




## CLOSED CASE SUMMARY

ISSUED DATE: JULY 6, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0427

### Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): |   | Director’s Findings          |
|----------------|---|------------------------------|
| # 1            | 5.001 - Standards and Duties, 5.001-POL-13 Employees Will Not Use Their Position or Authority for Personal Gain | Not Sustained - Inconclusive |
| # 2            | 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy           | Not Sustained - Inconclusive |
| # 3            | 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional                                   | Sustained                    |

**Imposed Discipline**

Written Reprimand

***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—a Kent Police Department (KPD) commander—alleged that Named Employee #1 (NE#1) took his truck from Community Member #1 (CM#1)—a Kent mechanic—after partially paying for services rendered. It was also alleged that during NE#1’s argument with CM#1, NE#1 slammed his Seattle Police Department badge on the counter.

### ADMINISTRATIVE NOTE:

In addition to its administrative investigation, OPA referred the matter to the KPD for criminal consideration. KPD sent it to the Kent City Attorney’s Office (CAO) for prosecutorial review. CAO declined to pursue charges, stating:

*Having rendered this legal opinion as to the existence of probable cause, it is the decision of this office to NOT file criminal charges. Ultimately, Kent police officers were able to assist the parties in reaching an agreement on the payment for services rendered. [CM#1] has indicated he does not wish to pursue any civil or criminal remedies. As such, this office will not file a criminal charge of theft based on the! allegations contained in KPD case report [xx-xxxx].*

Additionally, on May 26, 2023, the Seattle Office of Inspector General certified OPA’s investigation as timely, thorough, and objective.



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**SUMMARY OF INVESTIGATION:**

**A. Computer-Aided Dispatch (CAD) Data**

CAD data showed that on December 7, 2022, CM#1—the owner of Business #1 auto repair shop— called 9-1-1 at 8:27 AM to report, “Customer wanting keys to vehicle without paying....” At 8:35 AM, NE#1 called 9-1-1 reporting, “... [Business #1] didn’t do the repair job on his vehicle & refusing to return his keys....” The 9-1-1 call taker also noted that [NE#1] is off duty officer that works at the [Police Department] Academy [and] is armed....” At 8:59 AM, CM#1 called again to report, “customer took vehicle [without] paying....”

**B. Incident Report**

Witness Officer #1 (WO#1)—a KPD officer—responded to Business #1, investigated the matter, and wrote the related incident report. In summary, WO#1’s report noted:

Before he left for Business #1, WO#1 saw NE#1’s truck—a Chevy Silverado—at the police station. WO#1 believed NE#1 was there “to make an ISR (In Station Report) regarding the incident.” WO#1 continued to Business #1 and spoke with CM#1. CM#1 said NE#1 used a spare key to take the truck without paying. CM#1 said he quoted NE#1 \$545 to “replace rear cylinders and brake shoes.” NE#1 agreed. However, when Business #1 “opened the wheels, the right rear cylinder was leaking fluid, very rusted, and had no brake pedal at all. The left side was so rusted [Business #1 was] afraid they would break the line if they were to try and remove it.” Business #1 completed work on the rear left and right brake shoes and the rear right cylinder, but not the left cylinder. CM#1 told Community Member #2 (CM#2)—NE#1’s friend who came to pick up the truck—what work was done. CM#1 spoke with NE#1, who refused to pay and demanded that his keys be given to CM#2. CM#1 refused to turn over the keys without payment. NE#1 arrived at Business #1 the following day, and the dispute continued. CM#1 called 9-1-1. NE#1 said he was going outside to await police but used a spare key to leave in the truck.

WO#1 returned to the KPD station and spoke with NE#1. NE#1 explained that he refused to pay Business #1 because the job was incomplete. NE#1 said he would pay half of the agreed payment since half of the work was done, but CM#1 insisted on full payment. WO#1 returned to Business #1 with NE#1. NE#1 and CM#1’s argument restarted. CM#1 insisted that significantly more than half the work was completed. Specifically, CM#1 said he did the entire job except for the left cylinder.<sup>1</sup> NE#1 “was about to walk out of the store without paying, telling [CM#1] he would only pay half and ‘take it or leave it. You can go to civil court.’” CM#1 told NE#1 to give him \$250. NE#1 paid \$260 in cash and left. After that, CM#1 told WO#1 that during their earlier argument—before KPD’s involvement, CM#1 offered to show NE#1 the invoice for the work. However, NE#1 responded, “I don’t trust you,” and slammed his police badge on the counter. CM#1 thought, “[NE#1] was joking or trying to scare me to give him the keys or something.” CM#1 declined to pursue criminal or civil action, saying “\$240 wasn’t worth the pressure for him to go to court at his age (78)....”

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<sup>1</sup> CM#1 also explained that the labor cost increased because the right wheel work took fifteen minutes longer than projected, making the price almost the same since the left cylinder that was not installed cost \$44 and the additional labor was \$36.25.



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Witness Officer #2 (WO#2)—a backing KPD officer—wrote a supplemental report materially mirroring WO#1’s report.

At the KPD station, NE#1 spoke with Witness Officer #3—a KPD sergeant—about his dispute with Business #1. NE#1’s account materially mirrored what he told WO#1. Additionally, WO#3’s interview clarified that NE#1 did not work at the police academy as indicated in CAD but was in crisis intervention team training there. NE#1 also asked for a KPD officer to mediate the dispute with Business #1, but WO#3 declined, suggesting it would appear intimidating to Business #1 and that it was a civil matter. WO#3 suggested that NE#1 either pay for the work completed or have the truck fixed elsewhere and pursue civil action against Business #1.

### **C. OPA Interviews**

On January 26, 2022, OPA spoke with CM#1, whose account materially mirrored his interview with WO#1. CM#1 recounted NE#1 slamming his badge on the counter. Additionally, he insisted that \$260 from NE#1 was unfair, but he accepted it to pay his mechanics. CM#1 also admitted that he did not inform NE#1 that his truck’s condition was worse than expected and would cost roughly the full price to complete only the right wheel.

On March 28, 2023, OPA interviewed Witness Officer #4 (WO#4)—NE#1’s SPD acting sergeant, on the date in question. WO#4 told OPA that NE#1 called him during the dispute with Business #1. WO#4 said NE#1 threatened to use a key fob to take his truck, but WO#4 told him not to do it because that was “theft of services.” WO#4 encouraged NE#1 to pay Business #1 and pursue civil action or try to negotiate an acceptable price. At a subsequent roll call, WO#4 asked NE#1 whether he “[ended] up on a police report.” NE#1 said no and that he “worked out a deal with the shop to pay for half.” WO#4 asked whether NE#1 got a receipt. NE#1 said no, and WO#4 suggested that was problematic.

On April 14, 2023, OPA interviewed NE#1. NE#1 said CM#2 told him that CM#1 wanted the total price for doing half the work. NE#1 said he went to Business #1 the following day and offered half the quoted price, but CM#1 would only release the truck for full payment. NE#1 told OPA how he responded:

*“So, we were there arguing for a little bit. And that’s when I made the second mistake, I guess. I said, “Man, I’m a police officer. I know the laws, you know? You can’t hold onto my truck. It’s a civil issue. If you -- if you have a problem with, like, me not wanting to pay full price for doing half the job, then we could go argue it in court, you know?”*

He also told CM#1 to call the police. After that, NE#1 said he called WO#4 and said, “Sarge, I feel like I’m being bullied by this guy. I think he’s a sleazy mechanic.” NE#1 confirmed that WO#4 told him to pay the bill and deal with the dispute in civil court. NE#1 also called 9-1-1, explaining that he was an armed off-duty officer and his disagreement with Business #1. NE#1 said he sought KPD’s intervention to mediate the situation: “Even in Jamaica, we’d always go mediate, you know? So, I was expecting you guys to come mediate.”<sup>2</sup> NE#1 said KPD told him it was a civil matter

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<sup>2</sup> NE#1 was previously a law enforcement officer in Jamaica.



before WO#1 approached and asked him to accompany WO#1 to Business #1. At Business #1, after more arguing, NE#1 said that CM#1 said, “Okay, all right, then pay me \$250,” and “Just don’t come back to my shop.”

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties, 5.001-POL-13 Employees Will Not Use Their Position or Authority for Personal Gain***

The Complainant alleged that NE#1 referenced his law enforcement status to gain influence over Business #1.

Employees will not use their position or authority for personal gain. SPD Policy 5.001-POL-13.

Here, NE#1 told OPA that when he called 9-1-1 to report his dispute with Business #1, he told the call taker he was an armed off-duty officer. OPA did not find that disclosure unreasonable when law enforcement typically wants to know whether they are engaging an armed subject for safety reasons. CM#1 told OPA that NE#1 only indicated his law enforcement affiliation when NE#1 slammed his badge on the counter and said he did not trust CM#1. NE#1 told OPA he only told CM#1 he was an officer because he thought CM#1 was a “sleazy mechanic,” so NE#1 wanted to demonstrate that he knew the law. While—as explained at Named Employee #1 – Allegation #3—referencing his law enforcement affiliation while arguing with CM#1 was not a prudent decision, the surrounding context did not suggest NE#1 sought personal gain from that disclosure.

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

Recommended Finding: **Not Sustained - Inconclusive**

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

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

The Complainant alleged that NE#1 violated the law by taking his truck without paying for repairs.

Employees must adhere to laws, city policy, and department policy. SPD Policy 5.001-POL-2. A person commits theft in the third degree by committing theft of property or services which (a) does not exceed \$750 in value. See RCW 9A.56.050. To convict someone of theft in the third degree, the following elements must be proven beyond a reasonable doubt: 1) That the defendant (a) wrongfully obtained or exerted unauthorized control over property or services of another [not exceeding \$750 in value]; (2) that the person intended to deprive the other of the property [or services]; and (3) that the act occurred in the relevant jurisdiction.

Here, NE#1 wrongfully obtained unauthorized control over his truck when he owed Business #1 less than \$750 for repairs. Kent’s CAO determined probable cause existed that NE#1 committed theft in the third degree but declined to pursue charges since NE#1 and Business #1 reached “an agreement,” and CM#1 was uninterested in criminal charges. However, OPA found insufficient evidence that NE#1 “intended to deprive” Business #1 of compensation. Particularly when NE#1 called 9-1-1 during the dispute and went directly to KPD’s station after he took the truck from Business #1. Rather than intending to steal Business #1’s services, the evidence suggested he sought KPD’s intervention to mediate what NE#1 considered a fair price. Although, as discussed at Named Employee #1 – Allegation #3, that was not a prudent decision, it did not suggest criminal intent.



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

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #1 - Allegation #3**

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

The Complainant alleged that NE#1 unprofessionally handled a dispute with Business #1.

“Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” SPD Policy 5.001-POL-10.

During the dispute with Business #1, NE#1 called KPD, who told him the matter was civil. NE#1 also spoke with WO#4—his SPD supervisor—who concurred that the matter was civil. WO#4 encouraged NE#1 to pay the bill and seek a civil remedy. Nevertheless, NE#1 told CM#1 he was going outside to await police but instead used a spare key to take the truck without payment. That occurred after, according to CM#1, NE#1 slammed his badge on the counter, indicating he was a law enforcement officer. Even if NE#1 did not slam his badge on the counter as CM#1 described, NE#1 admitted to OPA that he told CM#1 he was an officer before taking his truck: “Man, I’m a police officer. I know the laws, you know?” Either way, as WO#1 told CM#1 on body-worn video, NE#1 handled the situation unprofessionally. Moreover, when WO#4 asked NE#1 about the dispute’s disposition, NE#1 indicated he had settled with CM#1. However, WO#1, WO#2, and CM#1 said NE#1 left CM#1 no viable option by threatening to leave without paying anything: “Take it or leave it. You can go to civil court.”

While OPA understands NE#1’s frustration with having a vehicle in need of repair and repair costs being more than anticipated, taking the truck from the repair shop without paying undermined CM#1’s and KPD’s trust in NE#1 and SPD—particularly when WO#4 warned him against doing it.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**