



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 24, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0327

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Sustained

**Imposed Discipline**

Suspension Without Pay – 15 days

***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 her ex-boyfriend, Named Employee #1 (NE#1), assaulted and threatened her.

### SUMMARY OF INVESTIGATION:

On July 12, 2021, an SPD Lieutenant filed a Blue Team complaint stating that the Kirkland (WA) Police Department (KPD) notified SPD that they were investigating NE#1 for an alleged domestic violence (DV) assault. OPA commenced this investigation.

During its investigation, OPA reviewed the OPA Complaint, Kirkland Police Department Case File, Email Correspondence, Emails and Texts, and Photograph(s). OPA also interviewed the Complainant and NE#1.

According to both the Complainant and NE#1, they met at a retail job in early 2020 and started dating sometime later in 2020. Both stated that they frequently fought during their relationship before ending the relationship sometime during the Summer of 2021. Among other things, the Complainant alleged that in (1) September of 2020, she and NE#1 left a bar, began arguing while driving home, and NE#1 grabbed her arm and pushed against the passenger door three times causing her pain; (2) January of 2021, she and NE#1 got into an argument at NE#1’s apartment during which NE#1 took her phone refused to let her leave by standing in front of her and moving her back into the apartment; (3) March or April of 2021, NE#1 visited her at work for a coffee break and, while in a drive through lane, NE#1 called her hair style “slutty” and pulled her hair to remove her hair buns causing her pain; (4) April 2021, NE#1 again refused to allow her to leave his apartment by taking her phone, and that, during this time, she yelled for help hoping someone would call 911; (5) May 2021, NE#1 became upset after seeing on Facetime that she had curled her hair, threatened to hurt her, and demanded that she go to his home causing her fear; (6) June 2021, NE#1 threatened



to yank out her hair extensions and to slash her car tires if she went on a family trip. The Complainant did not allege that these incidents occurred while NE#1 was on duty.

After NE#1 and the Complainant separated, the Complainant reported her allegations to KPD, which conducted a criminal investigation.

#### **A. Criminal Investigation and Charging Declination**

The Complainant reported her allegations to KPD, which investigated an offense charge of 4<sup>th</sup> Degree Misdemeanor Assault DV (RCW 9A.36.041). KPD interviewed the Complainant, a friend of the Complainant, and NE#1. KPD also reviewed a 911 call, Temporary Order of Protection listing the NE#1 as the Respondent, as well as photographs and text messages provided by the Complainant. Finally, KPD conducted a forensic examination of the Complainant's cell phone.

Ultimately, the KPD investigator concluded they were "unable to provide corroborating independent evidence of an intentional assault having occurred." KPD determined they did not have probable cause to charge NE#1 with assault. KPD referred the case to the Kirkland City Attorney's Office to review. The prosecutor at the Kirkland City Attorney's Office declined to file criminal charges against NE#1.

#### **B. Photographs, Text Messages, 911 Call**

OPA reviewed text messages and photographs provided by the Complainant to KPD. Among the most relevant are the following:

- A text exchange in which NE#1 stated over a string of messages "I'm watching my back. That's all I'm doing. You're about to wild the fuck out with that hair. Hair done Make Up Lashes Toes and nails. Yeah who the fuck are you tryna impress. I'm snatching that shit out next time I see you." The Complainant responded "You better not touch them." NE#1 then replied in two messages "Or else what. What the fuck are you going to do." The Complainant stated "I'm done." NE#1 then said "What you about to do." KPD confronted NE#1 with these messages and NE#1 admitted he sent these messages.
- A text exchange in which NE#1 stated over two messages "My turn. Ehhh." The Complainant responded "I'm not going to miss out on memories with my son." NE#1 then replied over a string of messages "Cap. Yeah you will. You ain't going. I'll slash your tires. Da Fuck." KPD confronted NE#1 with these messages and NE#1 admitted he sent these messages.
- A photograph of what appears to be a left arm with a small visible bruise on the upper arm, posterior side, somewhat below the shoulder. The Complainant alleged this photograph depicted bruising caused by NE#1 grabbing her arm during the September 2020 incident. KPD forensic examination of the photograph confirmed the image was created one September 15, 2020.

OPA and KPD also reviewed a 911 call from April 17, 2021 in which a Community Member in NE#1's apartment building and near his unit reported that they could hear a domestic disturbance, including a female voice yelling "get away from me" and "get out." This call for service was cleared as "No Police Action Needed."



### **C. OPA Interview of the Complainant**

OPA interviewed the Complainant. The Complainant alleged that NE#1 was mentally and physically abusive during their entire relationship.

The Complainant stated that the first incident occurred sometime around September of 2020 when she and NE#1 were leaving a bar. The Complainant alleged that NE#1 was driving when he got angry, yelled at her, grabbed her by the arm, pushed her against the passenger door causing her head to strike the passenger window three times. The Complainant alleged that she told NE#1 that he had hurt her, but he denied it and told her it was her fault. The Complainant stated she noticed her arm was bruised.

The Complainant stated that the second incident occurred in March or April of 2021 and involved an argument over her hair style, which she described as "Space Buns." The Complainant alleged that NE#1 called these "slutty" and that, while she was getting a ride from NE#1 on her coffee break from work, NE#1 started to yell at her that she was not allowed to wear her hair that way. The Complainant alleged that NE#1 then grabbed her hair and pulled out one of the buns. The Complainant said that she asked NE#1 to stop, but that NE#1 pulled out the other bun as well. The Complainant stated that some of her hair had been town out and she experienced pain during the incident. The Complainant alleged that NE#1 then drove recklessly back to her work and screamed at her for the rest of her lunch break.

The Complainant stated that a third incident occurred in March or April of 2021 and involved a time that she curled her hair. The Complainant recalled that it was not allowed in their relationship for her to curl her hair, but that NE#1 noticed her hair was curled during a video call with her. The Complainant alleged that NE#1 demanded that she come to his apartment immediately, but that she did not want to because she was afraid NE#1 would hurt her. The Complainant said that NE#1 responded that she would need to come to his apartment to find out. The Complainant said that she went to NE#1's apartment because NE#1 used a secret she did not want reveled to compel her to come. The Complainant alleged that she arrived at NE#1's apartment and that NE#1 drove into the parking lot and exited his vehicle. The Complainant stated that NE#1 exited his vehicle and ran up to her vehicle, demanding that she exit the car. The Complainant recounted that, when she said she was afraid, NE#1 replied "yeah I'm going to hurt you." The Complainant then stated that NE#1 prevented her from leaving by standing in front of her car, but that NE#1 eventually let her leave.

The Complainant described a fourth incident that she said occurred in January of 2021. The Complainant stated that she was at NE#1's apartment when he prevented her from leaving by using his size to prevent her from leaving his bedroom. The Complainant also stated NE#1 stood with his arms out and also wrapped his arms around her to prevent her from leaving. The Complainant alleged that she used her Apple Watch to contact a friend and that, when the friend came, NE#1 let her leave. The Complainant alleged that during this incident, NE#1's firearm was out and sitting on his dresser.

The Complainant described a fifth incident that she said occurred around May 2021. The Complainant stated that she was screaming for NE#1 to let her leave the apartment and that during this incident NE#1 had his firearm on the dresser. The Complainant stated that NE#1 wrapped his arms around her to keep her from leaving and that she was screaming for approximately 45 minutes before one of the neighbors called the police. The Complainant stated she never saw the police, but that NE#1 told her the police knocked on his door and spoke to him. However, The



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Complainant stated that KPD informed her that their records showed officers had not been able to locate the correct apartment and did not speak with anyone.

The Complainant alleged that a sixth incident occurred around June 2021 in which NE#1 threatened to slash her tires. The Complainant stated that NE#1 had forbidden her to go on a trip and threatened her by saying if she tried to go on the trip, he would slash her tires. The Complainant stated these threats occurred by text message and that, ultimately, her tires were not slashed.

The Complainant also alleged a seventh incident around June 2021 in which she stated NE#1 sent her threatening texts about her hairstyle. The Complainant alleged that NE#1 threatened to pull out her hair extensions. The Complainant stated that NE#1 pulled out her hair extensions when they met in person at his apartment.

The Complainant stated that NE#1 had threatened to hurt her if anything ever happened to his job. The Complainant stated that she was afraid that if NE#1 lost his job, he would mill her. The Complainant stated that she never called the police during their relationship because she was afraid of NE#1.

#### **D. OPA Interview of Named Employee #1**

OPA interviewed NE#1. NE#1 corroborated the occurrence of incidents identified by the Complainant, he categorically denied assaulting the Complainant. NE#1 described his relationship with the Complainant as “toxic,” that the Complainant did not trust him due to mistrust and jealousy issues, and that the relationship consisted of a series of separations and reconciliations.

NE#1 stated that he and the Complainant had an argument in a car around September 2020 that was “heated” but entirely verbal. NE#1 denied grabbing the Complainant by the arm or pushing her into the passenger door. NE#1 recalled seeing a text message from the Complainant showing a bruise on her arm. NE#1 stated that the bruise could have been caused by health issues the Complainant experienced around that time which included fainting. NE#1 recounted an incident in which the Complainant fainted and he grabbed her to prevent her from falling and hitting her head.

NE#1 also recalled an argument concerning the Complainant’s “space buns” hairstyle. NE#1 stated the argument was entirely verbal and got “worse and worse,” but NE#1 denied ever grabbing the Complainant’s hair. NE#1 denied driving recklessly and stated that would have been unlikely given the proximity of the two locations between which he was driving.

NE#1 also recalled an incident in which he had an argument with the Complainant in his apartment’s parking lot around March or April of 2021, but NE#1 denied this argument was about hair. NE#1 denied blocking the Complainant in and explained that it was happenstance that their cars came “nose-to-nose.” NE#1 stated the Complainant was not blocked in and could have reversed away. NE#1 stated he got out of his car and they both yelled an argued. NE#1 stated he could not remember the words he used during this argument, but that the Complainant was upset about his limited time off from work.

NE#1 also denied preventing the Complainant from leaving his apartment in January and May of 2021. NE#1 noted that the Complainant had a key to his apartment and “who is more than capable enough to push me aside or, and I also respect her enough to just like I said, if she wants to leave and go home, that’s obviously fine.” NE#1 stated that



the Complainant would frequently become upset and leave his apartment. NE#1 said that he would walk behind the Complainant and try to talk to her, but NE#1 denied ever preventing her from leaving.

NE#1 admitted sending the text message threatening to slash the Complainant's tires. NE#1 stated that he was "upset" and felt "horrible" for sending this message now. NE#1 explained that the Complainant lived "30 minutes away" and elaborated "I'm not going to drive up there to slash your tires. I never, obviously, never did slash her tires. And I feel really bad about sending that text."

NE#1 denied ever pulling out the Complainant's hair extensions. NE#1 explained that the Complainant was overly concerned and sensitive about her hair. NE#1 stated that the Complainant would react to any comment about her hair.

NE#1 also described that the Complainant had frequently threatened to accuse him of assaulting her during the September 2020 incident as a way to damage his career. NE#1 also stated that, during a three-way telephone call between the Complainant, NE#1, and NE#1's ex-girlfriend, the Complainant made such an accusation. NE#1 stated that he did not end the relationship sooner because he was afraid of her accusations and that it was the Complainant who intimidated NE#1.

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

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

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

The Complainant alleged that NE#1 violated law and policy by assaulting and threatening her.

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

It is an extremely close case as to whether the preponderance of the evidence shows that NE#1 assaulted the Complainant. The Complainant's allegations are both plausible and partially corroborated by a photograph (September 2020 incident), a text message ("I'm snatching that shit out next time I see you."), and a 911 call. However, NE#1 denied grabbing or pushing the Complainant and provided similarly plausible, innocent explanations. Moreover, specific evidentiary gaps give OPA pause. The photograph that the Complainant provided is of an extremely small bruise and was taken ten months prior to the Complainant reporting the incident. Moreover, while the bruise pictured could be consistent with being grabbed by the arm, there is not documentation of any other injury that would be consistent with the allegations, specifically, there are no documented injuries to the Complainant's face where she alleged her head struck the passenger window. Relatedly, the Complainant did not preserve any of her actual text messages with NE#1—she only preserved specific screenshots. The KPD forensic evaluation of the Complainant's cell phone did not locate NE#1's phone number on the Complainant's phone, nor did it locate any call history, chats, instant messages, or voicemails with NE#1's phone number. Similarly, OPA cannot sufficiently analyze the details of the screenshots of the text message of NE#1 threatening to "snatch" the Complainant's hairstyle to confirm whether it sufficiently corroborates the Complainant's allegations that this threat preceded an alleged act so as to sufficiently corroborate it. Finally, the 911 call did not specifically identify NE#1's unit, nor did the comments that were overheard—a female voice yelling "get away from me" and "get out"—align specifically with the Complainant's allegation that she was being held against her will. Taken in aggregate, OPA can say that it appears the Complainant and NE#1 had an extremely volatile relationship. But the preponderance of the evidence is inconclusive as to whether



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any specific allegation of assault occurred. For these reasons, OPA recommends that the assault portion of this allegation be Not Sustained – Inconclusive.

However, the preponderance of the evidence clearly shows that NE#1 threatened the Complainant. The Complainant's allegations were corroborated by screenshots of text messages. Conclusively, NE#1 admitted to sending these messages.

Washington law criminalizes harassment through electronic communication. "A person is guilty of harassment if: (a) Without lawful authority, the person knowingly threatens: (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or (ii) To cause physical damage to the property of a person other than the actor; . . . and (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. 'Words or conduct' includes, in addition to any other form of communication or conduct, the sending of an electronic communication." RCW 9A.46.020.

NE#1 admitted to sending text messages to the Complainant threatening to slash the Complainant's tires and "snatch" her hairstyle out. The Complainant also reported that she was and still is afraid that NE#1 would retaliate against her and—based on the face of the statements—it would be entirely reasonable to fear NE#1 carrying out such threats. Relatedly, NE#1's statements to both OPA and KPD showed that NE#1 made these statements because he was "upset," "frustrated," and "out of anger." On this evidence, more likely than not, these statements constituted harassment under Washington law and violated SPD Policy. For these reasons, OPA recommends that the threatening portion of this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

The Complainant alleged that NE#1 was unprofessional.

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 policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

When asked if he complied with SPD's professionalism policy, NE#1 stated that he "probably could have been more professional. I understand that the moment I took that oath. I wasn't just [NE#1]. I was an officer. And I think that the way I did my business outside of work could have been better. I'm not gonna sit here and lie to you and be like, yeah, I was professional that whole relationship. I could have done better." OPA agrees. NE#1 admitted that he and the Complainant had frequent "heated" arguments and that the relationship was "toxic." While OPA understands that personal relationships can be emotional, SPD officers must manage their words and actions better.



NE#1's threatening text messages to the Complainant were, at the very least, unprofessional and would undermine public trust in NE#1. For that reason, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**