. This does not mean that her entire version of events should be dismissed. It is a natural and inevitable occurrence for memories to fade over time.

10. The department asserts that the neighbor did not witness any interaction between the girlfriend and the officer. However, the neighbor did hear the girlfriend and the officer fighting from his bedroom window. He recognized the girlfriend's voice during the argument, and he could tell from the tone of their voices that the two were arguing. The neighbor heard the arguing stop, and then he heard the loud screeching of tires. The neighbor also heard the girlfriend crying and found the girlfriend walking back toward her apartment. The neighbor requested that the girlfriend stay with him in the parking lot while he searched for her thumb in case the officer returned and attempted to hurt her again. The neighbor's independent observations corroborate the girlfriend's statements. In addition, the girlfriend explained to the neighbor the events that had transpired between herself and the officer. She told the neighbor that the officer punched her in the mouth and slammed his car door on her hand, causing her thumb to be severed.[11] This is consistent with the statements she made to the police later in the evening.

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10. Njeri Mathis Rutledge, "Turning a Blind Eye: Perjury in Domestic Violence Cases," *New Mexico Law Review* 39, no. 1 (Winter 2009): 149–94.

11. Office of Internal Affairs' investigation report, summary of interview of neighbor, pp. 9–10.

11. The department notes that, subsequent to the preliminary hearing, where the officer was held to answer on all charges, the district attorney declined to proceed with the case. The OIG will not speculate as to the reasons why the district attorney did not continue with the prosecution of the officer. However, it is important to distinguish among the different legal standards of proof. In a criminal case, the prosecution has the burden of proving its case *beyond a reasonable doubt*. Reasonable doubt is the highest standard of proof in the American legal system.

> What is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge (*Commonwealth* v. *Webster,* 59 Mass. 295, 320 (1850).

In contrast, the department has the burden of proving its case by a mere *preponderance of the evidence*, which is one of the lowest burdens of proof in the American legal system. "The California Supreme Court has stated that the standard of proof to be used in state employment cases is a preponderance of the evidence" (*Skelly* v. *State Personnel Board, supra,* 15 Cal.3d at p. 204, fn. 19, 124 Cal.Rptr. 14, 539 P.2d 774). Practically speaking, the department is required to prove that it is more likely than not that the officer punched his girlfriend and severed her thumb. The girlfriend's statements to the police and to her neighbor, the neighbor's independent observations, and the physical evidence of the girlfriend's injuries are sufficient to prove the department's case. In the OIG's opinion, the department had sufficient evidence to sustain the allegations and dismiss the officer.

12. The department's credibility determination ignores the dynamics of domestic violence, revictimizes the girlfriend who suffered through a traumatic event and is permanently disfigured, and allows the officer to remain discipline free and maintain his position of authority as an officer with the department.