

TRIAL 9.14(A):

State v. Todd Wearl

Instructions for the Person Playing the Role of Officer Dan Kinger

Thank you for agreeing to play the role of Officer Dan Kinger in our upcoming trial. Without volunteers like you, we could not conduct these trials and give the law students a realistic courtroom experience. We are very grateful for your participation.

Please read **ALL** of these instructions before viewing the videotape.

General Instructions for All Participant Witnesses

There were three participants in the incident that gave rise to this lawsuit. You are playing the role of one of these three participants. Instructions applicable only to you appear below. This first section of the instructions outlines general rules that apply to all three participants in the events that led to this trial.

Each person playing the role of one of the three participants in the events in question will watch two video clips of the incident. You will only be allowed to watch each of these videos **once**. Then you will testify based upon your recollection of what you saw and heard.

Once you watch the two videos, we will pretend that the videos cease to exist. You are NOT allowed to watch either video again. The student attorneys are NOT allowed to watch or even attempt to locate a copy of any video.

Because you will be allowed to watch each of the two videos only once, it is important to put yourself in the correct frame of mind before you watch the videos. Remember that you are the police officer in the video. Try to watch the video from the officer's perspective. You saw what he saw. You said what he said. You did what he did.

There are a few additional general instructions you should follow in watching the video clips. It is important for you to follow all of these instructions:

1. Please read ALL of this packet of instructions before viewing the videos.
2. Before watching the video clips, be sure your computer is fully functioning, with the sound “on” at a reasonable level that you can hear. In other words, make sure the “mute” is NOT activated on your computer. You will want to watch and listen during your sole viewing of the two video clips.
3. You will probably see cameras in the background. Please ignore these cameras. When you testify, pretend that you did not see them. [Thus, if a student attorney asks you if you saw anyone who was filming the incident, say “No.”]
4. When you are sure you are ready for your only viewing of this video (with sound fully functioning on your computer), click on Camera 2 at <https://bcove.video/2ybDADW>. **It is very important for you to use the correct camera angle!**
5. After you click on this camera angle, you will see and hear the short video depicting the incident that forms the basis of this lawsuit.
6. After you watch the video from Camera 2, repeat this process to watch the video from Camera 7 at <https://bcove.video/2yfpYrh>.
7. After your viewing of the two videos (one time per video only), please do not revisit this website.
8. You might see people other than the other two persons involved in the incident in the background. As with cameras, please ignore persons other than the three of interest. [Thus, if a student attorney asks you if you saw anybody who might have seen the incident, please say something like, “There might have been people watching, but I really did not notice anyone.”]

Here are some basic facts about the events depicted in the video clips you are going to watch:

1. These events took place in the city where you live, which we will call "University."
2. The events took place outside the door to the Library/Museum building.
3. The north half of the building is the Museum portion. The south half is the Library portion. The door from which two of the three participants in the incident (the man you came to know as George Otta and, later, you) exited is about half way between the Museum portion and the Library portion.
4. The diagram included with your instructions shows the outline of the Library/Museum Building. The outline is accurate.
5. These events took place at about 10:00 a.m. on August 14, [-1], meaning August 14 of the year before this one. [In other words, if you are reading these instructions in 2016, the events took place on August 14 of 2015.]

Here are some instructions that apply to your testimony in the case:

1. At the trial where you will testify, volunteers will play the roles of the other two participants in the incident in the video clips. Obviously, the three people playing these roles at trial are NOT the people in the video.
2. You should assume that you had never met or seen the other two participants before the date of these events.
3. Since the initial encounter, you have come to learn that (a) the man in the red shirt is "Todd Wearl" and (b) the man in the white shirt is "George Otta."
4. This is NOT a case where identity is disputed. You and the other two volunteers who will be playing the roles of participants will admit that you are the

persons seen in the videos. The student attorneys will not be allowed to question you regarding identifying characteristics of the three participants (such as hair color, eye color, height, weight, etc.).

5. To help you identify the three key participants at the trial, we will ask you and the other two participants to dress as follows at trial:

a. You should wear something to trial that identifies you as a police officer, such as a police uniform shirt, a hat, or a badge. [If this presents problems, please tell the student attorney who asked you to volunteer to serve as a witness. If you cannot resolve any problems, the student attorney can contact the instructor.]

b. Todd Wearl, who wore a red tee shirt that day, will wear a red shirt (or a white shirt and a red tie) at trial.

c. George Otta, who wore a white tee shirt with a blue logo on the day in question, will wear a white shirt and a blue tie at trial.

Before the trial starts, you should meet briefly with the student attorneys. They will point out the persons who will be playing the roles of the other two participants, so you should have no trouble identifying any of them during the trial if you are asked to do so.

Special Instructions for You

In addition to the general instructions that apply to all of the volunteers playing witness roles, the following special instructions apply to you:

1. You are a patrol officer for the University Police Department. One of your duties is to conduct occasional foot patrols in town. Sometimes things change over time (like new buildings being put up, streets being shut off or opened up, etc.). Thus, it is your department's policy that beat officers like

you (who spend most of their time driving) should walk through town every once in a while. That is what you were doing the morning of August 14, [-1].

2. Of course, you are a police officer, so you keep your eyes and ears open, in case your help is needed. That turned out to be the case the morning of August 14, [-1].
3. You did not know either of the two men involved in the incident before you saw them that morning. After responding to the incident and asking a few routine questions, you came to learn that the man in the white shirt was George Otta and the man in the red shirt was Todd Wearl. But you did not know this at the time you first saw them.
4. Regarding your background, you can use your own background as much as possible, except as noted to the contrary in these instructions. Thus, if you are 26 years old, you should testify that you are 26 years old. If you are married, say (if asked) that you are married. Please make any minor adjustments to your background that are necessary for you to play the role of Officer Dan Kinger, who drives (and occasionally walks) a beat for the University Police Department. For example, be prepared to testify that you attended the state law enforcement academy and since worked for the University Police Department for some period of years (which you can invent).
5. Your police report contains your best recollection of the events in question. You do not remember all of the precise details of this incident, because this was just one incident among the many you have faced as a cop, and they tend to run together in your mind. [Frankly, this was not that big a deal. Just a scuffle that you were able to keep from escalating to something bigger. Unlike other incidents, nobody got badly hurt here. You did not even really make any substantial effort to find other witnesses to this incident, because it was no big deal. You remember the event to some extent, but you might not remember every little detail.] That is why you write detailed reports. You take pride in your reports. You know that it is important to record information accurately

and as completely as possible. The paperwork part of being a cop is a pain, but it is important. You are not saying you never make a mistake in your reports, but any mistakes are minor and totally accidental. Your reports are as accurate as you can possibly make them.

6. You are the police officer in the video. That means, of course, that you said the things that the police officer in the video said, and you did the things that the police officer did. While watching the video clips, try to assume the perspective of this person.
7. Regarding whether this guy Wearl ever asked to be taken to the hospital, you did not volunteer to take him there. Why would you? He was not hurt in any special way. Looked like typical irritation after pepper spray to you. When you spray someone, you expect his eyes to sting a bit. You have had to spray a few people before, and you know they always whine a bit. You have developed an answer when these folks, and other arrestees who claim injuries, ask to be taken to the hospital: You simply tell them you are not an ambulance service, and ask them if they want to have you call an ambulance for them and pay \$2,000 for an ambulance ride to the emergency room. That usually shuts them up. You do not remember if you said this to this guy Wearl, but you do know that he did not officially ask for medical care, as such. If he had made an official request or demand to be taken to the emergency room, you would have taken him there.
8. All in all, you cannot see what all the fuss is over this incident. You especially cannot see why anyone is pointing the finger at you. It seems to you that this is a perfect example of what you are supposed to do while on foot patrol (and in your other duties, for that matter). You saw someone—turned out to be this guy named Wearl—causing trouble. You intervened. By intervening, you prevented this incident from becoming more serious. When you tried to tell him to stop, he swung his arm at you. Once he directed force at you in this way, you had the right to shut him down. And you did, by

using pepper spray. Wearl also advanced toward you.

9. In your mind, this was exactly the kind of situation police carry pepper spray for. By using pepper spray, you were able to subdue an out of control individual who might have caused further harm if you had not used the spray. Eventually, the spray worked, because it helped you subdue the perpetrator and then arrest him, cuff him, and take him to the station in a police car. Maybe the guy had a bit of pain, but that comes with the territory with pepper spray. He had no long term damage.
10. So you did exactly what you should have done. Well, maybe not “exactly” because anyone can “Monday morning quarterback” anything you do as a police officer and say how you could have done it a little bit better. But you did it pretty well—within your regulations and training. And it worked, because it subdued this guy. And now people dare point the finger at you? That is just how those lawyers operate. Always criticizing cops. If you had done nothing and this guy Wearl had beaten Otta to a pulp, then the lawyers would be blaming you for doing nothing. No matter what you do as a cop, they blame you.
11. You are familiar with the University Police Department Use of Force policy. In your first week on the job, before you were allowed to go out on patrol, you were required to read this policy. You follow it as best as you can in the real world. You did not violate it in this incident (at least in any meaningful way).
12. After the events depicted in the video (i.e. after you subdued Wearl with the pepper spray), you arrested him and handcuffed him. Then you took him to your police cruiser, which was parked somewhere relatively close by, and drove him to the station, where you allowed him to wash the pepper spray out of his eyes. Please see your police report for further information.
13. After you watch the videos, the student attorney who asked you to volunteer to serve as a witness might ask

you questions about what you observed. You should answer the attorney's questions to the best of your ability, based upon your viewing of the videotape.

14. The student attorneys who are opposing the student attorney who asked you to volunteer might try to speak to you about the events that you observed. Please ask the student attorney who asked you to volunteer what s/he would like you to do if the opposing attorneys ask you to voluntarily talk to them about the case.
15. The student attorneys who are opposing the student attorney who asked you to volunteer may wish to schedule your deposition. The attorney who asked you to volunteer should work with you and the other attorneys to schedule a mutually agreeable time for your deposition. Please cooperate in the scheduling of this deposition. At a deposition, a witness swears (or affirms) to tell the truth, as at trial. The attorneys ask questions at a deposition and those questions and your answers are recorded and later transcribed in written form.
16. These events happened in the city where you live. We will be calling that city "University." But do your best to convert your living circumstances to that city. For example, if you live on the second floor of an apartment building, please testify, if asked, that you "live on the second floor of an apartment building here in University."
17. You should assume that the town where you live, "University," has a Library/Museum complex in the downtown area. The diagram in these instructions accurately depicts the (somewhat unusually shaped) exterior of the building. Sometimes the Library/Museum building is referred to by its formal name, "Hulston Hall."

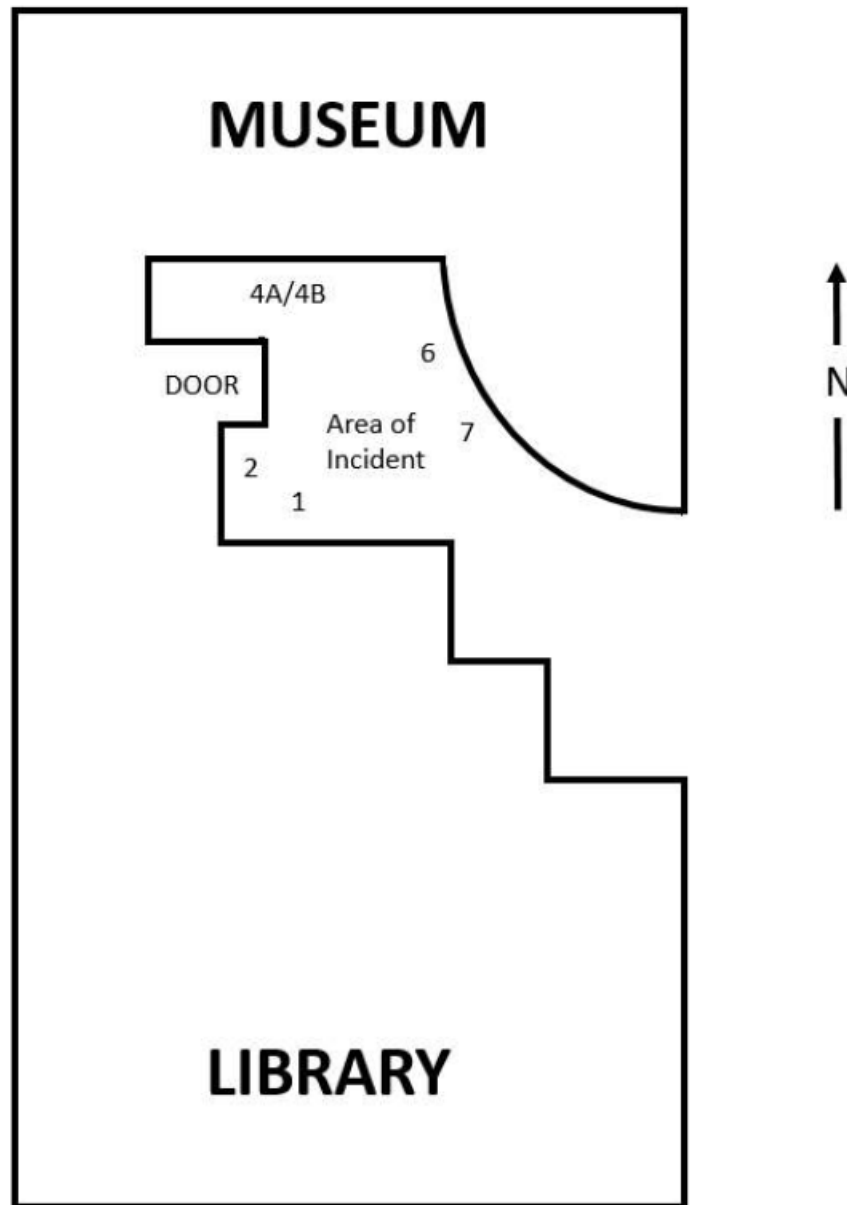


DIAGRAM OF LIBRARY/MUSEUM BUILDING

[Note: Some of the numbers show the approximate locations of witnesses.]

EVENT TYPE: AssaultCAD CALL#: 06-10318 Officer Initialed

CASE NUMBER

06-10318

ADMINISTRATIVE		UNIVERSITY POLICE												PAGE <u>1</u> OF <u>6</u>		ROUTING:	
		UNIFORM INCIDENT/OFFENSE REPORT												<input checked="" type="checkbox"/> INITIAL RPT. () OFFICER SAFETY <input type="checkbox"/> MODIFY RPT. <input checked="" type="checkbox"/> OFFICER ASSAULT <input type="checkbox"/> DELETE RPT.			
		AGENCY NAME: <u>UNIVERSITY POLICE DEPARTMENT</u> ORI # <u>UPD0000</u>												<input checked="" type="checkbox"/> PROSECUTOR <input type="checkbox"/> JUVENILE <input type="checkbox"/> FILE <input type="checkbox"/> OTHER			
		OCCURRED ON OR BETWEEN												REPORTED ON			
		MONTH <u>08</u> DAY <u>14</u> YEAR <u>2013</u> DOW <u>1000</u> MONTH <u>08</u> DAY <u>14</u> YEAR <u>2013</u> DOW <u>1000</u> MONTH <u>08</u> DAY <u>14</u> YEAR <u>2013</u> DOW <u>1005</u>															
		TYPE OF REPORT															
		<input checked="" type="checkbox"/> PERSONS <input type="checkbox"/> VEHICLE <input type="checkbox"/> JUVENILE <input type="checkbox"/> ARSON-LOSS \$ <input type="checkbox"/> PROPERTY <input type="checkbox"/> ARREST <input type="checkbox"/> CHILD ABUSE <input type="checkbox"/> GANG RELATED <input type="checkbox"/> INFORMATION <input type="checkbox"/> PHONE REPORT <input type="checkbox"/> DOMESTIC VIOLENCE <input type="checkbox"/> OTHER															
		NO. <u>1</u> VICTIM (LAST, FIRST, MIDDLE) <u>Ott, George N.</u> RACE <u>B</u> ETHNICITY <u>A</u> SEX <u>M</u> DOB <u>6-11-25</u> AGE <u>24</u> HGT <u>511</u> WGT <u>140</u> HAIR <u>Brn</u> EYES <u>Brn</u>															
		ADDRESS <u>1050 Riverfront Rd.</u> CITY/STATE/ZIP <u>University</u> RES. STATUS <u>N</u> PHONE <u>573 555-0000</u>															
		BUS. ADDRESS <u>University</u> CITY/STATE/ZIP <u>University</u> MARITAL STATUS <u>S</u> BUS. PHONE <u></u>															
		DR. LC. #/STATE <u>77321</u> SSN <u>999-04-3121</u> TYPE <input checked="" type="checkbox"/> INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> RELIGIOUS ORG. <input type="checkbox"/> OTHER <input type="checkbox"/>															
		<input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> SOCIETY/PUBLIC <input type="checkbox"/> UNKNOWN															
		TYPE OF INJURY															
		APPLIES ONLY TO OFFENSES LISTED BELOW															
		KIDNAPPING/ABDUCTION ROBBERY <input type="checkbox"/> N-NONE <input checked="" type="checkbox"/> M-APPARENT MINOR INJURY															
		FORCIBLE RAPE <input type="checkbox"/> B-APPARENT BROKEN BONES <input type="checkbox"/> O-OTHER MAJOR INJURY															
		FORCIBLE SODOMY <input type="checkbox"/> I-POSSIBLE INTERNAL INJURY <input type="checkbox"/> T-LOSS OF TEETH															
		SEXUAL ASSAULT, WITH AN OBJECT <input type="checkbox"/> L-SEVERE LACERATIONS <input type="checkbox"/> U-UNCONSCIOUSNESS															
		FORCIBLE FONDLING <input type="checkbox"/> O-DECEASED															
		RELATIONSHIP OF VICTIM TO OFFENDER(S) <u>ST</u> OFFENDER # <u>1</u> CODE # <u>ST</u> OFFENDER # <u></u> CODE # <u></u> VICTIM OF OFFENSE # <u></u> SID # <u></u> FBI # <u></u>															
		OFFENSE # <u>1</u> CLASSIFICATION <u>Assault</u> IBR CODE <u>N/A</u> ATTEMPT <u>COMP</u> ADDRESS/LOCATION OF OFFENSE/CITY/ZIP <u>MVS. I 418</u>															
		PREMISE TYPE NAME <u>County Jail</u> IBR CODE <u>312</u> HATE / BIAS <u>NO</u> CODE <u>99</u> APPLIES TO BREAKING & ENTERING ONLY <input type="checkbox"/> FORCIBLE <input type="checkbox"/> NO FORCE															
		OFFENSE # <u></u> CLASSIFICATION <u></u> IBR CODE <u>N/A</u> ATTEMPT <u>COMP</u> ADDRESS/LOCATION OF OFFENSE/CITY/ZIP <u></u>															
		PREMISE TYPE NAME <u></u> IBR CODE <u></u> HATE / BIAS <u>YES NO</u> CODE <u></u> APPLIES TO BREAKING & ENTERING ONLY <input type="checkbox"/> FORCIBLE <input type="checkbox"/> NO FORCE															
		TYPE OF CRIMINAL ACTIVITY															
		APPLIES ONLY TO OFFENSES LISTED BELOW															
		B - BUYING/RECEIVING															
		C - CULTIVATING/MANUFACTURING/PUBLISHING															
		D - DISTRIBUTING/SELLING															
		E - EXPLOITING CHILDREN															
		O - OPERATING/PROMOTING/ASSISTING															
		P - POSSESSING/CONCEALING															
		T - TRANSPORTING/TRANSMITTING/IMPORTING															
		U - USING/CONSUMING															
		TYPE OF WEAPON / FORCE INVOLVED															
		APPLIES ONLY TO OFFENSES LISTED BELOW															
		MURDER & NONNEGLIGENT															
		11 - FIREARM A															
		MANSLAUGHTER															
		12 - HANDGUN A															
		NEGLIGENT HOMICIDE															
		13 - RIFLE A															
		KIDNAPPING/ABDUCTION															
		14 - SHOTGUN A															
		FORCIBLE RAPE															
		15 - OTHER FIREARM A															
		FORCIBLE SODOMY															
		20 - KNIFE/CUTTING INSTRUMENT															
		SEXUAL ASSAULT, WITH AN OBJECT															
		30 - BLUNT OBJECT															
		FORCIBLE FONDLING															
		35 - MOTOR VEHICLE															
		ROBBERY															
		40 - PERSONAL WEAPONS															
		AGGRAVATED ASSAULT															
		50 - POISON 90 - OTHER															
		SIMPLE ASSAULT															
		60 - EXPLOSIVES 95 - UNKNOWN															
		EXTORTION/BLACKMAIL															
		65 - FIRE/INCENDIARY DEVICE 99 - NONE															
		WEAPON LAW VIOLATIONS															
		70 - DRUGS/NARCOTICS															
		IT IS UNLAWFUL TO FALSELY REPORT A CRIME. WILL YOU PROSECUTE? <u>YES</u>															
		REPORTED BY: <u>George Ott</u>															
		REPORTING OFFICER: <u>Det. Kinger</u> ID # <u>AV 76</u>															
		REVIEWED BY: <u>1 Sgt. Kerry</u> ID # <u>AV 76</u>															
		<u>2 Det. Bonds</u>															

UCR-MBRS-1

Case Number: 06-10318


Date: August 16, [-1]

On August 14, [-1], at approximately 1000 hours I, Officer Dan Kinger, was on foot patrol in the vicinity of Hulston Hall. As I approach the Southeast entrance to the building I observed a white male, later identified as Todd Wearl, shove another white male, later identified as George Otta, to the ground. I responded to the scene and verbally commanded Mr. Wearl to stop what he was doing. Mr. Wearl disregarded my command and made a gesture with his arm as if to shoe me away. I then placed his hand on Mr. Wearl's upper arm and shoulder region in an effort to deescalate the situation. Mr. Wearl responded by throwing my arm off, turning and then coming towards me in an aggressive and threatening manner. I backed away from Mr. Wearl and gave him verbal commands to stop. Mr. Wearl failed to obey my commands and continued to advance. A one second burst of Oleoresin Capsicum spray was applied to Mr. Wearl's face. Mr. Wearl stopped advancing and was taken into custody. Mr. Wearl was handcuffed behind his back; the handcuffs were then checked for proper fit and double locked.

After Mr. Wearl had been secured, I spoke with Mr. Otta. Mr. Otta stated that he had walked out of the building and accidentally bumped into Mr. Wearl. Some words were exchanged between Mr. Otta and Mr. Wearl and Mr. Wearl became agitated and through his soda onto the ground. Mr. Otta also stated that he believed that Mr. Wearl might have gotten some soda on him when the two men bumped into each other. Mr.

Otta further stated that the argument they were in escalated and that Mr. Wearl shoved him to the ground.

Mr. Otta refused a regional ambulance for medical treatment and signed a general complaint. Mr. Otta did not complete a voluntary written statement. Mr. Wearl was complaining that his face, eyes and nose burned. I informed Mr. Wearl that the sensation was caused by the Oleoresin Capsicum and that it would wear-off in time. Mr. Wearl did not wish to be transported by a regional ambulance for medical attention. I transported Mr. Wearl to the Boone County Detention Center and treated him for exposure to Oleoresin Capsicum. Mr. Wearl was then turned over to Detention Center staff for processing.


P.O. Dan King - Reporting Officer

Approval:


Sgt. H.C. Kerry

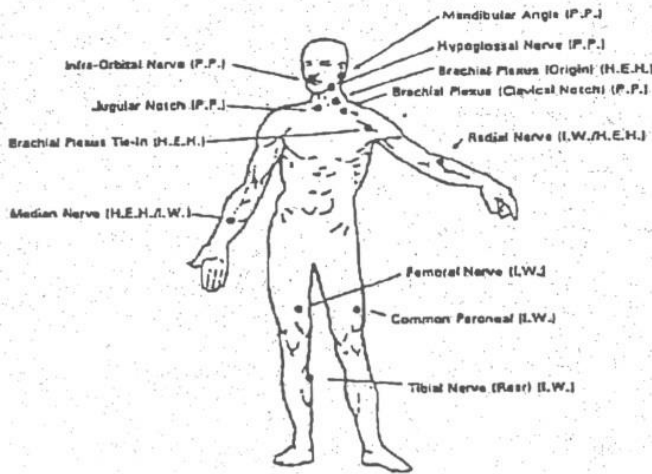
Date: 8-16-[-1]

USE OF FORCE REPORT

586

1) DATE 8-14-00		2) TIME 1000		3) LOCATION Mus Lib. Courtyard		4) COMPLAINT NUMBER 06-10318	
5) SUBJECT'S NAME Wearl, Todd R				6) DATE OF BIRTH 11-26-[-26]		7) SEX M	
8) SUBJECT'S ADDRESS (NUMBER, STREET, CITY, STATE, ZIP) 1031 E. Main St University, MO 65001				9) HOME PHONE 573-555-0001			
10) REASON FOR USE OF FORCE							
<input checked="" type="checkbox"/> NECESSARY TO AFFECT AN ARREST <input type="checkbox"/> NECESSARY TO DEFEND ANOTHER OFFICER <input checked="" type="checkbox"/> NECESSARY TO DEFEND ANOTHER PERSON				<input type="checkbox"/> TO PREVENT A VIOLENT, FORCIBLE FELONY <input type="checkbox"/> TO RESTRAIN FOR SUBJECT'S SAFETY <input type="checkbox"/> OTHER			
11) WAS THE SUBJECT INJURED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		12) CONVEYANCE N/A		13) DESTINATION N/A		14) ATTENDING PHYSICIAN N/A	
15) # SUBJECTS THAT RESISTED 1		16) # OFFICERS PRESENT 1		17) SUPERVISOR NOTIFIED/ TIME Sgt Kerry / 1010		18) NOTIFIED SUPERVISOR'S SIGNATURE H.C. Perry	
19) AT THE TIME OF ARREST, THE SUBJECT WAS:							
<input type="checkbox"/> UNDER INFLUENCE OF ALCOHOL/DRUGS <input type="checkbox"/> SUSPECTED UNDER INFLUENCE OF ALCOHOL/DRUGS				<input type="checkbox"/> MENTALLY IMPAIRED <input type="checkbox"/> OTHER			
20) DESCRIBE SUBJECT'S INJURIES OC exposure							
21) LEVELS OF RESISTANCE							
<input checked="" type="checkbox"/> PSYCHOLOGICAL INTIMIDATION: EXPLAIN - arm extended outward, flexing of muscles (non-verbal cues indicating subject's attitude or physical readiness)							
<input checked="" type="checkbox"/> VERBAL NON-COMPLIANCE: EXPLAIN - taunting, telling officer to leave (verbal responses or threats of non-compliance to officer's directions)							
<input type="checkbox"/> PASSIVE RESISTANCE: EXPLAIN - (dead weight or clinging to objects in an attempt to prevent the officer from gaining control)							
<input type="checkbox"/> ESCAPE RESISTANCE: EXPLAIN - (pushing, pulling, or running away from the officer to avoid control; never attempting to harm the officer)							
<input checked="" type="checkbox"/> ACTIVE AGGRESSION: EXPLAIN - came toward officer in aggressive manner, pushed officer's hand away (physical actions of assault)							
<input type="checkbox"/> AGGRAVATED ACTIVE AGGRESSION: EXPLAIN - (assaults with weapons)							
22) LEVELS OF CONTROL (OFFICER PRESENCE IS IMPLIED)							
<input checked="" type="checkbox"/> VERBAL DIRECTION: EXPLAIN - told to stop assault on victim & to stay back from officer (commands of direction or of arrest)							
<input checked="" type="checkbox"/> EMPTY HAND CONTROL: EXPLAIN - hand placed on upper arm of subject							
SOFT		HARD (See Charts on Reverse Side)					
<input type="checkbox"/> Muscling		<input type="checkbox"/> Hand Strikes		Body Part: _____			
<input type="checkbox"/> Joint Locks		<input type="checkbox"/> Leg Strikes		Body Part: _____			
<input type="checkbox"/> Pressure Points		<input type="checkbox"/> V.N.R.					
<input checked="" type="checkbox"/> INTERMEDIATE WEAPONS: (chemical etc., See Charts on Reverse Side) OC spray to face							
<input type="checkbox"/> IMPACT WEAPONS: (primary or alternative, See Charts on Reverse Side)							
<input type="checkbox"/> LETHAL FORCE: Specify - (firearms or other lethal force employed)							
23) REPORTING OFFICER'S SIGNATURE: Dan Ringer		24) SERIAL NUMBER: 4144		25) REGULAR SUPERVISOR'S SIGNATURE: Sgt. Perry		26) SERIAL NUMBER:	

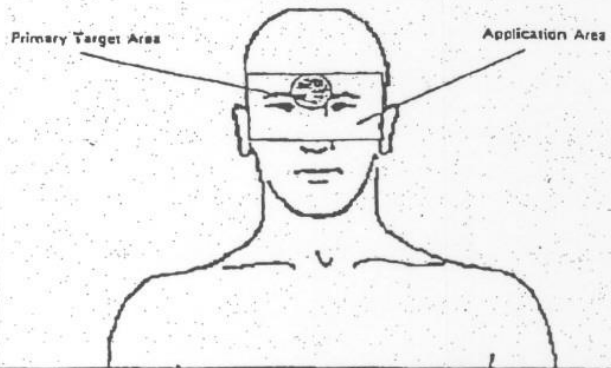
27) Control Point Target Areas



LEGEND
P.P. - Pressure Point
H.E.H. - Hard Empty Hand
I.W. - Impact Weapon

VARIABLES AFFECTING LEVELS OF CONTROL
1. Officer/Subject Size and Gender
2. Environmental Conditions
3. Reaction Time

28) Chemical Spray Target Area



29) Effects of Chemical Spray

Was Spray Effective? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Were Further Control Methods Needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Number of Times Sprayed: <u>2</u>	Approximate Distance From Subject: <u>3-5 feet</u>
Eyes: <input checked="" type="checkbox"/> Closure <input checked="" type="checkbox"/> Tears <input type="checkbox"/> No Effect	Skin: <input checked="" type="checkbox"/> Redness <input checked="" type="checkbox"/> Burning <input type="checkbox"/> No Effect
Nose: <input checked="" type="checkbox"/> Discharge <input checked="" type="checkbox"/> Irritation <input type="checkbox"/> No Effect	Chest: <input checked="" type="checkbox"/> Coughing <input type="checkbox"/> Labored Breathing

30) Post-Incident Observation

A. IMMEDIATELY FOLLOWING FINAL CONTROL TECHNIQUE:
Subject complaining of burning eyes and skin, coughing, nasal discharge
B. 15 MINUTES FOLLOWING FINAL CONTROL TECHNIQUE:
Same complaints but improving
C. 30 MINUTES FOLLOWING FINAL CONTROL TECHNIQUE:
Slight burning sensation on face

NARRATIVE:

See attached

32) ADMINISTRATIVE REVIEW BY: (Shift or Unit Commander) <u>Bgt King</u>	33) SERIAL NUMBER	34) ADDITIONAL REPORTS <input checked="" type="checkbox"/> See Attached Addendum <input type="checkbox"/> See Investigative Report
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Excerpts from University Police Department Manual Re Use of Force

49.00 - INTRODUCTION

The purpose of this policy is to provide officers of the City of University Police Department with guidance on the use of deadly and non-deadly force.

The City of University Police Department recognizes and respects the value and special integrity of each human life. In vesting officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this Police Department that officers shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others.

Terminology: DEADLY FORCE is any use of force that is likely to cause death or serious bodily harm. NON-DEADLY FORCE is any use of force other than that which is considered deadly force.

Officers and other employees shall not use more force in any situation than is reasonably necessary under the totality of the circumstances. All use of force shall be in accordance with the law and departmental policies.

Officers and other employees shall use and handle weapons in a careful and prudent manner. Officers and employees shall use weapons in accordance with law and departmental procedures.

Officers and other employees shall not examine, maintain, or display in a casual fashion any firearm in the view of the public, or in the Police Department's office, except at the discretion of a supervisor for official duty purposes.

49.01 - AUTHORIZATION

Officers are authorized to use deadly force only in order to:

Protect the officer or others from what is reasonably believed to be a threat of death or serious bodily harm; or

Prevent the escape of a one reasonably believed to be a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life if escape occurred.

Before using a firearm, an officer shall identify himself or herself and state the intent to shoot, where feasible.

Officers may also discharge a weapon under the following circumstances:

During range practice or competitive sporting events; or

To destroy an animal that represents a threat to public safety or to destroy an animal as a humanitarian measure where the animal is seriously injured.

49.02 - USAGE CRITERIA

Officers shall adhere to the following restrictions when their weapon is exhibited:

Except for maintenance or during training, an officer shall not draw or exhibit his or her firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.

Warning shots are not permissible in any situation.

Decisions to discharge firearms at or from a moving vehicle are prohibited if they present an unreasonable risk to the officers or others.

Where deadly force is not authorized, officers shall use only that level of force on the force continuum that is reasonably believed to be necessary to de-escalate the incident and bring it under control

49.03 - NON-DEADLY FORCE

Officers are authorized to use departmental-approved non-deadly force techniques and departmental-issued equipment for resolution of incidents as follows:

- To protect themselves or others from physical harm;

- To restrain or subdue a resistant individual;

- To bring an unlawful situation safely and effectively under control.

49.04 - FIREARMS AUTHORIZATION AND TRAINING Omitted

49.05 - FIREARMS REPORTING PROCEDURES Omitted

49.06 - ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS Omitted

49.07 - OFFICER RESPONSE

The Police Department's officers, whether on-duty or off-duty, are in the businesses and other establishments in the city on a continual and frequent basis and face the possibility of a felony criminal act occurring in their presence, while they are either on-duty or off-duty. The following responses are acceptable procedures:

- If the officer is on-duty, in full police uniform, and he or she is able to safely act to apprehend the felon without assistance from others, he or she is permitted to do so, or

- If the officer is on-duty and is in plain clothes, and he or she is able to safely act to apprehend the felon without assistance, he or she is permitted to do so, or

If the officer is on-duty, either in uniform or plain clothes, and there is extreme risk to civilian personnel or innocent citizens, he or she is permitted to take no action until the risk to innocent lives is either substantially lessened, or

If the risk of severe injury or death to a citizen is so imminent that the officer must act to protect the innocent lives, he or she is permitted to do so, if the actions taken do not otherwise violate the Department's use-of-force guidelines, or

If the officer is by himself, off-duty, without his or her family present, and he or she can safely apprehend the suspect and hold him until on-duty personnel arrive, he or she is permitted to do so, or

If the officer is off-duty, with members of his or her family present, he or she is permitted to take no action other than serving as a witness to a crime and obtaining information that he or she reports to the on-duty personnel as soon as they arrive, to include all pertinent information to assist in the capture of the suspect.

No officer of the Department is required to act if that action will needlessly endanger innocent civilians or will endanger the lives of the officer's family if he or she acts while off-duty; nor will any officer be required to act if he or she is off-duty and has family members present, and by his or her action, he or she would place himself or herself in a position of grave risk of serious injury.

49.08 - USE OF FORCE CONTINUUM

The following are methods utilized by an officer to neutralize the unlawful actions of a person, or to protect a person that may be injuring himself or others. The department recognizes the following levels of control, in ascending order of severity:

- (1) Officer presence - identification of authority (e.g. badge, uniform, etc.)
- (2) Verbal commands, direction - communication skills or techniques that may prevent further escalation of situation
- (3) Less-lethal devices or techniques - soft empty hand control, pepper spray, hard empty hand control, and/or canine
- (4) Less-lethal impact weapon - baton, less lethal munitions
- (5) Lethal force - the amount of force that could result in death or serious physical injury

The use of force continuum does not imply that an officer is required to use the least amount of force when affecting an arrest before the officer moves to the next level. The officer is justified in using the level of force that he or she believes to be reasonable and necessary to affect an arrest and/or protect the officer or another from bodily harm.

Use of force shall be consistent with authorized departmental training.

50.00 - INTRODUCTION

The purpose of this policy is to establish guidelines for the use of oleoresin capsicum (OC/Pepper Spray) aerosol restraint spray.

The courts have classified tear gas devices similar in nature to Pepper Spray as weapons, which fall into the same general category as the law enforcement officer's gun, baton, and slapper. Therefore, Pepper Spray must be used with the same discretion and limitations as any other weapon.

Pepper Spray was designed to enable officers to perform their duties in a more efficient and humane manner when dealing with persons who intend to do bodily harm to themselves, to other persons, or to the police officer. If used properly, Pepper Spray will reduce the risk of injury to the officer and/or other persons.

Pepper Spray should be used when it becomes necessary for an officer to physically subdue a person, regardless of whether or not the officer is making an arrest.

Once a person has been subdued and brought under control, there is no further justification to use Pepper Spray.

Authority for an officer to use Pepper Spray while making an arrest is implied in the Use of Force Policy, which states that an officer may use all necessary force to effect an arrest.

Pepper Spray shall not be used against any person in retaliation for their verbal abuse of an officer.

The threat or use of Pepper Spray shall not be used to elicit information from any person.

50.01 - AUTHORIZATION

Only officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

Officers whose normal duties might require them to make arrests or supervise arrestees shall be authorized to carry OC while on duty.

Uniformed officers shall carry only departmentally authorized OC canisters in the prescribed manner on the duty belt. Non-uniformed officers may carry OC in alternative devices as authorized by the agency.

50.02 - USAGE CRITERIA

OC spray is considered a use of force and shall be employed in a manner consistent with the use-of-force policy. OC is a force option following verbal compliance tactics on the use-of-force continuum.

OC may be used when verbal dialogue has failed to bring about the subject's compliance and the subject has signaled his intention to actively resist the officer's efforts to make an arrest.

Whenever practical and reasonable, officers should issue a verbal warning before using OC against a suspect.

An officer may use deadly force to protect himself or herself from the use or threatened use of OC when the officer reasonably believes that deadly force will be used against him or her if he or she becomes incapacitated.

Once a suspect is incapacitated or restrained, use of OC is no longer justified.

50.03 - USAGE PROCEDURES

Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.

An officer should maintain a safe distance from the suspect of between two and ten feet.

A single spray burst of between one and three seconds should be directed at the suspect's eyes, nose and mouth. Additional burst(s) may be used if the initial or subsequent burst proves ineffective.

Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.

Pepper Spray shall not be used as a threat to make a person comply with an officer's verbal order.

Pepper Spray shall not be used against any person in retaliation for their verbal abuse of an officer.

The threat or use of Pepper Spray shall not be used to elicit information from any person.

50.04 - EFFECTS OF OC AND OFFICER RESPONSE

Within several seconds of being sprayed by OC, a suspect will normally display symptoms of temporary blindness, have difficulty breathing, and experience a burning sensation in the throat, nausea, lung pain and/or impaired thought processes.

The effects of OC vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect, including, if necessary, other force options consistent with agency policy, if the suspect does not respond sufficiently to the Pepper Spray and cannot otherwise be subdued.

Immediately after spraying a suspect, an officer shall be alert to any indications that the individual needs medical care. This includes, but is not necessarily limited to, breathing difficulties, continued burning sensations, gagging, profuse sweating, and loss of consciousness. Upon observing these or other medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid.

Suspects that have been sprayed shall be monitored continuously for indications of medical problems and shall not be left alone while in police custody.

Officers should provide assurance to suspects who have been sprayed that the effects are temporary and encourage them to relax.

Air will normally begin reducing the effects of OC spray within 15 minutes of exposure. However, once a suspect has been restrained, officers shall assist him by rinsing and drying the exposed area.

Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent. All such incidents shall be reported as soon as possible to the officer's immediate supervisor and shall be detailed in an incident report.

50.05 - REPORTING PROCEDURES

Accidental discharges as well as intentional uses of OC spray against an individual in an enforcement capacity shall be reported to the officer's immediate supervisor as soon as possible.

A use-of-force report shall be completed following all discharges of OC spray except during testing, training, malfunction, or accidental discharge.

50.06 - REPLACEMENT

All OC spray devices shall be maintained in an operational and charged state by assigned personnel.

Replacements for damaged, inoperable, or empty devices are the responsibility of officers to whom they are issued.

Replacements of OC spray canisters shall occur when the unit is less than half full, as determined by weighing the canister.

OC canisters shall be inspected and weighed at the firing range during firearms qualification. A record of this fact shall be maintained by the appropriate agency authority.

Unexplained depletion of OC canisters shall require an investigation and written report by the officer's supervisor to the commanding officer.