

Issued Date: OCTOBER 10, 2024

From: Director Gino Betts, Jr. 
Office of Police Accountability

Case Number: 2024OPA-0082

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3 The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander ... (Eff. April 24, 2023)
Finding: Not Sustained - Unfounded
- 2. Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion
Finding: Not Sustained - Training Referral

Named Employee #2

- 1. Allegation #1:** 8.300 – Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, a. Stationary Tire Deflation Devices (Eff. April 24, 2023)
Finding: Not Sustained - Lawful and Proper

Named Employee #3

- 1. Allegation #1:** 8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)
Finding: Not Sustained - Lawful and Proper
- 2. Allegation #2:** 8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)
Finding: Not Sustained - Unfounded

Named Employee #4

1. **Allegation #1:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

Finding: Not Sustained - Lawful and Proper

2. **Allegation #2:** 8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)

Finding: Not Sustained - Lawful and Proper

3. **Allegation #3:** 8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)

Finding: Not Sustained - Unfounded

Named Employee #5

1. **Allegation #1:** 14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3 The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander ... (Eff. April 24, 2023)

Finding: Not Sustained - Unfounded

2. **Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

Finding: Not Sustained - Lawful and Proper

Named Employee #6

4. **Allegation #1:** 8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)

1. **Finding:** Allegation Removed

2. **Allegation #2:** 8.200 – Using Force, 8.200-POL-1. Use of Force: When Authorized (Eff. April 24, 2023)

Finding: Allegation Removed

3. **Allegation #3:** 8.300 – Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, a. Stationary Tire Deflation Devices (Eff. April 24, 2023)

Finding: Allegation Removed

4. **Allegation #4:** 8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

Named Employees #1-#5 (NE#1-NE#5) responded to a protest at the World Trade Center (WTC) plaza. NE#1 and NE#5—lieutenants—led SPD’s response. The complainants alleged that NE#2 improperly used a stationary tire deflation device (the Terminator) on vehicles whose drivers complied with police commands. The complainants alleged that NE#4 exercised unreasonable discretion by stabbing a minivan’s tire. The complainants alleged that NE#3 and NE#4 failed to de-escalate and used unauthorized force by deploying pepperballs at the protestors. The complainants alleged that NE#1 and NE#5 were responsible for police misconduct—like unauthorized uses of force— and exercised unreasonable discretion.

Administrative Note:

On September 26, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

Summary of Investigation:

A. OPA Complaint

From February 9, 2024, to March 8, 2024, OPA received multiple complainants alleging that during a peaceful protest, SPD officers were confrontational, pepper-sprayed protestors, and unreasonably immobilized vehicles.

OPA investigated the complaints, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and supplement reports, and use-of-force reports. OPA also interviewed the named employees.

B. Computer-Aided Dispatch (CAD) Call Report

On February 9, 2024, at 4:00 PM, CAD call remarks noted, “[REPORTING PARTY] REPORTING 20-30 PEOPLE FOR ANTI ISRAEL PROTEST.... [REPORTING PARTY] COULD NOT DESCRIBE ANYTHING [SUSPICIOUS] ABOUT THE PROTEST... [REPORTING PARTY] CONCERNED THERE IS NO POLICE [PRESENCE] CURRENTLY.”

C. Body-Worn Video (BWV)

The named employees responded to the incident location with their BWV activated, capturing the following:

NE#5 told NE#1 that he warned the protestors’ police liaison that protestors needed to move their vehicles blocking access to a hotel or be towed. NE#5 said the protestors would be allowed to

protest on the sidewalk. NE#5 said he would be the incident commander. NE#1 briefed the sergeants and stated that tow trucks were en route. NE#1 instructed the sergeants to arrest anyone interfering with towing or obstructing the access route. NE#1 said Terminators should be used if drivers refused to move their vehicles after the tow trucks arrived since they were given multiple warnings. Witness Officer #1's (WO#1) incident report stated that NE#1 and NE#5 issued multiple "clear and concise" warnings to the protestors for an hour. NE#1 said investigative holds would be placed on towed vehicles. He also told NE#5 that he would make public address (PA) system warnings, ordering the protestors to move their vehicles within five minutes, but would not order their dispersal.

NE#5 warned an event organizer that tow trucks were en route. NE#5 said protestors could assemble on the sidewalk but could not obstruct access and that obstructing vehicles would be towed. NE#1 and NE#5 walked away, and NE#1 told NE#5 that when the tow trucks arrived, he would instruct the officers to form a double column to separate the protestors from the vehicles, preventing them from interfering with tows. NE#5 permitted NE#1 to oversee that plan. NE#1 briefed Community Response Group (CRG) officers, telling them that once the tow trucks arrived, the protestors would be given a final warning to relocate their vehicles, or they would be towed.

NE#2, NE#3, and NE#4 joined a group of officers on a sidewalk. NE#1 told the officers:

We're going to move in there. [...] I'm going to give them warnings with the [public address system]. I'm going to allow them five minutes to move their vehicles, or we're going to start towing them. Once we own a vehicle, we own it, and we're going to take it. If somebody comes up and we can safely allow them to take their vehicle, we're going to do so.... We're going to put a line of officers between the crowd and the vehicles so they cannot interfere with the tow trucks.

NE#1 entered his patrol vehicle and used the public address system to address the protestors:

This is Lieutenant [NE#1] with the Seattle Police Department. We are here to support your First Amendment rights, but you cannot block egress or entrance into this building with vehicles or bodies. You are [] free to continue to protest, but you need to remove your vehicles and stop blocking the entrance. You have five minutes to move your vehicles, or we will begin towing them. Anyone who interferes with our activities will be arrested.

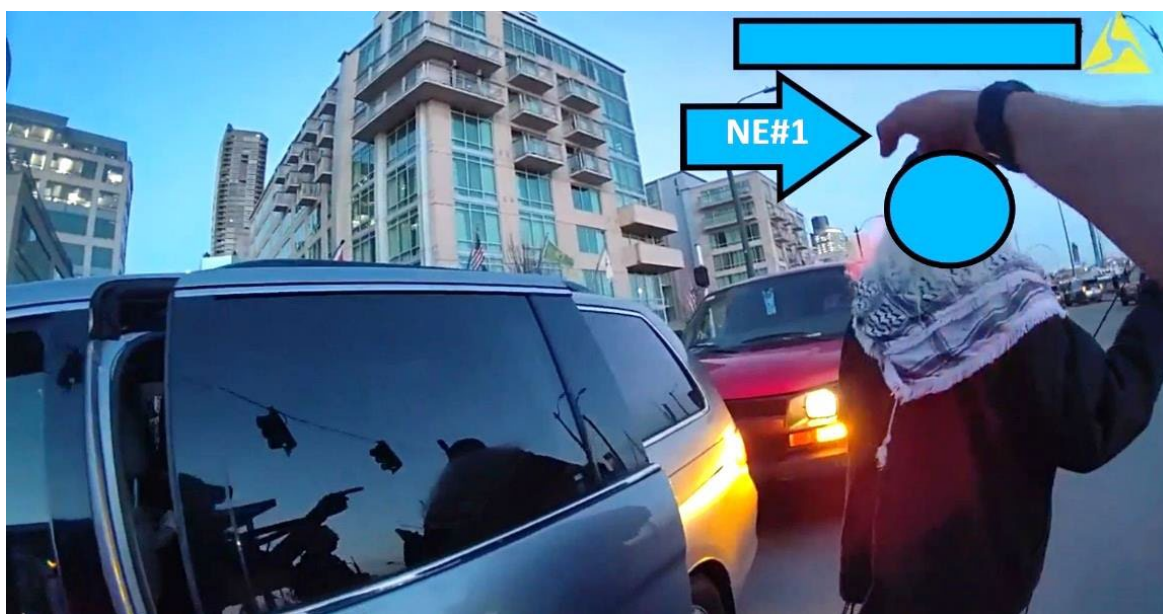
NE#1 reapproached NE#5 on the sidewalk. NE#5 suggested utilizing a long-range acoustic device (LRAD), so the loud protestors could hear. NE#1 said the LRAD was too far away, so he would issue a second warning over the PA system instead. NE#1 reapproached the CRG officers and clarified his instructions, saying they should block the vehicles but safely facilitate drivers who wanted to move. NE#1 instructed the officers to apply Terminators to vehicles moving unsafely. NE#1 approved a Terminator deployment on the first vehicle. NE#1 reentered his patrol vehicle and, over the PA system, told the protestors:

This is Lieutenant [NE#1] with the Seattle Police Department. We support your First Amendment right to protest. We are moving in now to remove those vehicles. Do not interfere with the officers. If you interfere, you will be arrested. You are free to continue your protest, but you will

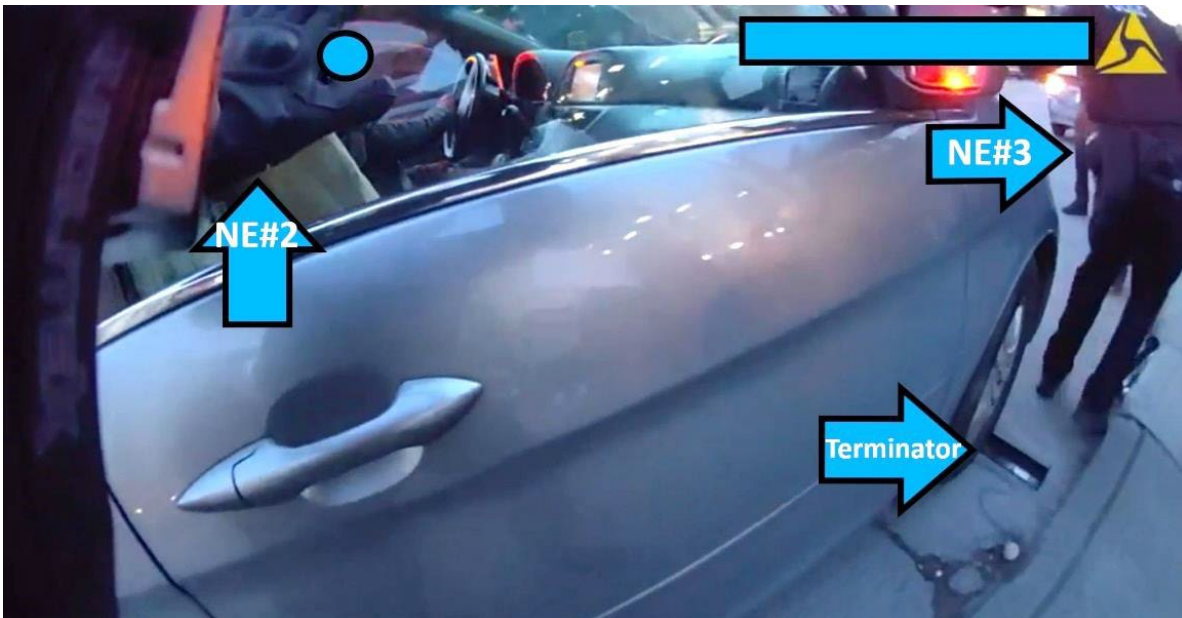
not block access [] and egress from this building, and you will not interfere with the officers. Move your vehicles now, or they will be towed.

NE#1 ordered the officers to “go ahead.” NE#2, NE#3, NE#4, and the other officers approached the protestors, who chanted and stood in the WTC plaza. WO#1’s incident report described the crowd as “confrontational” and stated one protestor wore a gas mask, suggesting impending criminal conduct. Officers formed a line between the protestors and three parked vehicles—a Prius (in front), an Odyssey (in the middle), and a Chevrolet van (at the end)—blocking the driveway. NE#1 approached the Odyssey’s driver and told her, “You’re going to have to wait to move this.” NE#2 and another officer applied Terminators on the Prius’ right rear wheel.

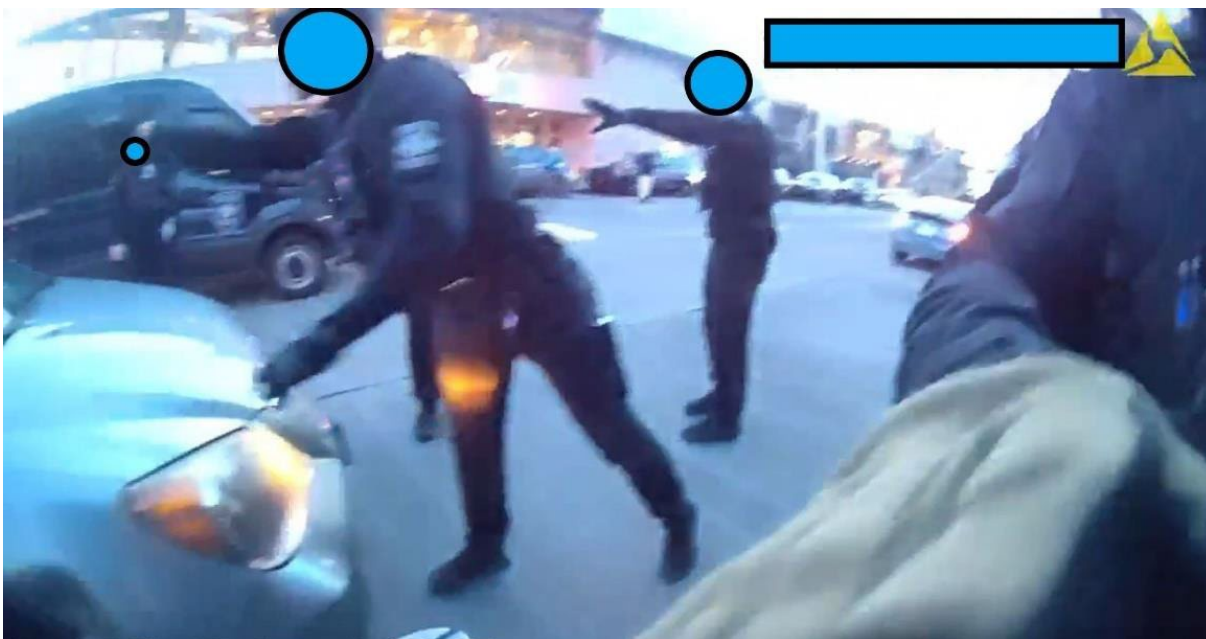
NE#1 stood beside the Odyssey. Its driver’s side window was partially down. NE#1 told the Chevrolet van’s driver, “Hey, if you’re here to move it, get in your car.” NE#1 pointed at the Chevrolet van and said, “Move your car”:



The Prius’ driver moved forward, driving over a Terminator. Its tire was heard deflating. The Odyssey’s driver accelerated forward, drove over a Terminator (intended for the Prius), and nearly struck NE#3:



An officer shouted at NE#3, "Watch out for that car!" Two officers pulled NE#3 away from the Odyssey. An officer slammed his hand on the Odyssey's hood, and NE#2 slammed his hand against the passenger's side window. Officers in front of the Odyssey, including NE#5, extended their arms and ordered the driver to stop:



The driver stopped. NE#1 walked toward the driver, pointed, and shouted, "Go! Go!"



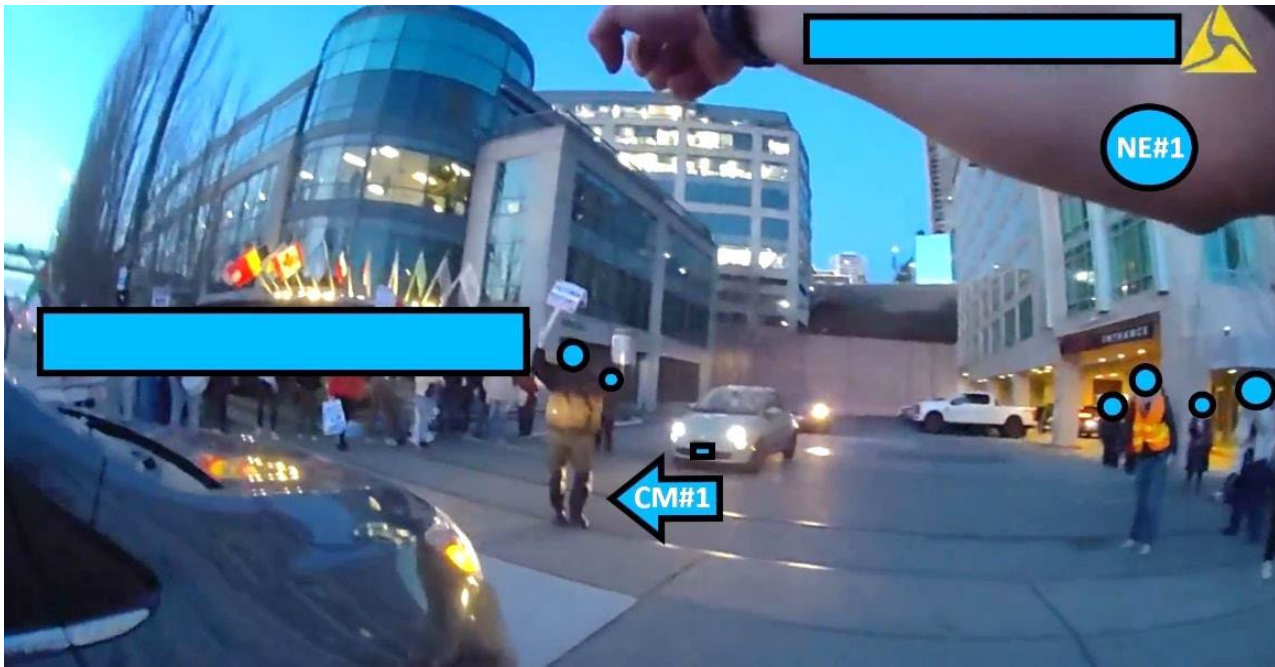
The driver slowly drove forward. A tire-deflation sound was captured. NE#4 came around to the driver's side rear tire, drew his knife, and stabbed it three times. NE#4's police report stated, "I was afraid the Honda [Odyssey would drive forward into [NE#3] and cause serious bodily harm to him, and the line of officers immediately off the passenger side.":



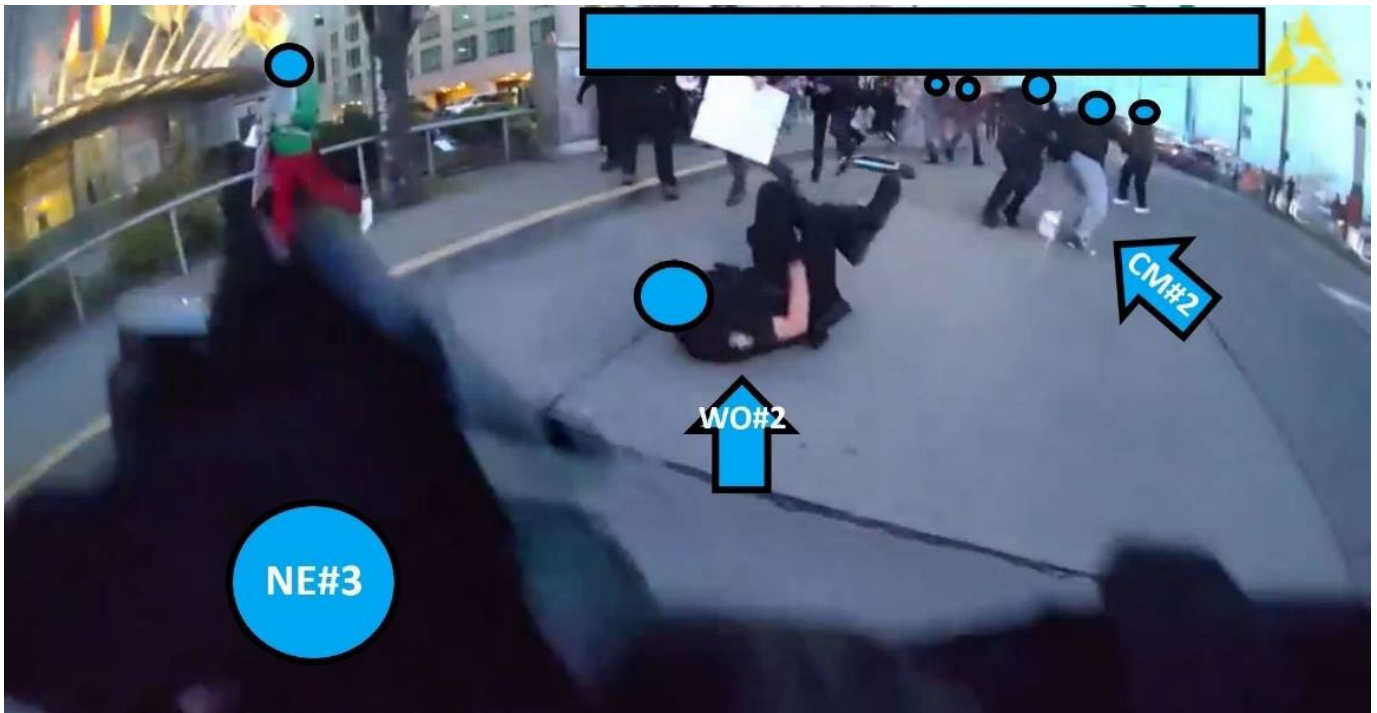
NE#1 told NE#4 to stop. The Odyssey drove off with the Terminator attached to its wheel.

NE#2, NE#3, NE#4, and the other officers surrounded a Corolla parked on the driveway as a tow truck began towing it. Officers cleared the driveway, allowing the driver to access it. The officers stood by as the protestors shouted.

Community Member #1 (CM#1) stood between two vehicles on the driveway:



NE#1 pointed at CM#1 and twice shouted, “Move, or you’ll be arrested!” CM#1 raised a middle finger at NE#1 and remained in the driveway. NE#1 ordered the officers to arrest CM#1, who had entered the crowd. The officers quickly approached the protestors. NE#2 and an officer arrested CM#1 on the ground as another protestor attempted to interfere. An officer arrested the interfering protestor. Witness Officer #2 (WO#2) fell. NE#4’s supplement report stated that Community Member #2 (CM#2) caused WO#2 to be “thrown violently to the asphalt.” NE#4 wrote that CM#2 ran up behind WO#2, lowered his shoulder, and struck WO#2 in the back of his legs like a “chop block.”:



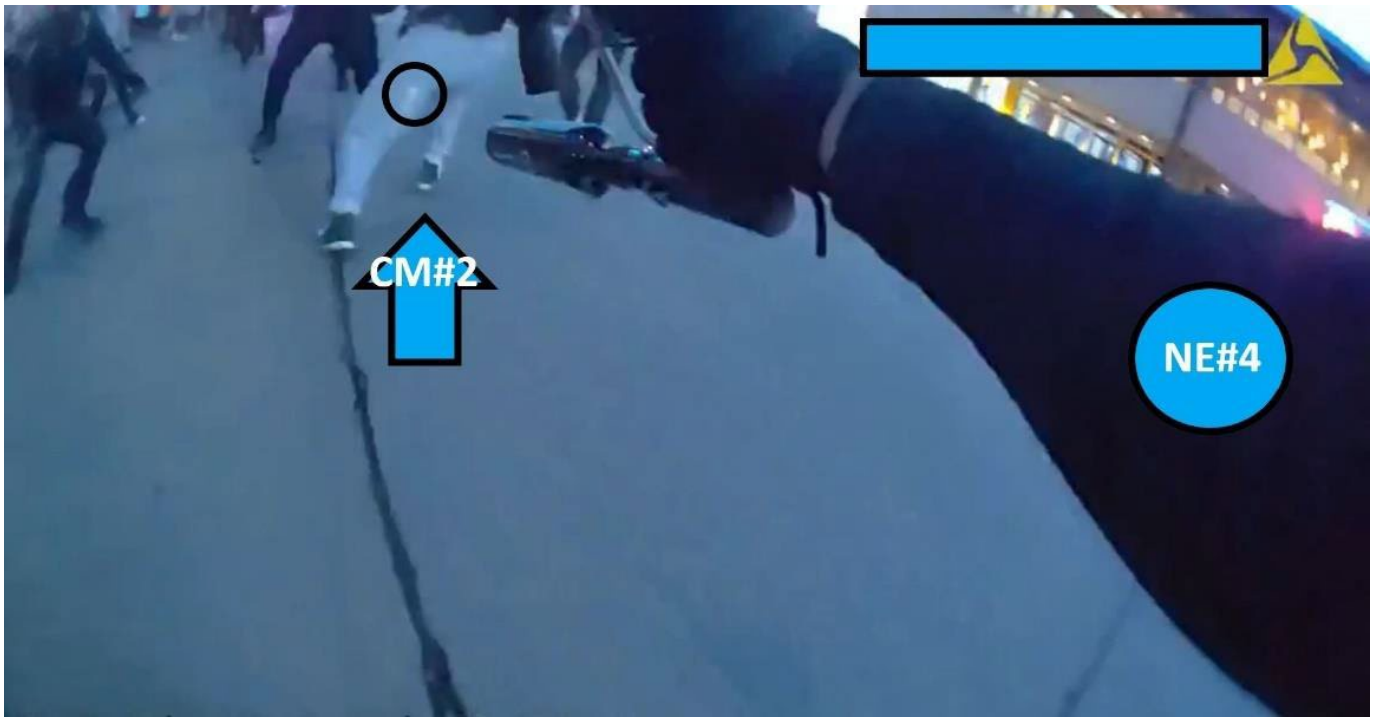
NE#3 fired two pepperballs at the ground near another protestor. NE#3’s use-of-force statement stated that he fired two pepperballs at the ground when a female protestor quickly approached an officer executing an arrest, believing that she intended to assault the officer or interfere with the arrest:



CM#2 ran through the officers, who tried to grab him. NE#4 fired two pepperballs at CM#2:



CM#2 ran past NE#4, who fired another pepperball at CM#1's left thigh:



An officer fell. WO#1 grabbed CM#2, took him to the ground, and handcuffed him:



D. Use-of-Force Reports

Named Employee #2

NE#2's type I use-of-force statement stated that he and another officer applied Terminators on both ends of the Prius' right rear tire because the Prius was detained, even though the driver drove away, striking one Terminator. Type I force causes transitory pain or the complaint of transitory pain, including using a stationary tire deflation device with confirmed contact and deflation of tires. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023). NE#2 wrote that he could not remove the other Terminator he left for the Prius because the Odyssey immediately moved forward after the Prius left. NE#2 wrote that he could not

safely remove the Terminator because the Odyssey's driver disobeyed commands. NE#2 wrote that the Terminator deployments were necessary to prevent suspects from fleeing detention.

Named Employee #3

NE#3's type II use-of-force statement stated that he fired two pepperballs at the ground in front of a female protestor who ran toward an officer executing an arrest. Type II force causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Interim Policy 8.050 (effective May 19, 2023). Type II force includes, among other things, using a stationary tire deflation device with confirmed contact and deflation of tires resulting in less than type III injury, or deploying a pepperball less lethal launcher at a person causing less than type III injury. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023). NE#3 wrote that two male protestors also walked toward that officer. NE#3 believed the three protestors intended to prevent the officer from completing his arrest and feared the officer would be assaulted.

Named Employee #4

NE#4's type II use-of-force statement stated that he stabbed the Odyssey's rear tire three times because he feared the driver would strike NE#3, whose back was toward the Odyssey as it moved forward. NE#4 wrote that the driver disobeyed commands and posed a threat to the officers and nearby protestors who were on the sidewalk and street. NE#4 wrote that he deployed two pepperballs at CM#2's lower torso and legs after CM#2 assaulted WO#2 and ran toward him. NE#4 wrote that he deployed a third pepperball at CM#2's legs after CM#2 ran past him and knocked over another officer.

E. OPA Interviews

Named Employee #3

On May 2, 2024, OPA interviewed NE#3. NE#3 said the protestors were hostile and chanting that the officers were the same as the Ku Klux Klan and Israel Defense Forces. NE#3 said he was a CRG "linebacker," meaning he observed the crowd for threats. NE#3 understood that the vehicles would be prohibited from leaving after the five-minute grace period ended. NE#3 also understood that the officers would form a line between the protestors and the vehicles so that the vehicles could be seized. NE#3 said he was unsure whether there was an order allowing the vehicles to leave after the officers formed the line, attributing this confusion to miscommunication between NE#1 and NE#5. NE#3 said he was near the Odyssey because he intended to retrieve the Terminators. NE#3 described the officers' attempt to arrest CM#1 as a targeted arrest maneuver, not an attack on the crowd. NE#3 described his pepperball deployments consistent with his use-of-force statement. NE#3 believed de-escalation was unfeasible because he had insufficient time, and the protestors could not hear him shout. NE#3 said his pepperball deployments deterred other protestors from approaching the arresting officer.

Named Employee #4

On July 26, 2024, OPA interviewed NE#4. NE#4 said he was a CRG linebacker. NE#4 understood that the vehicles would be prohibited from leaving once the officers formed a line between the protestors and the vehicles so that the vehicles could be seized. NE#4 said he was unaware of an order permitting the vehicles to leave once the officers formed the line. NE#4 believed the Odyssey threatened NE#3 because he saw its brake lights turn on and off. NE#4 said he was unsure whether the Odyssey's driver knew about NE#3's location. NE#4 said he stabbed the Odyssey's tire three times to immobilize it, mitigating its threat to the officers and the protestors. NE#4 said he was unsure who allowed the driver to leave. NE#4

said NE#1, during a debrief, agreed with NE#4's decision to stab the tire because NE#1 was unaware that officers ordered the driver to stop. NE#4's account of his pepperball deployments was consistent with his use-of-force statement. NE#4 believed de-escalation was unfeasible because he had insufficient time to consider alternative force, and he feared imminent assault.

Named Employee #2

On July 26, 2024, OPA interviewed NE#2. NE#2 understood that the vehicles would be detained and seized one at a time, starting with the Prius. NE#2 said he was assigned to deploy the Terminator, so he applied it to the right rear tire of the Prius. NE#2 said the Prius left, and then the Odyssey moved forward, threatening the officers in front of it. NE#2 said he intended to remove the Terminator after the Prius left, but he was prevented because the Odyssey immediately moved forward.

Named Employee #1

On August 16, 2024, OPA interviewed NE#1. NE#1 said he was CRG's operations lieutenant who coordinated with NE#5, the incident commander. NE#1 said the initial plan was to seize the vehicles once the tow trucks were situated. NE#1 said the revised plan allowed the vehicles to leave systematically. NE#1 said he aimed to protect the protestors' First Amendment rights but prohibit them from blocking the driveway. NE#1 acknowledged that NE#5 advised using the LRAD but noted that the protestors received several warnings for over an hour and thought the PA system was close enough that the protestors could hear. NE#1 believed his orders to the officers were clear. NE#1 did not believe his instructions to the drivers were unclear and thought someone may have directed the Odyssey's driver to move. NE#1 said he was unsure why NE#4 stabbed the Odyssey's tire but later learned that NE#4 tried to prevent it from striking the officers. NE#1 said he de-escalated by issuing warnings over the PA system, contacting the protestors' police liaison, and repeating warnings about blocking the driveway.

Named Employee #5

On August 16, 2024, OPA interviewed NE#5. NE#5 said he was the incident commander responsible for managing the scene. NE#5 said he approved calling for tow trucks because vehicles unlawfully obstructed the driveway. NE#5 believed the protestors received adequate warnings about their vehicles, noting that their police liaison was aware, and several PA warnings were issued to the protestors. NE#5 said NE#1 devised a plan to form a line to prevent the protestors from interfering while tow trucks towed the vehicles. NE#5 understood that the vehicles would be seized but permitted to leave safely if feasible. NE#5 said he instructed the Prius' driver to stop, but the driver disobeyed, drove over a Terminator, and left. NE#5 said he instructed the Odyssey's driver to stop because she was about to drive over a Terminator and NE#3, but NE#1 ordered her to drive. NE#5 believed NE#4's tire stabbing was justified based on a perceived danger in a chaotic scene. NE#5 also believed NE#1's order to arrest CM#1 was justified.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3 The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander ... (Eff. April 24, 2023)

The complainants alleged that NE#1 irresponsibly supervised the officers during the protest.

In crowd management events, the incident commander is responsible for subordinates' actions. SPD Interim Policy 14.090-POL-3(2) (effective April 24, 2023). To fulfill this obligation, the incident commander will be available for consultation. *Id.* A tactical advisor is assigned to the incident commander when feasible. *Id.* Tactical advisors are advisory, and the incident commander is responsible for subordinates' actions. *Id.*

NE#5 established his role as the incident commander at the scene. Before the officers approached the protestors, NE#1 screened his tactical plan with NE#5, who approved it. This allegation is unfounded since NE#1 was not the incident commander. However, NE#1's tactical decisions are addressed below.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

The complainants alleged that NE#1 exercised unreasonable discretion, resulting in officers using unauthorized force.

Employees are authorized and expected to use discretion reasonably consistent with the department's mission and duties for their office and assignment. SPD Policy 5.001-POL-6. Discretion is proportional to the severity of the crime or public safety issue being addressed. *Id.*

During the protest, NE#1 exercised discretion in two significant ways. First, NE#1 directed the officers to arrest CM#1. This decision was reasonable because CM#1 obstructed the driveway and was repeatedly warned that he would be arrested if he did not move. Moreover, for over an hour, the protestors were aware that while they were permitted to exercise their First Amendment rights, they were prohibited from obstructing the driveway using their bodies or vehicles. CM#1 disobeyed NE#1's command and flipped off NE#1. The officers, complying with NE#1's order to arrest CM#1, ran toward the protestors because CM#1 entered the crowd. It was not an attack on the crowd as the complainants perceived. Accordingly, this exercise of discretion was lawful and proper.

Second, NE#1 instructions about whether the vehicles were free to leave were unclear and inconsistent, especially considering the dynamic scene. NE#1 told the officers that SPD would "own" the vehicles and "take" them after the five-minute grace period. NE#1 instructed the officers to form a line between the vehicles and protestors to prevent them from interfering with the towing. Yet, NE#1 also told the officers, "If somebody comes up and we can safely allow them to take their vehicle, we're going to do so." Adding to these unclear instructions was NE#1's approval of Terminator deployments, suggesting the vehicles were not free to leave. After the five-minute grace period expired, NE#1 broadcasted, "We are moving in now to remove those vehicles. Do not interfere with the officers. If you interfere, you will be arrested." NE#1's PA announcement suggested the vehicles were not free to leave. NE#2, NE#3, and NE#4 told OPA their understanding that the vehicles were not free to leave once the officers formed a line.

However, after the officers formed the line, the drivers returned to their vehicles to leave. NE#1 facilitated their departure by telling them to move their vehicles. Simultaneously, the officers, including NE#2, NE#3, and NE#4, tried to prevent them from leaving, given their understanding that the vehicles were not free to leave. NE#1's conflicting and unclear instructions confounded a volatile situation. NE#1 acknowledged in his OPA interview that he modified his initial plan, ultimately deciding that the vehicles would be permitted to leave. Unfortunately, this modified plan was poorly communicated to the officers before approaching the protestors. While a preponderance of the evidence shows NE#1's decision-making process did not constitute misconduct, it necessitates a training referral.

Accordingly, OPA recommends this portion of the allegation be Not Sustained – Training Referral.

- **Training Referral:** The director recommends fourteen Not Sustained findings, including one training referral. Required training: NE#1's chain of command should discuss OPA's findings with NE#1, emphasizing clear communication during crowd management responses, and provide necessary retraining and counseling. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 – Allegation #1

8.300 – Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, a. Stationary Tire Deflation Devices (Eff. April 24, 2023)

The complainants alleged that NE#2 improperly applied the Terminator on vehicles whose drivers complied with police commands.

Stationary tire deflation devices safely immobilize a stationary vehicle to avoid flight. SPD Interim Policy 8.300-POL-6(5)(a) (effective April 24, 2023). They are placed under the tire of a stationary vehicle. *Id.* Officers trained to use stationary tire deflation devices may only use the device when the car is stationary, and the officer has reason to believe that the subject driving, or potentially driving, the vehicle has committed, is about to commit, or is in the process of committing a crime. Officers may also use the device for community safety purposes. *Id.*

NE#2 placed the Terminator under the tire of the Prius at the time it was stationary. NE#2 had reason to believe the Prius' driver unlawfully obstructed the driveway, preventing other vehicles from entering or exiting the WTC plaza. NE#1 also approved Terminator deployments to prevent vehicles from driving off during the towing process. NE#2 did not apply the Terminator on the Odyssey's tire because it was intended for the Prius. NE#2 could not safely and timely remove the Terminator because the Odyssey's driver immediately drove over it. However, had NE#2 applied the Terminator on the Odyssey, it would have been authorized for the same reason it was

approved for the Prius. NE#2 was directed to use the Terminator on detained vehicles whose owners committed a crime.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 – Allegation #1

8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)

The complainants alleged that NE#3 used unauthorized force by deploying pepperballs at the protestors.

Officers may use pepperballs only when such force is objectively reasonable, necessary, and proportional to protect against a specific imminent threat of harm to officers or identifiable others or to respond to specific violent acts or property destruction. SPD Interim Policy 8.300-POL-12(4) (effective April 24, 2023). Where multiple people are present, officers will direct pepperballs toward the person(s) posing a specific threat of harm to officers or others or who are engaging in violent acts or significant property destruction. *Id.* Officers deploying pepperballs will attempt to avoid or minimize incidental exposure to non-involved persons. *Id.* When directed toward a subject, the preferred target area for the pepperball is the area below the waist, including the buttocks, front or sides of the legs, or thighs. *Id.* Officers will not target the head, neck, or genitals. *Id.* When used for area denial purposes, preferred targets are hard surfaces like streets or walls. *Id.*

NE#3's pepperball deployments were objectively reasonable, necessary, and proportional to protect an officer executing an arrest from interference or an impending assault. NE#3 identified a female protestor running toward the arresting officer and two male protestors walking toward him. NE#3 fired two pepperballs on the ground near the female protestor since she posed a threat to the officer. Additionally, NE#3's pepperball deployments deterred other protestors, particularly the two male protestors, from approaching the arresting officer. NE#3's pepperball deployments were objectively reasonable, necessary, and proportional under the circumstances.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 – Allegation #2

8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)

The complainants alleged that NE#3 and NE#4 failed to de-escalate before using force.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force. SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* The totality of the circumstances should guide de-escalation options. *Id.* SPD policy emphasizes communication, time, distance, and shielding to minimize the need for force. *Id.*

NE#3 and NE#4 adequately de-escalated before using force. NE#3 and NE#4, through higher-ranking officers like NE#1 and NE#5, communicated with the protestors and the police liaison for over an hour, warning them that their vehicles would be towed if they were not relocated. The protestors were repeatedly told that they could continue exercising their First Amendment rights without obstructing public access to the WTC plaza. NE#3 and NE#4 maintained their distance from the protestors before being instructed to form a line between the vehicles and the protestors.

However, de-escalation became unfeasible once NE#1 ordered the officers to arrest CM#1, who deliberately obstructed the driveway. De-escalation was unfeasible for NE#3 when a female protestor quickly approached an officer executing an arrest. De-escalation was unfeasible for NE#4 when CM#2 assaulted WO#2 and knocked over another officer. Overall, a preponderance of the evidence shows NE#3 and NE#4 adequately utilized communication, time, and distance to de-escalate before using force.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #4 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

The complainants alleged that NE#4 exercised unreasonable discretion by stabbing the Odyssey's tire.

NE#4's decision to stab the Odyssey's tire was reasonable under the circumstances. First, NE#4 understood that the vehicles would be prohibited from leaving once the officers formed a line in front of them. NE#4 was unaware of an order allowing the vehicles to leave at that point. Second, the Odyssey's driver accelerated forward, nearly striking NE#3—as captured on BWV—prompting several officers to shout, "Stop!" NE#4 understandably feared the driver striking NE#3, whose back was toward the Odyssey as it moved forward. Third, based on NE#4's understanding that the drivers were not free to leave and seeing the Odyssey's driver nearly strike NE#3, NE#4 believed the Odyssey's driver disobeyed commands when she again accelerated forward. Fourth, NE#4 thought the Odyssey threatened the officers and the protestors, given their proximity to the Odyssey and the driver's noncompliance. Under these circumstances, NE#4 justifiably stabbed the Odyssey's tire to mitigate its threat to those around it. A preponderance of the evidence shows that NE#4 exercised reasonable discretion based on the facts and circumstances he knew.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #4 – Allegation #2

8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)

The complainants alleged that NE#4 used unauthorized force by deploying pepperballs at the protestors.

NE#4's pepperball deployments were objectively reasonable, necessary, and proportional to protect himself and the other officers from CM#2, who ran toward NE#4 after assaulting WO#2. A third deployment was justified after CM#2 ran past NE#4 and knocked over another officer. Due to the volatility of the scene, NE#4's pepperball deployments were necessary and proportional to overcome CM#2's noncompliance and prevent further assaults on the officers. Additionally, NE#4 deployed pepperballs below CM#2's waist, consistent with policy.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #4 – Allegation #3

8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)

For the reasons at Named Employee #3—Allegation #2, OPA recommends that this allegation be Not Sustained— Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #5 – Allegation #1

14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3 The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander ... (Eff. April 24, 2023)

The complainants alleged that NE#5 irresponsibly supervised the officers during the protest.

NE#5 was the incident commander, assuming responsibility for SPD's response to the protest. He approved NE#1's plan and authorized its execution. However, the officers punctured the tires of two vehicles based on NE#1's unclear and inconsistent instructions. NE#1's poorly communicated instructions should not be attributed to NE#5, who told OPA that the plan was to seize vehicles unless they could safely relocate.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #5 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-6. Employees May Use Discretion

The complainants alleged that NE#5 exercised unreasonable discretion, resulting in officers using unauthorized force.

NE#5 exercised reasonable discretion throughout the protest. NE#5 approved NE#1's plan to seize the vehicles unless they could be safely and feasibly removed. NE#5 respected the protestors' First Amendment rights and only targeted unlawful conduct, such as roadway obstruction or assault. NE#5 delegated the execution of the plan to NE#1. As noted above, had NE#1's instructions been more precise, the likelihood of using force could have been mitigated. A preponderance of the evidence shows NE#5's delegation of operational command to NE#1 was reasonable.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #6 – Allegation #1

8.100 – De-Escalation, 8.00-POL-1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)

During its intake investigation, OPA included Named Employee #6 (NE#6)—an unknown employee—since the scope of the complaints was unclear. OPA believes it identified all named employees pertinent to this investigation.

Accordingly, OPA recommends removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #6 – Allegation #2

8.200 – Using Force, 8.200-POL-1. Use of Force: When Authorized (Eff. April 24, 2023)

For the reasons at Named Employee #6 – Allegation #1, OPA recommends removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #6 – Allegation #3

8.300 – Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, a. Stationary Tire Deflation Devices (Eff. April 24, 2023)

For the reasons at Named Employee #6 – Allegation #1, OPA recommends removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #6 – Allegation #4

8.300 – Use of Force Tools, 8.300-POL-12 Pepperball Launcher, 4. Officers May Use Pepperballs Only When Such Force is Objectively Reasonable, Necessary, and Proportional to Protect ... (Eff. April 24, 2023)

For the reasons at Named Employee #6 – Allegation #1, OPA recommends removing this allegation.

Recommended Finding: **Allegation Removed**