



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 4, 2020

CASE NUMBER: 2020OPA-0322

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 – Use of Force Tools – POL – 3 Oleoresin Capsicum (OC) Spray	Not Sustained (Lawful and Proper)

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:

OPA received over 13,000 complaints alleging that an SPD officer pepper sprayed a young child during a demonstration and that this constituted excessive force. OPA determined that the wrong officer was initially named by the Complainants. OPA identified the actual involved officer – Named Employee #1 (NE#1) – and alleged that he may have violated the Department’s policies concerning force and the use of pepper spray.

SUMMARY OF INVESTIGATION:

A. Background

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of George Floyd’s murder by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.

The specific case addressed here occurred on the afternoon of May 30, 2020, the first full day of the protests. It was alleged that a parent (“the Father”) was present at a demonstration with his son (“the Child”) when the Child was pepper sprayed by an SPD officer. The Child was videotaped in the aftermath of the pepper spraying, crying with milk running down his face, obviously affected by the pepper spray. The video went viral on social media and the incident received widespread media coverage. OPA subsequently received around 13,000 complaints. Virtually all of these complaints identified a specific officer – referred to here as Witness Officer #1 (WO#1) – as targeting the Child with pepper spray.

OPA initiated an investigation and conducted a preliminary review of the Body Worn Video (BWV) for the officers who were present during the incident. This quickly established that WO#1 was not the involved officer and, moreover, that he did not use pepper spray during any portion of the incident. OPA was able to affirmatively identify that a Sergeant – Named Employee #1 (NE#1) – was the officer who dispersed the pepper spray.

As part of its initial investigation, OPA attempted to identify the Father and the Child in order to interview them concerning what occurred. This included making public requests for information and trying to reach out to the family via social media. The Child’s uncle contacted OPA and initially indicated a willingness to connect OPA with the family. However, shortly thereafter, the family retained legal counsel and asked that all future contacts go through that



counsel. OPA complied with this request, but the family's counsel did not respond to OPA or agree to allow the Father and Child to sit for interviews.

The Father did, however, make statements to the media. He was quoted by The Independent as recalling that: "he had just finished praying with members of their church as part of a peaceful anti-racism protest when a police officer fired mace at the group which hit his son in the face." The Independent reported the Father's statement that the pepper spraying "came out of nowhere." The Father confirmed to The Independent his belief that officers purposefully pepper sprayed the Child, stating: "I would say that [officers] were targeting my boy." The Father asserted that, in the aftermath of the pepper spraying no officers or medical personnel attempted to provide the Child with assistance. He told The Independent: "No officer, who's paid to protect, chose to stand up, break the ranks, [and] go help this child."

B. Analysis of Body Worn Video

1. Clarifying Information for the Reviewer

OPA reviewed the BWV for multiple officers and supervisors that were in the immediate vicinity of the pepper spraying and whose video captured the force in part or in full. This included the BWV for NE#1, WO#1, Witness Officer #2 (WO#2), Witness Officer #3 (WO#3), Witness Officer #4 (WO#4), Witness Officer #5 (WO#5), Witness Officer #6 (WO#6), Witness Officer #7 (WO#7), and Sergeant #1 (SGT#1).

This BWV is summarized below. Due to the significant amount of video analyzed and in order to give sufficient context to the reviewer, OPA provides the following points of clarification:

- At times, the BWV summaries overlap and repeat the same facts but from a different officer's perspective. This is done to provide a full accounting of what happened.
- The summaries describe multiple occurrences that took place largely simultaneously. Specifically, the summaries recount: (1) an arrest that was effectuated at the far right of the line; (2) pushing between officers and demonstrators that occurred to center right and far right of the line; and (3) NE#1's dispersal of pepper spray, which occurred in the vicinity of the center right portion of the line.
- The time that elapsed from the commencement of the arrest to the last dispersal of pepper spray was around 25 seconds. The pepper spraying, itself, took place over, at most, five seconds.
- The officers were stationed across the line from left to right in the following order: WO#5; WO#6; WO#3; WO#4; WO#1; and WO#2. In addition, NE#1, SGT#1, and WO#7 all started to the back left of the line and moved forward to the right and right center. NE#1's position at the time of the pepper spraying was to the right of WO#6 and to the left of WO#3. SGT#1's position was between WO#4 and WO#1. WO#7's position was between SGT#1 and WO#1.

2. The Demonstration, a Disturbance, and Pepper Spraying



At approximately 3:00 p.m., demonstrators were gathered in the vicinity of Fourth Avenue and Pine Street. Officers created a police line across the street and were facing the demonstrators. BWV captured discussions between a Lieutenant and two Sergeants – NE#1 and SGT#1. The Lieutenant noted that, given injuries suffered by officers earlier from projectiles, the demonstration occurring in the immediate vicinity was going to be declared an “unlawful assembly.” BWV further recorded NE#1 discussing this with SGT#1, another Sergeant, and officers. At this same time, WO#1, WO#2, WO#3, WO#4, WO#5, and WO#6 were all staffing the line facing the demonstrators. NE#1, SGT#1, and WO#7 remained to the back left of the line.

The BWV showed that, for approximately 40 minutes prior to the pepper spraying, various demonstrators interacted with the officers, some intermittently calling the officers “terrorists” and “racists” and using profanity towards them. For example, one demonstrator identified WO#3 by name, said that he would be “looking for him,” and stated: “I’m going to put you motherfuckers out...done.” None of the officers responded.

At approximately 3:10 p.m., a man on the right side of the line (the “Arrestee”) began yelling at the officers, accusing them of targeting him. Other demonstrators tried to calm him down and told him not to give the officers a “reason.” WO#2’s BWV showed him tell SGT#1 that the Arrestee had tried to steal his pepper spray earlier that day. WO#2 said that there was probable cause and SGT#1 agreed that the officers could effectuate the arrest. WO#2 notified other officers on the line about the imminent arrest and, around one minute later, grabbed the Arrestee and pulled him towards the officers’ side of the line. He and other officers took the Arrestee into custody.

Simultaneous to this, officers loudly stated: “move back.” They moved forward with their arms outstretched. The BWV showed WO#3 move towards a female demonstrator and push her backwards with his baton. Another female – referred to here as Subject #1 – then converged on the line. She yelled at the officers: “no you move back.” She pushed over the line and into WO#3. She grabbed onto WO#3’s baton, pushed back against him, and again yelled: “don’t push me. You move back.” At this moment, WO#3’s BWV captured the dispersal of pepper spray by NE#1 towards Subject #1. Subject #1 recoiled backwards and a male – later identified as the Father – could be seen. The Father put his left arm around Subject #1 as she turned. The Child could not be viewed at that time on WO#3’s BWV. It was unclear whether the pepper spray also impacted the Father. WO#3’s BWV also showed another momentary dispersal of pepper spray towards an individual – referred to here as Subject #3 – who was preparing to throw an object towards officers at the time. It did not appear to be a complete burst. Subject #3 threw the object towards the officers and then ran away. The Father and Child had already moved back by that point.

The BWV for WO#4, who was situated near WO#3, showed Subject #1 grab WO#3’s baton and push. It further showed the dispersal of pepper spray. The short burst of pepper spray hit Subject #1 in the head, and, at that time, she lowered her head. NE#1 shifted the stream of pepper spray downwards to follow her movements. WO#4’s BWV depicted the Father standing directly behind Subject #1. The Child was not visible. Subject #1 turned and ran into the Father at the time the pepper spray was dispersed. It was unclear from WO#4’s BWV whether the pepper spray also impacted the Father. WO#4’s view was then blocked by other individuals.

WO#5 was situated to the left of WO#3. At around the 43-minute mark of WO#5’s BWV, the Father first walked into view with the Child at his side. The Father was wearing a black jacket with the hood over his head and had a red mask on. The Child was also wearing a jacket with the hood up. Like the Father, the Child had a mask covering his face. With regard to the Child’s height, the top of his head reached to around the bottom of the Father’s ribcage. When the Father was behind demonstrators, the Child could not be seen, but the Child was visible at times when the Father paced back and forth.



The Father walked directly behind the line of demonstrators facing the officers and said: "...look at them, these scary motherfuckers, not one of them is over 200 pounds soaking wet." After a minute, he turned around and walked away. The Father continued to address officers from several feet away, calling them "scary motherfuckers" and "pussy ass motherfuckers." He said to them: "you'd get your ass beat out here one on one." He noted that this was why they had so many officers there. At this time, the Child was standing to the Father's right and was behind other individuals. For around the next 20 minutes, the Father and others spoke to and about the officers, sometimes identifying them by name. At one point, the Father referenced and pointed to the Child, noting that officers would shoot him when he grew up. At another point, shortly before the disturbance occurred, he said, while pointing at different officers in turn: "I'll beat your ass, I'll beat your ass, I'll beat your ass..." At this time, the Father appeared to be holding the Child's left hand with his right hand. The Child's location then shifted, so that he was standing to the front left of the Father. The Father turned from side to side, keeping the Child in front of him with his arms on the Child's shoulders.

The disturbance then began taking place to WO#5's right. The crowd in front of WO#5 began to move back while others moved towards the disturbance. WO#5 said: "move back guys. Give us a little space." Subject #1 could be seen walking directly in front of WO#5 and the other officers with her arms outstretched towards the disturbance. She then pushed into officers immediately next to WO#5. The Father was situated several feet back and to the left, but he also quickly moved towards the crowd that was gathering to the right with the Child still in front of him. He moved towards the back of Subject #1 and was immediately behind her at the time the pepper spray was deployed. He was holding the Child to his right side with his arm around the Child's shoulders. Subject #1 turned towards the Father and he grabbed her with his left arm and pulled her back. He again turned to face the officers and wiped his face with his left arm. He turned around and looked down at the Child, who was by his right side. He continued to walk away from the line. A bicyclist with a red top – referred to here as Community Member #1 (CM#1) – rode up to them and appeared to begin administering aid to the Child. The Child was in obvious discomfort and could be heard yelling. An unidentified officer stepped forward and called out for the Child to be brought over for medical assistance. Demonstrators then began accusing that officer of pepper spraying the Child. The Father also approached the officers and yelled at them regarding the pepper spraying of the Child.

WO#1's BWV showed that, at the time the man at the right side of the line was taken into custody, WO#1 used his bicycle to push the line back. When a woman approached him, he again used his bicycle to push her back. WO#1 stood in front of the woman and other demonstrators when, to his left, people started running backwards. CM#1 rode into view and down the street. WO#1's video did not show the Father or the Child, but CM#1 remained in the far left of his field of vision. Demonstrators in front of WO#1 yelled at him for pushing them back and for the arrest that had occurred. The woman WO#1 had previously pushed accused him of pepper spraying people and shooting "wooden" bullets. She and others stated WO#1's name and asked for his badge number, which he provided. The woman walked away saying: "fuck you" and "I hope you die." People in WO#1's vicinity began yelling about the Father and Child being pepper sprayed. WO#1 remained in that location until he left the scene. WO#1's BWV definitively established that he did not use pepper spray.

WO#6 was situated in between WO#3 (to her right) and WO#5 (to her left). Her BWV showed the disturbance occurring to her right and that she used her baton to push demonstrators back. While doing so, she stated: "move back." She used her baton to move back another woman – referred to here as Subject #2 – who was still standing in front of her. Subject #2 turned towards WO#6 and pushed into her. At that time, Subject #1 intentionally walked directly into WO#6 and WO#3 with her hands outstretched and while moving towards the disturbance. WO#6 pushed Subject #1 in the side with her baton and Subject #1 then converged on WO#3. The video showed Subject #1



push into WO#3 and then get pushed back. It further showed Subject #1 reengage and grab WO#3's baton. Subject #2 also turned around to face WO#6 and stepped towards her. At that time, pepper spray was dispersed by NE#1 over WO#6's shoulder. The pepper spray, which was a blue stream, hit the right side of Subject #1's helmet. She lowered her head and the spray followed her downwards. She lifted her head up again and turned to her right. The Child and the Father were not visible on WO#6's BWV at that moment. Pepper spray also appeared to affect Subject #2, and she turned around quickly. The crowd then began to dissipate. At that point, the Father and the Child could be seen walking backwards from the line. The Father wiped his face with his left forearm. The Child was at his right side. Demonstrators again approached the line and began yelling at WO#6 about the Child being pepper sprayed. The Father then approached and began yelling at the officers. He yelled at WO#6: "you're a bitch. You just fucking pepper sprayed my eight-year-old son." The Father walked away, and WO#6 remained at the scene.

WO#7 was standing behind the left side of the line. He spoke with SGT#1, who told him that the protest was going to "get real here in a bit" and was going to be declared an "unlawful assembly." While they were speaking, WO#7 noticed the disturbance at the far right side of the line. He rushed over to where the arrest was occurring. He turned to his left and observed Subject #1 and others converging in on where WO#3 was standing. NE#1 could be partially seen to WO#7's left, but he was predominantly blocked by SGT#1, who also raised his pepper spray towards the crowd. At that moment, a blur was noticeable on the BWV, as well as the sound of an impact. WO#7 recoiled, and his BWV shook. He stated several times: "I've just been hit by a rock." He walked by NE#1, who was to his left. NE#1 asked WO#7 if he was okay.

SGT#1's BWV showed him move to the vicinity of the disturbance at the same time that WO#7 did. NE#1 was to SGT#1's left, and they were separated by another officer. SGT#1 turned to face Subject #1 who could be seen grabbing onto WO#3's baton and pushing. His BWV depicted NE#1 then dispersing pepper spray at Subject #1. The blue mist of the pepper spray was visible, as was Subject #1's white helmet. The Father and the Child could not be seen at the time. Subject #1 recoiled backwards and, at that moment, the back of the Father was visible. SGT#1 reached out with his pepper spray, but he did not use it. An object that appeared to be a rock then sped by SGT#1. WO#7 exclaimed that he had been struck by the rock. SGT#1 stayed at the line, facing demonstrators. A demonstrator directly in front of him was holding a traffic cone. Behind that demonstrator was CM#1, who appeared to be providing aid to the Child. SGT#1 was at the line when the Father approached and began yelling at the officers about the Child being pepper sprayed.

Lastly, NE#1's BWV showed him standing behind the police line. Immediately prior to the disturbance occurring at the far right of the line, he was between 30 to 40 feet back, conferring with other supervisors. He then began running towards the line. He slowed down and walked directly behind WO#3 and placed his hand on WO#3's back. Subject #1 was facing him and pushing through the line. NE#1 stated: "move back." Subject #1 grabbed onto WO#3's baton and pushed forward, moving WO#3 back into NE#1. NE#1 yelled: "move back." He then dispersed his pepper spray at Subject #1. When he did so, Subject #1 dipped her head down and bent forward. From a review of the BWV, neither the Father nor the Child were in NE#1's line of sight. Virtually simultaneous to the pepper spraying of Subject #1, NE#1 turned to his left towards Subject #2, who was engaged with WO#6. Subject #2 quickly moved back and away. The crowd retreated soon after the pepper spray was used. At that time, the back of the Father could be seen. NE#1 remained at the line as a hard object was thrown towards the officers. He pointed to where he thought the object came from.



C. Use of Force Reports

NE#1 documented the force he used in a Use of Force Report. He detailed using pepper spray twice in quick succession and then beginning to do so a third time before stopping midway. NE#1 wrote that he observed Subject #1 pushing back against WO#3 and documented that she did not comply with several orders to “move back.” NE#1 indicated that he believed that there was the need to stop Subject #1 from pushing into WO#3 and he felt that pepper spray was the least intrusive force tool at his disposal. He said that he was carrying a blast ball but that he determined that the blast ball would affect more bystanders. In comparison, he noted that he could directly target Subject #1 with pepper spray. He said that he dispersed a burst of pepper spray to her head and that this caused her to back away.

He explained that he saw Subject #2 to his left pushing towards WO#6. He said that he turned to face her and dispersed a quick burst of pepper spray towards her face. He described this burst as being shorter than that used on Subject #1. He said that this caused Subject #2 to back away.

Lastly, he described that he saw Subject #3 in front of him winding up as if to throw an object. He said that he began to disperse pepper spray in the demonstrator’s vicinity, but that he determined that the range was too far and that he would not be able to reach the demonstrator.

He explained that, due to the exigent nature of the incident and how fast it was, it was not feasible to give a warning prior to using the pepper spray. He also noted that he gave other orders that the Subjects did not comply with.

NE#1 wrote that he did not see the Father or the Child at any of the times he dispersed pepper spray. He said that he was not aware that they were in the immediate vicinity of Subject #1 until he later watched video. NE#1 indicated that he did not target them or intend to spray them. He noted that he did not see any blue dye from the pepper spray on the Father, so it was unclear to NE#1 how the Father and the Child became affected.

D. Community Member Interviews

OPA interviewed CM#1. He said that he was observing the protest and saw the Father with the Child positioned in front of him. CM#1 characterized the Father as holding the Child in a “protective manner.” He said that the pepper spraying then occurred. CM#1 said that, given his training as a medic, he rode over to try to assist people affected by the pepper spray. He recalled believing that both the Father and the Child had been affected by blue pepper spray. He indicated that he poured milk in the Child’s eyes. CM#1 said that the Father wiped the Child’s eyes, which appeared to cause the recontamination of the Child. CM#1 then assisted the Father in getting cleaned first. He said that the Father then ran towards the police and he and others tried to pull him back. CM#1 said that he continued to decontaminate the Child and that, when this was accomplished, the Father and the Child walked away.

OPA also interviewed a community member – referred to here as Community Member #2 (CM#2) – who took the video of the Child crying that later went viral. CM#2 was at the scene and saw a disturbance between a demonstrator and officers and observed the officers push forward. He said that the Child then ran to the Father and, at that point, he began recording. He confirmed that he did not see the pepper spray being used or see the Child get pepper sprayed. He told OPA that he spoke to other witnesses at the scene but that he did not have contact information for them.



OPA further contacted a third community member – referred to here as Community Member #3 (CM#3) – who said that he had video concerning the incident. He told OPA that WO#1, who was initially alleged to have sprayed the Child, did not do so but that another officer did so “maliciously.” OPA requested that CM#3 consent to an interview; however, CM#3 demurred due to perceived safety concerns. OPA offered to list him as an anonymous witness and protect his identity, but ultimately CM#3 declined to participate in an interview.

OPA lastly contacted three other individuals who asserted that they witnessed the incident. The first said that she was on a FaceTime call with a friend who was at the protest and saw the pepper spraying. She confirmed that she was not present. She agreed to pass OPA’s contact information on to her friend, but the friend did not get in touch with OPA. The second said that he did not make an OPA complaint and then hung up the phone. The third said that her father-in-law was at the protest. She said that she would pass OPA’s contact information along to him, but her father-in-law did not get in touch with OPA.

With regard to the rest of the approximately 13,000 complaints, OPA reviewed each one to determine whether there were any direct witnesses. OPA ultimately identified that the remainder of the Complainants did not witness the incident but learned about it via social media or through some other means. These individuals were not interviewed based on their lack of first-hand knowledge and OPA’s resource limitations.

E. Officer Interviews

1. Named Employee #1

NE#1 told OPA that, prior to the incident occurring, he had tactical discussions with the Lieutenant and other Sergeants. He recalled that officers’ injuries from earlier that day were mentioned. He said that he then observed a disturbance at the far right side of the line. He stated that he believed an arrest was in progress. NE#1 indicated that, given the possibility that officers left the line to assist in the arrest, he ran up to the line to make sure that it was properly staffed and was held.

NE#1 said that he stood behind an officer. He told OPA that officers were directing demonstrators to move back, and that he did so as well. He recalled Subject #1 forcing her way through the line and pushing WO#3. He stated that, in his perception, Subject #1 was noncompliant with multiple legal orders and was engaging in assaultive behavior towards WO#3. Given the totality of the circumstances, NE#1 felt that the best force tool available to him was pepper spray. He believed that going hands on was more dangerous under the circumstances as it could result in increased physical harm to both Subject #1 and himself. He asserted that the use of pepper spray was the least intrusive force he could use to push Subject #1 back and prevent her and others from breaching the line.

NE#1 said that he directed one burst of pepper spray towards Subject #1’s face/head area, which was consistent with his training. He said that he did not recognize anyone else being in the immediate vicinity at the time but noted that she ducked down and pulled away and was grabbed by another individual. He stated that he later learned that this was the Father, but he did not see the Father at that moment.

He told OPA that he was aware that another demonstrator to his right had been pushing towards WO#6. He said that he turned to face that demonstrator and dispersed another burst of pepper spray. He said that this was shorter than the first burst. Again, he contended that he was concerned that this demonstrator was being non-compliant



and had been pushing into an officer to breach the line. He used pepper spray to prevent that demonstrator from continuing to do so and to create distance between them.

NE#1 stated that he then observed a third demonstrator about to throw an object at officers. He began to disperse pepper spray a third time but stopped because the distance was too far. NE#1 told OPA that the object, which he believed was a ball bearing, struck the baton of an officer next to him.

NE#1 indicated that he was upset when he learned that the Child was affected by pepper spray. He stated that this was not his intent and that he never saw the Child at the time the pepper spray was deployed. He told OPA that he was very sorry that the Child experienced this, and that the Child and the Father were not his targets at any point.

2. Witness Officer #1

OPA also interviewed WO#1. He confirmed to OPA that he did not pepper spray the Child and that he did not use any pepper spray during the incident. He told OPA that, while he was on the line at the time the pepper spray was used, he did not see it. He said, however, that he was aware that the Child had been affected by the pepper spray because of what demonstrators in the crowd were saying. WO#1 told OPA that, as a result of being falsely identified as the involved officer, he received a number of threats.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As a threshold matter, the BWV clearly established that, contrary to the popular narrative surrounding this case, the Child was not individually targeted with pepper spray by an SPD officer. The BWV also conclusively disproved some of the assertions attributed to the Father by The Independent and other media sources, including showing that he was not praying in the more than 30 minutes prior to the incident and that the force did not come out of “nowhere.” Instead, what the BWV showed was that, at the time Subject #1 began pushing into the line, the Father quickly moved from his position away from the disturbance towards her so that he was situated immediately behind her with the Child to his front right side facing the police line. NE#1 pepper sprayed directly at Subject #1 and, when he did so, she ducked and turned around. It appears that, at this point, a quantity of pepper spray affected the Father and the Child. When NE#1 pepper sprayed Subject #1, she was in his immediate vicinity and neither the Father nor the Child could be seen from his vantage point. NE#1 denied seeing them and, based on a review of the video, his account is supported by the evidence. The Child simply was not visible on NE#1’s BWV. Moreover, OPA’s review indicated that, at the time of the force, the Child was not visible on the BWV of any of the officers, except for WO#5 who was the further away and had the clearest perspective of what occurred.



The video indicated that NE#1's burst of pepper spray at Subject #1 was targeted directly towards her while she actively pushed WO#3 and appeared to attempt to breach the line. In that respect, it was an appropriate usage of this less-lethal tool. Notably, this was not a case in which NE#1 misted pepper spray across an entire crowd or indiscriminately sprayed a group of people. If he had done so, he would have borne responsibility for innocent bystanders that were affected and OPA would have found his actions contrary to policy. Here, however, NE#1 used a directed application purposed to eliminate unlawful behavior. This was consistent not just with the overall use of force policy, but also with the requirements of SPD Policy 8.300-POL-5, which specifically governs the use of pepper spray.

The same analysis applies to the second and partial third dispersing of pepper spray. In both situations, NE#1 perceived imminent safety risks and identified pepper spray as the least invasive force tool available to him. While Subject #2 may not have presented as significant a threat as Subject #1 did, OPA cannot say that NE#1's interpretation of her conduct was unreasonable given the second that he had to react. Moreover, WO#6's BWV did depict Subject #2 twice pushing into WO#6 and squaring up at her. With regard to Subject #3, the threat was clear as BWV conclusively showed Subject #3 pulling his arm back and then throwing a hard object at the officers.

The picture of the Child standing in the middle of the street, crying, with milk running down his face is an unforgettable image from these demonstrations. It shows an innocent child who was a victim regardless of the circumstances. That the Child suffered this trauma is something that OPA is extremely sorry for and that no decision in an administrative investigation can ever remedy. Notably, NE#1 expressed similar regret at his OPA interview.

This is one of the hardest cases that I, as the OPA Director, have had to consider during my nearly three years in office. Certainly, there has never been a case that received as many complaints. On one hand, the Child suffered a clear wrong when he was affected with the pepper spray utilized by NE#1. On the other hand, NE#1 used appropriate force to prevent Subject #1 from breaching the line and could not have known that Subject #1 was going to duck and that the Father was going to bring himself and the Child directly behind her, putting them in the immediate vicinity of the disturbance. This is not said to blame the Father, as OPA does not believe that any parent would knowingly place their child in harm's way. These are simply incontrovertible facts.

As discussed more fully above, when applying the policy in place on May 30 to the facts of this case, OPA cannot reach any conclusion other than that the force used by NE#1 was lawful and proper. Moreover, at the time of this incident, there was no section of the policy that caused directed pepper spraying to be improper simply because it inadvertently affected another individual in the immediate vicinity. Accordingly, that this occurred here cannot constitute a policy violation. Since this case, however, the Seattle City Council passed Ordinance 126102, which now creates a legal cause of action for individuals affected by pepper spray during a demonstration. While this does not undo the harm suffered by the Child, it may deter similar incidents from occurring in the future and, at the very least, will provide a legal and monetary remedy.

OPA understands that this decision will be unpalatable to some and perhaps to many. This is understandable. In some respects, it is unpalatable to OPA. In evaluating these cases, OPA is required to look at all of the facts, not just those presented on social media or captured in a short video. OPA is required to make decisions based on applicable policy and training, not just based on emotion or what feels good or easy in the moment. OPA is required to uphold the rule of law, not just reach a finding that may be the most politically expedient or that which we think will be most acceptable to demonstrators, officers, or some other group. In our current environment, where nuance is rare, facts do not always seem to matter, and people often make up their minds before having complete information, this



is a difficult place to be. But this is where OPA will always find itself – trying to make sense out of split-second decisions in incredibly complex and human situations and striving to do so objectively, transparently, and honestly. This is the standard we have done our best to meet in this case.

For the above reasons, OPA recommends that this allegation and Allegation #2 be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

8.300 – Use of Force POL – 5 Use of Force – Oleoresin Capsicum (OC) Spray

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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