



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 10, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0152

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-11 Employees Will Be Truthful and Complete in All Communication	Not Sustained - Unfounded (Expedited)
# 2	7.010 - Submitting Evidence 7.010-POL 1. Employees Secure Collected Evidence	Not Sustained - Unfounded (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)

***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 Named Employee #1 (NE#1) falsified messages allegedly sent by the Complainant to a crime victim. It was also alleged NE#1 submitted those messages as evidence for the Complainant's prosecution. Further, Named Employee #2 (NE#2)—an unknown employee—allegedly used that “fake evidence” as probable cause to arrest the Complainant.

### **ADMINISTRATIVE NOTE:**

NE#1 is a former SPD officer and NE#2 is an unknown employee. As such, this case is not governed by a 180-day deadline.

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and approval, believed it could reach and issue recommended findings without interviewing involved employees.

### **SUMMARY OF INVESTIGATION:**

This case concerns a 2018 arrest, and subsequent prosecution, of two men accused of a hate crime—the Complainant and Community Member #1 (CM#1). The Complainant and CM#1 were accused of assaulting another man (the



Accuser) due to his sexual orientation. The Complainant and CM#1 were originally charged in state court, but their cases were later transferred to federal court. In 2021, federal prosecutors dismissed charges.

On May 14, 2022, OPA received two web-based complaints concerning this case. The first was an anonymous complaint. The second was from the Complainant. OPA later determined both complaints came from the Complainant.<sup>1</sup>

The Complainant alleged he was arrested “on the basis of false allegations,” where “evidence had been prefabricated and . . . concealed.” The Complainant alleged “[s]omeone just make a retaliation and say I assault him because his sexual orientation.” The Complainant also alleged SPD “tried to build fake evidence” against him. OPA opened an investigation.

During its investigation, OPA reviewed the OPA complaints, Computer-Aided Dispatch (CAD) call report, an incident and supplemental reports, NE#1’s criminal case file, and two Seattle Times articles concerning the Complainant’s arrest and dismissed prosecution. OPA also interviewed NE#1, the Complainant, and a representative of the United States District Court for the Western District of Washington. OPA contacted the Complainant’s criminal defense attorney on multiple occasions to schedule an interview, but OPA did not receive a response.

*A. SPD records and criminal case file*

On October 22, 2018, the Accuser called 911, reporting two men assaulted him the day prior. The Accuser stated the suspects “pulled a knife” on him and threatened to kill him due to his sexual orientation. The Accuser believed the two men were former roommates of his “old friend.”

SPD officers responded that day and took a report. In summary, the Accuser stated the Complainant and CM#1—both identified by name—assaulted him. The Accuser stated CM#1 held his wrists and the Complainant held his ears. The Accuser stated CM#1 and the Complainant squeezed and shook him. The Accuser stated both CM#1 and the Complainant yelled at him in French, used homophobic slurs, and told him to stop being gay. The Accuser stated the incident occurred because his friend sent pictures of the Accuser with his husband to members of the Cameroonian community. The responding officer took photographs of bruises behind the Accuser’s ears. Thereafter, the Accuser claimed to receive threatening text and voicemail messages.

On November 3, 2018, the Complainant was arrested. On November 7, 2018, a SPD detective completed a probable cause statement for that arrest. It noted, during the assault, the Accuser saw the Complainant with a knife. CM#1 grabbed the Accuser’s wrists while the Complainant put the knife in his back pocket, grabbed the Accuser’s ears, and shook the Accuser back-and-forth while calling him homophobic slurs. The detective photographed abrasions behind the Accuser’s ears, noting “redness and scabbing.” The statement also noted “further investigation needs to be

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<sup>1</sup> Both complaints listed different contact email addresses. OPA communicated with both email addresses and was given the same contact phone number from both accounts. An OPA investigator spoke with the Complainant by phone, which was arranged by communications with both email accounts. Additionally, both web complaints were filed about eleven minutes apart, listed similar initials and physical descriptions, and similar factual allegations, specifically against NE#1.



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conducted in regard to the continued harassment, vandalism and possible property damage,” but there was probable for CM#1 and the Complainant’s arrest.

NE#1 requested analyses of CM#1 and the Complainant’s cell phones. No calls, SMS, or location data was found on CM#1’s phone prior to November 4, 2018, suggesting those items were deleted. Location information was found on the Complainant’s phone.

Despite dismissal of federal charges, SPD’s criminal investigation continued because state prosecution was still an option. The criminal investigation file contained hundreds of documents, pictures, and other evidence. OPA reviewed phone message screenshots, mostly in French. The criminal file case timeline indicated the FBI’s investigative involvement.

#### *B. Seattle Times Articles*

OPA reviewed two Seattle Times articles covering the case.

The first was published in November 2018. That article described the alleged assault, CM#1 and the Complainant’s arrest, and the filing of criminal charges. The article noted SPD requested FBI assistance due to potential internet stalking involved.

The second article was published in September 2021. That article detailed the impact of the criminal case on CM#1 and the Complainant. The article noted the case was initially filed in King County Superior Court but was transferred to the U.S. District Court for the Western District of Washington in August 2019. According to that article, CM#1 believed the Accuser targeted him after he rebuffed the Accuser’s romantic overtures. Further, CM#1 and the Complainant believed they were implicated so the Accuser could claim asylum from returning to Cameroon. The Complainant claimed to have cell phone records proving an alibi. CM#1 stated he offered cell phone and internet records to authorities demonstrating an alibi. The article also noted CM#1 and the Complainant’s defense attorneys’ investigations showed the Accuser fabricated evidence. The article also stated court records showed the Accuser refused to give SPD or the FBI his cell phone to analyze location data and text messages allegedly sent via WhatsApp.

#### *C. OPA Interview – Named Employee #1*

NE#1 was a SPD detective. He no longer works at the Department but agreed to a voluntary OPA interview.

NE#1 was a main detective on the case but worked in collaboration with federal investigators. NE#1 photographed and inventoried the text messages on the Accuser’s phone. NE#1 was unable to verify the text messages’ authenticity, so they were given to the FBI and a federal prosecutor. The federal prosecutor worked with someone who assisted them with the technology involved. NE#1 assumed that person was responsible for that aspect of the case.



NE#1 spoke with the Accuser. The Accuser's story had inconsistencies and corroborated elements, which NE#1 relayed to the prosecutor. The FBI and federal prosecutors were involved early on and handled many of the evidentiary and investigative issues.

NE#1 denied creating or falsifying evidence. NE#1 confirmed he did not verify the authenticity of the text messages. Rather, he turned the screenshots over to the federal prosecutors.

*D. OPA Interviews – Complainant*

OPA spoke with the Complainant twice by phone.

During the first conversation, the Complainant stated he believed some of the evidence was altered, such as the Accuser's screenshots. The Complainant agreed to send OPA copies of other allegedly altered evidence, but never did. The Complainant was unable to explain how, why, or who altered the texted messages, but suggested NE#1 was possibly responsible. The Complainant asked for the weekend to review documents and identify other specific evidence he believed was falsified. OPA never received that information.

During the second conversation, the Complainant claimed the WhatsApp messages and social media posts were falsely created by the Accuser. Further, the Complainant stated NE#1 should have verified their authenticity before giving them to the prosecutor.

Overall, the Complainant expressed frustration with the criminal justice system. The Complainant wanted the Accuser charged with falsifying evidence.

*E. OPA Interview – U.S. Courts*

OPA spoke with a federal court representative who could not disclose why the criminal case was dismissed. That representative confirmed CM#1 and the Complainant were indicted by Grand Jurys, but Grand Jury evidence was sealed.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 5.001-11 Employees Will Be Truthful and Complete in All Communication***

The Complainant alleged NE#1 altered text messages allegedly sent by the Complainant to the Accuser.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Here, the Complainant alleged NE#1 possibly falsified text messages allegedly sent by the Complainant to the Accuser. However, OPA found no evidence corroborating the Complainant's unsubstantiated hunch or a clear motive. Instead, the evidence suggests NE#1 merely photographed the messages presented by the Accuser. Further, following NE#1's



interview of the Accuser, NE#1 reported inconsistencies and corroborated elements to the prosecutor. Highlighting holes in the Accuser's story to prosecutors is inconsistent with the Complainant's theory NE#1 conspired to frame him. Later, during separate OPA interviews, the Complainant's allegation shifted from NE#1 fabricating those text messages to NE#1 failing to authenticate them prior to his arrest. Officers must have probable cause to arrest a suspect. See SPD Manual 6.010-POL-1. Probable cause requires "the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed." See State v. Barron, 170 Wash. App. 742, 750, 285 P.3d 231, 235 (2012).

Here, available evidence suggested the Complainant participated in a hate crime against the Accuser. That evidence included text messages allegedly sent from the Complainant to the Accuser and injuries consistent with the Accuser's account. Those seemingly trustworthy facts and circumstances led NE#1 to arrest the Complainant. NE#1 told OPA he photographed the text messages and turned them over to a federal prosecutor. NE#1 explained that was standard procedure because he lacked the technological ability to authenticate the messages. NE#1 presumed the federal prosecutors would verify that evidence before presenting it to a Grand Jury. While authentication is required prior to the text messages' admission into evidence at trial, it was not required for NE#1 to establish probable cause to arrest the Complainant.

Last, OPA uses a preponderance of the evidence standard.<sup>2</sup> That means allegations will be sustained where the greater weight of the evidence—more than 50%—supports the allegation. *Id.* Overall, an "inarticulate hunch" is insufficient to establish reasonable suspicion, let alone a preponderance of the evidence. See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

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

##### ***7.010 - Submitting Evidence 7.010-POL 1. Employees Secure Collected Evidence***

The Complainant alleged NE#1 submitted fabricated evidence in a criminal investigation.

SPD Policy 7.010-POL-1 requires employees secure collected evidence.

Here, NE#1 collected/photographed text messages the Accuser claimed evidence of a crime. NE#1 gave that evidence to a prosecutor. Nothing in SPD Policy 7.010-POL-1 required NE#1 to do more.

While a forensic analysis of the Accuser's phone could have possibly verified the authenticity of the messages, NE#1 apparently did not have that option. According to the September 2021 Seattle Times article, the Accuser "refused to turn his cellphone over to Seattle police or the FBI." Accordingly, NE#1 would have needed a warrant to seize and search the Accuser's phone. SPD, the FBI, or prosecutors could have sought that warrant. Ultimately, SPD Policy 7.010-POL-1 did not require NE#1 to do that at that juncture.

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<sup>2</sup> *Seattle Office of Police Accountability Internal Operations and Training Manual (7.1).*



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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

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

***6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

The Complainant alleged NE#2—an unknown officer—arrested him without probable cause.

SPD Policy 6.010-POL-1 requires officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, probable cause existed for the Complainant’s arrest. As set forth above and in the probable cause statement, the Complainant’s arrest was supported by: (1) the Accuser’s statement the Complainant confronted him with a knife, pulled his ears, then “continuously pulled [the Accuser’s] head back and forth while calling him anti-gay slurs;” and (2) physical evidence, including “significant abrasions” behind both ears such that “the skin on the back of the ears had come off,” and “redness and scabbing” behind both ears when a SPD detective photographed the Accuser on October 23, 2018. Such information coming from an identified complaining victim was sufficient probable cause to arrest the Complainant for a violation of RCW 9A.36.080.<sup>3</sup>

Probable cause is a significantly lower standard than that needed to prove a crime beyond a reasonable doubt. Further, the fact that federal charges were later dismissed against the Complainant does not call to question the probable cause SPD officers had to arrest the Complainant on different state charges. Finally, the principle evidence that the Complainant claimed was “fake”—the text messages—were only referenced briefly in one line of the probable cause statement (“[The Complainant] and his family members began to receive harassing texts.”). Even if this one line were stricken from the probable cause statement, SPD officers still had probable cause to the arrest the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

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<sup>3</sup> “A person is guilty of a hate crime offense if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim’s . . . sexual orientation . . . : (a) Causes physical injury to the victim or another person.” RCW 9A.36.080(a)