

**HEARING SUMMARY FORM**  
**# 0134-20**

**Hearing:**

September 4, 2020  
**Date**

3:27 PM  
**Time**

**Location:** 170 N. Main St., Ste. 12-08

**Attended by:** PII Brandon McLean 11687      **Hearing Officer:** Deputy Chief Samuel Hines 3713  
PII John Covington 13102 – MPA Rep & Ltc. Lambert Ross 7353

**Statement of Hearing Officer:** After careful review of the ISB Investigation Case File, Hearing Statement from Officer Brandon McLean and further review of Enhanced Video from Officer McLean BWC provides the reasons for my decision and findings in Case File #I2020-005. *Cont. page 2*

**Action Ordered:** DR 104 – PERSONAL CONDUCT – **SUSTAINED** *25 SWOP Days*  
DR 301-EXCESSIVE/UNNECESSARY FORCE - **SUSTAINED** *5 SWOP Days*  
*Samuel E. Hines 3713*  
**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.**

9-4-2020  
**Date**

*[Handwritten Signature]*  
**Employee Signature**

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

**HEARING SUMMARY FORM Continuation**  
**# 0134-20**

**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 themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.”

On January 16, 2020, at 6:47 p.m., you along with PIIP Joseph Gallina 14360 answered a call and made the scene at Kirkwood Road. Your actions and conduct in its entirety while on the scene reflect a serious violation of DR 104 Personal Conduct. While on the scene you verbally threatened to not only harm the suspect Mr. Daniel Jefferson who was already properly detained in the rear seat of a squad car, you also threatened to kill him. Your verbal threats of physical harm towards Mr. Jefferson reflect adversely on the Memphis Police Department, the law enforcement profession and the City of Memphis. Your behavior was captured on your BWC, the BWC of other officers, and ICV and also in the presence of Mr. Jefferson’s family members.

It must also be noted that even after your fellow officers attempted to calm you down, you continued to act in a rage and use profanity laced language. During this event, you were serving in the capacity of a Field Training Officer (FTO) with a Trainee under your guidance. FTO’s are expected to perform their duties with the highest standard of professionalism and conduct, especially during the time of training. Unfortunately, during this incident your conduct fell below the required standard. Your conduct on the night of January 16, 2020 reflects poorly upon the Memphis Police Department. Your performance and actions on the scene can only be used as a training aide as to what not to do on a scene and what conduct is unacceptable as a member of this department.

Your behavior on this scene brings into question your ability to continue to serve as a FTO and whether additional training or counseling is needed. While it is commendable that your supervisors and command speak highly of you as an officer and FTO, and your personnel file and work in the community both on and off duty are good, your conduct in this incident fell below the expected norms and you must be reprimanded. Therefore, your **DR 104 PERSONAL CONDUCT** charge will be **SUSTAINED with a 25 Day Suspension.**

Additionally, you will be suspended from the FTO Program for a period of at least one (1) year. You may reapply to the program after your year of suspension and reentry will be based on your job performance and disciplinary record. Lastly, you are ordered to attend eight (8) hours of a combined Anger Management and Use of Force Continuum class provided by the Memphis Police Academy. This class will be scheduled and given at the first opportunity after your **SWOP Days** are served.

### **DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE**

“**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 in 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.”

You were charged with DR 301 Excessive/Unnecessary Force for choking Mr. Jefferson inside the home at Kirkwood Road. After enhancing your BWC footage of the incident and a more careful review, it was determined you didn’t choke the suspect. However, you did state “I’m gonna cut your wind off to where you cannot talk”, which was very concerning and gave the impression you were going to choke the suspect. Your statement along with the video led investigators to believe you were choking the suspect, which caused you to be charged with DR 301 Excessive/Unnecessary Force. You admitted to grabbing the suspect’s clothing around the collar area with your right hand in attempt to scare the suspect into calming his behavior. The suspect did not complain of you choking him, nor did any of the witnesses (suspect’s mother, sister, or girlfriend) inside the home during this portion of the incident. However, the actions taken were not a trained technique, nor compliance measure taught and approved by the Memphis Police Training Academy. The use of this technique was not **EXCESSIVE** physical force, but is viewed as **Unnecessary Force** and an untrained technique. There were other de-escalating methods in the MPD’s Use of Force Continuum that you should have used.

Mr. Jefferson did make a complaint of a male white officer choking him from behind. However, there is no evidence of you or a male white officer choking Mr. Jefferson from behind inside the squad car. Consequently, your partner at the time, PIIP Gallina while on the driver side did put his hands around Mr. Jefferson shoulders and pulled him back inside the squad. Mr. Jefferson was pulled back as result of him refusing to put his feet inside the squad car.

When you initially placed Mr. Jefferson in the squad car, he refused to put his feet inside the doorway as instructed. During the process the suspect spat blood in your face on two (2) separate occasions. Although spitting presents the opportunity for exposure to a blood borne pathogen to the officer's face and may constitute as an assault, your response to the situation fell below the training you received with the Memphis Police Department. Again, there were other measures, resources and responses to this situation, which should have been applied. Instead, you dove into the car and appeared to be striking the suspect, while pushing his head away in an attempt to prevent the suspect from spitting even more. **Striking a handcuffed suspect under the given circumstances constitutes Unnecessary Force.** Again, there were other reasonable alternatives for you to execute other than striking Mr. Jefferson. Additionally, while engaging the suspect you stated, "I just gave him something to spit on" which to me, indicated your physical force was intentional and deliberate. Since your physical force did not cause serious bodily injuries to Mr. Jefferson, the Excessive Force charge will be dismissed, but the charge of **Unnecessary Force** is appropriate based upon what was clearly captured in the BWC and ICV during this incident. Because the force used against suspect Daniel Jefferson was not reasonable according to *Graham v. Connor (US 1989)*,

**DR 301 UNNECESSARY FORCE** will be **SUSTAINED WITH a 5 Day Suspension**, which will be served consecutively with your **25 SWOP Days**, for a total of **30 SWOP Days**.



# MEMPHIS POLICE DEPARTMENT MEMORANDUM



## UNIFORM PATROL DISTRICT I

**To: Deputy Director M. Ryall**      **Subject: Administrative Hearing**  
**PII Brandon McLean**  
**SOC # 0134-20**

**From: Deputy Chief Samuel Hines** *SH* **Date: 09/4/20**

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On Friday, September 4, 2020 at 3:37 PM , Deputy Chief Samuel Hines IBM 3713 continued an Administrative Hearing for Officer Brandon McLean 11687, after a charge of **DR-104 PERSONAL CONDUCT and DR 301 EXCESSIVE/UNNECESSARY FORCE** was administered. Officer Brandon McLean was administratively charged by the Inspectional Services Bureau and both charges were **SUSTAINED**.

**DR 104 PERSONAL CONDUCT - SUSTAINED with 25 SWOP Days.**

**DR 301 EXECESSIVE / UNNECESSARY FORCE - SUSTAINED with 5 SWOP Days.**

Officer Brandon McLean will serve the following SWOP days on the listed dates below:

- SWOP: September 5, 2020 Day 1
- SWOP: September 6, 2020 Day 2
- RDO: September 7, 2020
- RDO: September 8, 2020
- SWOP: September 9, 2020 Day 3
- SWOP: September 10, 2020 Day 4
- SWOP: September 11, 2020 Day 5
- SWOP: September 12, 2020 Day 6
- SWOP: September 13, 2020 Day 7
- RDO: September 14, 2020
- RDO: September 15, 2020
- SWOP: September 16, 2020 Day 8
- SWOP: September 17, 2020 Day 9
- SWOP: September 18, 2020 Day 10
- SWOP: September 19, 2020 Day 11
- SWOP: September 20, 2020 Day 12
- RDO: September 21, 2020
- RDO: September 22, 2020

SWOP:	September 23, 2020	Day 13
SWOP:	September 24, 2020	Day 14
SWOP:	September 25, 2020	Day 15
SWOP:	September 26, 2020	Day 16
SWOP:	September 27, 2020	Day 17
SWOP:	September 28, 2020	Day 18
SWOP:	September 29, 2020	Day 19
RDO:	September 30, 2020	
RDO:	October 1, 2020	
SWOP:	October 2, 2020	Day 20
SWOP:	October 3, 2020	Day 21
SWOP:	October 4, 2020	Day 22
SWOP:	October 5, 2020	Day 23
SWOP:	October 6, 2020	Day 24
RDO:	October 7, 2020	
RDO:	October 8, 2020	
SWOP:	October 9, 2020	Day 25
SWOP:	October 10, 2020	Day 26
SWOP:	October 11, 2020	Day 27
SWOP:	October 12, 2020	Day 28
SWOP:	October 13, 2020	Day 29
RDO:	October 14, 2020	
RDO:	October 15, 2020	
SWOP:	October 16, 2020	Day 30

Officer Brandon Mclean will return to work on October 17, 2020, and received the recommended redial training at the Memphis Police Training Academy first availability.

## HEARING SUMMARY QUESTIONS SOC # 0134-20

Q: State your name and IBM# for the record of this Hearing Summary for SOC # 0134-20.

A: Brandon McLean 11687

Q: On Thursday, January 16, 2020, did you participate in an arrest of a suspect named Daniel Jefferson at Kirkwood Rd. along with your partner Joseph Gallina 14360?

A: Yes

Q: Who was the supervisor that made the scene of this arrest?

A: Lt. Bryan Hardaway and Lt. Ricky Davison

Q: Why was the suspect arrested?

A: Assault on an officer, but reason there was an alleged kidnapping from a different precinct.

Q: Did you initially detain the suspect or arrest suspect?

A: Initial detention due to the allegation from the Airways Precinct

Q: What was the evidence to support the arrest?

A: BWC footage showing him spitting in my face not once but twice while he was being detained

Q: At any time during detention or arrest, did you choke the suspect?

A: No sir

Q: Did you use any hold or tactic that could give the impression you choked the suspect?

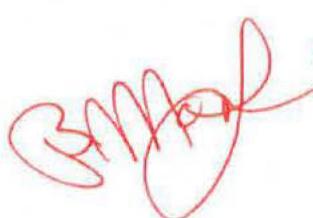
A: Yes sir

Q: what was the position or the hold?

A: I grabbed the gentleman collar and jaw line until he kneeled down to the floor while guiding his face away from you and I released his collar and said thank you.

Q: Did the suspect pass out or lose consciousness?

A: No sir

 #11687  
7-14-2020

## HEARING SUMMARY QUESTIONS SOC # 0134-20

Q. Did the suspect ever make a statement indicating you were choking him?

A. No sir.

Q. Did any of the suspect family members ever make a statement indicating you choking him?

A. No sir.

Q. Did you grab his collar or jawline?

A. Grabbed his collar and turned his head away.

Q. Who bust the walls?

A. Suspect shoulder hit the walls.

Q. Was the suspect under arrest when you all attempted to place him in the squad car?

A. No, he was still being detained. I was not sure what information my partner had at this time, he was still speaking to Airways Station.

Q. Did you attack or strike the suspect while he was in the back seat and in handcuffs?

A. I did not attack him nor did I strike him. I was only attempting to hold his held so he would not continue to spit on me.

Q. Were there any injuries to you or your partner?

A. No sir that I know of.

Q. Did the suspect have any known blood pathogens of concerns to your health after being check out medically?

A. No sir, but there was a concern my partner found out before the suspect was medically cleared.

Q. Any known health issues you may have suffered after the fact of this incident.

A. Not as of now, no sir

Q: Now that you hear and seen yourself on video making this statement, do you see the Personal Conduct concern?

A: yes sir, absolutely

BW  
11/6/87

**Q. Do you believe your use of physical force was just and necessary?**

**A. Yes, I do believe the force, which was used was necessary.**

**Q: Can you see how your verbal statements could suggest abuse or Excessive/Unnecessary Force?**

**A: Yes, I can how me using that type of verbiage could make it seem like I was physically abusive to the suspect.**

**Q: Have you ever arrested the suspect Daniel Jefferson before, if so, do you recall the charges?**

**A: No sir**

**Q: Were you familiar with the suspect once you made the scene?**

**A: No sir**

**Q. Any additional you would like to add?**

**A. Please compare the person alleging against the person alleged. My file for the positive things I've done in the community for outweigh the personal conduct I may have displayed during this incident. Please review my file and consider the words of the community, which I work in daily.**

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

**Administrative Summons**

**Memphis Police Department VS.  
McLean, Brandon IBM: 11687**

**Date: 04/07/2020  
ISB Case #: I2020-005**

**I. Allegation**

During an investigation it was determined that on January 16, 2020; you used a chokehold on a suspect while he was in handcuffs. After he was placed in a patrol vehicle, you tackled him to the seat and struck him in the face and head.

**II. Rules, regulations or orders violated.**

**DR 104 Personal Conduct  
DR 301 Excessive Force/Unnecessary Force**

**III. Hearing**

**Date: July 14, 2020  
Place: 170 N. Main St, Room 12-08  
Time: 3:00 PM**

**You are entitled to representation during this hearing.**

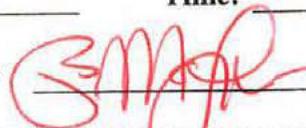
**Served by:**

**LT. B. HARDWAY <sup>3236</sup> - RAINES "C" SHIFT**  
Name/Rank/Assignment/IBM

**Date: 7-6-20**

**Time: 1030**

**Signature of Officer:**

** #11687**

**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.**

0134-20  
PAC

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

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**Case # I2020-005      Statement of Charges**

**Officer's Name:** Mclean, Brandon

**IBM #** 11687

**Rank:** PII

**Assignment:** Raines Station "C"

**Date:** 04/07/2020

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

**DR 104 PERSONAL CONDUCT** - *Sustained 25 days SWOP*

**DR 301 EXCESSIVE FORCE / UNNECESSARY FORCE** - *Sustained 5 days SWOP*

**Date of Occurrence:** January 16, 2020

**Statement of Particulars:**

After your suspect was secured in handcuffs he continued to resist. You said that whenever he would speak spit came from his mouth. You then told him two times, "Look, I'm gonna cut your wind off to where you cannot talk". You took hold of his throat with your right hand for twelve seconds, moved him to the floor and then replied, "Thank you!" Your suspect remained completely silent for 55 seconds. You stated that you did not know of a better technique use, but it was just meant to be a scare tactic.

**The Memphis Police Department Policy and Procedures Chapter XIII, Section 1, Page 14 states in part:**

**C. Prior Training:**

Any prior training received in **any type choke-hold, carotid type or otherwise should not be utilized.** This will include any prior training received through the Memphis Police Department, military training, or by any other means.

D. Exceptions:

**The only exception for the use of any strike, choke hold, or come along applied to the head area above the shoulder line, would be if the officer was otherwise justified under the current Memphis Police Department deadly force policy.**

Personal body weapons (hands, feet, fists, etc.) are excluded from these requirements **WITH THE EXCEPTION OF ANY TYPE CHOKE HOLD.**

After you detained the suspect in your patrol vehicle he refused to move his legs into the vehicle, and then spit on your face. You reacted by entering the patrol vehicle and tackling him to the backseat. You said you then pushed his head down onto the seat to keep from being spat on again. However, you told officers on the scene that after you were spat on you were in your car, "giving him something to spit on."

In lieu of the allegations from the complainant and his family and the B.W.C. and the I.C.V. recordings, it is concluded that you struck your handcuffed prisoner in the head and face. Also, because you used a chokehold on a handcuffed prisoner, which is outside of the guidelines of the Memphis Police Department's deadly force policy, you did violate **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.

Secondly, you placed your handcuffed prisoner in a choke hold because spit would come from his mouth when he spoke. Then when he deliberately spat on you, you tackled him inside of the vehicle and delivered several hand strikes to his face and head. You then commented seven times loud enough to be heard by your prisoner and his family, and multiple scene officers that you wanted to, or that you would kill your prisoner. Your conduct not only cast a negative reflection upon the Memphis Police Department, but also your leadership as a Field Training Officer. **The Memphis Police Department Policy and Procedures Law Enforcement Code of Ethics (1.1.2), Chapter I, Section 1, Page 4, 5, states in part:**

2. All sworn members of the Memphis Police Department will abide by the standards of conduct set forth in the Law Enforcement Code of Ethics (1.1.2):

"... An officer's conduct is closely scrutinized, and when his actions are found to be excessive, unwarranted or unjustified, he and the Department are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of a member, on or off duty, does reflect directly upon the Department, members must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City. The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances."

Therefore, you are found to have violated **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 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 officer's disciplinary resume will be reviewed and become a part of this file)**

*LT. B. Hardaway #3286*  
\_\_\_\_\_  
Issuing Officer

*[Signature] #1334*  
\_\_\_\_\_  
Charging Officer

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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] #11667*  
\_\_\_\_\_  
Signature of Officer:

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Written Response Ordered?  Yes  No

Was officer relieved of duty?  Yes  No

Reviewed by:  <sup>6/21/2022</sup> Dep. Dir.  <sup>6-30-20</sup> Dep. Chief  Work Station Commander

Delegated to:  Dep. Chief  Station/Bureau

\_\_\_\_\_  
Major/Lt. Colonel/Colonel

D/C Santomas

**City of Memphis**  
**Police Division, Inspectional Services Bureau**  
**Case Summary I2020-005**

Printed On: 3/12/2021

**I) Principal Officer:**

Officer Brandon McLean #11687

Raines Station Charlie Shift

Officer Joseph Gallina #14360

Raines Station Charlie Shift

**II) Administrative Regulation:**

DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera

DR-103 Aid Another to Violate Regulation

DR-104 Personal Conduct

DR-301 Excessive Force / Unnecessary Force

**III) Allegation:**

Daniel Jefferson alleged that at approximately 7:00 p.m. on January 16, 2020, Officer Brandon Mclean and Officer Joseph Gallina used excessive and unnecessary force on him, after placing him into handcuffs.

**IV) Background:**

On January 16, 2020, at 6:47 p.m., Field Training Officer Brandon Mclean and his Trainee, Officer Joseph Gallina were dispatched to Kirkwood Road. The officers were sent to look for Yolanda Hill, who was believed to have been kidnapped from 2500 Bridgeport, in the Airways Station. Both, Miss Hill and her ex-boyfriend/suspect Mr. Jefferson were located at the Kirkwood location. Mr. Jefferson became verbally and physically combative, and placed under arrest.

Mr. Jefferson filed a complaint with the Memphis Police Department Internal Affairs office, alleging that police officers choked him while he was in handcuffs. Officers then placed him in the backseat of a patrol vehicle, placed their knees on his chest and beat him. Mr. Jefferson was arrested and charged with resisting arrest and with aggravated assault for spitting blood in Officer Mclean's face. A case was opened to investigate Mr. Jefferson's allegations.

**V) CAD #:**

P200162151

**VI) Evidentiary Findings:**

**A) Statements:**

**Civilian Complainant, Daniel Jefferson** said he was arrested while at his mother's house at Kirkwood Road. The officers told him that he was just being detained, but he was handcuffed, choked, and "fiercely beaten". He was charged with aggravated assault, resisting arrest, and violating bond conditions. He would not comment on whether or not he resisted the officers.

Once he was placed in the patrol vehicle he was out of his family's sight, and that was when he was beaten. One officer got on top of him, put his knee on Mr. Jefferson's chest,

**City of Memphis**  
**Police Division, Inspectional Services Bureau**  
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grabbed his hair and pulled his head down onto the backseat. The other officer came up from behind him on the other side of the vehicle and pulled Mr. Jefferson across the seat, and leaned his body against him. Mr. Jefferson received a cut to his head, a black eye, and a bruised chest.

When the black officer finished beating him he kept saying, "I'm finna kill this motherfucker." After the other officers arrived on the scene, Mr. Jefferson kicked on the window to let them know his handcuffs were too tight. A male white officer then began choking him from behind, and a female officer applied leg restraints to Mr. Jefferson. Mr. Jefferson believed that the officers may have known him from the past, and wanted to settle a score with him.

**Principle Employee, Officer Brandon Mclean #11687** stated that on January 16, 2020, he and his trainee Joseph Gallina responded to Kirkwood Road to look for a kidnapping victim. The abduction occurred from an address in the Airways Station. They came in contact with the alleged suspect Daniel Jefferson, and detained him. He became belligerent and began flailing his body to resist being placed into handcuffs.

Although Mr. Jefferson was in handcuffs, he continued to resist the officers physically and verbally. When Mr. Jefferson spoke, spit would come out of his mouth. Therefore, Officer Mclean placed his hand on Mr. Jefferson's throat, and told him twice that he would cut his wind off so he could not talk. Officer Mclean released the hold after Mr. Jefferson went to the floor on his knees. Officer Mclean did that to avoid getting spit in his face. It was meant to be a scare tactic, and did not know a better technique at the time.

After Mr. Jefferson was placed in the patrol vehicle, he refused to put his legs inside and then deliberately spit in Officer Mclean's face. Officer Mclean then dove into the vehicle and pushed Mr. Jefferson back inside. Officer Gallina ran to the other side of the vehicle to pull Mr. Jefferson back across the seat. Officer Mclean held Mr. Jefferson's head down on the seat to avoid being spat on, and then backed out of the vehicle.

However, before Officer Mclean exited and got the door closed, Mr. Jefferson spat on him again. Mr. Jefferson was taken to Regional One Hospital to be treated for his wounds and tested for H.I.V. Officer Mclean was sent to Regional One Hospital to be treated for exposure. Officer Mclean's B.W.C. and I.C.V. was activated for this call.

**Principle Employee, Officer Joseph Gallina #14360** stated that on January 16, 2020, he was riding with his Field Training Officer, Brandon Mclean. They were dispatched to Kirkwood Road in search of a kidnapping victim, Yolanda Hill. As the officers approached the house, Daniel Jefferson was standing outside. He was heard saying, "Oh shit, what the fuck's the police doing at my house." He then ran back into the house.

Officer Gallina entered the house and was forced to detain Mr. Jefferson, when he tried to leave the house through another door. Mr. Jefferson resisted verbally and physically, knocking Officer Gallina's Body Worn Camera (referred to hereafter as B.W.C.) off its mount. Officer Gallina restrained Mr. Jefferson from behind, and Officer Mclean assisted

**City of Memphis**  
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Printed On: 3/12/2021

in applying the handcuffs. At one point Mr. Jefferson went down to the floor while Officer Gallina was holding onto his arms.

Mr. Jefferson was moved outside under the carport, where the officers allowed his mother to pull his pants up. He angrily and continuously yelled and cursed at the officers, vowing to kill any officer that ever came to his house. As Mr. Jefferson was being escorted to the patrol vehicle, he dragged his feet to create dead weight. He incidentally bumped his forehead against the door frame, as he resisted getting into the patrol vehicle.

Before the vehicle door was closed, Mr. Jefferson spat in Officer Mclean's face and then tried to get out of the vehicle. Officer Gallina ran to the opposite side of the vehicle to pull Mr. Jefferson back across the seat, but instead had to use his body to push him back inside. When Officer Gallina returned to the passenger side of the patrol vehicle, Mr. Jefferson spat in Officer Mclean's face again. Officer Mclean screamed out that blood was spat in his face. Mr. Jefferson's mother and girlfriend walked up to the patrol vehicle and questioned, 'What are you doing to my son? He said he's gonna kill my son!' Officer Gallina ordered them back into the house.

Mr. Jefferson was extremely belligerent and refused to be checked by paramedics. He would ask for help but curse at anyone who came near him. Officer Mclean was taken to Regional One Hospital by ambulance, and Mr. Jefferson was taken by a team of six officers. The scene officers later discovered that Mr. Jefferson was once arrested for shooting a police officer. Officer Gallina's B.W.C. and I.C.V. was activated for the call.

**Witness Employee, Officer Brandon Jones #12473** stated that on January 16, 2020 while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean called for help over the radio, stating that his prisoner spat blood in his face. When Officer Jones arrived Mr. Jefferson was already in custody in the back of Officers Mclean and Gallina's patrol vehicle. He was extremely hostile and irate, and refused to calm down. Officer Mclean was very upset and angry because he had been spat upon. Officer Jones responded to provide backup, and played no key roll on the scene. Officer Jones utilized his B.W.C. on the scene, and turned it off as he drove away.

**Witness Employee, Officer Carey Owen #14193** stated that on January 16, 2020, while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean called for help over the radio stating that his prisoner spat blood in his face. When he arrived numerous patrol officers were on the scene and his prisoner was already in custody. Officer Mclean was extremely worried that he might have been infected with a communicable disease. Paramedics made the scene and treated Officer Mclean. Officer Owen was on the scene for about 30 minutes and played no key roll while there. He could not explain why he did not activate his B.W.C. for the call.

**Witness Employee, Officer Carl Webb #14221** stated that on January 16, 2020, while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean called for help over the radio, stating that his prisoner spat blood in his face. He and his ward partner Officer Owen, were two of the last officers to make the scene. When they drove up the

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Paramedics were checking Officer Mclean. The prisoner was already in custody and there was nothing for them to do. According to his Log Sheet he was on the scene for 27 minutes. He could not explain why he did not activate his B.W.C. for the call.

**Witness Employee, Lieutenant Byron Hardaway #3286** stated that on January 16, 2020, while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean called for help over the radio stating that his prisoner spat blood in his face. When he arrived, Mr. Jefferson was handcuffed and detained in the back of Officer Mclean's patrol vehicle. Mr. Jefferson was very loud, vocal, and difficult to understand. Lieutenant Hardaway recognized Mr. Jefferson from when he was charged, with shooting a police officer.

Mr. Jefferson never complained or accused officers of choking him, or making any life threats to him. Lieutenant Davison arrived and took charge of the scene, and Lieutenant Hardaway returned to service to handle other calls. Lieutenant Hardaway was disturbed and did not understand why his B.W.C. was not on for the call on Kirkwood. He is normally very adamant about activating his camera.

**Witness Employee Lieutenant Ricky Davison #2223** stated that on January 16, 2020 while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean took custody of Mr. Jefferson after he resisted arrest. After Mr. Jefferson was placed in the patrol vehicle he spat blood in Officer Mclean's face. Lieutenant Davison observed some bruises on Mr. Jefferson's face, but because he was combative ambulance personnel would not go near him. Lieutenant Davison tried to speak with Mr. Jefferson but he would not be reasoned with. When Lieutenant Davison arrived at the scene Officer Mclean was in the ambulance being treated.

Mr. Jefferson's mother said a white officer used knee jabs against her son while he was detained in the patrol vehicle's backseat. Lieutenant Davison viewed Officer Gallina's B.W.C. video footage. He saw Officer Gallina using his hands and body to get Mr. Jefferson back into the vehicle, and never saw Officer Gallina striking Mr. Jefferson with his knee. She did not say anything about anyone choking Mr. Jefferson.

Mr. Jefferson was uncooperative and irate, violently yelling and screaming; out of control! During his transport to Regional One Hospital Mr. Jefferson spit on another officer. He remained angry and disruptive the entire time. Lieutenant Davison completed an Incident Report for the call and verified that officers submitted a Response to Resistance. Lieutenant Davison utilized his B.W.C. for the call.

**Witness Employee, Officer Wayne French #12908** stated that on January 16, 2020, while working Charlie Shift he and his trainee, Officer Timothy Hamilton, were called to Kirkwood Road. They were there to take Officer Mclean's vehicle back to the precinct because he was taken to the hospital by ambulance, and his trainee assisted in the transport of Mr. Jefferson to Regional One Hospital. Mr. Jefferson was irate, yelling racial slurs, cursing and threatening to spit on officers.

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Officer French assisted in adjusting Mr. Jefferson's handcuffs and putting him in a rip-hobble. They also attempted to don Mr. Jefferson with a spit mask. Officer French activated his B.W.C. for this call, and turned it off as he prepared to leave the scene. He reactivated his camera a second time when he met with officers to assist the transport vehicle. The transport temporarily halted to check Mr. Jefferson's pockets. At that time Mr. Jefferson spat on Officer French.

**Witness Employee, Officer Mercedes Rodriguez #13706** stated that she is assigned to the Delta Shift at Airways station. On January 16, 2020, she was sent to Kirkwood Road to locate the kidnapping victim from the Airways precinct. The victim was Yolanda Hill, the ex-girlfriend of Mr. Daniel Jefferson. For officer safety, Lieutenant Davison asked Officer Rodriguez to be present when he spoke with Mr. Jefferson's mother. Officer Rodriguez took Yolanda Hill back to her home in the Airways Precinct. Officer Rodriguez utilized her B.W.C. for this call.

**Witness Employee, Officer Breanna McCarthy #14185** stated that on January 16, 2020, she worked Delta Shift and was doubled up with Officer Hannah Caruthers. At 7:06 p.m. they responded to Kirkwood Road, after Officer Mclean called for help over the radio. When they arrived, Daniel Jefferson was already handcuffed and secured in Officer Mclean's vehicle. Officer Mclean was angry and upset that blood was spat in his face, and then screamed out that he wanted to kill him Mr. Jefferson.

Mr. Jefferson was in the patrol vehicle backseat, and remained verbally combative. He continually kicked and struck the interior of the vehicle, and spat on the window. Mr. Jefferson had to be rip-hobbled for the transport to Regional One Hospital, at which time he claimed he was being choked. When officers applied the spit mask to his face outside the emergency room, he claimed that he was choked again. When Mr. Jefferson was examined by medical personnel he complained that his ribs were sore but never complained that he was choked.

Mr. Jefferson said that while he was inside the house Officer Mclean hit him and choked him, and that he should have killed Mr. Jefferson. It was determined that Mr. Jefferson would be transported in the vehicle he was in, and Officers McCarthy and Caruthers would drive it. Officer French came to assist for a moment when the transport had to be stopped, and Mr. Jefferson spat on him. During the transport, Mr. Jefferson bragged about shooting a police officer. Officer McCarthy utilized her B.W.C. and In-Car Video (hereafter referred to as I.C.V.) for the call.

**Witness Employee, Officer Tony Moore #13681** stated that on January 16, 2020, he worked Delta Shift and responded to a call at Kirkwood Road. Officer Mclean called for help over the radio stating that his prisoner spat blood in his face. When Officer Moore arrived Mr. Jefferson was already handcuffed and in the backseat of Officer Mclean's patrol vehicle. At least six other officers were already there. Obviously upset, Officer Mclean was heard three times saying that he wanted to kill Mr. Jefferson. Officer Moore remained on the scene for one hour but played no key roll while there. He said his time was spent standing around talking with other officers. His B.W.C. was activated for three

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minutes and 59 seconds. He said he turned it off because the prisoner was already in custody when he arrived.

**Witness Employee, Officer Charles White #12651** stated that on January 16, 2020, he worked Charlie Shift, and responded to Kirkwood Road. Officer Mclean called for help over the radio, stating that his prisoner spat blood in his face. When he arrived he helped Officer Mclean flush his face and eyes with water. Officer Mclean was agitated and his adrenaline was elevated, so Officer White walked him away from the area to calm him down.

Mr. Jefferson was secured in Officer Mclean's patrol vehicle. He was shouting profanities, kicking the patrol vehicle door and window, and covered it with his bloody spit. Officer White tried to speak with Mr. Jefferson through a partially lowered window and got spit at. Mr. Jefferson was placed in a rip-hobble to control his actions. The officers tried to don him in a spit mask but it fell off.

Officer White followed Mr. Jefferson's transport vehicle to Regional One Hospital. Mr. Jefferson was once again donned with a spit mask, and then transferred to a lock down bench inside the medical holding area. While there, Mr. Jefferson exposed his penis and urinated on the floor. Officer White's B.W.C. was activated for the call, but his battery died while at Kirkwood.

**Witness Employee, Officer Joseph Stewart #14003** stated that on January 16, 2020 while working Charlie Shift, he responded to Kirkwood Road. Officer Mclean called for help, after stating over the radio that his prisoner spat blood in his face. The prisoner (Mr. Jefferson) was extremely irate, yelling that he wanted out of the handcuffs and wanted to fight the officers. Officer Stewart waited on the scene until time to follow the ambulance that transported Mr. Mclean to the hospital. Officer Stewart was on the scene for 87 minutes. His B.W.C. was activated for a total time of 18 minutes and 51 seconds.

**Witness Employee, Officer Timothy Hamilton #13449** stated that on January 16, 2020, while working Charlie Shift, he and his F.T.O., Wayne French, responded to Kirkwood Road. Officer Hamilton was with other officers when contact was made with Mr. Jefferson's mother inside her home. While he was secured in the patrol vehicle, Mr. Jefferson wanted to speak with Officer Hamilton because he was the only black officer on the scene at the time. Mr. Jefferson would not stop kicking the patrol vehicle and had to be rip-hobbled. Officer Hamilton's B.W.C. recorded four minutes and forty-nine seconds of the call. His log sheet was incorrectly tallied, and was not sure how long he was on the call.

**Witness Employee, Officer Hannah Caruthers #13958** stated that on January 16, 2020, while working Delta Shift, she and her partner, Breanna McCarthy, went to Kirkwood Road. Officer Mclean announced over the radio that his prisoner spat blood in his face. When they arrived, the prisoner, Mr. Jefferson, was already in custody in the back of Officer Mclean's patrol vehicle. He had a cut to his forehead and was very irate.

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He vented a lot of his anger toward Officers White and French, but the majority was focused at Officer Mclean.

Various people tried to calm Mr. Jefferson down. However he was eventually rip-hobbled for his transport to Regional One Hospital. Officers Caruthers and McCarthy drove the transport vehicle, and were followed by four or five other officers. Mr. Jefferson was very talkative while enroute to the hospital. Upon arrival he was donned with a spit mask and secured in a wheel chair, to relocate him into the medical holding area. Officer Caruthers utilized her B.W.C. and I.C.V. for this call.

**Witness Employee, Officer Lain Fullilove #13106** stated that on January 16, 2020 while working Delta Shift, he arrived to Kirkwood Road. He was dispatched to follow the transport vehicle to Regional One Hospital. Mr. Jefferson had assaulted an officer, was making threats and still being combative. At the hospital he was secured in a wheel chair and donned with a spit mask. Officer Fullilove initiated his B.W.C. four times for this call, each time he was in contact with Mr. Jefferson. It was shut off each time Mr. Jefferson was being treated or secured in the lock down area.

**Witness Employee, Officer Rodger Foxx #10256** stated that on January 16, 2020, he was dispatched to Kirkwood Road. Officer Mclean put out a call for help over the radio that his prisoner spat on him. When Officer Foxx arrived to the scene a large number of officers were already there, and he had to park about 70 feet away. The suspect was secured in the backseat of Officer Mclean's patrol vehicle, "mouthing off" at Lieutenant Hardaway. Officer Mclean was obviously upset and was heard screaming that he wanted to kill the prisoner. Officer Foxx said he was on the scene for one hour and 20 minutes. His B.W.C. audit showed it was on for nine minutes and 32 seconds.

**Witness Employee, Officer David Rowsey #11435** stated that on January 16, 2020, he was dispatched to Kirkwood Road. Officer Mclean called for help over the radio, after his prisoner spat on him. When Officer Rowsey arrived to the scene, the suspect was already in custody. Officer Rowsey found Officer Mclean to be very upset and spent some time consoling him. Officer Rowsey said he was on the scene for one hour and 23 minutes. His B.W.C. audit showed it was on for five minutes and three seconds.

**Witness Employee, Officer Kamaal Truitt #13727** stated that he was working Charlie Shift on January 16, 2020, and responded to Kirkwood Road, after hearing a call for help over the radio. Officer Truitt completed the Offense Report, and took photos of Mr. Jefferson's injuries through the patrol vehicle window. Mr. Jefferson was rip-hobbled for his transport to Regional One Hospital. Upon arrival he was donned with a spit mask and restrained in a wheel chair. Officer Truitt's B.W.C. was activated for his call to Kirkwood Road.

**B) Physical Evidence:**

N/A

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**C) Forensic Evidence:**

N/A

**D) Recorded Evidence:**

1. The recorded statement of Civilian Complainant Daniel Jefferson
2. The recorded statements of the officer's (i.e. Audio and printed signed copy, with Audio Verification form)
3. DVD of B.W.C. / I.C.V. footage for the scene officers
4. B.W.C. / I.C.V. Log
5. B.W.C. / I.C.V. Audit Log
6. Photos of Daniel Jefferson at time of arrest
7. Photos of Daniel Jefferson at I.A.B.
8. Photos of Officers Hands-on with Daniel Jefferson
9. Offense Report
10. Incident Report
11. Response to Resistance Reports
12. Arrest Documents
13. Log Sheets
14. Roll Call
15. Net Viewer Event log
16. Printed Communications Chronology
17. CD of Dispatcher Recording of the Call to Kirkwood
18. Signed Garrity Advisory Forms
19. Video Analysis Request
20. B.W.C. / I.C.V. Duplication Requests
21. Medical Release Requests
22. (F.T.O.) Field Training Officer Disciplinary Record Guidelines
23. Confidential Envelope containing:
  - Medical Records
  - RMS/Inform documents and statements

**E) Miscellaneous Evidence:**

N/A

**VII) AG Review:**

This case was not submitted to the Attorney General's Office for review.

**VIII) Analysis:**

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The purpose of this investigation was to determine if Field Training Officer Brandon Mclean and his Probationary Officer, Joseph Gallina violated the Memphis Police Department's Policy and Procedures. Daniel Jefferson alleged that after Officer Mclean and Officer Gallina handcuffed him he was beaten and choked. Information for the investigation was taken from the recorded statements of Mr. Jefferson, Officers Gallina and Mclean, and the seventeen officers that gave support on the scene.

Also reviewed were arrest documents, an Offense Report, the supervisor's Incident Report, and the Body Worn Camera (B.W.C.) video and In Car Video (I.C.V.) of the officers. Mr. Jefferson told the writer of this case that he would have his mother Angela Hill, and girlfriend, Yolanda Hill give a statement. Neither of them called the Inspectional Services Bureau to schedule an interview, nor did they respond to phone calls and messages from the writer.

On January 16, 2020, Officers Gallina and Mclean were dispatched to Kirkwood Road, at the request of Airways Station officers. They were sent to look for a kidnapping victim, Yolanda Hill. Both, Yolanda and her boyfriend, Mr. Jefferson were found together. The officers spoke with the home owner, Angela Hill, and discovered that Mr. Jefferson was her son. The officers were informed by one of their sources, that Mr. Jefferson was the kidnapping suspect and had pending Domestic Violence charges against him.

Mr. Jefferson was inside of the house and attempted to flee from the officers. The B.W.C. video of Officers Gallina and Mclean recorded Mr. Jefferson resisting as they placed him into handcuffs. He verbally and physically resisted so much that Angela and Yolanda pleaded with him to stop resisting and calm down (Officer Mclean's B.W.C. Min Mark 2:20 – 3:00). Angela pointed out a hole in the kitchen wall to Lieutenant Davison, that occurred as Officers Mclean and Gallina struggled to get Mr. Jefferson into handcuffs.

After Mr. Jefferson was secured he continued to rant and flail his body back and forth. Officer Mclean said that when Mr. Jefferson spoke, spit would come from his mouth; therefore, he placed his right hand on Mr. Jefferson's throat and told him twice, "Look, I'm gonna cut your wind off to where you cannot talk." Officer Mclean's B.W.C. showed that, he held Mr. Jefferson's throat for twelve seconds. He became silent and was taken to the floor. Mr. Jefferson remained completely silent for 55 seconds. (Officer Mclean's B.W.C. Min Mark 3:23 – 3:35). Officer Mclean said it was meant to be a scare tactic. However such tactics are not sanctioned by the **Memphis Police Department Policy and Procedures, as found in Chapter XIII, Section 1, Page 14, which states in part:**

**C. Prior Training**

Any prior training received in **any type choke-hold, carotid type or otherwise should not be utilized**. This will include any prior training received through the Memphis Police Department, military training, or by any other means.

**D. Exceptions:**

The only exception for the use of any strike, choke hold, or come along applied to the head area above the shoulder line, would be if the officer was otherwise justified under the current Memphis Police Department deadly force policy.

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Personal body weapons (hands, feet, fists, etc.) are excluded from these requirements  
**WITH THE EXCEPTION OF ANY TYPE CHOKE HOLD.**

Mr. Jefferson was placed back onto his feet and escorted outside to the patrol vehicle. He dragged his feet to make the officers carry him and threatened to bite Officer Mclean's nose off. Mr. Jefferson struck his head against the door frame as he resisted being placed into the patrol vehicle. When Officer Mclean started to close the door, Mr. Jefferson refused to pull his feet to block the door and then spat in Officer Mclean's face (Officer Mclean's B.W.C. Min Mark 4:44 – 6:51).

Officer Mclean said that he dove into the vehicle to push Mr. Jefferson inside, which resulted in his B.W.C. falling off its mount. Officer Gallina ran to the other side of the vehicle to assist. When he opened the door he had to lean against Mr. Jefferson to keep him in. To exit the vehicle, Officer Mclean said he held Mr. Jefferson's head down on the backseat to avoid being spat on again. After Officer Mclean reattached his B.W.C. Mr. Jefferson spat on him again (Officer Mclean's B.W.C. Min Mark 6:56 – 7:19).

Mr. Jefferson complained that an officer crawled on top of him, put his knee on his chest, pulled his hair and beat him, while handcuffed in the back of a patrol vehicle. It was then that Mr. Jefferson said he received bruised ribs and abrasions to his head and body. The I.C.V. backseat recording showed Officer Mclean on top of Mr. Jefferson fighting and yelling (I.C.V. Officer J. Gallina Backseat Vid 1 Min Mark 00:1 – 00:20).

**Graham v. Connor (US 1989)** is the landmark US Supreme Court case that defines reasonable use of force by police officers in the line of duty. As such, this standard was applied in defining the Memphis Police Department's use of force policies, which are contained in the Memphis Police Department Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11.

The ruling in **Graham V. Connor** holds that all claims that law enforcement officials had used excessive force --deadly or not-- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

The "reasonableness" of a particular use of force must be judged from the perspective of a **reasonable officer on the scene**, rather than with the "20/20 vision of hindsight."

The test of reasonableness is **not capable of precise definition or mechanical application**. Its proper application requires careful attention to the facts and circumstances of each particular case, including:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the officers or others; and
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

This "objective reasonableness" standard was applied during the investigation of the complaint that Officer Brandon Mclean used Excessive Force / Unnecessary Force, while at Kirkwood Dive. The three standards applied in **Graham v. Connor** were used to

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determine the reasonableness of the force used by Officer Mclean which revealed the following:

1. The crime at issue in this investigation is Resisting Official Detention, a Misdemeanor, and Aggravated Assault to wit Law Enforcement Officer, a felony in the State of Tennessee.
2. When the officers approached Daniel Jefferson he spouted verbal threats and tried to evade custody.
3. Mr. Jefferson was secured into handcuffs and continued resisting by flailing his body and threatening to kill police officers.

After Mr. Jefferson was handcuffed and in police custody, Officer Mclean used a choke hold on Mr. Jefferson to keep him from speaking. Later when Mr. Jefferson was sat down on the backseat of the patrol vehicle, he spat in the face of Officer Mclean. Officer Mclean used his body to push Mr. Jefferson inside of the vehicle, and tackle him onto the seat. It was concluded that while on top of him inside of the patrol vehicle, Officer Mclean used hand strikes on Mr. Jefferson's head and face. **Therefore, based on the evidence presented, Officer Brandon Mclean did violate the Memphis Police Departments Policy and Procedure 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.**

Two separate times Officer Mclean responded to Mr. Jefferson with a level of force which was neither to defend nor to protect. The second time he reacted to Mr. Jefferson's behavior. **Seven times** he spoke loudly for all to hear, that he wanted to, and/or would kill Mr. Jefferson (Officer Mclean's B.W.C. Min Mark 7:46 – 13:10). **The Memphis Police Department**

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**Policy and Procedures Law Enforcement Code of Ethics (1.1.2), Chapter I, Section 1, Page 4, 5, states in part:**

2. All sworn members of the Memphis Police Department will abide by the standards of conduct set forth in the Law Enforcement Code of Ethics (1.1.2):

“... An officer's conduct is closely scrutinized, and when his actions are found to be excessive, unwarranted or unjustified, he and the Department are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of a member, on or off duty, does reflect directly upon the Department, members must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City.

The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances.”

Officer Mclean’s conduct in front of his peers while dealing with Mr. Jefferson reflected negatively upon the Memphis Police Department and upon himself as a Field Training Officer. **Therefore, based on the evidence presented, Officer Brandon Mclean did violate the Memphis Police Departments Policy and Procedure 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 themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

Angela Hill told Lieutenant Davison (Vid #1 Lt. Davison Min Mark 1:03:03), that she was standing in the carport (approximately 20 feet away), and saw Officer Gallina using knee strikes on Mr. Jefferson. Lieutenant Davison reviewed Officer Gallina’s B.W.C., and never saw him kicking Mr. Jefferson. Officer Gallina said Mr. Jefferson appeared to be exiting the vehicle when he spat on Officer Mclean. Officer Gallina then ran to the other side of the vehicle to pull Mr. Jefferson back across the seat.

Mr. Jefferson then tried to push his way through the open door. Mr. Jefferson’s body extended into the doorway and Officer Gallina used his body push him back into the vehicle. (Officer Gallina’s B.W.C. recording Vid #1 Min Mark 8:37 – 9:00). Based on the evidence presented in the investigation, it is reasonable to believe that Officer Gallina did not kick Mr. Jefferson. **Therefore, because it could be neither proven nor disproved, the allegation that Officer Joseph Gallina #14360 violated DR 301 Excessive Force / Unnecessary Force is not sustained.**

Another matter discovered during the investigation concerned Officer Kamaal Truitt. While on the scene at Kirkwood Drive, he demonstrated to other officers his technique for

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dislodging his B.W.C. from its mount (B.W.C. Officer Brandon Jones Min Mark 23:25 – 23:45). Officer Truitt explained that an officer could use the technique if he was in a physical altercation. This would prevent the wrongful actions that an officer may impose upon his prisoner from being recorded. **Based on the evidence presented, Officer Kamaal Truitt #13727 violated the Memphis Police Departments Policy and Procedure DR 103 Aid Another to Violate Regulation which states in part:**

**DR 103 Aid Another to Violate Regulation**

A member shall not aid, abet, or incite another member to violate departmental regulations, duties, orders, policies or prescribed procedures.

A final matter discovered in this investigation concerned the B.W.C. usage by the following eight officers:

1. Officer David Rowsey #11435 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Rowsey recorded on his log sheet that he was on the scene for one hour and 23 minutes. An audit showed that his B.W.C. was activated for four minutes and three seconds, the battery was not exhausted, and he did not utilize his I.C.V. system.
2. Officer Tony Moore #13681 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Moore recorded on his log sheet that he was on the scene for one hour. An audit showed that his B.W.C. was activated for three minutes and fifty-eight seconds, the battery was not exhausted, and he did not utilize his I.C.V. system.
3. Officer Joseph Stewart #14003 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Stewart recorded on his log sheet that he was on the scene for 87 minutes. An audit showed that his B.W.C. was activated twice for a total of 18 minutes and 51 seconds, the battery was not exhausted, and he did not utilize his I.C.V. system.
4. Officer Rodger Foxx #10256 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Foxx recorded on his log sheet that he was on the scene for 80 minutes. An audit showed that his B.W.C. was activated for a total of 9 minutes and 32 seconds, and the battery was not exhausted. His I.C.V. showed active for ten minutes and 49 seconds and was not positioned to record his activity on the scene.
5. Officer Timothy Hamilton #13449 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Hamilton's Log sheet was incorrect. According to the B.W.C. video and log of his Field Training Officer, his involvement recorded on other officer's B.W.C. video, his approximate time on the scene was 54 minutes. Officer Hamilton's B.W.C. audit noted his camera was activated for four minutes and three seconds, the battery was not exhausted. Also his I.C.V. system was not utilized.
6. Officer Carey Owen #14193 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Owen recorded on his log sheet that he was on the

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scene for 30 Minutes. Officer Owen could not say why he did not activate his B.W.C. for the call. However, an audit showed that neither his B.W.C. nor his I.C.V. system was utilized for the call.

7. Officer Carl Webb #14221 arrived on the scene to assist Officer Mclean and Officer Gallina, after Mr. Jefferson was in custody. Officer Webb recorded on his log sheet that he was on the scene for 27 Minutes. Officer Webb said he did not know why he did not activate his B.W.C. for the call. An audit showed that neither his B.W.C. nor his I.C.V. system was utilized for the call.
8. Lieutenant Byron Hardaway #3286 arrived on the scene to check on the welfare of Officer Mclean and Officer Gallina, and to assure proper protocol was being followed. He was on the scene approximately six minutes, and left shortly after Lieutenant Davison arrived. Lieutenant Hardaway's activity on the scene was recorded on the B.W.C. of other officers. He could not recall why his B.W.C. was not activated for the time he spent on the scene.

**Therefore based on the evidence presented for the seven officers stated above, they are found to have violated DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera, as is defined by The Memphis Police Departments Policy and Procedures Chapter XIII, Section 15, Pages 3, 4, states in part:**

### **III. PROCEDURES – BODY WORN CAMERA**

#### **B. Use of BWC During the Shift**

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.
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.
7. ... In the event that the BWC was not activated, terminated early, or otherwise interrupted, a supervisor will be immediately notified.

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**IX) Conclusion**

Based on the preponderance of evidence presented in this investigation, **Officer Brandon Mclean #11687** is in violation of the stated allegation of **DR 301 Excessive Force / Unnecessary Force**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Brandon Mclean #11687** is in violation of the stated allegation of **DR 104 Personal Conduct**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Joseph Gallina #14360** is not in violation of **DR 301 Excessive Force / Unnecessary Force**. Therefore, the allegation **IS NOT SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Kamaal Truitt #13727** was found to be in violation of the allegation of **DR 103 Aid Another to Violate Regulation**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer David Rowsey #11435** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Tony Moore #13681** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Joseph Stewart #14003** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Rodger Foxx #10256** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Timothy Hamilton #13449** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Officer Carey Owen #14193** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

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Based on the preponderance of evidence presented in this investigation, **Officer Carl Webb #14221** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.

Based on the preponderance of evidence presented in this investigation, **Lieutenant Byron Hardaway #3286** is in violation of the stated allegation of **DR-101 Compliance with Regulations to wit: In-Car Video/Body Worn Camera**. Therefore, the allegation **IS SUSTAINED**.