

Office of the City Manager

September 17, 2012

To: Honorable Mayor and Members of the City Council
The Police Review Commission

From: Christine Daniel, City Manager *CD*

Subject: **USE OF PEPPER SPRAY INCIDENT**

Attached please find the use of pepper spray report relating to the use of Oleorisin Capsicum (OC) that occurred on September 9, 2012.

Attachment: Use of Pepper Spray Report 12-49492

cc: William Rogers, Deputy City Manager
Michael Meehan, Chief of Police
Mark Numainville, Acting City Clerk
Ann-Marie Hogan, City Auditor
Mary Kay Clunies-Ross, Public Information Officer
Police Review Commissioner



**BERKELEY POLICE DEPARTMENT
USE OF PEPPER SPRAY REPORT**



(Note – this is a public document)

This report is to be completed by any Department employee who use "Oleoresin Capsicum" OC spray during the performance of his or her duties. The authorization for this report comes from City of Berkeley Council action taken September 16, 1997, directing that any use of "OC" be reported to the City council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Date: September 13, 2012
Date of Pepper Spray Report

From: Ofc. Cummings
Note: This form is to be completed by the Department employee using the spray. If that person is unable to complete this form due to injury, it shall be completed by his or her immediate supervisor.

Case Number(s): 12-49492

Incident Date: September 9, 2012

Incident Time: 0016

Incident Location: South Aquatic Park

Application was: Effective Ineffective

Subject: Adult Juvenile

Subject description:	<u>M</u>	<u>5-09</u>	<u>175</u>
	Sex	Height	Weight

First Aid for Subject: Paramedic responded and administered First Aid Yes No

Additional comments on First Aid rendered: BFD responded and examined subject. Subject did not display any signs of exposure and first aid was not needed.

Nature of Incident:

On 09/09/12 Ofc. Cummings was conducting an after park hours check of South Aquatic Park. He arrived into the area and saw subject walking southbound out of the park. Ofc. Cummings made contact with subject to investigate the park hours violations. During the contact Ofc. Cummings noticed subject displayed signs of being under the influence of narcotics. Subject

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was acting erratic, which supported Ofc. Cummings suspicion that he was under the influence of narcotics.

The detention deteriorated when subject became more agitated and attempted to walk away. Ofc. Cummings ordered subject to stop, but he continued to walk away. Ofc. Cummings grabbed at subject's arm and told him to stop, but subject started to run. Ofc. Cummings gave chase and attempted to take subject to the ground, but was unsuccessful. Subject turned to face Ofc. Cummings and assumed a squatted wrestling position. Subject grabbed Ofc. Cummings by the waist and attempted to take him to the ground. During the struggle, subject grabbed at Ofc. Cummings' holstered handgun and tried to take the gun. Subject was tugging on the handgun and Ofc. Cummings was able to retain control of his handgun.


Ofc. Cummings was able to break free from subject and deployed his ASP baton. Ofc. Cummings ordered subject to the ground and subject took a fighting stance. Ofc. Cummings delivered several baton strikes to the upper thigh area of both legs, which appeared to be ineffective. Subject walked away and Ofc. Cummings followed, ordering him to the ground. Subject stopped and faced Ofc. Cummings again and took another fighting stance. Ofc. Cummings delivered numerous baton strikes to the left and right shoulder area. The strikes appeared ineffective and subject began to fast walk away.


Ofc. Cummings gave chase again, closed the distance and ordered subject to stop. Ofc. Cummings attempted to spray subject with his OC spray, but due to the darkness and subject's rapid movements, he was not exposed to the spray. Subject continued to run and with the assistance of arriving officers, he was taken to the ground and detained in handcuffs.


Summary and justification of the Actions of Officer(s) Involved:


Officer Cummings was justified in deploying and using his OC spray in an attempt to overcome the violent resistance of the subject.

Please print and route through Chain of Command to the Office of the Chief.



Duty Supervisor


Watch Commander


Operations Captain


Chief of Police