



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Mills, Jr. , Desmond , A.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 3881-6075

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated _____/_____/_____

Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____

Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:

From: 01 / 08 / 2023 To: _____/_____/_____

Administrative

Educational

Military

Medical

Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more

From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY
File _____ DOE _____/_____/_____
Card: 4x6 _____ 3x5 _____ DOB: _____
DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



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Terminated 01 / 20 / 2023 Reason: _____

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Cerelyn J. Davis
Signature of Agency Head

Cerelyn J. Davis
Print/Type Name of Agency Head

Memphis Police Department
AGENCY



**Peace Officer Standards and Training Commission
Decertification Request**

Agency Requesting Decertification: Memphis Police Department

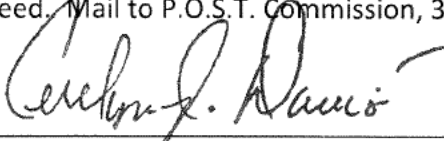
Name of Officer: Desmond Mills, Jr. PSID#: 3881-6075

Address

Please check all that apply:

- 1. Convicted of any state or by federal government of any crime the punishment which could have been imprisonment in a federal or state prison or institution; or
- 2. Convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law; or
- 3. Suspended or discharged 30 days or longer, resign in lieu of termination, resign with disciplinary action pending that could have resulted in termination, or discharged by his/her employing law enforcement agency for disciplinary reasons; or
- 4. Found to have supplied or acquiesced in false information being supplied to the P.O.S.T. Commission regarding eligibility for certification; or
- 5. Fail to participate in a 40 hour in-service training program each calendar year; or
- 6. Fail to maintain pre-employment requirements.

*All supporting documentation **must** be attached in order for the P.O.S.T. Commission to proceed. Mail to P.O.S.T. Commission, 3025 Lebanon Rd., Nashville, Tn. 37214



Date: 01 / 25 / 2023

Signature of Law Enforcement Agency Head

Cerelyn J. Davis

Print Name

Memphis Police Dept.
Human Resources

City of Memphis
Police Division
Inspectional Services Bureau

JAN 25 2023

RECEIVED

Case # I2023-001	Statement of Charges
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Officer's Name: Mills, Jr., Desmond	IBM # 13678
Rank: Police Officer II	
Assignment: OCU/Scorpion Unit	Date: January 14, 2023

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct: TERMINATION

DR 120 Neglect of Duty: TERMINATION

DR 301 Excessive Force/Unnecessary Force: TERMINATION

DR 101 Compliance with Regulations to wit: BWC: 40 DAY SWOP

Date of Occurrence: January 7, 2023

Statement of Particulars:

On January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, and other officers were captured on body worn camera making multiple unprofessional comments, laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. When you changed location to speak with the victim's mother, you and the supervisor did not obtain her contact information or refused to provide an accurate account of her son's encounter with police or his condition. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law

enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

You use of force behavior caused visible injuries to a non-violent subject who evaded officers on foot for a suspected traffic violation. According to body worn camera footage, you knew the subject was pepper sprayed, tased, struck with an ASP baton, punched, and kicked. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render the proper medical attention. In your Garrity statement, you admitted you did not provide immediate medical aid and walked away and decontaminated yourself from chemical irritant spray. Your actions place you in violation of DR 120 Neglect of Duty which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

In your Garrity statement, you deployed your ASP baton and struck a non-violent subject three times and deployed your OC spray twice while the individual because your partners were unable to handcuff him. Your actions were captured on video evidence. Although you did not assist with handcuffing the subject, your use of force behavior was excessive, unnecessary, and caused serious bodily injury. Your actions place you in violation of DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE *is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.*

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or

themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Your body worn camera was activated during the initial interaction to apprehend the male subject, but later you removed your duty vest and placed it on the trunk of an unmarked vehicle with the body worn camera attached. Therefore, you did not keep your camera affixed to your body to capture the incident in its entirety. Your actions place you in violation of DR 101 Compliance with Regulations to wit: BWC which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. ***Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call.*** *In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. ***Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.*** *Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV*

recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.

- 7. Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. The BWC will not be activated for the following:

- The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.
- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.

Officers working in an undercover capacity will not utilize the BWC.

(The officer's disciplinary resume will be reviewed and become a part of this file)

Written Response Ordered?

Yes No

2d JKM - 6 #1864

 Issuing Officer

Sgt. D. Craig #4164
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges. I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

[Signature] 13648
Signature of Officer:

Was officer relieved of duty?

Yes No

Reviewed by: Assistant Chief Deputy Chief Work Station Commander

Delegated to: Deputy Chief Station/Bureau D/C Michael Hardy
~~Major/Lt. Colonel/Colonel~~

AC Crowe

AC Crowe / DC Hardy

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Mills, Jr., Desmond IBM: 13678**

**Date: January 14, 2023
ISB Case #: I2023-001**

I. Allegation

You used excessive and unnecessary force to apprehend a non-violent subject following a traffic stop where the person sustained critical injuries and later expired. Your on-duty conduct was unbecoming, and you neglected your duty to render aid and provide viable details to the emergency medical personnel. You failed to record the event in its entirety on your body worn camera uninterrupted.

Rules, regulations or orders violated.

**DR 104 Personal Conduct
DR 120 Neglect of Duty
DR 301 Excessive Force/Unnecessary Force
DR 101 Compliance with Regulations to wit: BWC**

II. Hearing

**Date: Friday, January 20, 2023
Place: 2714 Union Ave Ext Suite 700
Time: 10:00 a.m.**

You are entitled to representation during this hearing.

Served by:

Lt J.K. Morris / IAB / 1564
Name/Rank/Assignment/IBM

Date:

1/14/23

Time:

8:34 a.m.

Signature of Officer:

[Signature] 13678

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

HEARING SUMMARY FORM
#I2023-001

Hearing:

January 20, 2023
Date

1000 hours
Time

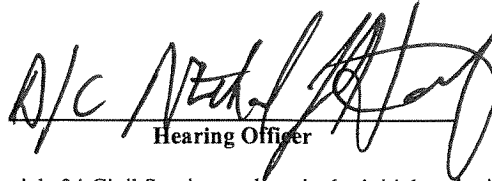
Location: 2714 Union Ave Ext, Suite 700

Attended by: Ptl Desmond Mills Jr. # 13678
Lt. Essica Cage-Rosario #1705

Hearing Officer: Deputy Chief M. Hardy #3581

Statement of Hearing Officer: On Friday, January 20, 2023, at 1000 hrs., an Administrative Hearing was conducted for Officer Desmond Mills, Jr. # 13678, resulting from a Statement of Charges issued to Officer Mills, Jr. by the ISB for violations of DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 301 Excessive Force/Unnecessary Force and DR 101 Compliance with Regulations to wit: BWC. **Statement of Hearing Officer Continue: (See Page 2)**

Action Ordered: DR 104 Personal Conduct: SUSTAINED and TERMINATION is ordered.
DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered.
DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.


Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: Will Will Not Be Filed

Grievance: Will Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

01/20/2023
Date


Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct
HSF 07/07

Drn

Hearing participants were Officer Desmond Mills Jr., Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer). Prior to this hearing, Officer Desmond Mills Jr. had been made aware of the pending charges by being served an Administrative Summons on January 16, 2023, which he did sign acknowledging receipt and was provided with a copy.

The charges stem from a complaint regarding allegations that on January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, you and other officers were captured on body worn camera making multiple unprofessional comments, laughing, bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who photographed and recorded cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. When you changed location to speak with the victim's mother, you and the supervisor did not obtain her contact information or refused to provide an accurate account of her son's encounter with the police or his condition. The report of the victim's death was broadcasted on both the local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of **DR 104 Personal Conduct** which states:

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B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

In your Garrity Statement, you deployed your ASP baton and struck a non-violent subject three times and deployed your OC spray twice because your partners were unable to handcuff him. Your actions were captured on video evidence. Although, you did not assist with handcuffing the subject, your use of force behavior was excessive, unnecessary, and caused serious bodily injury. Your actions place you in violation of **DR 301 Excessive Force/Unnecessary Force** which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

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2. Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.

Dm

Statement of Hearing Officer: #I2023-001 (page 4)

3. Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.

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Statement of Hearing Officer: #I2023-001 (page 5)

- Officers ***will not*** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC ***will not*** be used during undercover operations.

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Officers working in an undercover capacity will not utilize the BWC.

At the beginning of the Administration Hearing, Lt. Cage-Rosario informed the Hearing Officer that Officer Mills, Jr, would like to waive his rights to have each charge read in detail.

During the Administrative Hearing on January 20, 2023, Officer Desmond Mills, Jr. was asked if he would like to make a statement by the Hearing Officer. Officer Mills, Jr. responded, "No." Hearing Officer asked Officer Mills, Jr. did he give TBI an oral statement? Officer Mills, Jr. responded, "No". Hearing Officer asked Officer Mills, Jr. did he give TBI a written statement. Officer Martin responded, "No".

Lt. Cage-Rosario (MPA Representative) was asked if she would like to make a statement. Lt. Cage-Rosario read a written statement which will be included in the Administrative File, "To Whom it May Concern, The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer Emmitt Martin prior to the conclusion of the Administrative investigation and/or TBI's investigation. Per Article 14 (MOU Between the MPA and the COM), 'A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing. Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process. Not only is this a right under the MOU, but it is a right guaranteed by federal law. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided

notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997). In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

Hearing Officer convened the hearing on 01/20/2023 at 1015 hrs, without rendering a decision. Hearing reconvened on 01/20/2023 at 1505 hrs. In attendance were Officer Desmond Mills, Jr., Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer).

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Mills, Jr, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario.

Upon review of the evidence as it relates to **DR104 Personal Conduct**, which states in part: **The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession.** This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

The Hearing Officer finds that Officer Desmond Mills Jr. did violate DR 104 Personal Conduct, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 120 Neglect of Duty**, which states in part: **A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty.** This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

The Hearing Officer finds that Officer Desmond Mills Jr. did violate DR 120 NEGLECT OF DUTY, therefore the charge is TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 301 Excessive Force/Unnecessary Force**, which states in part: **Excessive Force/Unnecessary** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

The Hearing Officer finds that Officer Desmond Mills Jr. did violate DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 101 Compliance with Regulations**, which states in part: *Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.*

B. Use of BWC During the Shift

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

The Hearing Officer finds that Officer Desmond Mills Jr. did violate DR 101 COMPLIANCE WITH REGULATIONS TO WIT: BWC, therefore the charge is SUSTAINED and 40 DAY suspension is ordered.

DR 104 Personal Conduct: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered.

DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.

DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer **Emmitt Martin** prior to the conclusion of the Administrative investigation and/or TBI's investigation.

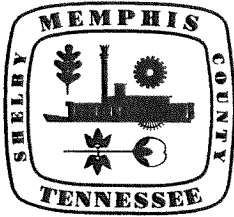
Per Article 14 (MOU Between the MPA and the COM) " A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing". Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process.

Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997).

In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

LT Essica Cage-Rosario
President
Memphis Police Association
638 Jefferson Ave.
Memphis, TN 38105



MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

Date: 01/20/2023

Assistant Chief Crowe,

On January 20, 2023 at 1705 hrs, the Administrative hearing for Officer Desmond Mills, Jr. #13678 was held. Deputy Chief Hardy #3581 was the Hearing Officer. **The charges for DR 104 Personal Conduct, DR 120 Neglect of Duty and DR 301 Excessive Force/Unnecessary Force were SUSTAINED and TERMINATION was ordered for all.**

The charge for DR 101 Compliance with Regulations to wit: BWC was SUSTAINED and a 40 Day suspension is ordered.



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Martin, III, Emmitt
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 4834-2715

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated _____/_____/_____ Reason: _____

Discharged _____/_____/_____ _____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:
From: 01 / 08 / 2023 To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY
File _____ DOE _____/_____/_____
Card: 4x6 _____ 3x5 _____ DOB: _____
DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis
Print/Type Name of Agency Head

Memphis Police Department
AGENCY



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Martin, III, Emmitt
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 4834-2715

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated 01 / 20 / 2023 Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:
From: _____/_____/_____ To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

FOR POST USE ONLY
File _____ DOE _____/_____/_____
Card: 4x6 _____ 3x5 _____ DOB: _____
DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis
Print/Type Name of Agency Head

Memphis Police Department
AGENCY



Peace Officer Standards and Training Commission
Decertification Request

Agency Requesting Decertification: Memphis Police Department

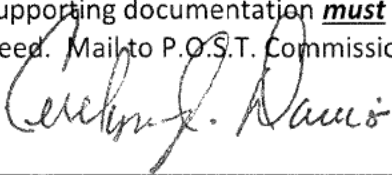
Name of Officer: Emmitt Martin III PSID#: 4834-2715

Address: [REDACTED]

Please check all that apply:

- 1. Convicted of any state or by federal government of any crime the punishment which could have been imprisonment in a federal or state prison or institution; or
- 2. Convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law; or
- 3. Suspended or discharged 30 days or longer, resign in lieu of termination, resign with disciplinary action pending that could have resulted in termination, or discharged by his/her employing law enforcement agency for disciplinary reasons; or
- 4. Found to have supplied or acquiesced in false information being supplied to the P.O.S.T. Commission regarding eligibility for certification; or
- 5. Fail to participate in a 40 hour in-service training program each calendar year; or
- 6. Fail to maintain pre-employment requirements.

*All supporting documentation **must** be attached in order for the P.O.S.T. Commission to proceed. Mail to P.O.S.T. Commission, 3025 Lebanon Rd., Nashville, Tn. 37214



Date: 01 / 25 / 2023

Signature of Law Enforcement Agency Head

Cerelyn J. Davis

Print Name

City of Memphis
Police Division
Inspectional Services Bureau

Memphis Police Dept.
Human Resources

JAN 25 2023

RECEIVED

Case # I2023-001 Statement of Charges

Officer's Name: Martin, Emmitt

IBM # 13985

Rank: Police Officer II

Assignment: OCU/ Scorpion Unit

Date: January 14, 2023

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct: TERMINATION

DR 108 Truthfulness: TERMINATION

DR 120 Neglect of Duty: TERMINATION

DR 127 Duty to Intervene and Reporting Improper Conduct: TERMINATION

DR 301 Excessive Force/Unnecessary Force: TERMINATION

DR 101 Compliance with Regulations to wit: BWC: 40 DAY SWOP

Date of Occurrence: January 7, 2023

Statement of Particulars:

On January 7, 2023, you and your partners initiated a traffic stop at E. Raines and Ross Road involving a suspected reckless drive who died at the hospital three days following a use-of-force incident. After your partner forced the driver out of the vehicle, you gained controlled of one of the subject's wrists. You claimed the subject attempted to grab your duty weapon from your holster positioned on the right side. Audio from a body worn camera did not capture the driver using profanity or displaying any violent threats; however, you made assaultive statements such as "*Bitch, put your arm behind your back before I break it*" and "*I'mma knock you ass the fuck out!*" After the subject was placed in custody at Castle Gate Lane and Bear Creek Cove, you and other officers were captured on body worn camera making multiple unprofessional comments such as "that muthafucka made me spray myself", laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct

was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

You were required to complete a Response to Resistance form to provide a truthful account of your use of force during your encounter with a suspect. In your incident summary, you reported the subject grabbed your duty weapon before you and your partners placed him on the ground. However, video evidence does not corroborate your statement in the report. During your Garrity statement, you were afforded the opportunity to review your use of force narrative and told ISB investigators that the details were correct. You failed to disclose you punched the subject in the face and kicked him multiple times on Response to Resistance form. Instead, you added to your ISB statement that you gave "body blows." Both your oral and written statement was deemed deceitful. Your actions place you in violation of DR 108 Truthfulness which states:

DR 108 TRUTHFULNESS

A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.

Your use of force behavior caused visible injuries to a non-violent subject who evaded officers on foot for a suspected traffic violation. According to body worn camera footage, you knew the subject was pepper sprayed, tased, struck with an ASP baton, punched and kicked. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render proper medical attention. You and your partners also failed to immediately assist the emergency medical personnel with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of DR 120 Neglect of Duty which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

During your encounter with a non-violent subject who was not complying with being handcuffed. You also witnessed another officer excessively strike him with the ASP baton multiple times and another officer kicked the subject who was not being violent. You failed to take reasonable action to stop the excessive and unnecessary use of force as the subject was not armed and only evading arrest on foot for a traffic violation.

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.

You were the second contact officer on the traffic stop at which time you assisted another officer to physically force the driver from the vehicle. That person did not display any violence toward you or other officers. He ran from you and two of your partners and was later apprehended Castle Gate Lane and Bear Creek Cove shortly thereafter. As your partners were attempting to handcuff him, you kicked the individual three times in the upper torso area while he was on the ground. You also struck him with a closed fist in his face five times while his arms were being held by two officers. In your Garrity statement, you were unable to provide justification for the physical force and the subject was not armed with a weapon. Your physical force during both encounters was not reasonable. Your actions place you in violation of DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

You failed to activate your body worn camera during the first encounter with the involved citizen on the traffic stop. Your body worn camera was functioning properly and did not

record the use of force incident in its entirety. At some point, you also took the body worn camera off your duty vest and placed it in your unmarked vehicle. Your actions place you in violation of DR 101 Compliance with Regulations to wit: BWC which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. *Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. *Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording. Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.*

7. *Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or*

otherwise interrupted, a supervisor will be immediately notified.

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. The BWC will not be activated for the following:

- The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.
- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.

Officers working in an undercover capacity **will not** utilize the BWC.

(The officer's disciplinary resume will be reviewed and become a part of this file)

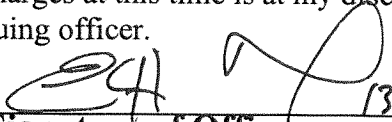
Written Response Ordered?

Yes No

J.P. [Signature] #18204
Issuing Officer

Sgt. D. Craig #4164
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges. I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.


Signature of Officer: _____ 13685

Was officer relieved of duty? Yes No

Reviewed by: Assistant Chief Deputy Chief Work Station Commander

Delegated to: Deputy Chief Station/Bureau D/C Michael Hardy
Major/Lt. Colonel/Colonel

A Chief

AC Crowe / D.C. Hardy

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Martin, Emmitt IBM: 13985**

**Date: January 14, 2023
ISB Case #: I2023-001**

I. Allegation

You used excessive and unnecessary physical force to apprehend a non-violent subject following a traffic stop where the person sustained critical injuries and later expired. Your on-duty conduct was unprofessional, and you neglected your duty to render aid and provide viable details to the emergency medical personnel. You also had a duty to intervene when you observed the excessive force conducted by a member of your team. You failed to record the vehicle stop on your body worn camera and you provided an untruthful report and oral statement.

II. Rules, regulations or orders violated.

**DR 104 Personal Conduct
DR 120 Neglect of Duty
DR 127 Duty to Intervene and Reporting Improper Conduct
DR 108 Truthfulness
DR 301 Excessive Force/Unnecessary Force
DR 101 Compliance with Regulations to wit: BWC/ICV**

III. Hearing

Date: *Friday, January 20, 2023*
Place: *2714 Union Ave Ext Suite 700*
Time: *9:00 a.m.*

You are entitled to representation during this hearing.

Served by:

Lt J.K. Morris #1844

Name/Rank/Assignment/IBM

Date:

1/14/23

Time:

8:30 a.m.

Signature of Officer:

[Signature] 13985

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A

WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

HEARING SUMMARY FORM
#I2023-001

Hearing:

January 20, 2023
Date

0900 hrs
Time

Location: 2714 Union Ave Ext, Suite 700

Attended by: PII Emmitt Martin #13985
Lt. Essica Cage-Rosario #1705

Hearing Officer: Deputy Chief M. Hardy #3581

Statement of Hearing Officer: On Friday, January 20, 2023, at 0900 hrs., an Administrative Hearing was conducted for Officer Martin 13985, resulting from a Statement of Charges issued to Officer Martin by the ISB for violations of DR 104 Personal Conduct, DR 108 Truthfulness, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, DR 301 Excessive Force/Unnecessary Force and DR 101 Compliance with Regulations to wit: BWC.

Action Ordered:

- DR 104 Personal Conduct: SUSTAINED and TERMINATION is ordered.
- DR 108 Truthfulness: SUSTAINED and TERMINATION is ordered.
- DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered
- DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.
- DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
- DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.


Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.


In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: ___ Will Will Not Be Filed

Grievance: Will ___ Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

1/20/23
Date


Employee Signature

Edm

Hearing participants were Officer Emmitt Martin, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer). Prior to this hearing, Officer Martin had been made aware of the pending charges by being served an Administrative Summons on January 16, 2023, which he did sign acknowledging receipt and was provided with a copy.

The charges stem from a complaint regarding allegations that on January 7, 2023, you and your partners initiated a traffic stop at E. Raines and Ross Road involving a suspected reckless driver who died at the hospital three days following a use-of-force incident. After your partner forced the driver out of the vehicle, you gained control of one of the subject's wrists. You claimed the subject attempted to grab your duty weapon from your holster positioned on the right side. Audio from a body worn camera did not capture the driver using profanity or displaying any violent threats; however, you made assaultive statements such as "*Bitch, put your arm behind your back before I break it*" and "*I'mma knock you ass the fuck out!*" After the subject was placed in custody at Castle Gate Lane and Bear Creek Cove, you and other officers were captured on body worn camera making multiple unprofessional comments such as "that muthafucka made me spray myself", laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of **DR 104 Personal Conduct** which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

You were required to complete a Response to Resistance form to provide a truthful account of your use of force during your encounter with a suspect. In your incident summary under this form, you reported the subject grabbed your duty weapon before you and your partners placed him on the ground. However, video evidence does not corroborate your statement in the report. During your Garrity statement, you were afforded the opportunity to review your use of force narrative and told ISB investigators that the details were correct. You failed to disclose you punched the subject in the face and kicked him multiple times on the Response to Resistance form. Instead, you added to your ISB statement that you gave "body blows." Both your oral and written statement was deemed deceitful. Your actions place you in violations of **DR 108 Truthfulness** which states:

DR 108 TRUTHFULNESS

A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.

Your use of force behavior caused visible injuries to a non-violent subject who evaded officers on foot for a suspected traffic violation. You knew the subject was pepper sprayed, tased, struck with an ASP baton, punched, and kicked. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render proper medical attention. You and your partners also failed to immediately assist the emergency medical personnel with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of **DR 120 Neglect of Duty** which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

During your encounter with a non-violent subject who was not complying with being handcuffed. You also witnessed another officer excessively strike him with the ASP baton multiples times and another officer kicked the subject who was not being violent. You failed to take reasonable action to stop the excessive and unnecessary use of force as the subject was not armed and only evading arrest on foot for a traffic violation. Your actions place you in violation of **DR 127 Duty to Intervene and Reporting Improper Conduct** which states:

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.

You were the second contact officer on the traffic stop at which time you assisted another officer to physically force the driver from the vehicle. That person did not display any violence toward you or other officers. He ran from you and two of your partners and was later apprehended at Castle Gate Lane and Bear Creek Cove shortly thereafter. As your partners were attempting to handcuff him, you kicked the individual three times in the upper torso area while he was on the ground. You also struck him with a closed fist in his face five times while his arms were being held by two officers. In your Garrity statement, which is included in the ISB File and incorporated herein, you were unable to provide justification for the physical force upon the subject who was not armed with a weapon. Your physical force during both encounters was not reasonable. Your actions place you in violation of **DR 301 Excessive Force/Unnecessary Force** which states:

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DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

You failed to activate your body worn camera during the first encounter with the involved citizen on the traffic stop. Your body worn camera was functioning properly and did not record the use of force incident in its entirety. At some point, you also took the body worn camera off your duty vest and placed it in your unmarked vehicle. Your actions place you in violation of **DR 101 Compliance with Regulations to wit: BWC** which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. *Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*

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3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g., "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. ***Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.*** *Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.*
7. *Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.*

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. *The BWC will not be activated for the following:*
 - *The BWC/ICV will not be used to knowingly record confidential informants or undercover officers.*

- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

*OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.*

Officers working in an undercover capacity will not utilize the BWC.

During the Administrative Hearing on January 20, 2023, **Officer Emmitt Martin** was informed by the Hearing Officer that he is now afforded the opportunity to make a statement. Officer Martin responded, "No", indicating that he did not wish to make a statement.

Hearing Officer asked Officer Martin did he give TBI a verbal statement? Officer Martin responded, "No". Hearing Officer asked Officer Martin did he give TBI a written statement. Officer Martin responded, "No". Hearing Officer asked Officer Martin if he wished to make any further statement, and Officer Martin declined to make a statement.

Lt. Cage-Rosario (MPA Representative) was asked if she would like to make a statement. Lt. Cage-Rosario read a written statement which will be included in the Administrative File, "To Whom it May Concern, The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer Emmitt Martin prior to the conclusion of the Administrative investigation and/or TBI's investigation. Per Article 14 (MOU Between the MPA and the COM), 'A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing. Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process. Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided

notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997). In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

Hearing Officer convened the hearing on 01/20/2023 at 0915 hrs, without rendering a decision. Hearing reconvened on 01/20/2023 at 1645 hrs. In attendance were Officer Emmitt Martin, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer).

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Martin, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario.

Upon review of the evidence as it relates to **DR 104 Personal Conduct**, which states in part: **The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession.** This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

The Hearing Officer finds that Officer Emmit Martin did violate DR 104 Personal Conduct, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR108 Truthfulness**, which states in part: **A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.**

The Hearing Officer finds that Officer Emmit Martin did violate DR108 TRUTHFULNESS, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 120 Neglect of Duty**, which states in part: **A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty.** This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

The Hearing Officer finds that Officer Emmit Martin did violate DR 120 NEGLECT OF DUTY, therefore the charge is SUSTAINED and a TERMINATION is ordered.

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Upon review of the evidence as it relates to **DR 127 Duty to Intervene and Reporting Improper Conduct**, which states in part: **Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.**

The Hearing Officer finds that Officer Emmit Martin did violate DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 301 Excessive Force/Unnecessary Force**, which states in part: **Excessive Force/Unnecessary** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

The Hearing Officer finds that Officer Emmit Martin did violate DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 101 Compliance with Regulations**, which states in part: *Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.*

B. Use of BWC During the Shift

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

The Hearing Officer finds that Officer Emmit Martin did violate DR 101 COMPLIANCE WITH REGULATIONS TO WIT: BWC, therefore the charge is SUSTAINED and a 40 Day suspension is ordered.

DR 104 Personal Conduct: SUSTAINED and TERMINATION is ordered.

DR 108 Truthfulness: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered

DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.

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DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.

EM

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer **Desmond Mills Jr.** prior to the conclusion of the Administrative investigation and/or TBI's investigation.

Per Article 14 (MOU Between the MPA and the COM) " A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing". Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process.

Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997).

In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

LT Essica Cage-Rosario
President
Memphis Police Association
638 Jefferson Ave.
Memphis, TN 38105



MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

Date: 01/20/2023

Assistant Chief Crowe,

On January 20, 2023 at 1645 hrs, the Administrative hearing for Officer Emmitt Martin #13985 was held. Deputy Chief Hardy #3581 was the Hearing Officer. **The charges for DR 104 Personal Conduct, DR 108 Truthfulness, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, and DR 301 Excessive Force/Unnecessary Force were SUSTAINED and TERMINATION was ordered for all.**

The charge for DR 101 Compliance with Regulations to wit: BWC was SUSTAINED and a 40 Day suspension is ordered.



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Bean, Tadarius, M.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 3916-2465

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated _____/_____/_____

Discharged _____/_____/_____

Other _____/_____/_____

Reason: _____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:

From: 01 / 08 / 2023 To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY

File _____ DOE _____/_____/_____

Card: 4x6 _____ 3x5 _____ DOB: _____

DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Bean, Tadarrius, M.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 3916-2465

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated 01 / 20 / 2023 Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:
From: _____/_____/_____ To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

FOR POST USE ONLY

File _____ DOE _____/_____/_____

Card: 4x6 _____ 3x5 _____ DOB: _____

DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



Peace Officer Standards and Training Commission
Decertification Request

Agency Requesting Decertification: Memphis Police Department

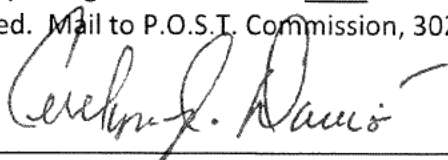
Name of Officer: Tedarius M. Bean PSID#: 3916-2465

Address [REDACTED]

Please check all that apply:

- 1. Convicted of any state or by federal government of any crime the punishment which could have been imprisonment in a federal or state prison or institution; or
- 2. Convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law; or
- 3. Suspended or discharged 30 days or longer, resign in lieu of termination, resign with disciplinary action pending that could have resulted in termination, or discharged by his/her employing law enforcement agency for disciplinary reasons; or
- 4. Found to have supplied or acquiesced in false information being supplied to the P.O.S.T. Commission regarding eligibility for certification; or
- 5. Fail to participate in a 40 hour in-service training program each calendar year; or
- 6. Fail to maintain pre-employment requirements.

*All supporting documentation **must** be attached in order for the P.O.S.T. Commission to proceed. Mail to P.O.S.T. Commission, 3025 Lebanon Rd., Nashville, Tn. 37214



Date: 01 / 25 / 2025

Signature of Law Enforcement Agency Head

Cerelyn J. Davis
Print Name

City of Memphis
Police Division
Inspectional Services Bureau

Memphis Police Dept.
Human Resources

JAN 25 2023

RECEIVED

Case # I2023-001 Statement of Charges

Officer's Name: Bean, Tadarrius

IBM # 14711

Rank: Police Officer II

Assignment: OCU/ Scorpion Unit

Date: January 14, 2023

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

- DR 104 Personal Conduct: TERMINATION
- DR 120 Neglect of Duty: TERMINATION
- DR 127 Duty to Intervene and Reporting Improper Conduct: TERMINATION
- DR 301 Excessive Force/Unnecessary Force: TERMINATION
- DR 101 Compliance with Regulations to wit: BWC: 40 DAY SWOP

Date of Occurrence: January 7, 2023

Statement of Particulars:

On January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, and other officers were captured on body worn camera making multiple unprofessional comments, laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which,

although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

During your encounter with the subject, you held the subject by one of his arms while one your partners pepper sprayed him then excessively struck him with ASP baton. Your other partner punched and kicked the non-violent subject. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render the proper medical attention. According to body worn camera footage, you knew the subject was pepper sprayed, tased, struck with an ASP baton, punched, and kicked. You and your partners also failed to immediately assist the emergency personal with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of DR 120 Neglect of Duty which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

During your encounter with a non-violent subject who was not complying with being handcuffed, you held the subject by one of his arms as one your partners pepper sprayed him then excessively struck him with the ASP baton multiple times. You also witnessed another officer punch and kick the non-violent subject multiple times. You failed to take reasonable action to stop the excessive and unnecessary use of force as the subject was not armed and only evading arrest on foot for a traffic violation.

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.

In your Garrity statement, you admitted you struck an unarmed and non-violent subject with a closed fist two to three times in his face because you and your partners were unable to handcuff him. Your actions were captured on video evidence. You also held the individual's right arm while other officers kicked, punched, and pepper sprayed him several times. Your actions place you in violation of DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Your body worn camera was activated prior during your initial interaction to apprehend the male subject, but you removed your camera off your duty vest and placed it on the trunk of a squad car during an active scene. You walked away from your camera while it was still recording to have a conversation with other officers about the incident. Your actions place you in violation of DR 101 Compliance with Regulations to wit: BWC which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. *Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity*

are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.

4. Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").
5. It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.
6. **Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.** Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.

Exceptions: Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.

7. Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. The BWC will not be activated for the following:

- The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.
- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event

Worn Camera policy.

*OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.*

Officers working in an undercover capacity will not utilize the BWC.

(The officer's disciplinary resume will be reviewed and become a part of this file)

Written Response Ordered?

Yes No

20 JKM # 15244
Issuing Officer

Sgt. D. Craig #4164
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges. I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

[Signature] 14711
Signature of Officer:

Was officer relieved of duty? Yes No

Reviewed by: Assistant Chief Deputy Chief Work Station Commander

Delegated to: Deputy Chief Station/Bureau D/C Michael Hardy
~~Major/Lt. Colonel/Colonel~~
AC/Comd. S. D/C Hardy

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Bean, Tadarrius IBM: 14711**

**Date: January 14, 2023
ISB Case #: I2023-001**

I. Allegation

You used excessive force and restrained movement of a subject as your partner punched him multiple times and the person sustained critical injuries and later expired. Your on-duty conduct was unbecoming, and you neglected your duty to render aid and provide viable details to the emergency medical personnel. You also had a duty to intervene when you observed the unnecessary force conducted by a member of your team. You failed to record the event in its entirety on your body worn camera.

II. Rules, regulations or orders violated.

**DR 104 Personal Conduct
DR 120 Neglect of Duty
DR 127 Duty to Intervene and Reporting Improper Conduct
DR 301 Excessive Force/Unnecessary Force
DR 101 Compliance with Regulations to wit: BWC**

III. Hearing

Date: *Friday, January 20, 2023*
Place: *2714 Union Ave BXT Suite 700*
Time: *11:00 a.m.*

You are entitled to representation during this hearing.

Served by: *Lt J.K. Morris / IAB / 1864*
Name/Rank/Assignment/IBM

Date: *1/14/23* Time: *8:52 a.m.*

Signature of Officer: *[Signature]* *14711*

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE,

**A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING
PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO
ATTEND THE HEARING AS A RESULT OF SAID CONDITION.**

HEARING SUMMARY FORM

#I2023-001

Hearing:

January 20, 2023

Date

1105 hrs

Time

Location: 2714 Union Ave Ext, Suite 700

Attended by: PII Tadarrius Bean #14711

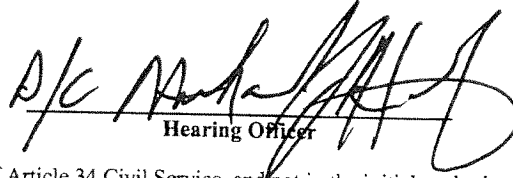
Lt. Essica Cage-Rosario #1705

Hearing Officer: Deputy Chief M. Hardy #3581

Statement of Hearing Officer: On Friday, January 20, 2023, at 1105 hrs., an Administrative Hearing was conducted for Officer Tadarrius Bean 14711, resulting from a Statement of Charges issued to Officer Bean by the ISB for violations of DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, DR 301 Excessive Force/Unnecessary Force and DR 101 Compliance with Regulations to wit: BWC .

Action Ordered:

DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.
DR 120 Neglect of Duty: SUSTAINED and a TERMINATION is ordered.
DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.
DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.


Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter 1 Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: Will Will Not Be Filed

Grievance: Will Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

1/20/2023
Date


Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct
HSF 07/07

Hearing participants were Officer Tadarrius Bean, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer). Prior to this hearing, Officer Bean had been made aware of the pending charges by being served an Administrative Summons and a copy of the statement of charges on January 16, 2023, which he did sign acknowledging receipt and was provided with a copy.

The charges stem from a complaint regarding allegations that on January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, you and other officers were captured on body worn camera making multiple unprofessional comments, laughing and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of **DR 104 Personal Conduct** which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

During your encounter with the subject, you held the subject by one of his arms while one of your partners pepper sprayed him and then excessively struck him with ASP baton. Your other partner punched and kicked the non-violent subject. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render proper medical attention. You and your partners also failed to immediately assist the emergency medical personnel with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of **DR 120 Neglect of Duty** which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

TS

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

During your encounter with a non-violent subject who was not complying with being handcuffed, you held the subject by one of his arms as one of your partners pepper sprayed him then excessively struck him with the ASP baton multiple times. You also witnessed another officer excessively struck him with the ASP baton multiples times. You failed to take reasonable action to stop the excessive and unnecessary use of force as the subject was not armed and only evading arrest on foot for a traffic violation. Your actions place you in violation of **DR 127 Duty to Intervene and Reporting Improper Conduct** which states:

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.

In your Garrity statement, you admitted you struck an unarmed and non-violent subject with a closed fist two to three times in his face because you and your partners were unable to handcuff him. Your actions were captured on video evidence. You also held the individual's right arm while other officers kicked, punched and pepper sprayed him several times. Your actions place you in violation of **DR 301 Excessive Force/Unnecessary Force** which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

TAS

Statement of Hearing Officer: #I2023-001 (page 4)

Your body worn camera was activated prior during your initial interactions to apprehend the male subject, but you removed your camera off your duty vest and placed it on the trunk of a squad car during an active scene. You walked away from your camera while it was still recording to have a conversation with the officers about the incident. Your actions place you in violation of **DR 101 Compliance with Regulations to wit: BWC** which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. ***Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.***
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g., "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. ***Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording. Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.***

TIS

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related*

events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.

7. *Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.*

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. *The BWC will not be activated for the following:*

- *The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.*
- *Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.*
- *Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.*
- *The BWC **will not** be used during undercover operations.*

2. *OCU Personnel Working Non-OCU related details:*

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

*OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.*

T/S

Officers working in an undercover capacity will not utilize the BWC.

At the beginning of the Administration Hearing, Lt. Cage-Rosario informed the Hearing Officer that Officer Bean would like to waive his rights to have each charge read in detail.

During the Administrative Hearing on January 20, 2023m Officer Tadarrius Bean was informed by the Hearing Officer that he is now afforded the opportunity to make a statement. Officer Bean responded, "No Sir", indicating that he did not wish to make a statement. Hearing Officer asked Officer Bean did he give TBI a statement? Officer Bean responded, "No Sir". Hearing Officer asked Officer Bean did he give TBI a written statement. Officer Bean responded, "No Sir".

Lt. Cage-Rosario (MPA Representative) was asked if she would like to make a statement. Lt. Cage-Rosario read a written statement which will be included in the Administrative File, "To Whom it May Concern, The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer ~~Essica Cage-Rosario~~ ^{Tadarrius Bean} prior to the conclusion of the Administrative investigation and/or TBI's investigation. Per Article 14 (MOU Between the MPA and the COM), 'A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing. Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process. Not only is this a right under the MOU, but it is a right guaranteed by federal law. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See Wagner v. City of Memphis, 971 F. Supp 308 (W.D. Tenn 1997). In Wagner, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

Hearing Officer convened the hearing on 01/20/2023 at 1105 hrs, without rendering a decision. Hearing reconvened on 01/20/2023 at 1715 hrs. In attendance were Officer Tadarrius Bean, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer).

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Bean, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario.

TB

Upon review of the evidence as it relates to **DR104 Personal Conduct**, which states in part: **The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession.** This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

The Hearing Officer finds that Officer Tadarrius Bean did violate DR 104 Personal Conduct, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 120 Neglect of Duty**, which states in part: **A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty.** This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

The Hearing Officer finds that Officer Tadarrius Bean did violate DR 120 NEGLECT OF DUTY, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 127 Duty to Intervene and Reporting Improper Conduct**, which states in part: **Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.**

The Hearing Officer finds that Officer Tadarrius Bean did violate DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 301 Excessive Force/Unnecessary Force**, which states in part: **Excessive Force/Unnecessary** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

The Hearing Officer finds that Officer Tadarrius Bean did violate DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE, therefore the charge is SUSTAINED and a TERMINATION is ordered.

TB

Upon review of the evidence as it relates to **DR 101 Compliance with Regulations**, which states in part: *Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department*

B. Use of BWC During the Shift

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

The Hearing Officer finds that Officer Tadarrius Bean did violate DR 101 COMPLIANCE WITH REGULATIONS TO WIT: BWC, therefore the charge is SUSTAINED and a 40 DAY suspension is ordered.

DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and a TERMINATION is ordered.

DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.

DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.

DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.

TB

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer **Tadarrius Bean** prior to the conclusion of the Administrative investigation and/or TBI's investigation.

Per Article 14 (MOU Between the MPA and the COM) " A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing". Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process.

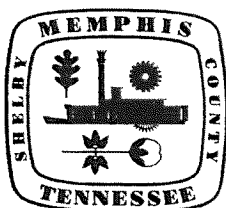
Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997).

In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

LT Essica Cage-Rosario
President
Memphis Police Association
638 Jefferson Ave.
Memphis, TN 38105





MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

Date: 01/20/2023

Assistant Chief Crowe,

On January 20, 2023 at 1715 hrs, the Administrative hearing for Officer Tadarrius Bean # 14711 was held. Deputy Chief Hardy #3581 was the Hearing Officer. **The charges for DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, and DR 301 Excessive Force/Unnecessary Force were SUSTAINED and TERMINATION was ordered for all.**

The charge for DR 101 Compliance with Regulations to wit: BWC was SUSTAINED and a 40 Day suspension is ordered.



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Haley, Demetrius, _____
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 2072-1713

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated _____/_____/_____ Reason: _____

Discharged _____/_____/_____ _____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:
From: 01/08/2023 To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY
File _____ DOE _____/_____/_____
Card: 4x6 _____ 3x5 _____ DOB: _____
DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department
AGENCY



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Haley, Demetrius, J.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 2072-1713

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated 01 / 20 / 2023

Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:

From: _____/_____/_____ To: _____/_____/_____

Administrative

Educational

Military

Medical

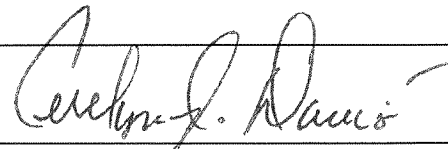
Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more

From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

FOR POST USE ONLY	
File _____	DOE _____/_____/_____
Card: 4x6 _____	3x5 _____ DOB: _____
DOC: _____/_____/_____	#: _____



Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



Peace Officer Standards and Training Commission
Decertification Request

Agency Requesting Decertification: Memphis Police Department

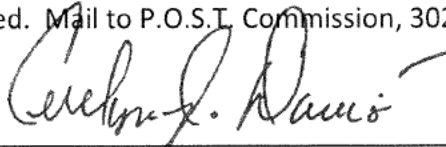
Name of Officer: Demetrius Haley PSID#: 2072-1713

Address: [REDACTED]

Please check all that apply:

- 1. Convicted of any state or by federal government of any crime the punishment which could have been imprisonment in a federal or state prison or institution; or
- 2. Convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law; or
- 3. Suspended or discharged 30 days or longer, resign in lieu of termination, resign with disciplinary action pending that could have resulted in termination, or discharged by his/her employing law enforcement agency for disciplinary reasons; or
- 4. Found to have supplied or acquiesced in false information being supplied to the P.O.S.T. Commission regarding eligibility for certification; or
- 5. Fail to participate in a 40 hour in-service training program each calendar year; or
- 6. Fail to maintain pre-employment requirements.

*All supporting documentation **must** be attached in order for the P.O.S.T. Commission to proceed. Mail to P.O.S.T. Commission, 3025 Lebanon Rd., Nashville, Tn. 37214



Date: 01 / 25 / 2023

Signature of Law Enforcement Agency Head

Cerelyn J. Davis

Print Name

City of Memphis
Police Division
Inspectional Services Bureau

Memphis Police Dept.
Human Resources

JAN 25 2023

Case # I2023-001 **Statement of Charges** **RECEIVED**

Officer's Name: Haley, Demetrius **IBM #** 14730
Rank: Police Officer II
Assignment: OCU/Scorpion Unit **Date:** January 14, 2023

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct: TERMINATION
DR 108 Truthfulness: TERMINATION
DR 120 Neglect of Duty: TERMINATION
DR 301 Excessive Force/Unnecessary Force: TERMINATION
DR 101 Compliance with Regulations to wit: BWC: 40 DAY SWOP
DR 603 Information Concerning Police Business: 40 DAY SWOP

Date of Occurrence: January 7, 2023

Statement of Particulars:

On January 7, 2023, you and your partners initiated a traffic stop at E. Raines and Ross Road where your partner alerted you of a reckless driver who died at the hospital three days later following a use-of-force incident. You exited your unmarked vehicle stopped in an opposing traffic lane and you forced the driver out of his vehicle while using loud profanity and wearing a black sweatshirt hoodie over your head. You never told the driver the purpose of the vehicle stop or that he was under arrest. Audio from a body worn camera did not capture the driver using profanity or displaying any violent threats. You also were on an active cell phone call where the person overheard the police encounter. After the subject was placed in custody at Castle Gate Lane and Bear Creek Cove, you and other officers were captured on body worn camera making multiple unprofessional comments such as "that muthafucka made me spray myself", laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis.

Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

You were required to complete a Response to Resistance form to provide a truthful account of your use of force during your encounter with a suspect. In your incident summary, you wrote that you heard your partner tell the individual, "Let my gun go!" before he was taken to the ground. You were also heard making the same statement on body-worn camera to your partners in the presence of witness officers. However, video evidence did not support your oral or written statement and your information was deemed untruthful. As a result, two of your other partners also reported an incorrect statement. During your Garrity statement, you were afforded the opportunity to review your use of force narrative and told ISB investigators that the details were correct. You failed to disclose you also kicked the subject while he was on the ground. Your actions place you in violation of DR 108 Truthfulness which states:

DR 108 TRUTHFULNESS

A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.

During your first and second encounter with the subject, you sprayed him up close directly in his eyes, and then kicked him while he was on the ground. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render the proper medical attention. According to body worn camera footage, you knew the subject was pepper sprayed, tased, struck with an ASP baton, and kicked. You and your partners also failed to immediately assist the emergency medical personnel with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of DR 120 Neglect of Duty which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

You were the first contact officer on the traffic stop at which time you physically forced the driver from the vehicle and deployed your chemical irritant spray directly up close to the subject's eyes. He ran from you and two of your partners and was later apprehended other members of your unit at Castle Gate Lane and Bear Creek Cove within six minutes. As three of your partners were attempting to handcuff him, you ran up and kicked the individual in the upper torso area. In your Garrity statement, your reason was to loosen the subject's arm who appeared to already be held onto by his arms. Your physical force during the second encounter was not reasonable. Your actions place you in violation of DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

You failed to activate your body worn camera during the first encounter with the involved citizen on the traffic stop. Your body worn camera was functioning properly and did not record the use of force incident in its entirety. Your actions place you in violation of DR 101 Compliance with Regulations to wit: BWC/ICV which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

Use of BWC During the Shift

- 1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes*

having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

2. **Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call.** In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.
3. Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.
4. Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").
5. It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.
6. **Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.** Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.

Exceptions: Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.

7. Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. The BWC will not be activated for the following:

- The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.

- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.

Officers working in an undercover capacity will not utilize the BWC.

On your personal cell phone, you took two photographs while standing in front of the obviously injured subject after he was handcuffed. In your Garrity statement, you admitted you shared the photo in a text message with five (5) people; one civilian employee, two MPD officers, and one female acquaintance. During the administrative investigation, a sixth person was identified as a recipient of the same photograph. Your actions place you in violation of DR 603 Information Concerning Police Business.

DR 603 INFORMATION CONCERNING POLICE BUSINESS

A member shall not communicate information relating to official police matters without prior approval or subpoena, except to authorized persons. A member shall treat the official business of the Department as confidential.

(The officer's disciplinary resume will be reviewed and become a part of this file)


Written Response Ordered?

Yes No

Sgt. D. Craig^{alt} [Signature]
 Issuing Officer

Sgt. D. Craig #4164 [Signature]
 Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges. I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.


Signature of Officer: _____ 14780

Was officer relieved of duty? Yes No

Reviewed by: Assistant Chief Deputy Chief Work Station Commander

Delegated to: Deputy Chief Station/Bureau
LYAC
D/C Michael Hardy
~~Major/Lt. Colonel/Colonel~~
AC Crowe / D/C Hardy

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Haley, Demetrius IBM: 14730**

**Date: January 14, 2023
ISB Case #: I2023-001**

I. Allegation

You used excessive force to apprehend a non-violent subject following a traffic stop where the person sustained critical injuries and later expired. Your on-duty conduct was unbecoming, and you neglected your duty to render aid and provide viable details to the emergency medical personnel. You failed to record the event in its entirety on your body worn camera, later shared an unauthorized photo of the injured subject while in police custody, and you provided an untruthful report and oral statement.

Rules, regulations or orders violated.

- DR 104 Personal Conduct**
- DR 108 Truthfulness**
- DR 120 Neglect of Duty**
- DR 301 Excessive Force/Unnecessary Force**
- DR 101 Compliance with Regulations to wit: BWC**
- DR 603 Information Concerning Police Business**

II. Hearing

Date: *Friday, January 20, 2023*
Place: *2714 Union Ave Ext. Suite 700*
Time: *1:00 P.M.*

You are entitled to representation during this hearing.

Served by: *Lt. J.K. Morris / IAB / 1864*
Name/Rank/Assignment/IBM

Date: *1/16/2023* Time: *9:12 a.m.*

Signature of Officer: *[Signature]* *14730*

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE

DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

HEARING SUMMARY FORM
#I2023-001

Hearing:

January 20, 2023
Date

1300 hrs
Time

Location: 2714 Union Ave Ext, Suite 700

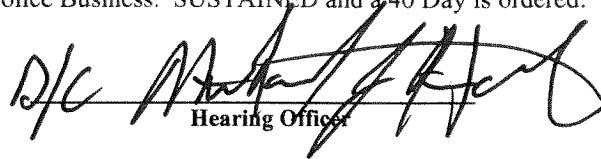
Attended by: PII Demetrius Haley #14730
Lt. Essica Cage-Rosario #1705

Hearing Officer: Deputy Chief M. Hardy #3581

Statement of Hearing Officer: On Friday, January 20, 2023, at 1300 hrs., an Administrative Hearing was conducted for Officer Demetrius Haley 14730, resulting from a Statement of Charges issued to Officer Haley by the ISB for violations of DR 104 Personal Conduct, DR 108 Truthfulness, DR 120 Neglect of Duty, DR 301 Excessive Force/Unnecessary Force, DR 101 Compliance with Regulations to wit: BWC and DR 603 Information Concerning Police Business. **Statement of Hearing Officer Continue: (See Page 2)**

Action Ordered:

- DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.
- DR 108 Truthfulness: SUSTAINED and TERMINATION is ordered.
- DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered.
- DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
- DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered
- DR 603 Information Concerning Police Business: SUSTAINED and a 40 Day is ordered.


Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: ___ Will Will Not Be Filed

Grievance: Will ___ Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

1/20/2023
Date

Demetrius Haley
Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct
HSF 07/07

Hearing participants were Officer Demetrius Haley, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer). Prior to this hearing, Officer Haley had been made aware of the pending charges by being served an Administrative Summons and a copy of the Statement of Charges on January 16, 2023, which he did sign acknowledging receipt and was provided with a copy.

The charges stem from a complaint regarding allegations that on January 7, 2023, you and your partners initiated a traffic stop at E. Raines and Ross Road, where your partner alerted you of a reckless driver who died at the hospital three days later following a use-of-force incident. You exited your unmarked vehicle, stopped in an opposing traffic lane and you force the driver out of his vehicle while using loud profanity and wearing a black sweatshirt hoodie over your head. You never told the driver the purpose of the vehicle stop or that he was under arrest. Audio from a body worn camera did not capture the driver using profanity or displaying any violent threats. You also were on an active cell phone call where the person overheard the police encounter. After the subject was placed in custody at Castle Gate Lane and Bear Creek Cove, you and other officers were captured on body worn camera making multiple unprofessional comments such as such as “that muthafucka made me spray myself”, laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian’s viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim’s death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners’ actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of **DR 104 Personal Conduct** which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

You were required to complete a Response to Resistance form to provide a truthful account of your use of force during your encounter with a suspect. In your incident summary, you wrote that you heard your partner tell the individual, “Let my gun go!” before he was taken to the ground. You were also heard making the same statement on body-worn camera to your partners in the presence of witness officers. However, video evidence did not support your oral or written statement and your information was deemed untruthful. As a result, two of your other partners also reported an incorrect statement. During your Garrity statement, you were afforded the opportunity to review your use of force narrative and told ISB investigators that the details were correct. You failed to disclose you also kicked the subject while he was on the ground. Your actions place you in violations of **DR 108 Truthfulness** which states:

DR 108 TRUTHFULNESS

A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.

Statement of Hearing Officer: #I2023-001 (page 3)

During your first and second encounter with the subject, you sprayed him up close directly in his eyes, and then kicked him while he was on the ground. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render proper medical attention. You and your partners also failed to immediately assist the emergency medical personnel with the request to unhandcuff the subject as his condition changed while left unattended on the ground. Your actions place you in violation of **DR 120 Neglect of Duty** which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

You were the first contact officer on the traffic stop at which time you physically forced the driver from the vehicle and deployed your chemical irritant spray directly up close to the subject's eyes. He ran from you and two of your partners and was later apprehended at Castle Gate Lane and Bear Creek Cove within six minutes. As three of your partners were attempting to handcuff him, you kicked the individual in the upper torso area. In your Garrity statement, which is included in the ISB File and incorporated herein, your reason was to loosen the subject's arm who appeared to already be held onto by his arms. Your physical force during the second encounter was not reasonable. Your actions place you in violation of **DR 301 Excessive Force/Unnecessary Force** which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

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You failed to activate your body worn camera during the first encounter with the involved citizen on the traffic stop. Your body worn camera was functioning properly and did not record the use of force incident in its entirety. Your actions place you in violation of **DR 101 Compliance with Regulations to wit: BWC** which states:

DR 101 COMPLIANCE WITH REGULATIONS

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B. Use of BWC During the Shift

- 1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
- 2. Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call. In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
- 3. Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
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- 5. It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
- 6. Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording. Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.*

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D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. *The BWC will not be activated for the following:*

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- *Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.*
- *The BWC **will not** be used during undercover operations.*

2. *OCU Personnel Working Non-OCU related details:*

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

*OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.*

Officers working in an undercover capacity will not utilize the BWC.

Statement of Hearing Officer: #I2023-001 (page 6)

On your personal cell phone, you took two photographs while standing in front of the obviously injured subject after he was handcuffed. In your Garrity statement, you admitted you shared the photo in a text message with five (5) people; one civilian employee, two MPD officers, and one female acquaintance. During the administrative investigation, a sixth person was identified as a recipient of the same photograph. Your actions place you in violation of **DR 603 Information Concerning Police Business** which states:

DR 603 INFORMATION CONCERNING POLICE BUSINESS *A member shall not communicate information relating to official police matters without prior approval or subpoena, except to authorized persons. A member shall treat the official business of the Department as confidential.*

At the beginning of the Administration Hearing, Lt. Cage-Rosario informed the Hearing Officer that Officer Haley would like to waive his rights to have each charge read in detail.

During the Administrative Hearing on January 20, 2023, **Officer Demetrius Haley** was informed by the Hearing Officer that he is now afforded the opportunity to make a statement. Officer Haley responded, "No Sir", indicating that he did not wish to make a statement. Hearing Officer asked Officer Haley did he give TBI a statement? Officer Haley responded, "No Sir". Hearing Officer asked Officer Haley did he give TBI a written statement. Officer Haley responded, "No Sir".

Lt. Cage-Rosario (MPA Representative) was asked if she would like to make a statement. Lt. Cage-Rosario read a written statement which will be included in the Administrative File, "To Whom it May Concern, The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer ~~Edward Martin~~ ^{Demetrius Haley} prior to the conclusion of the Administrative investigation and/or TBI's investigation. Per Article 14 (MOU Between the MPA and the COM), 'A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing. Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process. Not only is this a right under the MOU, but it is a right guaranteed by federal law. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See Wagner v. City of Memphis, 971 F. Supp 308 (W.D. Tenn 1997). In Wagner, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

Hearing Officer convened the hearing on 01/20/2023 at 1315 hrs, without rendering a decision. Hearing reconvened on 01/20/2023 at 1750 hrs. In attendance were Officer Demetrius Haley, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer).

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Haley, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario.

Upon review of the evidence as it relates to **DR104 Personal Conduct**, which states in part: **The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession.** This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

The Hearing Officer finds that Officer Demetrius Haley did violate DR 104 Personal Conduct, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR108 Truthfulness**, which states in part: **A member shall not give any information, either oral or written, in connection with any assignment or investigation that is either knowingly incorrect, false, or deceitful.**

The Hearing Officer finds that Officer Demetrius Haley did violate DR108 TRUTHFULNESS, therefore the charge is SUSTAINED and a TERNMINATION is ordered.

Upon review of the evidence as it relates to **DR 120 Neglect of Duty**, which states in part: **A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty.** This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

The Hearing Officer finds that Officer Demetrius Haley did violate DR 120 NEGLECT OF DUTY, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 301 Excessive Force/Unnecessary Force**, which states in part: **Excessive Force/Unnecessary** is defined as the amount of force which is beyond the

need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

The Hearing Officer finds that Officer Demetrius Haley did violate DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 101 Compliance with Regulations**, which states in part: *Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.*

B. Use of BWC During the Shift

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

The Hearing Officer finds that Officer Demetrius Haley did violate DR 101 COMPLIANCE WITH REGULATIONS TO WIT: BWC, therefore the charge is SUSTAINED and a 40 Day suspension is ordered.

Upon review of the evidence as it relates to **DR 603 Information Concerning Police Business**, which states in part: *A member shall not communicate information relating to official police matters without prior approval or subpoena, except to authorized persons. A member shall treat the official business of the Department as confidential.*

The Hearing Officer finds that Officer Demetrius Haley did violate DR 603 INFORMATION CONCERNING POLICE BUSINESS, therefore the charge is SUSTAINED and a TERMINATION is ordered.

DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.

DR 108 Truthfulness: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and a TERMINATION is ordered.

DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.

DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.

DR 603 Information Concerning Police Business: SUSTAINED and a 40 Day suspension is ordered.

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer **Demetrius Haley** prior to the conclusion of the Administrative investigation and/or TBI's investigation.

Per Article 14 (MOU Between the MPA and the COM) " A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing". Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process.

Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997).

In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

LT Essica Cage-Rosario
President
Memphis Police Association
638 Jefferson Ave.
Memphis, TN 38105



MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

Date: 01/20/2023

Assistant Chief Crowe,

On January 20, 2023 at 1750 hrs, the Administrative hearing for Officer Demetrius Haley #14730 was held. Deputy Chief Hardy #3581 was the Hearing Officer. **The charges for DR 104 Personal Conduct, DR 108 Truthfulness, DR 120 Neglect of Duty, DR 301 Excessive Force/Unnecessary Force, and DR 603 Information Concerning Police Business were SUSTAINED and TERMINATION was ordered for all.**

The charge for DR 101 Compliance with Regulations to wit: BWC was SUSTAINED and a 40 Day suspension is ordered.



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Smith, Justin, L.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 0775-3619

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated _____/_____/_____

Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:
From: 01 / 08 / 2023 To: _____/_____/_____

Administrative Educational Military

Medical Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more
From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY
File _____ DOE _____/_____/_____
Card: 4x6 _____ 3x5 _____ DOB: _____
DOC: _____/_____/_____ #: _____

Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

NAME: Smith, Justin, L.
(Last) (First) (Middle)

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 0775-3619

SEPARATION: This is to notify the POST Commission that the named officer is no longer employed by this department as indicated below:

Type of Separation Effective Date (mm/dd/yyyy)

Resigned _____/_____/_____

Retired _____/_____/_____

Terminated 01 / 20 / 2023

Reason: _____

Discharged _____/_____/_____

Other _____/_____/_____

New Employer, if known _____

CHANGE OF NAME/RANK: From _____ to _____
Effective Date of Change: _____/_____/_____

LEAVE: This officer has been granted leave as indicated:

From: _____/_____/_____ To: _____/_____/_____

Administrative

Educational

Military

Medical

Maternity

Returned to full time status on: _____/_____/_____

SUSPENSION: This officer has been suspended for a period of thirty (30) days or more

From: _____/_____/_____ To: _____/_____/_____ for the following reason(s)

FOR POST USE ONLY	
File _____	DOE _____/_____/_____
Card: 4x6 _____	3x5 _____ DOB: _____
DOC: _____/_____/_____	#: _____

Signature of Agency Head

Cerelyn J. Davis
Print/Type Name of Agency Head

Memphis Police Department
AGENCY



Peace Officer Standards and Training Commission
Decertification Request

Agency Requesting Decertification: Memphis Police Department

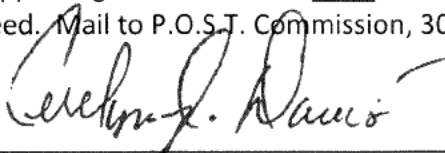
Name of Officer: Justin L. Smith PSID#: 0775-3619

Address: [REDACTED]

Please check all that apply:

- 1. Convicted of any state or by federal government of any crime the punishment which could have been imprisonment in a federal or state prison or institution; or
- 2. Convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law; or
- 3. Suspended or discharged 30 days or longer, resign in lieu of termination, resign with disciplinary action pending that could have resulted in termination, or discharged by his/her employing law enforcement agency for disciplinary reasons; or
- 4. Found to have supplied or acquiesced in false information being supplied to the P.O.S.T. Commission regarding eligibility for certification; or
- 5. Fail to participate in a 40 hour in-service training program each calendar year; or
- 6. Fail to maintain pre-employment requirements.

*All supporting documentation **must** be attached in order for the P.O.S.T. Commission to proceed. Mail to P.O.S.T. Commission, 3025 Lebanon Rd., Nashville, Tn. 37214



Date: 1 / 25 / 2023

Signature of Law Enforcement Agency Head

Cerelyn J. Davis

Print Name

City of Memphis
Police Division
Inspectional Services Bureau

~~Memphis Police Dept.~~
 Human Resources

JAN 25 2023

RECEIVED

Case # I2023-001 Statement of Charges

Officer's Name: Smith, Justin L.

IBM # 13999

Rank: Police Officer II

Assignment: OCU/Scorpion Unit

Date: January 14, 2023

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct: TERMINATION

DR 120 Neglect of Duty: TERMINATION

DR 127 Duty to Intervene and Reporting Improper Conduct: TERMINATION

DR 301 Excessive Force/Unnecessary Force: TERMINATION

DR 101 Compliance with Regulations to wit: BWC: 40 DAY SWOP

Date of Occurrence: January 7, 2023

Statement of Particulars:

On January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, and other officers were captured on body worn camera making multiple unprofessional comments, laughing, and bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who took photographs and cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of DR 104 Personal Conduct which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which,

301 Excessive Force/Unnecessary Force which states: Your actions place you in violation of DR 301 Excessive Force/Unnecessary Force which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Your body worn camera was not activated during your initial interaction to apprehend the male subject. Your body worn camera was functioning properly and you did not record the event in its entirety. Your actions place you in violation of DR 101 Compliance with Regulations to wit: BWC which states:

DR 101 COMPLIANCE WITH REGULATIONS

Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.

B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. ***Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call.*** *In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an*

officer's safety be compromised in an effort to record an event.

4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g. "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. ***Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.*** *Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.*

7. *Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.*

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. *The BWC will not be activated for the following:*

- *The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.*
- *Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.*
- *Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.*
- *The BWC **will not** be used during undercover operations.*

2. *OCU Personnel Working Non-OCU related details:*

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.

Officers working in an undercover capacity will not utilize the BWC.

(The officer's disciplinary resume will be reviewed and become a part of this file)

Written Response Ordered?

Yes No

J.D. JKM - #1844
Issuing Officer

Sgt. D. Craig #4164
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges. I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

[Signature] 13999
Signature of Officer:

Was officer relieved of duty? Yes No

Reviewed by: Assistant Chief Deputy Chief Work Station Commander

Delegated to: Deputy Chief Station/Bureau D/C Michael Hardy
Major/Lt. Colonel/Colonel

[Signature] A chief

[Signature] A.C. / D. Hardy

**City of Memphis
Police Division
Inspectional Services Bureau**

Administrative Summons

**Memphis Police Department VS.
Smith, Justin IBM: 13999**

**Date: January 14, 2023
ISB Case #: I2023-001**

I. Allegation

You used excessive force and restrained movement of a subject as your partner punched him multiple times and the person sustained critical injuries and later expired. Your on-duty conduct was unbecoming, and you neglected your duty to render aid and provide viable details to the emergency medical personnel as a first responder and certified EMT. You also had a duty to intervene when you observed the unnecessary force conducted by a member of your team. You failed to record the event in its entirety on your body worn camera.

II. Rules, regulations or orders violated.

**DR 104 Personal Conduct
DR 120 Neglect of Duty
DR 127 Duty to Intervene and Reporting Improper Conduct
DR 301 Excessive Force/Unnecessary Force
DR 101 Compliance with Regulations to wit: BWC**

III. Hearing

**Date: Friday, January 20, 2023
Place: 2714 Union Ave Ext Suite 700
Time: 12:00 p.m.**

You are entitled to representation during this hearing.

Served by: Lt. J.K. Morris / IAB / 1864
Name/Rank/Assignment/IBM

Date: 1/16/23 Time: 8:56 a.m.

Signature of Officer:  13999

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE

DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

HEARING SUMMARY FORM

#I2023-001

Hearing:

January 20, 2023
Date

1200 hrs
Time

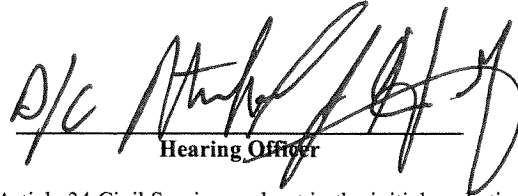
Location: 2714 Union Ave Ext, Suite 700

Attended by: PII Justin Smith # 13999
Lt. Essica Cage-Rosario #1705

Hearing Officer: Deputy Chief M. Hardy #3581

Statement of Hearing Officer: On Friday, January 20, 2023, at 1200 hrs., an Administrative Hearing was conducted for Officer Justin Smith #13999, resulting from a Statement of Charges issued to Officer Smith by the ISB for violations of DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, DR 301 Excessive Force/Unnecessary Force and DR 101 Compliance with Regulations to wit: BWC.

Action Ordered: DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.
DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered.
DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.
DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.
DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.


Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

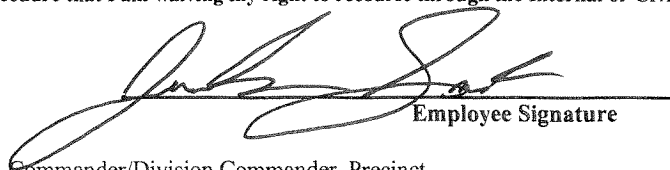
In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: Will Will Not Be Filed

Grievance: Will Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

01-20-23
Date


Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct
HSF 07/07

Statement of Hearing Officer: #I2023-001 (page 2)

Hearing participants were Officer Justin Smith, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer). Prior to this hearing, Officer Smith had been made aware of the pending charges by being served an Administrative Summons on January 16, 2023, which he did sign acknowledging receipt and was provided with a copy.

The charges stem from a complaint regarding allegations that on January 7, 2023, you and your partners apprehended a fleeing non-violent individual at Castle Gate Lane and Bear Creek Cove. After the subject was placed in custody, and you other officers were captured on body worn camera making multiple unprofessional comments, laughing, bragging about your involvement. Your conversation and lack of concern for the injured subject was witnessed by a civilian who photographed and recorded cell phone video. The civilian's viewpoint was you and your partners left the injured subject lying on the ground, handcuffed and unattended. The report of the victim's death was broadcasted on both the local and national media sites. The release of any digital evidence of you and your partners' actions will shed a bad light on the Department and City of Memphis. Your on-duty conduct was unjustly, blatantly unprofessional and unbecoming for a sworn public servant. Your actions place you in violation of **DR 104 Personal Conduct** which states:

DR 104 PERSONAL CONDUCT

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

During your encounter with the subject, you held the subject by one of his arms while one of your partners pepper sprayed him then excessively struck him with ASP baton. Your other partner punched and kicked the non-violent subject. You failed to recognize the victim's signs of distress and failed to disclose viable information to the responding emergency personnel to render the proper medical attention. You and your partners also failed to immediately assist the emergency personal with the request to unhandcuff the subject as his condition changed while left unattended on the ground. In your Garrity statement, you stated you have an EMT certifications. This fact further support the finding of the investigatioin. Your actions place you in violation of **DR 120 Neglect of Duty** which states:

DR 120 NEGLECT OF DUTY

A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty. This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

B. A member with supervisory responsibility is required to properly supervise their subordinates in compliance with the above, and the failure of any supervisor to do so through deliberateness, carelessness, neglect, or inefficiency shall be a violation.

During your encounter with a non-violent subject who was not complying with being handcuffed you held the subject by one of his arms while one of your partners pepper sprayed him then excessively struck him with ASP baton multiple times. You also witnessed another officer punch and kick the non-violent subject multiple times. You failed to take reasonable action to stop the excessive and unnecessary use of force as the subject was not armed and only evading arrest on foot for a traffic violation. Your actions place you in violation of **DR 127 Duty to Intervene and Reporting Improper Conduct** which states:

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.

In your Garrity Statement, you admitted you struck an unarmed and non-violent subject with a closed fist two to three times in the face because you and your partner were unable to handcuff him. Your actions were captured on video evidence. You sprayed the subject with your chemical irritant spray and also held the individual's arm while other officers kicked, punched, and pepper sprayed him several times. Your actions place you in violation of **DR 301 Excessive Force/Unnecessary Force** which states:

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Your body worn camera was not activated during your initial interaction to apprehend the male subject. Your body worn camera was functioning properly and you did not record the event in it's

entirety. Your actions place you in violation of **DR 101 Compliance with Regulations to wit: BWC** which states:

DR 101 COMPLIANCE WITH REGULATIONS

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B. Use of BWC During the Shift

1. *An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.*
2. ***Officers shall activate their BWC when responding to all calls for service prior to making the scene of a dispatched call.*** *In the event that recording was not started prior to making the scene of a dispatched call, an officer will activate the device as soon as reasonably possible.*
3. *Officers shall record all law-enforcement encounters and activities. Calls for service, self-initiated events (specials), and citizen contacts while not engaged in police activity are to be documented via BWC. It is not necessary for an officer to record in a constant state, but is required when his/her duties are being performed and allowed when otherwise prudent. It should be understood that under no circumstance shall an officer's safety be compromised in an effort to record an event.*
4. *Unless unsafe, impractical, or impossible, officers shall inform subjects that they are being recorded at the beginning of the contact (e.g., "Ma'am/Sir, I am advising you that our interaction is being recorded").*
5. *It should be understood that even when individuals are in various stages of undress, medically incapacitated, or in a location where video would otherwise be prohibited, BWC recording should continue. Videos will be redacted in a manner to reasonably protect privacy.*
6. ***Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording.*** *Once an event has concluded, an officer will mark the conclusion of the recording verbally after clearing the call/special. In cases of arrest, an officer shall continue recording until custody is transferred.*

Exceptions: *Should an officer have an activated BWC and respond to a call inside of a location that is out of view of the ICV system, the officer may discontinue the ICV recording (e.g. indoor report calls, crime scenes, and other police related events). Should the call progress back towards the car and contact with another individual is made, the event should be recorded by the ICV system.*

7. Officers will document the fact that a BWC video was or was not captured on all incident reports, arrest tickets, misdemeanor citations, summons, and traffic citations. This documentation will be referenced by the Computer Aided Dispatch number written on/in the document. In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

D. OCU Procedures

Members of the Criminal Apprehension Team (CAT) and Gang Response Team (GRT) will utilize the Body Worn Camera (BWC) when performing daily enforcement.

1. The BWC will not be activated for the following:

- The BWC/ICV **will not** be used to knowingly record confidential informants or undercover officers.
- Officers **will not** record any type of tactical briefings, IE Search Warrants, Rips, Reversals, Prostitution Stings, etc.
- Officers **will not** record any aspects of training, unless specifically requested to do so by the OCU Commander.
- The BWC **will not** be used during undercover operations.

2. OCU Personnel Working Non-OCU related details:

Any OCU officer working overtime in a Uniform Patrol Station, Special Event Detail, Blue Crush Detail, or a THSO Detail will be acting as a Uniform Officer and will be governed under the Memphis Police Department's Uniform Patrol Body Worn Camera policy.

OCU officers will store their BWC cameras inside the MPD approved BWC cabinet that is located within their assigned workstation. Whenever OCU officer(s) choose to work a Non-OCU related detail, it is the officers' responsibility to notify his/her immediate supervisor, **in advance**, in order to pick up his/her assigned BWC. When an officer takes control of his /her BWC for a detail, he/she should ensure the camera is taken to a work station to be docked until the camera is ready to be utilized.

Officers working in an undercover capacity will not utilize the BWC.

At the beginning of the Administration Hearing, Lt. Cage-Rosario informed the Hearing Officer that Officer Smith would like to waive his rights to have each charge read in detail.

During the Administrative Hearing on January 20, 2023, **Officer Justin Smith** was informed by the Hearing Officer that he is now afforded the opportunity to make a statement. Officer Smith responded, "Per my attorney's advice, I will not be making a statement today and will submit this (copy of letter)." Hearing Officer was handed a notarized type-written statement which will become a part of the Administrative file and is attached.

Hearing Officer asked Officer Smith did he give TBI a verbal statement? Officer Smith responded, "No Sir". Hearing Officer asked Officer Smith did he give TBI a written statement. Officer Smith responded, "No Sir". Hearing Officer asked Officer Smith if he wished to make any further statement, and Officer Smith declined to make a statement.

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Smith, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario

Lt. Cage-Rosario (MPA Representative) was asked if she would like to make a statement. Lt. Cage-Rosario stated, "To Whom it May Concern, The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer Justin Smith prior to the conclusion of the Administrative investigation and/or TBI's investigation. Per Article 14 (MOU Between the MPA and the COM), 'A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing. Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process. Not only is this a right under the MOU, but it is a right guaranteed by federal law. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See Wagner v. City of Memphis, 971 F. Supp 308 (W.D. Tenn 1997). In Wagner, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

Hearing Officer convened the hearing on 01/20/2023 at 1215 hrs, without rendering a decision. Hearing reconvened on 01/20/2023 at 1740 hrs. In attendance were Officer Justin Smith, Lt. Essica Cage-Rosario (MPA) and Deputy Chief M. Hardy (Hearing Officer).

In conclusion, the Hearing Officer carefully reviewed all documents related to each alleged violations of the listed DRs by Officer Smith, including the Garrity statements of all the charged officers and the Response to Resistance forms. The Garrity statements made by you and the other charged officers are

not consistent with each other and are not consistent with the publicly known injuries and death of Mr. Nichols. Hearing Officer additionally considered the statement made by Lt. Cage-Rosario

Upon review of the evidence as it relates to **DR104 Personal Conduct**, which states in part: **The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession.** This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

The Hearing Officer finds that Officer Justin Smith did violate DR 104 Personal Conduct, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 120 Neglect of Duty**, which states in part: **A. Each member, because of his or her rank and assignment, is required to perform certain duties and assume certain responsibilities. Failure to properly function in these areas constitutes neglect of duty.** This regulation prohibits any omission or failure to act by any member of the Department, whether on-duty or off-duty, when such action is required by the stated policy, goals, rules, regulations, orders, and directives of this Department. It applies to any member who, through carelessness, inefficiency, or design, fails to implement the policy, goals, rules, regulations, orders, training, and directives of this Department.

The Hearing Officer finds that Officer Justin Smith did violate DR 120 NEGLECT OF DUTY, therefore the charge is SUSTAINED and a TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 127 Duty to Intervene and Reporting Improper Conduct**, which states in part: **Any member who directly observes another member engaged in dangerous or criminal conduct or abuse of a subject shall take reasonable action to intervene. A member shall immediately report to the Department any violation of policies and regulations or any other improper conduct which is contrary to the policy, order or directives of the Department. For sworn employees this reporting requirement also applies to allegations of uses of force not yet reported.**

The Hearing Officer finds that Officer Justin Smith did violate DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 301 Excessive Force/Unnecessary Force**, which states in part: **Excessive Force/Unnecessary** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

The Hearing Officer finds that Officer Justin Smith did violate DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE, therefore the charge is SUSTAINED and TERMINATION is ordered.

Upon review of the evidence as it relates to **DR 101 Compliance with Regulations**, which states in part: *Disciplinary action may be taken for, but not limited to, violations of the stated policy, rules, regulations, orders, or directives of the Department.*

B. Use of BWC During the Shift

1. An officer shall at all times during his/her shift have BWC equipment ready to record police interactions with those they may encounter. This state of readiness includes having the BWC on and in standby mode. Officers shall attempt to maintain a clear, level, and unobstructed forward-facing view. Officers shall attempt to keep the microphone portion of the device unobstructed in order to accurately record audio.

The Hearing Officer finds that Officer Justin Smith did violate DR 101 COMPLIANCE WITH REGULATIONS TO WIT: BWC, therefore the charge is SUSTAINED and a 40 Day suspension is ordered.

DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered

DR 127 Duty to Intervene and Reporting Improper Conduct: SUSTAINED and TERMINATION is ordered.

DR 301 Excessive Force/Unnecessary Force: SUSTAINED and TERMINATION is ordered.

DR 101 Compliance with Regulations to wit: BWC: SUSTAINED and a 40 Day suspension is ordered.

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

The Memphis Police Association (MPA) objects to the Memphis Police Department's decision to proceed with the administrative hearing for Officer **Justin Smith** prior to the conclusion of the Administrative investigation and/or TBI's investigation.

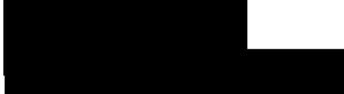
Per Article 14 (MOU Between the MPA and the COM) " A reasonable amount of time to review the statement of charges (**including all proof to be relied upon by the hearing officer**) is to be given to the representative prior to the administrative hearing". Upon review, several pieces of proof were either omitted from the file, or incomplete at this time. Body worn camera video, which was referenced multiple times in the statement of charges, was NOT provided to the MPA representative, nor were statements from other principal and witness officers. These are only a few examples of the GROSS violations of this officers' right to due process.

Not only is this a right under the MOU, but it is a right guaranteed by federal law. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) where the Court provided that a public employee with a property right to his or her employment must be provided notice of charges against them and a hearing to provide them with an opportunity to defend themselves against the charges against them. Additionally, that hearing must be a meaningful one. See *Wagner v. City of Memphis*, 971 F. Supp 308 (W.D. Tenn 1997).

In *Wagner*, Mayor Herenton predetermined the outcome of the hearing and the court said there was no due process.

This will serve as the MPA's statement for this administrative hearing.

LT Essica Cage-Rosario
President
Memphis Police Association
638 Jefferson Ave.
Memphis, TN 38105



STATEMENT OF JUSTIN L. SMITH

I am making this statement to the best of my recollection, and I reserve the right to amend it for purposes of clarification. Any inconsistencies between this Statement and other officers' statements, witness statements, or what may have been captured partially or completely by audio or video recordings, should not be considered as being or attempting to be untruthful. It is a well-established fact that an officer's perceptions during critical incidents will differ from others and/or what is captured on video or audio.

For any and all other purposes, I hereby reserve my constitutional right to remain silent under the FIFTH and FOURTEENTH AMENDMENTS to the UNITED STATES CONSTITUTION and any other rights prescribed by law. Further, I rely specifically upon the protection afforded me under the doctrines set forth in *Garrity v. State of New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 551 (1956), should this report be used for any other purpose of whatsoever kind or description.

I have been informed that I have an administrative hearing on Friday, January 20, 2023, arising from a Statement of Charges that I received setting forth certain allegations regarding violations of policies and procedures for which the discipline is being suggested.

I have also been contacted by the Tennessee Bureau of Investigation which is undertaking a criminal investigation of the incident in question which has received wide media speculation and statements from the Memphis Police Department's Chief as well as the Mayor of the City of Memphis.

I have also been contacted by the District Attorney General's Office through my attorney.

I have been informed by more than one source that a criminal investigation is being undertaken which could or might involve me and other officers of the Memphis Police Department.

As much as I would like to set the record straight, based upon the inconsistencies and misstatements in the Statement of Charges given to me, upon advice of counsel, I am not allowed to make any statements surrounding the incident of January 7, 2023.

I would respectfully ask that this statement, executed by me, be placed in the administrative investigation file.

I would state for the record that on January 7, 2023, I assisted another officer in making an arrest of a non-compliant suspect. My first interaction with that suspect was that suspect fighting with the other officer in failing to comply in our attempts to take the suspect into custody.

On the day in question, I was directed to be on desk duty because of an on-the-job injury which was serious enough to disable my abilities by way of a knee injury suffered the preceding day. Even though I was directed to be on desk duty, I was directed by my supervisors to be on patrol. While on stationary observation duties as directed, dispatches were made where an officer needed assistance after an officer had attempted to investigate a traffic stop. It was stated in the radio dispatch that the suspect had been tazed as well as sprayed with OC spray and had fled the scene.

Even though no one else requested medical assistance, because of the reported tazing and chemical spray, I immediately made a radio call and indicated that medical should be sent to the area where the suspect was last seen to possibly render medical aid if the suspect was taken into custody.

I then came upon one officer taking what was later learned to be the same suspect to the ground. I assisted that officer in our attempts to take that suspect into custody. The suspect was violent and would not comply.

It is my contention that I personally utilized the training and defensive tactics provided to me as a Memphis police officer in attempting to handcuff the suspect.

I categorically deny utilizing any defensive weapons other than OC spray. OC spray was used only after another officer had attempted to utilize OC spray on the suspect but inadvertently sprayed himself.

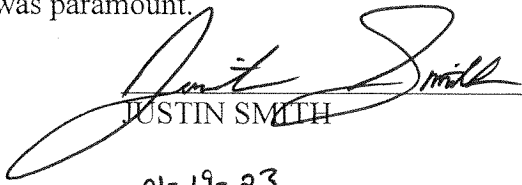
Obviously, because one officer believed that the use of OC spray was reasonable and necessary to gain control over the suspect, I then attempted to utilize my OC spray. I am not sure whether or not it was effective when used.

I continued to struggle with the actively resisting suspect to gain control of said suspect because he had only one arm/wrist handcuffed. Despite the effects of OC spray in my eyes and experiencing excruciating pain in my knee, officers were finally able to place the suspect in custody.

After the suspect was handcuffed, I then removed myself from the immediate vicinity as my knee was in severe pain. When I returned to the immediate area, I informed my fellow officers to assist me in sitting the suspect against my squad car in order for the suspect to breath better.

The medical personnel on the scene were providing direct medical care and were discussing treatment of the suspect with my lieutenant who had arrived on the scene.

As it relates to the use of my body worn camera, dispatch records will show that a very short brief period of time elapsed from the time the initial call went out to the time that I inadvertently came upon the other officer attempting to subdue the suspect. I did not immediately turn my body worn camera on as I was getting out of my car, but I did turn it on as I interacted with the suspect. I did not intentionally fail to activate my body worn camera, but the safety of other officers and myself was paramount.


JUSTIN SMITH

01-19-23
DATE

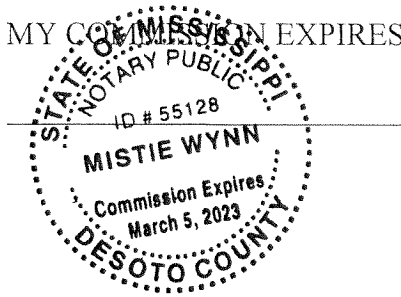
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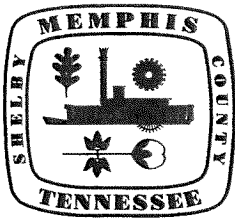
THIS DAY PERSONALLY APPEARED BEFORE ME, the undersigned authority, in and for the said County and State, the within named Justin Smith after being by me first duly sworn, states on his oath that the matters, facts and things contained in the above and foregoing are true and correct to the best of Affiant's knowledge as therein stated.

Witness my hand and official seal this the 19th day of January, 2023.


NOTARY PUBLIC

MY COMMISSION EXPIRES:





MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

Date: 01/20/2023

Assistant Chief Crowe,

On January 20, 2023 at 1740 hrs, the Administrative hearing for Officer Justin Smith #13999 was held. Deputy Chief Hardy #3581 was the Hearing Officer. **The charges for DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, and DR 301 Excessive Force/Unnecessary Force were SUSTAINED and TERMINATION was ordered for all.**

The charge for DR 101 Compliance with Regulations to wit: BWC was SUSTAINED and a 40 Day suspension is ordered.