




## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 17, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0512

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Inconclusive
# 2	5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to be Professional	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:

It was alleged that Named Employee #1 (NE#1) violated the law by assaulting and unlawfully imprisoning Community Member #1 (CM#1)—NE#1’s 18-year-old daughter. It was also alleged that NE#1’s actions, criminally investigated by the Snohomish County Sheriff’s Office (SCSO), were unprofessional.

### SUMMARY OF INVESTIGATION:

On November 13, 2021, at NE#1’s home, NE#1 and CM#1 argued about her school grades. It escalated into a physical altercation, partially witnessed by Community Member #2 (CM#2)—CM#1’s friend, Community Member #3 (CM#3)—NE#1’s juvenile daughter, and two others.

The next day, CM#1 filed a report with SCSO alleging NE#1 assaulted her and physically prevented her from leaving. SCSO investigated NE#1 for violating Domestic Violence Assault 2 (RCW 9A.36.021 DV) and Domestic Violence Unlawful Imprisonment (RCW 9A.40.040 DV). SCSO forwarded its investigation to the Snohomish County Prosecuting Attorney’s Office (SCPAO) for review. On August 24, 2022, SCPAO declined to prosecute the case. OPA began its investigation.

During its investigation, OPA reviewed SCSO’s investigation and SCPAO’s declination letter. OPA also interviewed CM#2 and NE#1. OPA tried to reach CM#1 by phone, text message, US mail, and email but did not receive a response. SCSO interviewed CM#3, and since she is a juvenile who lives with NE#1, OPA did not request an additional interview. For similar reasons, OPA did not interview the two other individuals.

#### *a. Snohomish County Sheriff’s Office Investigation*

Deputy #1—an SCSO investigating deputy—wrote the related case report.



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Deputy #1 wrote that, on November 14, 2021, he received a 9-1-1 call about the alleged assault. CM#1 reported NE#1 assaulted her, causing marks.

Deputy #1 responded and spoke with CM#1. CM#1 reported she had dinner at NE#1's home when she and NE#1 argued about her grades and military application. CM#1 said NE#1 accused her of "rolling her eyes," which enraged him and led him to grab her neck. CM#1 said NE#1 pulled her by her arms into his bedroom. CM#1 said she resisted, but NE#1 picked her up. CM#1 reported NE#1 pinned her to his bed "face down," laid on her, and used his body weight to prevent her from leaving.<sup>1</sup> CM#1 reportedly said, "Stop, let me go," several times, but NE#1 refused. CM#1 said while NE#1 pinned her face to the bed, she told him, "Stop, I can't breathe." CM#1 reportedly felt lightheaded, causing her to scream at NE#1 to let her go. CM#1 reportedly tried to free herself, but NE#1 pushed her face further into the bed. CM#1 reportedly broke free, but NE#1 grabbed her arms and pinned them behind her back, again pushing her face into the bed. CM#1 said the altercation lasted about ten minutes before NE#1 let her go. CM#1 said as she attempted to leave, NE#1 blocked the door and pushed her back onto the bed to talk. CM#1 reported NE#1 told her she was no longer welcome at his house and would burn any personal items she did not remove. CM#1 said she and CM#2 packed her belongings. CM#1 reported CM#3 later told her NE#1—whom CM#1 said was drinking—went for a drive. Deputy #1 photographed a small bruise on CM#1's left bicep and shoulder blade and slight scratches on her right front shoulder.

Deputy #1 spoke with CM#2, who gave a similar story regarding CM#1 and NE#1, arguing about grades and heated arguments. CM#2 said NE#1 stood up, got in CM#1's face intimidatingly, and reached toward CM#1's neck. CM#2 said CM#1 deflected NE#1's hand. CM#2 said NE#1 also grabbed for CM#1's collarbone, which CM#1 deflected. CM#2 reported NE#1 grabbed CM#1's whole body with her arms across her chest, causing CM#1 to scream to be let go. CM#2 said NE#1 dragged CM#1 to his bedroom. CM#2 said she did not follow them into the bedroom but heard them. CM#2 said it sounded like NE#1 slammed CM#1 onto the bed as CM#1 screamed, including CM#1 screaming she could not breathe. CM#2 reported CM#1 exited the bedroom, and she and CM#1 packed CM#1's belongings and left.

Deputy #1 spoke with NE#1, who waived his *Miranda* rights and provided a statement. NE#1 reported an argument with CM#1 about her grades and being disrespectful to him. NE#1 said that, during the argument, he stood up and told CM#1 to calm down. NE#1 reported grabbing CM#1's arm to lead her to his room so they could talk, but when he grabbed CM#1's arm, she punched his stomach. NE#1 reported trying to turn from CM#1 to avoid being hit, but she squared off against him. NE#1 admitted hugging CM#1 and walking her to his room. NE#1 wrote once they entered his room, he kept hugging CM#1 to prevent her from hitting him. NE#1 said he held CM#1 on his bed and leaned her on her right side. NE#1 reportedly told CM#1 to "calm down," "I just want to talk," and "I love you." NE#1 wrote he released CM#1 when she calmed. NE#1 said he told CM#1 she could not come to his house and disrespect him and that she needed to remove her belongings.

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<sup>1</sup> Deputy #1's report lists NE#1 as a middle-aged adult male, five feet eight inches tall, and one hundred eighty pounds. CM#1 was listed as a young adult female, five feet one inch tall, and eighty-seven pounds.



Deputy #1 also took CM#3's statement. CM#3 said the argument escalated when NE#1 accused CM#1 of rolling her eyes. CM#3 said she left the room to escape the argument but heard it from the bathroom. CM#3 reported CM#1 was yelling and swearing, and NE#1 sounded calm. CM#3 reported NE#1 said, "Don't touch me" or "Get off me." CM#3 reported the argument continued inside NE#1's bedroom. CM#3 heard CM#1 yell, "Get off me." CM#3 reported NE#1 and CM#1 eventually left NE#1's bedroom, and NE#1 told CM#1 she needed to pack her things.

Deputy #1 conducted a follow-up interview with CM#1. During that interview, CM#1 said NE#1 pinned her upper body and face against the bed. CM#1 reported her shoulders were at NE#1's chest, and NE#1's head was above her head. CM#1 said NE#1's weight forced her neck and head down. CM#1 reported NE#1 squeezed harder as she fought to be released. CM#1 said she could not breathe for three to seven seconds on three to four occasions. CM#1 said she was lightheaded when she broke free. CM#1 reportedly yelled she could not breathe every time NE#1 put his weight on her. CM#1 reported she told NE#1 to "Let go" and "I want to go," but NE#1 refused and told her, "You need to calm down, or I won't let you go." CM#1 said she told NE#1 he was hurting her, but he refused to let her go.

Deputy #1 attempted to contact the two other individuals who were present during the incident. CM#1 identified them as NE#1's girlfriend's children. Deputy #1 could not contact them with a phone number CM#1 provided.

Deputy #1 referred the matter to the SCPAO for violations of RCW 9A.36.021 Assault 2 for assaulting another by suffocation and RCW 9A.40.040 Unlawful Imprisonment.

*b. Snohomish County Prosecuting Attorney's Office Declination*

An SCPAO deputy prosecuting attorney reviewed Deputy #1's investigation and declined charges.

Specifically, SCPAO found insufficient evidence to prove the case beyond a reasonable doubt due to CM#1's uncooperativeness. SCPAO noted it attempted to contact CM#1 multiple times over three months but was unsuccessful. SCPAO noted on August 23, 2022, CM#1 sent a text message stating, "I don't want to file charges, I want to drop them."

SCPAO noted CM#1 was the only witness to testify against NE#1. SCPAO assessed CM#2's testimony alone would not even support a misdemeanor Fourth Degree Assault charge.

*c. OPA Interview – Community Member #2*

OPA interviewed CM#2, whose account was generally consistent with her SCSO statement.

CM#2 said NE#1 was drinking, and CM#1 had an attitude with NE#1. CM#2 said NE#1 got in CM#1's face dominantly. CM#2 said NE#1 tried to grab CM#1, but CM#2 did not remember how or where. CM#2 recalled them yelling, and NE#1 took CM#1 into another room. CM#2 said the door was open, and she heard CM#1 scream, "Get off me." CM#2 also heard NE#1 say, "Don't kick me." CM#2 said she heard CM#1 screaming NE#1 was suffocating her, and she could not breathe. CM#2 described CM#1 as loud and yelling, but CM#2 could not hear what NE#1 said. When CM#1 and



NE#1 left the bedroom, CM#2 reported NE#1 said, “Get your shit and leave.” CM#2 described CM#1 as hyperventilating, distressed, and red-faced.

*d. OPA Interview – Named Employee #1*

OPA interviewed NE#1. His recollection of the incident was broadly consistent with his SCSO statement.

NE#1 said CM#1 came over for dinner. NE#1 said he asked CM#1 about her grades, which made her uptight. NE#1 said he and CM#1 argued, so he said, “Hey, why don’t you come with me? We’re going to go into the room. We’re going to talk about this.” NE#1 described CM#1 as “excited” and swearing at him in front of others. NE#1 said he “went to reach for her” to “guide her over to my room. Then she started punching me in my stomach.”

NE#1 said he “spun her around” to avoid getting hit, “grabbed her wrist,” and “hugged her.” NE#1 said he hobbled to his room. NE#1 said inside his room, he laid on his side and told CM#1 he loved her and that she needed to calm down. NE#1 said after CM#1 calmed down, he told her to get her things and leave.

NE#1 denied reaching for CM#1’s neck in the living room. NE#1 said he grabbed CM#1’s arm.

NE#1 said he wanted to speak with CM#1 in his bedroom, not to discuss personal business in front of others.

NE#1 said inside the bedroom, CM#1 would not calm down, so he held her on the bed so they were on their sides. NE#1 said he did that to avoid CM#1 kicking him. NE#1 denied “slamming” CM#1 onto the bed. NE#1 said that while he held CM#1 on the bed, he told her he loved her and that she needed to calm down. NE#1 could not explain why CM#1 said he pushed her face into the bed with his body. NE#1 said he was “pretty much on [his] right shoulder” with his “left butt cheek at the edge of the bed.” NE#1 said CM#1 asked to be let go, and he replied he would let her go when she calmed down because he did not want her to hit him. NE#1 said that after CM#1 calmed down, he let her go and asked her to sit on the bed. NE#1 said he told CM#1 she could not act that way in his home and told her to pack her things and leave. NE#1 denied hearing CM#1 say she could not breathe. NE#1 said he held CM#1 on the bed for about thirty to forty-five seconds before she calmed down.

**ANALYSIS AND CONCLUSIONS:**

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

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

It was alleged NE#1 assaulted and unlawfully imprisoned his adult daughter.

Employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2.

There is insufficient evidence that NE#1 more likely than not violated the law. Ultimately, there are two competing accounts about what transpired, corroborated by different witnesses that heard—but did not observe—what occurred in NE#1’s bedroom. According to CM#1, NE#1 grabbed her and took her to another room against her will,



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pushed her face into a bed multiple times with sufficient force to restrict her breathing, and refused to let her leave. According to NE#1, he tried to grab CM#1's arm to lead her to the bedroom for a private conversation when she punched his stomach, causing him to defend himself by hugging her from behind, leading her into the bedroom, and laying on their sides until CM#1 calmed down.

CM#1's account is broadly supported by her friend, CM#2, whom she drove home with after the altercation. Conversely, NE#1's account is broadly supported by CM#3, his juvenile child, who lives with him. Deputy #1 photographed minor—but visible—injuries on CM#1's shoulder blade, bicep, and shoulder. Those injuries do not, on their face, appear more consistent with CM#1's account than NE#1's account.

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

Recommended Finding: **Not Sustained - Inconclusive**

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

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

It was alleged NE#1's was unprofessional during an argument and physical confrontation with his adult daughter.

Employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.*

Like Named Employee #1 – Allegation #1, there is insufficient evidence NE#1 violated the department's professionalism policy. While CM#1's account supports sustaining that finding, competing evidence makes OPA's burden of proof insurmountable.

Here, NE#1 argued with his daughter about grades inside his private residence with family and friends present. As the argument intensified, by all accounts, NE#1 took CM#1 to his bedroom rather than quarreling in front of others. Only NE#1 and CM#1 can confidently say what transpired inside the bedroom.

Without more, OPA cannot find NE#1 behaved in a manner that undermined public trust or unnecessarily escalated the event.

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

Recommended Finding: **Not Sustained - Inconclusive**