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MEMO

August 28th, 2023

To : Lieutenant Leo Viola #512

From : Sergeant Austin Hancock #566

Ref : Use of Force Investigation - Case: IA2023-00039078 & IA2023-00039088

CC: Professional Standards /IA. File

Initial Awareness:

On Thursday 07/27/23 Lt. Jurgens asked me to look into a use of force incident by KPD Officers Vences #686, Courtier #661, Karaway #732, and Roepke #696. The incident occurred on 07/20/23 stemming from a hit and run investigation and the use of force was documented under case #2023-00039088.

Investigation:

I have been a Police Officer with the Kenosha Police Department for over 13 years and I have been a Sergeant for more than 3 years during that time. I am currently assigned to the Office of Professional Standards. I am also a certified Defensive Tactics (DT) Instructor for the State of Wisconsin and I am certified as a Force Science Analyst by the Force Science Institute.

It should be noted that my review of this incident was focused solely on the use of force by KPD Officers and the other aspects of this incident are being investigated by Lt. Jurgens. For that reason, my review of this incident was focused on the Officers directly involved with the use of force.

In my review of this incident, I read the reports generated by PO Courtier, PO Vences, PO Roepke, PO Karaway and PPPD Sgt. Lodygowski. I watched the body worn camera video (BWC) of PO Courtier, PO Vences, PO Roepke, and PO Karaway. PO Thorpe, and PO Maccari's BWC were reviewed but did not offer me any additional insight to this investigation. I also reviewed the BWC of PPPD Sgt. Lodygowski, a cell phone video that was circulating the internet from "Hal Mudge" and a video of someone recording a computer screen with surveillance video from inside the restaurant (titled

“Daniel Thompson). Along with Lt. Jurgens, I conducted interviews with PO Courtier, PO Vences, [REDACTED] I did not gain any new or additional information from my interview with [REDACTED]

PO Courtier - Report:

PO Courtier documents in his report that he was investigating a rollover hit and run accident. While searching for the suspects who fled the scene on foot, he was directed to a male, female, and infant child who were in “Applebee’s”. The male was later identified as Jermelle English and the female as Shanya Boyd. The staff of that establishment directed PO Courtier to Shanya and Jermelle identifying them as the people who were “acting suspicious”. PO Courtier documents that he strongly believed Jermelle and Shanya were involved based on how similar they were to the suspect description and the fact that they were reportedly acting nervous. According to his report, PO Courtier was trying to investigate whether or not Jermelle and Shanya were involved in the accident when Jermelle began to get up and walk toward an exit. PO Courtier then told Jermelle that he was not free to leave but he still did not comply. At this point, PO Vences is trying to deal with Jermelle and PO Courtier begins dealing with Shanya. PO Courtier documents that he told Shanya to stay back and she said no. Shanya began to walk toward PO Vences who was dealing with Jermelle. PO Courtier attempted to take hold of Shanya’s right arm and, according to his report, informed her she was under arrest but Shanya pulled away. PO Courtier directed her into the side of a booth and attempted to put her arm behind her back for handcuffing. PO Courtier documents that he placed a handcuff on her right wrist when she began screaming loudly and stood up on the booth. PO Courtier goes on to say that he was trying to control the handcuff so it could not be used as a weapon when Shanya started to push him off of her and swing her arms toward his face. PO Courtier was not able to get his balance while standing on the booth so he attempted to wrap his arm around Shanya’s backside to direct her off the booth. He was not able to do this as Shanya went back against the window. PO Courtier documents that he could not grab any other part of Shanya other than the “bun of her hair” to try to move her forward and away from the window. According to PO Courtier, [Shanya] “continued to still try to break free from my grip that I still had on her and continued to swing her left arm toward me, as well as kicking her legs, making me fearful I was going to get struck in the face.” PO Roepke arrived at this point and assisted in directing Shanya to the ground. PO Courtier documents that during this, numerous dishes, tables and chairs were knocked to the ground and Shanya continued to resist Officers. He goes on to say “Needing to stop the continued active resistance, I deployed my department issued oleoresin capsicum (OC) spray into Shanya’s face.” They were then able to take Shanya into custody and secure her into a squad car.

PO Courtier - BWC:

On PO Courtier’s BWC, Jermelle can be seen carrying the infant child in his arms as he repeatedly ignores Officers commands and is trying to walk away. At about 23:15:36 on the BWC PO Vences can be seen attempting to follow Jermelle who is

carrying the infant and PO Vences tells Shanya to “stay with my partner” while physically preventing her from walking around him. As PO Vences has his back turned to Shanya and is trying to address Jermelle, Shanya replies “no I’m not going to stay with nobody”. PO Courtier is attempting to grab Shanya’s right arm as she is waking toward PO Vences. PO Courtier tells her “put your hands behind your back”. There is a visible struggle as they end up in the booth and PO Courtier is attempting to place Shanya in an escort hold for handcuffing. He is not able to get an escort hold as Shanya continues to pull away and flail her arms knocking dishes around on the table. PO Courtier maintains some control of her right wrist and is able to secure a handcuff. It is at this point that Shanya stands onto the booth cushion. She is jerking her arms away from PO Courtier and turns toward him as she appears to kick at him with her right leg. PO Courtier is giving repeated commands for Shanya to put her hands behind her back but she continues to resist by swinging at him with her left hand. They are still positioned standing on the booth, Shanya’s back is against the window and she is facing PO Courtier. As she is doing this, PO Courtier is seen grabbing ahold of Shanya’s hair and trying to pull her away from the window. PO Roepke and PO Karaway arrive and take hold of Shanya’s left arm. Together they are able to get her out of the booth but she maintains a standing position on the ground. The Officers are attempting to handcuff her but Shanya is seen still pulling away. As Officers are trying to direct her to the ground for handcuffing, PO Courtier deploys his OC spray into Shanya’s face. This appears to have the desired effect as Shanya’s resistance greatly diminishes. Once she is stabilized on the ground, Shanya is able to be handcuffed.

PO Roepke - Report:

PO Roepke documents being at the Applebee’s and investigating the same incident as PO Courtier. I found his report to be consistent with his BWC. He indicated that he could hear a woman yelling in the restaurant and observed PO Courtier struggling with a female/black [Shanya]. PO Roepke observed that Shanya had climbed onto the booth and PO Courtier was actively trying to take her into custody. PO Roepke documents that he observed Shanya “brace her body up against the window and actively push against the seat in order to keep her distance from PO Courtier”. He further documents that Shanya was “actively pulling away from PO Courtier as he was giving her multiple commands.” PO Roepke described that he was observing “active resistance” and said that he climbed onto the seat of the booth to take hold of Shanya’s left bicep and forearm. PO Roepke could feel “resistive tension” in Shanya’s arm as she actively pulled away from him. PO Roepke documents that with assistance from other Officers, they were able to pull her down from the booth and attempt to stabilize Shanya against a table. Shanya continued to resist and PO Roepke determined that “she needed to be placed on the ground for further stabilization.” PO Roepke documents that even at this point, Shanya was continuing to resist by pulling her arm away. Eventually Shanya was placed into handcuffs and escorted outside to a squad car.

PO Roepke - BWC:

At about 23:16:02 on the BWC PO Roepke can be seen moving from the back of the restaurant toward a loud commotion. PO Courtier is visible standing on the booth and struggling with Shanya who is also standing on the booth with her back against the window. PO Roepke then grabs onto Shanya's left bicep and forearm and directs her off of the booth seat. Shanya can be seen clenching her fist and pulling her arm away from PO Roepke. Shanya is then brought to the ground where she is seen pulling her arm away from PO Roepke and is able to free her arm from his grip. PO Roepke is able to regain control of her arm and Shanya is then handcuffed. PO Roepke moves her to a seated position and then asks her if she is ok. Shanya is assisted to her feet and then walked outside to a squad car. Shanya is continuing to yell as Officers stabilize her against the squad car to conduct a search. Shanya is then seated inside the squad car.

PO Karaway - Report:

PO Karaway documents being at the Applebee's restaurant investigating the hit and run accident. While he was there, he documents seeing PO Courtier standing on the seat of a booth and attempting to place Shanya into custody. He went on to say that Shanya was standing on another booth seat with her leg propped on the back of the booth and her back pressed against the wall. According to PO Karaway: "Shanya was obviously bracing her body to overcome PO Courtier's attempts to control her." PO Karaway says he then climbed onto the table and pushed Shanya away from the wall she was leaning on. He then put himself between the wall and Shanya and pushed her off the booth. He documents: "I could feel Shanya pushing back against me as I tried to pushed(sp) her away from the wall." Shanya was continuing to "actively resist" when PO Karaway attempted a "control the head" decentralization. He documents that the dynamic situation caused his hands to miss the target area and he suspects, "made contact with the front of her neck". Not wanting to perform the decentralization from that position, he released his hands from Shanya. PO Karaway then grabbed Shanya's ankles and "pulled them out from underneath her". It was about this time that he said he could feel a liquid contact his head and forearm. He then realized that the liquid was OC and he had been exposed to its effects. PO Karaway then took control of Shanya's right arm from PO Courtier and secured her in handcuffs. Shanya was assisted to her feet and escorted to a squad car.

PO Karaway - BWC:

PO Karaway's BWC shows him entering the main area of the restaurant and a loud commotion can be heard. He is seen running with PO Roepke toward Shanya and PO Courtier who are physically struggling while standing on the seats of a booth. PO Roepke takes hold of Shanya's left arm and PO Karaway stands on the table. As Officers move Shanya away from the window, PO Karaway positions himself behind her as Officers move her out of the booth. PO Roepke and PO Courtier can be seen struggling to place Shanya's hands behind her back. Shanya is yelling and does appear to be actively resisting Officers. Tables and chairs are being knocked around and all of this is happening while Shanya is in a standing position. PO Karaway takes hold of Shanya's

ankles and Shanya is directed to the ground in a controlled descent. PO Karaway then takes control of Shanya's right arm which already has a handcuff applied. PO Karaway secures Shanya's hands behind her back. Shanya is assisted to a seated position.

PO Vences – Report:

PO Vences documents being at the Applebee's restaurant to investigate the hit and run accident. He documents that while speaking with Shanya and Jermelle, they were not cooperative with simple questions. He says that Jermelle grabbed the baby and attempted to walk away from Officers towards an exit when they informed him he was detained for the accident investigation. PO Vences documents that Jermelle continued to walk away from Officers now heading deeper into the restaurant. PO Vences told Shanya to stay with PO Courtier because he was trying to separate them. According to PO Vences report, he "attempted to stop the male half [Jermelle] with a modified escort hold to his right arm." According to the report, Jermelle was still holding the child and quickly tried to pull away. PO Vences documents that he told Jermelle to stop and a struggle ensued. PO Vences then states that he was concerned for the baby's safety and did not want the child to fall or get hurt. He documents that Pleasant Prairie Police [Sgt. Lodygowski] assisted him during the struggle and that they were able to get Jermelle down to a seated position and retrieve the baby. He goes on to say that during the struggle, Jermelle continued to attempt to pull away and was squeezing the child tighter in his arms. Once the child was removed, PO Vences documents that he "performed a modified 'secure the head' decentralization from a half-kneeling stance." PO Vences states: "The male was successfully decentralized to the ground, and was given several commands to put his hands behind his back. To gain compliance, I delivered multiple strong side hand strikes and strong side forearm strikes to the male half [Jermelle]. Due to the dynamics of the situation, the strikes met the subject's head, but they successfully caused him to relax his arms and put those near his back." According to PO Vences' report, Jermelle was placed into the recovery position and then eventually checked by the Kenosha Fire Dept. for injuries.

PO Vences – BWC:

During the first few minutes of PO Vences BWC video he is investigating the hit and run accident with PO Courtier. At about 23:15:08 Jermelle is seen standing up with the child in his arms and then walking toward the exit. PO Courtier is heard telling Jermelle "you are not free to go right now". Jermelle is then stopped by PPPD Sgt. Lodygowski. Jermelle starts to become very agitated and PO Vences tells him: "Relax, Relax, Relax you got a baby with you". Jermelle immediately responds "yeah and don't touch me with my son in my hands". Jermelle then walks back around PO Vences heading the opposite direction and deeper into the restaurant. As PO Vences attempts to follow Jermelle, Shanya walks behind him saying "We don't have to answer your questions..." PO Vences extends his hand to keep Shanya back and says "you're going to stay with my partner". As PO Vences turns back toward Jermelle he can be seen walking quickly away from PO Vences. Jermelle is still carrying the child and has created a considerable distance between himself and PO Vences. PO Vences closes the distance as

Jermelle says “you can follow me all you want to...” It appears that PO Vences is trying to secure the right arm of Jermelle while giving the command “Stop”. Jermelle replies “Get the fuck off of me” and a struggle ensues. At about 23:15:51 the audio cuts out on the video. The audio comes back on at about 23:15:54 where Jermelle is heard repeatedly yelling “Let me the fuck go”. PO Vences is still saying “Stop it” and there is a visible struggle for control of Jermelle’s right arm. At about 23:16:03 PO Vences is seen trying to control Jermelle’s right arm and grabbing onto Jermelle’s hair with his right hand. At about 23:16:15 Jermelle pulls his right arm away from PO Vences and then swings toward him. At about 23:16:24 the audio cuts out again. For a period of time, the video is in close proximity to Jermelle so it is difficult to see what is happening but there is clearly a struggle. At 23:16:31 the audio comes back on but immediately turns off again. At 23:16:32 Jermelle is decentralized face down on the ground with PO Vences on his right side and Sgt. Lodygowski on his left. Slowing the video down and watching it at ¼ speed, Jermelle’s right hand/arm are not visible at this point. Within one second, PO Vences appears to deliver two hand strikes to Jermelle’s head with his right hand. PO Vences’s left hand is holding onto the collar area of Jermelle’s shirt, between his shoulder blades. At 23:16:33 Jermelle’s right hand/arm are flat on the ground and raised up near his head. Jermelle’s left hand arm is pulled behind his back by PPPD Sgt. Lodygowski. Jermelle’s right hand/arm are visible in the same position for approximately 4 seconds. During this same time, PO Vences is seen delivering what appear to be six additional strikes to Jermelle. At about 23:16:39 PO Vences pulls Jermelle’s right hand/arm behind his back and about 23:16:47 Jermelle is secured into handcuffs by Sgt. Lodygowski. At about 23:17:38, Jermelle is placed into the recovery position. PO Vences and Sgt. Lodygowski stay with Jermelle until rescue arrives.

- It should be noted that where the audio cuts out, it is due to the recording being stopped, likely a result of the struggle taking place. The video was able to be recovered but the audio was not. However, with the additional videos recorded in this incident, it appears that any audio during that time was captured by those additional recordings.

PPPD Sgt. Lodygowski – Report:

Sgt. Lodygowski documents being at the Applebee’s restaurant in relation to a mutual aid request from KPD in regards to the hit and run accident. He writes that after entering Applebee’s, two KPD officers were speaking with Shanya and Jermelle and that one of the two KPD officers, is PO Vences. He observed that Jermelle was holding an infant child and that they matched the suspect description. He describes Shanya and Jermelle as “very uncooperative”. Sgt. Lodygowski said that Jermelle stood up with the child and was walking away from KPD officers. Sgt. Lodygowski says he heard PO Vences tell Jermelle he was not free to go. Sgt. Lodygowski states: “As Jermelle approached me, I both advised Jermelle he was not free to go, as he was being detained by KPD. I then extended both my arms towards him with open hands, while directing him to stop walking away. Jermelle then forcibly pushed arms away and stated “don’t touch me!”. He goes on to say that Jermelle turned away from him and walked around KPD officers. Sgt. Lodygowski said that it appeared Jermelle was going to walk back to the booth they had been seated at but he continued walking and increased his speed. He

writes that PO Vences caught up to Jermelle and grabbed onto him and attempted to prevent him from walking away. He observed Jermelle immediately resist and described him as thrashing his upper body and pulling away while yelling profanities. Sgt. Lodygowski documents that Jermelle was still holding the child while he and PO Vences were giving commands. Jermelle refused to comply and continued to “violently thrash his body and pull away”. Sgt. Lodygowski and PO Vences were able to decentralize Jermelle “in a very slow and controlled decent, where Jermelle came to rest on his buttocks.” He describes giving additional loud commands to Jermelle to release his child but he appeared to grip the child even tighter. Sgt. Lodygowski was trying to gain control of Jermelle’s left arm while PO Vences was on the right. He documents: “I felt very strong resistive tension from both his arm and upper body, as he continued to pull away from us.” With assistance from PO Vences they were able to loosen Jermelle’s grip and an Applebee’s employee removed the child to a safe area. Once the child was removed, PO Vences is able to turn Jermelle face down onto the ground. Sgt. Lodygowski documents that PO Vences gave numerous loud commands for Jermelle to put his hands behind his back. He writes: “Due to Jermelle refusing to comply with Officer M. Vences’s lawful orders, as he continued to actively resist, Officer M. Vences delivered several focused strikes to the area of Jermelle’s upper body, in order to create dysfunction in Jermelle’s violent behavior.” Sgt. Lodygowski writes that after PO Vences “delivered these focus strikes, it was effective in creating a dysfunction and we were able to overcome his resistance and direct both of his hands behind his back.” He documents that he was then able to secure Jermelle in handcuffs and EMS was requested to provide medical attention to Jermelle and the child.

PPPD Sgt. Lodygowski – BWC:

As the video starts, Jermelle is seen getting up from the booth and walking up to Sgt. Lodygowski while carrying the child. Sgt. Lodygowski reaches out with both hands open but there is no audio on this portion of the video. Jermelle is holding a diaper in his right hand and pulls away and pushes off of Sgt. Lodygowski with that same hand. When the audio does start, PO Vences is heard telling Jermelle to relax while Sgt. Lodygowski is telling him he is not free to leave. Jermelle is still facing Sgt. Lodygowski at this point. Shanya can also be seen walking up directly behind PO Vences and PO Courtier. After exchanging some words, Jermelle turns around and walks directly between PO Courtier, PO Vences, and Shanya, heading deeper into the restaurant. PO Vences tells Shanya to stay with his partner and then walks toward Jermelle who is still walking away. From a distance, PO Vences is seen grabbing Jermelle and saying “Stop”. Sgt. Lodygowski runs from the other end of the restaurant and immediately tries to control Jermelle’s left arm while he clutches the child. The audio on this portion of the video is the same as what I previously documented. Also, as previously documented, Jermelle is seen going to the seated position and actively resisting officers. The child is removed by the Applebee’s employee and PO Vences directs Jermelle to the ground. This video offers an angle from the left side of Jermelle which is where Sgt. Lodygowski is positioned. From what I can see in the video, PO Vences delivers two strikes to Jermelle’s head with his right hand. During this time, I can’t see where Jermelle’s right hand/arm is but Sgt. Lodygowski already has his left arm behind his back. By the time PO Vences is delivering the third

strike, Jermelle's right hand/arm are visible and near his head. Sgt. Lodygowski appears to use his right arm to move PO Vences left hand off of Jermelle's back. Someone can be heard saying "Alright...Alright". When PO Vences stops delivering strikes, he brings Jermelle's right hand/arm behind his back. He then appears to strike Jermelle in the right shoulder with his right knee. It does appear that there is some force behind this strike but not "full force". At this point you can hear someone yell "STOP" and then what sounds like a different voice also say "alright, alright, stop". PO Vences replies, "Alright we're good, we're good". Sgt. Lodygowski secures Jermelle in handcuffs. Sgt. Lodygowski asks Jermelle if he is alright. Jermelle does not respond other than making moaning / grunting sounds. Sgt. Lodygowski then asks Jermelle if he needs rescue. KFD is contacted to respond to the scene and Jermelle is placed into the recovery position.

"Hal Mudge" Video:

This is the video that was widely circulated on the internet and recorded by an employee of the Applebee's restaurant. A copy of this video was provided to me by Sgt. Bandi on 08/16/23. However, I had previously viewed portions of this same video that were available on various social platforms and news media.

In the first 16 seconds of the video the camera is moving all over but audio can be heard of the struggle between PO Vences and Jermelle. It is the same audio as documented above that was captured on PO Vences BWC. From this recording, the baby is seen crying and being held by Jermelle as PO Vences and Sgt. Lodygowski are trying to loosen his grip. Jermelle is sitting on the ground at this point but visibly resisting officers. This video also offers a different angle when Jermelle frees his right hand and swings it toward PO Vences. Jermelle then appears to be using that hand to attempt to keep PO Vences away from him. PO Vences and Sgt. Lodygowski appear to gain control of Jermelle's arms and someone removes the child from the area. Jermelle is immediately decentralized lying face down on the ground. PO Vences is on his right side and Sgt. Lodygowski is on his left. PO Vences is seen delivering eight strong side strikes while Sgt. Lodygowski is securing Jermelle's left arm/hand. As officers are handcuffing Jermelle, the person recording the video is standing in very close proximity to them. That person is then ordered by PO Thorpe and PO Maccari to move away from the arresting officers. You can also hear Shanya yelling in the background. This ended my review of this video.

Surveillance Video "Daniel Thompson":

This video is one that was also circulating on social media. It is an apparent cell phone recording of a computer screen that is playing surveillance video from within the restaurant. The surveillance video is positioned high in the corner of the restaurant near where PO Vences and Sgt. Lodygowski are engaged with Jermelle. The video shows Jermelle walking away from PO Vences and carrying his child. PO Vences can be seen grabbing toward Jermelle's right arm as they go off camera. When they come back on camera, PO Vences is seen holding onto Jermelle's head and Sgt. Lodygowski is trying to control Jermelle's left arm. There is a struggle for a period of time but there is not a lot of

detail due to the video quality. Jermelle is decentralized flat onto his stomach and PO Vences is seen delivering what appear to be four hand strikes and four forearm strikes to the area of Jermelle's head. He then pulls Jermelle's right hand behind his back and delivers one knee strike to the area of Jermelle's right shoulder/bicep. PO Quilling then walks up and the video ends a few seconds later.

Findings:

In the course of this investigation it is my duty to determine whether the force used by KPD Officers was reasonable or unreasonable. As I work toward that determination, I weigh the following issues:

Graham v. Connor (1989) The United States Supreme Court found that Law Enforcement Officers' use of force against subjects was a type of seizure, and therefore, under the Constitution had to be "objectively reasonable". In its decision, the Court laid out the issues to consider when deciding if a particular use of force is reasonable. These include:

- *The severity of the alleged crime at issue.*
- *Whether the suspect poses an imminent threat to the safety of the officer and/ or others.*
- *Whether the suspect is actively resisting or attempting to evade arrest by flight.*

The City of Kenosha Police Department (KPD) has authorized sworn law enforcement officers to use physical force to arrest, apprehend, or restrain a person based on the above listed "objectively reasonable" factors. The Kenosha Police Department's policy defines the level and amount of force which an officer uses must be reasonably necessary to accomplish the law enforcement objective.

During an investigation like this, it is important to remember that many things are not captured on video. Video is not able to depict tactile cues (ex. Resistive Tension), it is not able to portray an individual's unique perspective, and it does not offer us an understanding of the physiological responses that may or may not be taking effect. The benefit of video is that it objectively records visual and sound within the field of view. During my investigation, I would continually remind myself of these things in an attempt to remain objective and understand that Officers are often forced to make decisions in fractions of seconds without the benefit of rewinding, slowing down, or enhancing.

The State of Wisconsin Department of Justice Law Enforcement Standards Board (LESB) has developed a curriculum for basic WI Law Enforcement recruit academies to follow. The structure developed for Law Enforcement to use and justify force used against subjects is the Defense and Arrest Tactics (DAAT) system. This method is defined as a system of verbalization skills coupled with physical alternatives. Within this curriculum are "intervention options". "Intervention options" are types of force defined by the LESB DAAT system.

Categories of force include:

- *A trained technique*
- *A dynamic application of a trained technique.*
- *Not trained but justified under the circumstances*

PO Courtier: Use of Force Findings

During this incident PO Courtier is directly involved in three documentable use of force decisions that were all applied on Shanya and will be outlined below. Based on the evidence I reviewed, PO Courtier believes that Shanya is a suspect in a felony hit and run incident and he is detaining her on that belief. Shanya initially displays passive resistance when PO Vences tells her “Stay with my partner” and she replies “no I’m not going to stay with nobody”. Passive resistance is defined as: *Non-threatening and non-compliant behavior*. Shanya quickly escalates from passive resistance to active resistance when she pulls away from PO Courtier and turns to face him as he is applying handcuffs and steps up onto the booth/table. Active resistance is defined as: *Behavior which physically counteracts an officer’s control efforts and which creates a risk of bodily harm to the officer, subject, and/or other person*. It is at this point that PO Courtier engages in his first documentable use of force decision.

#1 Grabbing Shanya’s Hair (Courtier BWC 23:16:08): Not Trained / Reasonable

At the point that PO Courtier takes hold of Shanya’s hair, they are standing on a bench within a booth of the restaurant and Shanya’s level of resistance has escalated. PO Courtier documents in his report and it is visible on BWC that Shanya is trying to push him off of her and was swinging her arms toward his face. This level of resistance is defined as “Assaultive Behavior”: *Direct actions or conduct that generate bodily harm*. Shanya’s behavior would also be defined as “Continued Resistance”: *Maintaining a level of counteractive behavior that is not controlled by an officer’s current efforts*. This is a dynamic situation and PO Courtier documents that he is trying to control Shanya and because of where and how she is positioned, the only place he could grab was the bun of her hair. Based on PO Courtier’s BWC and documentation in his report, it appears that he did this in an effort to decentralize Shanya and gain a position of advantage. In my interview with PO Courtier, he described concerns over the ability for Shanya to use the attached handcuff or broken dishes as weapons. Weighing the totality of the circumstances, this is a reasonable level of force.

#2 Decentralization (Courtier BWC 23:16:21): Reasonable

At this point, PO Roepke and PO Karaway are on scene and actively assisting with trying to take Shanya into custody. Shanya is able to be removed from the booth but is still in a standing position on the ground. According to officer’s reports and apparent on BWC, Shanya is still portraying continued resistance. The situation is very dynamic and Officers utilized team tactics to decentralize Shanya in what appeared to be a controlled descent.

#3 Oleoresin Capsicum (OC spray) (Courtier BWC 23:16:30): **Reasonable**

As officers are attempting to decentralize Shanya, PO Courtier deploys his OC spray into her face. PO Courtier documents that he was experiencing “continued active resistance” at the time he deployed his OC spray. This appears consistent with BWC and officer’s reports as multiple officers are still struggling to handcuff Shanya. The LESB DAAT manual lists OC spray as a “Control Device” under “Control Alternatives”. *The purpose of control alternatives is to overcome passive resistance, active resistance, or their threats. The goal of a control device is to overcome active resistance or its threat.* At the time PO Courtier deploys his OC spray he has already experienced assaultive behavior and is at that moment experiencing continued resistance. His decision to use OC spray was reasonable under the circumstances. See Lt. Jurgens investigation regarding PO Courtier’s improper aftercare.

PO Roepke: Use of Force Findings

During this incident PO Roepke is directly involved in one documentable use of force decision that was applied on Shanya and will be outlined below. When PO Roepke arrives into the main area of the restaurant, he documents that Shanya is standing on a booth, bracing herself against a window, and attempting to pull away from PO Courtier. He also writes that he was observing “active resistance” and could feel “resistive tension” in Shanya’s arm as she pulled away from him. According to PO Roepke’s report, officers tried to stabilize Shanya against a table but determined “she needed to be placed on the ground for further stabilization”

#1 Decentralization (Roepke BWC 23:16:21): **Reasonable**

PO Roepke was positioned on Shanya’s left arm during this decentralization. PO Roepke, PO Courtier, and PO Karaway utilized team tactics to decentralize Shanya in a controlled descent. For the same reasons documented above, this is a reasonable use of force under the circumstances.

PO Karaway: Use of Force Findings

During this incident PO Karaway is directly involved in one documentable use of force decision that was applied on Shanya and will be outlined below. PO Karaway enters the main area of the restaurant at about the same time as PO Roepke and documents similar observations as PO Roepke. He describes Shanya as bracing her body to prevent PO Courtier’s attempts to control her.

#1 Decentralization (Karaway BWC 23:16:21): **Reasonable**

PO Karaway documents that Shanya was continuing to actively resist. According to PO Karaway’s report, he attempted a “control the head” decentralization but did not feel comfortable due to the dynamics of the situation. He then positioned himself on

Shanya's ankles and utilizing team tactics, was able to decentralize her. This appeared consistent with his BWC and for the reasons documented above, this is a reasonable use of force under the circumstances.

Note: Throughout the entire incident with Shanya, officers are giving commands using heavy control talk to "Stop Resisting", "Put your hands behind your back", "Get on the ground". At no point did Shanya display any behavior that she would comply with officers until she was handcuffed.

PO Vences: Use of Force Findings

During this incident PO Vences is directly involved in eleven documentable use of force decisions that were all applied on Jermelle and will be outlined below. Based on the evidence I reviewed, PO Vences believes that Jermelle is a suspect in a felony hit and run incident and he is detaining him on that belief. According to PO Vences's report, Jermelle is refusing to answer even basic questions during his initial investigation. Jermelle then displays passive resistance by walking away from officers as they inform him he is not free to go. When PO Vences attempts to take hold of Jermelle's right arm, Jermelle tries to pull away from him. PO Vences documents this in his report: "The male, while still holding the small child, attempted to swiftly pull away from my grip, so I told him to stop and a struggle ensued..." This is a display of active resistance by Jermelle and is yet another escalation of his overall resistance. PO Vences also documents that he was concerned for the safety of the child and that as the struggle ensued, Jermelle was squeezing the child tighter in his arms. This lends to PO Vences state of mind in the moment, and that he felt Jermelle's behavior was creating a risk of bodily harm to the child.

#1 Grabbing Jermelle's Hair (Vences BWC 23:16:03): Not Trained /Reasonable

At this point, PO Vences and Sgt. Lodygowski have lowered Jermelle into a seated position. Jermelle is visible on BWC holding the baby and refusing to release his grip. Sgt. Lodygowski documents in his report that "loud lawful commands were being given to Jermelle to release his 1 y/o child..." Based on the evidence available, Jermelle is displaying "continued resistance" as his counteractive behavior is not being controlled by the officer's current efforts. This is an extremely dynamic situation as the officer's attention is divided between trying to control a resistive person and monitoring the safety of the child. Jermelle has the child clutched across his chest with both arms leaving very little for officers to grab onto without potentially harming the child. PO Vences is seen on his BWC holding onto Jermelle's hair with his right hand. This is also visible on Sgt. Lodygowski's BWC at 23:16:01. While officers are not trained to control a person by holding onto their hair, PO Vences is using what is available to him in a dynamic situation as he attempts to stop Jermelle's continued resistance. Considering the totality of the circumstances, this is a reasonable level of force in this situation. This use of force was not documented in PO Vences's report. During my interview with PO Vences I asked him if he remembered grabbing Jermelle by the hair and he said, yes. When he was

asked about why it was not documented in the report, PO Vences said its possible that he didn't remember it at that time.

At about 23:16:15 (Vences BWC) Jermelle is still in the seated position and holding his child. He swiftly pulls his arm away from PO Vences and then appears to swing toward him. PO Vences and Sgt. Lodygowski did not document this incident in their written reports. [REDACTED]

[REDACTED] According to him, in that moment, he identified this action by Jermelle as a possible "pre-attack posture". *"Pre-attack Postures" are defined as behaviors that may indicate imminent danger of physical assault.* PO Vences describes this moment in his interview. He said that he had concerns about Jermelle "gaining the upper hand to react". He also says that he was concerned about weapons because Jermelle had not been searched and his behavior did not make sense. PO Vences and Sgt. Lodygowski are able to loosen Jermelle's grasp of the child and an employee takes the child to a safe location.

#2 Decentralization (Vences BWC 23:16:32): **Reasonable**

Up to this point PO Vences and Sgt. Lodygowski have documented active and continued resistance from Jermelle. With the child removed from the immediate area PO Vences documents that he "performed a modified "secure the head" decentralization from a half-kneeling stance." I found this to be consistent with the BWC from PO Vences and Sgt. Lodygowski. PO Vences's "modified" decentralization would be considered a dynamic application of a trained technique. The "secure the head" decentralization is listed under "control alternatives" as a "passive countermeasure" in the DAAT curriculum's "intervention options". *The purpose of "passive countermeasures" is to overcome passive resistance, active resistance, or their threats. The goal is to decentralize.* Based on the totality of the circumstances, this is a reasonable level of force in this situation. This is also visible on Sgt. Lodygowski's BWC and the video "Hal Mudge".

As soon as Jermelle is decentralized, PO Vences begins a series of focus strikes that are outlined below. During this portion of my investigation I relied heavily on BWC from PO Vences, BWC from Sgt. Lodygowski, video "Hal Mudge", and video "Daniel Thompson" to determine the timing, number, and type of focus strikes used. My perspective and decisions about the use of force weighed heavily on officer's reports and interviews with PO Vences and [REDACTED].

#3 Strong Hand Strike (BWC 23:16:32/33): **Reasonable**

At the point that Jermelle is decentralized he has been displaying continued, active resistance. Within that same second, PO Vences is seen delivering his first focus strike to Jermelle's head while giving loud verbal commands "put your hands behind your back". He continues to give these same repeated commands until Jermelle is in a position for handcuffing. In reviewing all of the video that was available to me, I cannot find anywhere that clearly shows where Jermelle's right hand is during this strike. I considered the fact that PO Vences believes the hand is under Jermelle's body [interview]

and the fact that Sgt. Lodygowski is still feeling resistive tension from Jermelle

██████████. ██████████, ██████████, ██████████
██████████
██████████ Under these circumstances and with the level of resistance previously displayed, a focus strike would be a reasonable response in this incident.

Within the LESB DAAT curriculum, focus strikes are listed as an “active countermeasure” under “protective alternatives”. The purpose of “protective alternatives” *is to overcome continued resistance, assaultive behavior or their threats. These interventions are designed to protect officers in situations when they face subjects continuing to resist or threatening assault.* The goal of “active countermeasures” *is to create a temporary dysfunction of an actively resistive or assaultive subject. In essence you are interrupting the subject’s ability to resist, enabling the officer to direct the subject to the ground for stabilization, handcuffing, and other follow-through considerations.* The LESB DAAT curriculum also talks about “targets of circumstance” versus “conventional targets”. *“Conventional targets” are used to offer guidance when practicing focused strikes during shadow, prop, and simulation training. These targets have a practical application in the field, but the dynamics of the rapidly evolving situations law enforcement officers face allow for an adjustment for officers to shift their focus from the conventional target areas to targets of circumstance.* The “conventional target” area for a “strong hand strike” would be the abdomen. However, the dynamics of this incident did not allow access to the abdomen. PO Vences had to process that information and select a “target of circumstance” within less than one second. Based on PO Vences positioning in the videos that I reviewed, his target areas were limited to Jermelle’s back, shoulder, and head. Considering that PO Vences is attempting to overcome continued resistance, is processing how to respond to that, and selecting a target area within fractions of a second; I believe that this use of force is reasonable under the circumstances.

#4 Strong Hand Strike (BWC 23:16:33): **Reasonable**

At the time that PO Vences delivers the second focus strike to Jermelle’s head only about ½ of a second has elapsed from the first strike. Jermelle’s right hand is still not visible on any video that I reviewed and Sgt. Lodygowski is just starting to bring Jermelle’s left arm behind his back. ██████████

██████████ Considering that I could find no considerable change in circumstances at the time PO Vences utilizes a second strike, I believe that this a reasonable use of force under the circumstances.

#5 Strong Hand Strike (BWC 23:16:33/34): **Reasonable**

It is only about another ½ of a second that has passed when PO Vences is ready to deploy his third focus strike. By slowing down the video to ¼ speed, stopping, and replaying as needed, I am able to see that Jermelle’s left hand has been brought to the

center of his back by Sgt. Lodygowski. Now, Jermelle's right hand is also visible and positioned near the right side of his head. While training at the Force Science Institute I learned about "open-loop motor programing". A *motor program is a pre-structured set of motor commands selected by the central nervous system and sent to the muscles via the spinal cord. Motor control is executed via open- and closed-loop systems.* The easiest way to describe "open-loop motor program" is that its movements are typically fast and ballistic. An example of this would be driving a golf ball or throwing a pitch. Once the movement has started and reached the advanced programming stage, it can not be stopped. It is very possible that this is what PO Vences is experiencing in this moment.

#6 Strong Hand Strike (BWC 23:16:34): Unreasonable

About ½ second has elapsed from the third focus strike as PO Vences deploys his fourth strike. There are several factors why I determined that his use of force is no longer justified. By this point, Jermelle's left hand is behind his back and being controlled by Sgt. Lodygowski with seemingly little to no effort. From the perspective of Sgt. Lodygowki's and PO Vences's BWC, Jermelle's right hand has been visibly positioned at the right side of his head for a little over one second. Based on the fact that PO Vences has made three consecutive focus strikes to Jermelle's head it is reasonable to believe that is where his vision is focused. Focal vision provides the highest level of clarity for an individual. Focal vision is only about 1 to 3 degrees of visual angle. Parafoveal Vision is of a diminished clarity and is present between 2 and 10 degrees visual angle. At the rough distance that PO Vences is positioned from Jermelle, I believe that Jermelle's right hand would be within his focal vision and it should have been recognized by PO Vences. It is difficult to tell for certain, but it appears that this strike makes contact with Jermelle's hand as it is against his head. In addition to these factors, the goal of focus strikes is to create a temporary dysfunction. The idea is to use that dysfunction to create time to disengage or in this case, gain control of his right arm. I do not see any attempt by PO Vences to bring Jermelle's hand behind his back. Officers are trained that "hands" are what can hurt you. For that reason, officers are trained to always be watching for or controlling a person's hands. I don't see that happening in this incident. For all of these factors I do not believe that this level of force is reasonable.

#7 Strong Forearm Strike (BWC 23:16:34/35): Unreasonable

It is at this point that PO Vences makes a transition from "strong hand strikes" to "strong forearm strikes". This strike is also directed at Jermelle's head and his right hand is still visible. PO Vences's level of force is not a reasonable response to the information presented to him and he still has not attempted to control Jermelle's arm. I believe it is also important to mention that it does not appear that Jermelle is moving at this point. While this does not account for tactile cues that the officers may be feeling, there is no indication from the video that there is any resistance at this point.

#8 Strong Forearm Strike (BWC 23:16:35): **Unreasonable**

Within approximately ½ second another focus strike is delivered to Jermelle’s head. His right hand is still positioned near the right side of his head, his left arm is still behind his back and Jermelle is still not moving his body. This is not a reasonable use of force.

#9 Strong Forearm Strike (BWC 23:16:35/36): **Unreasonable**

Within approximately ½ second another focus strike is delivered to Jermelle’s head. His right hand is still positioned near the right side of his head, his left arm is still behind his back and Jermelle is still not moving his body. This is not a reasonable use of force.

#10 Strong Forearm Strike (BWC 23:16:36/37): **Unreasonable**

As PO Vences delivers his last focus strike to Jermelle’s head, Sgt. Lodygowski can be heard saying “alright, alright” several times as he uses his right hand to move PO Vences’s left arm from Jermelle’s back. It is at this point that PO Vences takes ahold of Jermelle’s right hand/arm and rotates it behind his back. Jermelle’s arm appears limp and there is no visible resistance on the video. PO Vences is still yelling “Put your hands behind your back” as he rotates Jermelle’s arm for handcuffing. This is not a reasonable use of force.

#11 Strong Angle Knee Strike (BWC 23:16:40): **Unreasonable**

After Jermelle’s right arm is placed behind his back, PO Vences delivers a “strong angle knee strike” to Jermelle’s right shoulder/bicep area. It should be noted that based on my perspective from the video, this is not a “full force” strike and it does appear that PO Vences was “letting off”. That being said, this is still a use of force and requires justification. It is also at this point that Sgt. Lodygowski is heard saying “alright, alright, stop”.

[REDACTED]

PO Vences did not document this strike in his report. When I asked him in the interview if he used a knee strike on Jermelle he said: “Yes, right at the end. I was basically in the middle of this knee strike, realized his arm was limp at his side and kind of stopped simultaneously as I noticed it. It was still a strike but it definitely wasn’t full force because I realized it while I was using that strike.” When asked for clarification, PO Vences contradicted this statement and said: “Well, it’s clear that my memory is unclear

here too. He still had muscle tightening during that, I remember that.” PO Vences only real explanation as to why this was not in his report was that is “obviously not what I remember” as he pointed to the video of the knee strike taking place.

Based on Jermelle’s behavior after the use of force it appeared to me that he had possibly lost consciousness or was nearly unconscious. He appeared very dazed and confused for some time after the force was used. I asked PO Vences [REDACTED] if Jermelle had lost consciousness and [REDACTED] stated that [REDACTED] did not believe he had.

After the use of force was complete, Sgt. Lodygowski asked Jermelle if he wanted medical treatment. Jermelle’s response is incoherent and Sgt. Lodygowski, PO Vences, and other officers who arrived on scene, facilitate Jermelle being treated by the Kenosha Fire Department (KFD). PO Vences and Sgt. Lodygowski place Jermelle into the recovery position before sitting him up and staying with him until KFD arrives.

Conclusion:

In my investigation, I found that the force used by PO Courtier, PO Roepke and PO Karaway was reasonable. I found no violations of KPD policy related to their use of force in this incident. Note: See Lt. Jurgens investigation regarding improper aftercare by PO Courtier.

My conclusion on the use of force by PO Vences is much more involved. I found that he started out using a reasonable level and amount of force that was driven by the articulable actions of Jermelle. However, this incident did reach a point where the force being used by PO Vences is no longer a reasonable response to the situation. After PO Vences delivered the third strong side hand strike, I found no articulable reason why that force was being used. Looking at the breakdown of this review it is easy to forget about the perspective of time in the actual moment. From the time PO Vences’s actions were no longer reasonable to the time he stopped using force was about 6 seconds. After the use of force is completed, PO Vences administers proper after care and follow through considerations. While this does not condone all of the decisions he made during this incident, it does offer perspective that is worthy of consideration.

I found that PO Vences is in direct violation of **KPD Policy 1.3 Use of Force** for his use of force decisions #6 - #11 outlined above. Furthermore, PO Vences violated this policy by failing to document in his report use of force decision #1 and #11.

PO Vences is also in violation of **KPD Policy 41.14 Mobile Video/Audio and Body-Worn Camera Equipment** for failing to document in his report that his camera had been inadvertently turned off during this incident.

In addition, I found that PO Vences violated **KPD Policy 1.1 Mission, Vision, Core Values**. PO Vences made decisions and took actions during this incident that do not reflect the Mission, Vision, or Values of the Kenosha Police Department.

Attached Interviews for Reference:

PO Courtier Friday, August 18th, 2023 @ 1400hrs. KPD-IA #23-39088

1. Have you received State of Wisconsin LESB DAAT training and are you familiar with its terminology used to describe use of force and resistance? **Yes**
2. Are you familiar with the United States Supreme Court Case Graham vs. Connor and the reasonableness standard that arose from that case? **Yes**
3. Have you received oleoresin capsicum (OC) training and are you certified to carry and use OC? **Yes**
4. Can you describe for me, how Shanya Boyd resisted Officers and how you perceived her resistive behavior? **So, starting I guess even right before she was being handcuffed, she was being told to stay back by Officer Vences. Her refusal right there was passive resistance. Then when I go to handcuff her, she pulls away that's when we fall back toward that table and booth. She's not putting her left hand behind her back, not putting her right arm behind her back while it's handcuffed and using her force against me for the active resistance. Continuing to tell her to "put her hands behind her back", "put her hands behind her back". Her refusal both verbal and physical was that she was continuing the active resistance. I knew that my handcuff was on her and if she were to get it away now then I just gave her a weapon. There was all the silverware and all the glasses and everything that were all over the table. Some of it, sounded like broke. So, there would have been glass shards in there too that she would have gotten away... would have been able to use a number of things as weapons against me.**
5. At what point did you deploy OC spray? **I think it was as we were going down to the ground once Roepke got there or right when we hit the ground.**
6. For how long and how many times did you deploy your OC spray? **Just once, and then Roepke said "stop spraying". I would say for ½ a second to a second.**
7. Is there anything you want to add or clarify about your use of force or Shanya's resistive behavior? **Like I said, I've used pepper spray several times in the past**

and I know that especially in a building it can get messy for everybody. That's why I thought about that for half a second and didn't want to spray her from far away to... you know make the cloud or however you want to say it... you know expand. I don't think it was touching her on the face but you know getting pretty close to narrow the exposure to everyone else.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PO Vences Thursday, August 24th, 2023 @ 1430hrs. KPD-IA #23-39088

1. Have you received State of Wisconsin LESB DAAT training and are you familiar with its terminology used to describe use of force and resistance? **Yes**
2. Have you received refresher training on focused strikes from the Kenosha Police Department, specifically in September of 2022? **Am I signed off on it? To the best of my recollection if I'm signed off on it I did.**
 - You are signed off on it but you don't remember? **No, I don't. That was quite a while ago.**
3. Have you signed, and are you familiar with KPD Policy 1.3 "Use of Force"? **I've signed all of the policies to the best of my knowledge.**
 - Are you familiar with it? **I couldn't read it back to you right now. But I, that's all I got for you.**
4. Are you familiar with the United States Supreme Court Case Graham vs. Connor and the reasonableness standard that arose from that case? **Yes**
5. Have you signed, and are you familiar with KPD Policy 41.14 "Mobile Video/Audio and Body-Worn Camera Equipment"? **I believe I've signed it, yes.**
6. When did you first realize that your BWC had been turned off during this incident? **I think it was after the conclusion of the use of force. I think I even mentioned it.**
7. Why is that not documented in your report? **Well, the specific answer to that would be because I didn't put it in there. But, it wasn't malicious intent.**
 - [Lt. Jurgens] You know it is part of the policy that you are supposed to do that right? **I'm aware... now.**
8. Did you review any BWC after this incident? If yes, when? **No**

9. Can you describe for me, how Jermelle English resisted Officers and how you perceived his resistive behavior? **Active resistance, he tried pulling away when I first told him to stop. Muscle tightening... verbally said "no". There was passive resistance. After he was decentralized, he kept his arms under his torso after being ordered to put his hands behind his back. [Lt. Jurgens] That's after the baby was removed? Yes... While the baby was with him, he was pretty much holding. He's just kind of holding him back because, what's the word... Unpredictable. His emotions when I first grabbed his wrist and said "stop". He yanks back, while holding the child and goes into a wall. I remember saying "stop", a lot of times.**

10. Was there a particular time that you felt there was more resistance than others? **I would say on the ground yep. On the ground he... Well, the type of resistance was the same, I would say. He's not complying either way.**

- Was there any point that you felt the physical resistance was more than others? **When he moved unpredictably, like when he would pull away. I didn't know if he was going to attempt to strike or anything at that point.**
- Is there a particular time you can remember that happening, that you can describe? **The moment I first grabbed him and told him to stop, when he was walking away, around down the ramp. And then, I got him to a seated position on the ground and I remember the baby's head was very close to the corner of a table. I was trying to hold him back, to keep the baby from hitting the table. And at some point he yanks his arm away and I lose my grip. So, I had to like re-grab him just in case you know, he was going to do anything else. Again, I'm concerned about the baby, I'm concerned about our safety.**
- Earlier you mentioned something like, "I didn't know what he was about to do". Can you explain to me what you were feeling in that moment? **In that moment I believe that he's already lost my grip that he would have gained... or he did gain potentially the upper hand to react. Physically or violently, with any type of weaponry. At that time he was not frisked. We had no idea if he had something in his waist, he had baggy clothing. He's holding his baby, he was very hostile, verbally. What I visually saw was this baby's head almost hitting the table multiple times. I'm concerned about that, he didn't seem to be concerned about him in that moment. And seeing that, my mindset was well... where can this**

go, with all those things considered. So, I grabbed back on him. The baby was somehow freed. I don't know how, but someone else assisted and got the baby out of the way. Because of that, perceived escalation or potential for it, he was decentralized to the ground.

11. Did you observe Jermelle to be armed with any weapon? **No**

12. Did you have prior information that Jermelle may be armed with a weapon? **No**

13. Did you believe that Jermelle was a physical threat to himself, officers, or any other person? **I believe the potential was there, yes. He did at one point that I remember distinctly, he pulled away and he tightened up and seemed like compressed his son, like in his arm. Like a strong hold almost. I'm not sure if it was intentional or not but it was also during the act of him pulling away or attempting to pull away. I think that was right before he went to a seated position by the table on the ground.**

- That was while you guys were still standing? **Right, yep. At that point he was specifically a danger to the baby, he's not complying with us, he's potentially a danger to us until we know otherwise. Especially with the lack of cooperation.**

14. Do you recall grabbing onto Jermelle's hair? **Yes**

- Can you articulate why? **The best way I could describe it is essentially like a "secure the head" but it was almost more of like, a holding him back? His hair happened to be braided, maybe corn rowed style. Don't quote me on that. It offered better grip, traction, to secure his head. To pull him back.**

15. Why is that not documented in your report? **I... possibly... didn't remember it at that time. I didn't review the footage afterward. I've seen the video... now. This, and online multiple times now. Things get refreshed watching the video.**

- [Lt. Jurgens] You said, "trying to pull him back" what do you mean? **I can't remember specifically in that moment if he was standing or if he was seated. I know he was seated and I was trying to pull him back so that the baby's head wasn't tapping because he was moving. The baby's**

head was, I mean the proximity, was really close. Any type of jerking, the baby could have just knocked right into the corner. So, I was just holding him to try to prevent him from whipping. He had already tried to whip away or swiftly pull away from us at least twice at that point.

- You mentioned that you watched videos online, what video's online have you seen? **There was an Applebee's surveillance footage video that was circulating and one from an Applebee's employee. A recording from a cell phone.**

16. After the child was removed and Jermelle was flat on the ground, what level of resistance did you observe? **Like DAAT specific verbiage? His arms were tucked in his abdomen and he was refusing to put them behind his back, or even outside.**

- Is there anything else you were feeling in that moment? Do you remember where you were or what you were doing? **Yeah, so when we went down to the ground, I'll say this as a general... there was a crowd around us. Multiple officers, possible Applebee's staff, I know there was a guy recording, which that was just another body in there. There were tables and chairs around us after we were on the ground. It just felt like a tight space. My position was at the upper right area of his torso. Seeing that there was no compliance verbally, there's no progress to get his arms out, he's not complying; I utilized focus strikes.**
- [Lt. Jurgens] The positioning of his hands is never in your report, right? **I would have to review it. It's possible that...** [Lt. Jurgens] You have it right there. **Would you like me to review it?** [Lt. Jurgens] I just want you to acknowledge that the positioning of his hands is not in the report. **It's not?** [Lt. Jurgens] It's not. **Ok.** [Lt. Jurgens] It doesn't indicate that his hands are underneath his torso. **Ok.**

17. When Jermelle was flat on the ground, where were his hands? *Answered during previous questioning.*

18. While Jermelle was flat on the ground, did you attempt to pull his hand behind his back prior to using Focus Strikes? **No**

- Why not? **Based on the resistance he had already shown, his behavior, I thought it was possible that he could have been armed. There was a**

reason he wasn't listening or cooperating. So, I thought that was the appropriate force to use. For officer safety. It was myself and a Prairie officer on him, or who had him.

19. You document in your report about giving commands for Jermelle to put his hands behind his back (Read verbatim from report). Do you remember the timing of giving those versus the focus strikes? Was it before, after, during? **I don't remember. I know I said it at least two or more times. So, at least during.**

20. [Shown video – Part of the use of force from PPPD BWC] Does this refresh your memory about any of the questions that I have asked you?

- Do you see where his hands are at in this video? **Yes**
- You said that his arms were underneath his body, that's obviously not the case here. Does that jog your memory at all? **Well that's his left arm, I'm on his right side. So, I remember seeing his right side down under his torso.**
- I'll point out for you here[video] this is his right hand, here. **Is it?** Yeah. **Oh, ok. Hmm**

21. I want you to think back to when you were delivering focus strikes, what do you remember seeing? Do you remember what you were looking at while you were delivering focus strikes? **I mean, just from his shoulder, "traps", up. Basically, in this video for reference anyway. Where my elbow is, up. Inside of my elbow, that little sliver of body. I think I remember at that time, Sgt. Lodygowski basically covering this airspace if you will. It was tight.**

- Is there any particular part of his body that you remember looking at? **Yeah, that specific region is what I saw.**

22. Do you recall delivering a knee strike to Jermelle? **Yes, right at the end. I was basically in the middle of this knee strike, realized his arm was limp at his side and kind of stopped simultaneously as I noticed it. It was still a strike but it definitely wasn't full force because I realized it while I was using that strike.**

- You said that you remembered that his arm was limp along the side of his body, obviously you have control of it in your hand. What were you feeling from him at that point? **Well, it's clear that my memory's unclear here too. He still had muscle tightening during that, I remember that.**

23. Is there a reason why that strike is not documented in your report? **No. Besides again, that it's not malicious intent.**
- Do you have any explanation that you want to offer? **Yeah, I mean I fell like that knee strike. I remember getting ready to do it and I feel like I stopped it right before I struck him and I just propped up against him. But I obviously made contact so, reaction time, visual timing, everything all at once. This [points to video] is obviously not what I remember.**
24. Do you remember Sgt. Lodygowski saying anything to you during this incident? **No... Like, while I'm actively striking him? Not that I can remember.**
25. Did Jermelle lose consciousness during this incident? **I wasn't aware that he lost consciousness during this incident.**
26. Is there anything else you would like to add or clarify? *[Break 1548-1601]* **Yeah. We'll start at when we were near the front entrance/exit. When "Prairie" is like "hey stop" and Luke is like "you're legally detained". I saw that situation kind of escalating and I told the female half, hey, why don't you stay with my partner. Trying to basically sperate both parties, maybe a one on one conversation we'll get some info and get out of here. To keep it from turning into what it did turn into, obviously that's how it went. But there was an attempt there to de-escalate and take care of it without using force in the first place.**

When I altered my report I hadn't watched any, body-cam footage, I didn't review anything, it was strictly off memory. I didn't have access to "Prairie's" body-cam footage either. Cleary my memory is jarred once I saw the video. The guy's hand is on his head, he's displaying resistive tension there, I bring it back. You can see I do a knee strike at the end before saying "we're good" and "we're done". Which you can tell in the video, well, I can tell that I had let up. I was definitely not giving my all in the knee strike, based on my strength and size alone.

More importantly though, after the use of force was given or completed, the aftercare that we provided was important too. I believe. After sitting him up I realized that it at least appeared he urinated on himself and considering the strikes that were given I was concerned that maybe there was something

wrong with his head or something physically wrong. I told other officers to roll rescue. And I asked him, I think, if he was good. One of us officers checked his welfare, asked if he was ok.

Kenosha County Eye