

HEARING SUMMARY FORM

0237-20

Hearing:

December 9, 2020 15:00 Location: Real Time Crime Center (RTCC); 600 Jefferson
Date Time

Attended by: Phillip Andrews 13016, Darrell Mathis 10438, LTC L. Ross 7353

Hearing Officer: Deputy Chief D. Crowe 1585

Statement of Hearing Officer:

On December 9, 2020, an Administrative Hearing (Hearing) was held for PII Phillip Andrews 13016 regarding Statement of Charges (SOC) 0237-20. PII Andrews accused of violating DR 101 Compliance with Regulations to Wit Response to Resistance Pointed Weapon and DR 301 Excessive Force/Unnecessary Force. See Continuation on page 2

Action Ordered: DR 101 Compliance with Regulations to Wit Response to Resistance Pointed Weapon- Sustained Written Reprimand

DR 301 Excessive Force/Unnecessary Force- Sustained 3 Day SWOP and remedial training

D. E. Crowe 1585

Hearing Officer 3-25-21

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 dependent 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 X Will Not Be Filed

Grievance: Will X 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.

3/25/21 Phillip Andrews 13016
Date Employee Signature

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

Administrative Hearing
SOC 0237-20
Statement of Hearing Officer

The Hearing was called to order. PII Andrews was asked if he was given a copy of the SOC. He replied yes. PII Andrews was asked if he had representation for the hearing. He replied Officers Mathis. PII Andrews was asked if he had an opportunity to review the ISB File. PII Andrews and Officer Mathis replied yes.

D/C Crowe read the SOC out loud.

D/C Crowe allowed PII Andrews to explain what occurred. His statement is summarized below.

Andrews was in a two-man car with Officer Belivens. Officer Cross called in a frantic state and said that the suspect was following them. When they encountered the suspects, their truck was stuck in the mud. The passenger put his hands in the air. The driver tried to drive out. It was raining intermittently. Both refused to get out of the truck. Other officers interacted with the driver. Cross and Robinson interacted with the passenger. Once he was out of the truck, Officer Andrews struck the passenger to obtain compliance.

D/C Crowe allowed Officer Mathis to address the hearing. His statement is summarized below.

Officer Andrews did use force. The suspect did not give his hands. Officer Andrews could not use his chemical agent because of proximity to other officers. The suspect's comments were not in response to Officer Andrews. PII Andrews did not use excessive force. PII Andrews did complete a pointed weapon report but did not attach it to Blue Team.

D/C Crowe allowed LTC Ross to address the Hearing. His statement is summarized below.

LTC Ross asked PII Andrews if he was familiar with the suspects. PII Andrews replied yes, he had interacted with them in stolen vehicles and refusals to stop. The suspect had warrants issued in the last few weeks. LTC Ross asked how long the truck was stopped. PII Andrews explained over 2 minutes. The suspect never fully cooperated. They did not want to go to jail.

D/C Crowe then asked PII Andrews a series of questions. His responses are summarized below.

The first question asked was whether PII Andrews violated Memphis Police Department DR 101 Compliance with Regulations to wit response to resistance Pointed Weapon. PII Andrews responded by saying yes. PII Andrews was asked if he violated DR 301 Excessive/Unnecessary Force. PII Andrews replied no.

Administrative Hearing
SOC 0237-20
Statement of Hearing Officer

PII Andrews stated the suspect was resisting arrest. Andrews did not use his baton or duty weapon. He used his hands. PII Andrews did not interact with the driver only the passenger. PII Andrews did strike the passenger. PII Andrews' statement to ISB was reviewed. PII Andrews' response to resistance report was reviewed. PII Andrews advised the passenger was engaged in passive resistance. Officers did not know what was under him. He kept his left arm under him.

The Hearing was stopped at 16:00 with the agreement the Hearing would be continued until a date to be determined.

Between the Hearing and conclusion of the Hearing D/C Crowe reviewed the case file for a second time. D/C Crowe reviewed the notes taken during the Hearing. D/C Crowe typed this Hearing Summary.

Based upon the review of the evidence D/C Crowe reached the following conclusions.

1. This case was difficult to evaluate without the cooperation and a full statement from the passenger Terry Stuart. ISB never interviewed him.
2. Terry Stuart was in possession of Crystal Methamphetamine. The logical conclusions are;
 - a. Terry Stuart is a user of Crystal Methamphetamine
 - b. Terry Stuart was under the influence of Crystal Methamphetamine during this incident.
3. Officer Andrew's statement to ISB provided detailed information about the event.
4. Officer Andrews did not complete a pointed weapon form or describe this in the response to resistance report
5. Officer Andrews' response to the suspect resisting arrest was not consistent with departmental policy.

The Hearing resumed on March 25, 2021 at 16:00 at RTCC. The following people were present: D/C Crowe, PII Andrews, Sgt. K. Walcott 10280, and Colonel M. Williams 9486.

Based upon the preponderance of the evidence the following rulings were made in regard to SOC 0237-20.

DR 101 Compliance with Regulations to Wit Response to Resistance Pointed Weapon Report;
Sustained

DR 301 Excessive Force/Unnecessary Force: Sustained

Administrative Hearing
SOC 0237-20
Statement of Hearing Officer

PII Andrews's Disciplinary Resume was in a sealed envelope. It was opened and shared with everyone present. The resume contained no entries or prior policy violations.

The following corrective action was ordered.

DR 101 Compliance with Regulations to Wit Response to Resistance Pointed Weapon Report; Written Reprimand

DR 301 Excessive Force/Unnecessary Force:
3 Days Suspension without Pay and Remedial Training.

END



MEMPHIS POLICE DEPARTMENT
(Raines)

Written Reprimand



Date: March 25, 2021

Employee's Name: PII Phillip Andrews IBM: 13016 Rank: PII

Policy Number Violated: DR 101 Compliance with Regulations to wit
Response to Resistance Pointed Weapon

Statement of Charge Number: 0237-20

Circumstances:

On February 6, 2020 PII Andrews was involved an arrest that included a Response to Resistance. PII Andrews pointed his weapon at the suspect. PII Andrews did not completed a pointed weapon report or describe this in his response to resistance report.

D. E. Linn #1585

Supervisor's Signature

Phillip Andrews 13016
Officer's Signature

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

Administrative Summons

**Memphis Police Department VS.
Andrews, Phillip IBM: 13016**

**Date: May 22, 2020
ISB Case #: I2020-010**

I. Allegation

It is alleged that you used excessive force/unnecessary force while taking a suspect into custody on a traffic stop at Longcrest Road and Hill Drive.

II. Rules, regulations or orders violated.

DR-101 Compliance with Regulations to wit: Response to Resistance (Pointed Weapon)
DR 301 Excessive Force/Unnecessary Force

III. Hearing

Date: 12-09-2020
Place: RTCC
Time: 1500 hrs

You are entitled to representation during this hearing.

Served by:

Det. Reed / Sgt. Raines C, 2009
Name/Rank/Assignment/IBM

Date: 12-02-2020 Time: 2122 hrs

Signature of Officer: Phillip Andrews 13016

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.

0237-20
PAP

City of Memphis
Police Division
Inspectional Services Bureau

Case # I2020-010 Statement of Charges**Officer's Name:** Andrews, Phillip**IBM #** 13016**Rank:** POLICE OFFICER II**Assignment:** Raines Station - "A"**Date:** May 22, 2020

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

DR-101 Compliance with Regulations to wit: Response to resistance (Pointed Weapon) — *Sustained — written Reprimand*

DR 301 Excessive Force/Unnecessary Force — *Sustained — 3 Day Swoop to be served 3/26/21, 3/27/21, and 3/28/21 Remedial Training.*

Date of Occurrence: February 6, 2020

Statement of Particulars:

The facts of this investigation revealed on February 6, 2020, at approximately 12:00 a.m., you were working Raines Station Task Force, and you were involved in an incident at Longcrest Road and Hill Drive. According to your statement to ISB Investigators, you acknowledged that you pointed your weapon at the suspects in the vehicle. Records indicated that you completed a Response to Resistance Form. However, you neglected to complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place you in violation of **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:

1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)

B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:

1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
2. Chemical agent use. (1.3.6c)
3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
4. The use of an MPD canine to apprehend a suspect.
5. The use of the Baton/Expandable Baton. (1.3.6c)
6. **Whenever a suspect is charged with T.C.A. 39-16-602 Resisting Arrest.**
7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)

C. The *Response to Resistance* incident in Blue Team need not be completed for:

1. The mere presence of police officers, the issuance of tactical commands; or
2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
3. **The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a Pointed Weapon Incident in BlueTeam will be completed. This report will NOT be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention.** After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

According to your statement to ISB Investigators, you admitted to striking the suspect. "Uh, with my closed fist one, once, or twice trying to get his left arm from out underneath him clinched. Just like in the lower back maybe like where the left arm, it was kinda clinched up in fetal position. Maybe just loosen his arm up." When asked by ISB Investigators if the suspect posed a threat to you while in a fetal

position, you said, “No. The suspect was not aggressive.” You also acknowledged that you were aware that the suspect was struck on the head with a weapon prior his interaction with you.

Your Body Worn Camera Footage revealed that the suspect did not resist officers. Officers were seen striking the suspect at the same time. The suspect was seen in a fetal position as officers kicked and hit him. The suspect said, “You can have my hands, God damn, why are you beating me? I had my hands up the whole time bro. Oww God damn.” You were also seen pulling the suspect’s hair. When you asked for the suspect’s hands, he said, “You got it man, get off me. Why did you beat me like that? Why are you beating me like that?” These actions place you in violation of the Memphis Police Department’s **DR-301 Excessive/ Unnecessary Force**.

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 ‘Excessive Force/Unnecessary Force’ *by you at Longcrest Road and Hill Drive*. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by you, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee.

2. The suspect did not pose an immediate threat to your safety while in fetal position as you struck him.
3. The suspect did not actively resist nor did he pose a threat to you at any time.

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

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

Sgt. Peter Reed #2009
Issuing Officer

Det. N. Williams #2843
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.

Philip A. 13016
Signature of Officer:

Written Response Ordered? ☐ Yes ☐ No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by: ☒ Dep. Dir. ☐ Dep. Chief ☐ Work Station Commander

Delegated to: ☒ Dep. Chief ☐ Station/Bureau

Major/Lt. Colonel/Colonel

D/C Crowe

HEARING SUMMARY FORM

0239-20

Hearing:

February 19, 2021 12:00 Location: Real Time Crime Center (RTCC); 600 Jefferson
Date Time

Attended by: PII Marcus Robinson 13124, Sgt. K. Walcott 10280, Col. M. Williams 9486
Hearing Officer: Deputy Chief D. Crowe 1585

Statement of Hearing Officer:

On February 19, 2021 an Administrative Hearing (Hearing) was held for PII Marcus Robinson 13124 regarding Statement of Charges (SOC) 0239-20. PII M. Robinson was accused of violating DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report, DR 301 Excessive Force/Unnecessary Force, and DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera. See Continuation on page 2

Action Ordered: DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report; Dismissed

DR 301 Excessive Force/Unnecessary Force: Sustained, 6 Day SWOP and remedial training

DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera: Sustained, written reprimand.

D. E. Crowe 1585
Hearing Officer 3/31/21

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 dependent 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.

03/31/21
Date

Marcus Robinson #13124
Employee Signature

Administrative Hearing

SOC 0239-20

Statement of Hearing Officer

The Hearing was called to order. PII Robison was asked if he was given a copy of the SOC. He replied yes. PII Robison was asked if he had representation for the hearing. He replied Sgt. Walcott. PII Robison and Sgt. Walcott were asked if they had an opportunity to review the ISB File. PII Robison and Sgt. Walcott replied yes.

D/C Crowe read the SOC out loud.

D/C Crowe allowed PII Robison to explain what occurred. His statement is summarized below.

PII Robison was assigned to a burglary detail. On the radio he heard Officers Smith and Cross advise the suspects chased the officers. PII Robinson responded. The truck was stuck in the mud. Officer Smith approached the truck and got the passenger out. Officer Cross was struggling with the passenger and had her weapon out. PII Robinson gave verbal commands asking for the suspect's arm with no compliance. PII Robinson's foot was caught under the suspect. PII Robinson wasn't trying to kick the suspect, he was trying to free his foot. PII Robinson saw the suspect as a serious threat and used hard hand techniques to get control of the suspect's arm. PII Robinson found a crack pipe on the suspect and a bag of methamphetamine. PII Robinson requested an ambulance for the suspect and contacted Lt. Young.

D/C Crowe allowed Sgt. Walcott to address the hearing. His statement is summarized below.

Sgt. Walcott asked that the situation be taken in context. PII Robinson and the others were looking for bad actors on a crime spree. The suspects knew they were encountering police officers. The way the truck went back and forth, it was a 4,000 pound weapon, it could have hit the officers. There was a gun in the suspect vehicle. The suspects created this situation by their actions. Officers went through force continuum including presence with lights, verbal commands, soft hands, etc. The passenger was a threat while on the ground. His hands were under him. He would not allow officers to handcuff him. The suspect was a threat.

D/C Crowe allowed Colonel Williams to address the Hearing. His statement is summarized below.

The MPA representative summarized this event well. The suspects have a history of resisting arrest with officers. The crime rate in this ward went down after the arrest. PII Robinson is an excellent officer and displays excellent work attitude. PII Robinson was selected to be on the Raines Task Force because of his work ethic. PII Robinson stopped in the snow, on his way to work, on 02-18-21 to remove a trapped person from an overturned car. Colonel Williams would like more officers like PII Robinson.

D/C Crowe then asked PII Robinson a series of questions. His responses are summarized below.

Administrative Hearing

SOC 239-20

Statement of Hearing Officer

The first question asked was whether PII Robinson violated DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera. PII Robinson replied yes. PII Robinson did not have his protective vest and camera on while riding in plain clothes. He grabbed his vest and put on his vest with his BWC as he exited the car. He did not activate the camera. He thought the marked unit's blue lights would activate the camera.

PII Robinson was asked if he violated DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon report. PII Robinson stated he did not know he had to complete a separate report since he completed a response to resistance form and put the pointed weapon information in his Response to resistance.

PII Robinson was asked if he violated DR 301 Excessive Force/Unnecessary Force. PII Robinson replied no. PII Robinson saw the suspect has a serious threat and did not know what he had in his hands. PII Robinson wanted to get the suspect in custody as quick as possible for safety.

PII Robinson's Response to Resistance form was reviewed with him. PII Robinson's formal statement to ISB was reviewed with him. PII Robinson started his BWC when he realized it was not on.

Between the Hearing and conclusion of the Hearing D/C Crowe reviewed the case file for a second time. D/C Crowe reviewed the notes taken during the Hearing. D/C Crowe typed this Hearing Summary.

Based upon the review of the evidence D/C Crowe reached the following conclusions.

1. This case was difficult to evaluate without the cooperation and a full statement from the passenger Terry Stuart. ISB never interviewed him.
2. Terry Stuart was in possession of Crystal Methamphetamine. The logical conclusions are;
 - a. Terry Stuart is a user of Crystal Methamphetamine
 - b. Terry Stuart was under the influence of Crystal Methamphetamine during this incident
3. PII Robinson admitted to violating the BWC Policy and Procedure.
4. PII Robinson did not understand the need for a pointed weapon report in addition to his response to resistance report.
5. PII Robinson's response to the suspect's resistance did not meet MPD Policy and training.

The Hearing resumed on March 31, 2021 at 13:45 at RTCC. The following people were present: D/C Crowe, PII Robinson, Sgt. Walcott, and Colonel Williams.

Administrative Hearing
SOC 239-20
Statement of Hearing Officer

Based upon the preponderance of the evidence the following rulings were made in regard to SOC 0239-20.

DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report:
Dismissed

DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera”
Sustained

DR 301 Excessive Force/Unnecessary Force: Sustained

PII Robinson’s Disciplinary Resume was in a sealed envelope. It was opened and shared with everyone present. The resume contained

The following corrective action was ordered.

DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera.
Written Reprimand

DR 301 Excessive Force/Unnecessary Force
6 day suspension without pay and remedial training



MEMPHIS POLICE DEPARTMENT
(Raines)

Written Reprimand



Date: March 31, 2021

Employee's Name: PII Marcus Robinson IBM: 13124 Rank: PII

Policy Number Violated: DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera

Statement of Charge Number: 0239-20

Circumstances:

On February 6, 2020 PII M. Robinson was involved an arrest that included a Response to Resistance. PII Robinson did not activate his BWC at the beginning of the incident.

D. E. Crowe 1585

Supervisor's Signature

Marcus Robinson 13124

Officer's Signature

City of Memphis
Police Division
Inspectional Services Bureau

Administrative Summons

Memphis Police Department VS.
Robinson, Marcus IBM: 13124

Date: May 22, 2020
ISB Case #: I2020-010

I. Allegation

It is alleged that you used excessive/unnecessary force while taking a suspect into custody on a traffic stop at Longcrest Road and Hill Drive.

II. Rules, regulations or orders violated.

DR-101 Compliance with Regulations to wit: Response to Resistance (Pointed Weapon)
DR 301 Excessive Force/Unnecessary Force
DR-101 Compliance with Regulations to wit: In Car-Video/Body Worn Camera

III. Hearing

Date: 01-29-2021
Place: 600 Jefferson RTCC
Time: 14:30 hours

You are entitled to representation during this hearing.

Served by: Lt. Ricky Dumas / Raines C 205C
Name/Rank/Assignment/IBM

Date: 01/13/2021 Time: 15:15 hours

Signature of Officer: Marcus Robinson #13124

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.

0239-20
PR

City of Memphis
Police Division
Inspectional Services Bureau

Case # I2020-010 Statement of Charges

Officer's Name: Robinson, Marcus

IBM # 13124

Rank: POLICE OFFICER II

Assignment: Raines Station - "D"

Date: May 22, 2020

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

DR-101 Compliance with Regulations to wit: Response to Resistance (Pointed Weapon) - *Dismissed*

DR 301 Excessive Force/Unnecessary Force

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

- *Sustained Written Reprimand*

6 DAY SWOP and Remedial Training

Date of Occurrence: February 6, 2020

Statement of Particulars:

The facts of this investigation revealed on February 6, 2020, at approximately 12:00 a.m., you were working Raines Station Task Force. You were involved in an incident at Longcrest Road and Hill Drive. According to your statement to ISB Investigators, you acknowledged that you drew and pointed your weapon at the suspect in the vehicle. Records indicated that a Response to Resistance Form related to this incident was completed. However, you neglected to complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place you in violation of the Memphis Police Department's **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:

1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)

B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:

1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
2. Chemical agent use. (1.3.6c)
3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
4. The use of an MPD canine to apprehend a suspect.
5. The use of the Baton/Expandable Baton. (1.3.6c)
6. **Whenever a suspect is charged with T.C.A. 39-16-602 Resisting Arrest.**
7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)

C. The *Response to Resistance* incident in Blue Team need not be completed for:

1. The mere presence of police officers, the issuance of tactical commands; or
2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
3. **The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a Pointed Weapon Incident in Blue Team will be completed. This report will NOT be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention.** After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

According to your statement to ISB Investigators, you assisted with arresting a suspect. You admitted to using hard hands. You stated, "Well, I hit him a couple of times, um, in the back, in the shoulder. Um. Also, I think I kicked him and, um.. After I stood up, I think I kicked him." You admitted to kicking the suspect after he stood up. "Yeah, I had to stand up first. Reason I stood up because it was muddy and an

officer was still on the scene, and she had a weapon still out. That's why I stood up." Body Worn Camera Footage also showed you kicking the suspect repeatedly. You stated that you did not know if he posed a threat. When asked if you heard the suspect say, "Stop it. Y'all are beating me." You said, "I heard him say that after the fact. After we got him in cuffs." He was asking, "Why we, why we, beat him like that, that what he said." Body Worn Camera Footage showed you pulling the suspect's hair and hitting his head on the ground.

Body Worn Camera Footage revealed that the suspect did not resist or fight at any time. Officers struck the suspect simultaneously while he was in a fetal position. These actions place you in violation of violation of the Memphis Police Department's **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force/Unnecessary Force' *by you at Longcrest Road and Hill Drive*. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by you , and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee.
2. **The suspect** did not pose an immediate threat to your safety while in a fetal position as you stood up and kicked him.

3. **The suspect** did not actively resist or did he pose a threat to **you at any time.**

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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 did not record the event in its entirety as required by departmental policy and procedure. Video Analysis revealed that you only recorded the incident after the suspects were taken into custody. These actions place you in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras Policy.**

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

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.

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

Lt. R. Damm #2223
Issuing Officer

Det. N. Williams #2843
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.

M. Johnson #13124
Signature of Officer:

Written Response Ordered? ☐ Yes ☐ No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by: ☒ Dep. Dir. ☐ Dep. Chief ☐ Work Station Commander

Delegated to: ☒ Dep. Chief ☐ Station/Bureau

Major/Lt. Colonel/Colonel

Dlc Crowe

HEARING SUMMARY FORM

0240-20

Hearing:

March 2, 2021 12:50 Location: Real Time Crime Center (RTCC); 600 Jefferson
Date Time

Attended by: PII Evan Smith 12833, Sgt. K. Walcott 10280, Col. M. Williams 9486
Hearing Officer: Deputy Chief D. Crowe 1585

Statement of Hearing Officer:

On March 2, 2021 an Administrative Hearing (Hearing) was held for PII Evan Smith 12833 regarding Statement of Charges (SOC) 0240-20. PII E. Smith was accused of violating DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report, DR 301 Excessive Force/Unnecessary Force, and DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera. See Continuation on page 2

Action Ordered: DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report-Dismissed
DR 301 Excessive Force/Unnecessary Force- Sustained 10 Day SWOP and remedial training
DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera- Sustained Written Reprimand

D. F. Crowe 1585
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 dependent 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 48 Will Not Be Filed

Grievance: Will 48 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.

04/06/21
Date

[Signature] #12833
Employee Signature

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

Administrative Hearing
SOC 0240-20
Statement of Hearing Officer

The Hearing was called to order. PII Smith was asked if he was given a copy of the SOC. He replied yes. PII Smith was asked if he had representation for the hearing. He replied Sgt. Walcott. PII Smith and Sgt. Walcott were asked if they had an opportunity to review the ISB File. PII Smith and Sgt. Walcott replied yes.

D/C Crowe read the SOC out loud.

D/C Crowe allowed PII Smith to explain what occurred. His statement is summarized below.

PII Smith advised this was the third night of work in this area locating suspects responsible for multiple thefts. A pickup caught PII Smith's eye when they saw it pass by a third time. PII Cross was with PII Smith. PII Smith and PII Cross sat on a corner as the pickup disappeared into a neighborhood. They waited. After several minutes the truck came out of the neighborhood and slow rolled past PII Smith and PII Cross. The suspects looked into the unmarked car as they passed. The suspects then backed up in the street to get behind PII Smith and Cross. PII Smith was driving a GIB car with a government tag and an MPD marking on the rear. PII Smith drove away. The suspects followed and stayed with PII Smith as he took evasive action turning corners. PII Smith said, "we were being chased." PII Smith and Cross called for other Task Force Cars. PII Smith stated he was scared. The Task Force Officers caught up with them and turned on their emergency equipment. The suspects in the pick up backed away from the marked car and ran off the road into a mud ditch. The driver of the pick up was trying to get out of the mud. PII Smith thought this would lead to a shooting so he jumped out of his car without grabbing his body armor/ equipment vest. PII Smith and other officers were giving commands and screaming at the suspects to surrender. The driver kept trying to get out of the mud but was burying the pick up into the mud. The suspects were not compliant with commands. PII Smith ran to the truck in the mud. PII Smith had his duty weapon in his hand. He had no idea what was waiting on the other side of the window. PII Smith opened the passenger door and recognized the passenger as Terry Stuart. PII Smith grabbed Stuart with his left hand. He knew Stuart had active felony warrants. He knew Stuart would do anything to get away. Stuart tensed his muscles. PII Smith struck Stuart while holding his duty weapon. PII Smith then assisted taking the driver into custody. Once the suspects were handcuffed the response stopped and the officers turned to scene management. There was a loaded weapon in the truck that both suspects had access to.

D/C Crowe allowed Sgt. Walcott to address the hearing. His statement is summarized below.

This incident was caused by the aggressions of the suspects. The suspects were out to commit crimes. Officers tried to driveway and avoid a confrontation. The suspects pursued the officers. The suspects knew they were pursuing police officers. What were the suspects' intentions? Possible to

Administrative Hearing
SOC 0240-20
Statement of Hearing Officer

rob the officers. From watching the Body Worn Camera (BWC) video, Sgt Walcott counted 28 commands given by officers that the suspects ignored. This amounted to two continuous minutes of verbal commands that were ignored. If the truck would have found traction the driver would have run over an officer. While PII Smith was taking the suspect into custody the suspect tensed. PII Smith struck the suspect once with the butt of his duty weapon. Officers had to escalate force to get compliance. PII Smith's BWC was in the car attached to his equipment vest. Exigent circumstances caused PII Smith to jump from his car without grabbing his vest. PII Smith did what he had to do. PII Smith is a thorough investigator.

D/C Crowe allowed Colonel Williams to address the Hearing. His statement is summarized below.

Both PII Smith and Sgt. Walcott stated the facts well. The Task Force purpose is to identify hot spots and solve crime problems. The Task Force identified the problem. The task Force went to the area to catch the criminals. The Task Force go the right suspects. Crime dropped in this ward after this arrest. PII Smith is a competent reliable leader. That is why he is on task force.

D/C Crowe then asked PII Smith a series of questions. His responses are summarized below.

Did PII Smith violate DR 101 Compliance with Regulations to wit Body Worn Camera? As the policy is written it is up to debate. This was a unique circumstance. By letter of policy, it was violated.

Did PII Smith violate DR 101 compliance with Regulations to wit Pointed Weapon Report? PII Smith completed a Response to Resistance report and thought that covered everything.

Did PII Smith violate DR 301 Excessive Force/Unnecessary Force? PII Smith said to look at every incident he has been involved in. Things could have been done better but "we did the best we can."

PII Smith was in plain clothes. His equipment vest was in the backseat of the car. The BWC was on the vest. Lt Owens discussed BWC but not sure of what he advised. PII Smith's goal of hitting the window was to get compliance, to convey his presence. PII Smith's ISB statement was reviewed. PII Smith's Response to Resistance was reviewed.

PII Smith was holding the suspect with his left hand. He was holding his handgun in his right hand. He felt the suspect tense up. Based upon the suspect's past actions, PII Smith thought the suspect was about to flee or resist. PII Smith reacted forgetting the handgun was his right hand.

At 13:37 hours the hearing was stopped. The hearing was continued to a date to be determined.

Administrative Hearing
SOC 0240-20
Statement of Hearing Officer

Between the Hearing and conclusion of the Hearing D/C Crowe reviewed the case file for a second time. D/C Crowe reviewed the notes taken during the Hearing. D/C Crowe typed this Hearing Summary.

Based upon the review of the evidence D/C Crowe reached the following conclusions.

1. This case was difficult to evaluate without the cooperation and a full statement from the passenger Terry Stuart. ISB never interviewed him.
2. Terry Stuart was in possession of Crystal Methamphetamine. The logical conclusions are;
 - a. Terry Stuart is a user of Crystal Methamphetamine
 - b. Terry Stuart was under the influence of Crystal Methamphetamine during this incident
3. PII Smith admitted to violating the BWC Policy and Procedure.
4. PII Smith did not understand the need for a pointed weapon report in addition to his response to resistance report.
5. PII Smith described pointing his weapon in the Response to Resistance report.
6. PII Smith's response to the suspect's resistance did not meet MPD Policy and training.

The Hearing resumed on April 6, 2021 at 14:50 at RTCC. The following people were present: D/C Crowe, PII Smith, Sgt. Walcott, and Lt. Colonel T Burford 0840.

Based upon the preponderance of the evidence the following rulings were made in regard to SOC 0240-20.

DR 101 Compliance with Regulations to wit Response to Resistance Pointed Weapon Report:
Dismissed

DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera"
Sustained

DR 301 Excessive Force/Unnecessary Force: Sustained

PII Smith's Disciplinary Resume was in a sealed envelope. It was opened and shared with everyone present. The resume contained

The following corrective action was ordered.

DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera.
Written Reprimand

DR 301 Excessive Force/Unnecessary Force
10 days suspension without pay and remedial training



MEMPHIS POLICE DEPARTMENT
(Raines)

Written Reprimand



Date: April 6, 2021

Employee's Name: PII Evan Smith IBM: 12833 Rank: PII

Policy Number Violated: DR 101 Compliance with Regulations to wit In Car Video/Body Worn Camera

Statement of Charge Number: 0240-20

Circumstances:

On February 6, 2020 PII E. Smith was involved an arrest that included a

Response to Resistance. PII Smith did not activate his BWC.

D.E. Cune 1585

Supervisor's Signature

[Signature] #12833

Officer's Signature

08-08krp

City of Memphis
Police Division
Inspectional Services Bureau

Administrative Summons

Memphis Police Department VS.
Smith, Evan IBM: 12833

Date: May 22, 2020
ISB Case #: I2020-010

I. Allegation

It is alleged that you used excessive/unnecessary force while taking a suspect into custody on a traffic stop at Longcrest Road and Hill Drive.

II. Rules, regulations or orders violated.

DR-101 Compliance with Regulations to wit: Response to Resistance (Pointed Weapon)
DR 301 Excessive Force/Unnecessary Force
DR-101 Compliance with Regulations to wit: In Car-Video/Body Worn Camera

III. Hearing

Date: March 2, 2021
Place: 600 Jefferson, RTCC
Time: 1200hrs

You are entitled to representation during this hearing.

Served by:

Robert Reed, Lt, Boines, 2009
Name/Rank/Assignment/IBM

Date: 02/24/21

Time: 1502 HRS

Signature of Officer:

[Signature] #12833

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.

0240-20
RAP

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

Case # I2020-010 Statement of Charges

Officer's Name: Smith, Evan

IBM # 12833

Rank: POLICE OFFICER II

Assignment: Raines Station - "C"

Date: May 22, 2020

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

DR-101 Compliance with Regulations to wit: Response to Resistance (Pointed Weapon) - *Dismissed*

DR 301 Excessive Force/Unnecessary Force - *Sustained 10 Day SDOOP and Remedial Training*

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

Date of Occurrence: February 6, 2020

*DECISB
4/6/21*

Statement of Particulars:

This investigation revealed on February 6, 2020, at approximately 12:59 a.m., you were working Raines Station Task Force. You were involved in an incident at Longcrest Road and Hill Drive. According to your statement to ISB Investigators, you acknowledged that you drew your weapon and pointed it at both suspects in the vehicle. Records indicated that a Response to Resistance Form related to this incident was completed. However, you did not complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place you in violation of the Memphis Police Department's **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
 - 1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:
 - 1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 - 2. Chemical agent use. (1.3.6c)
 - 3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
 - 4. The use of an MPD canine to apprehend a suspect.
 - 5. The use of the Baton/Expandable Baton. (1.3.6c)
 - 6. **Whenever a suspect is charged with T.C.A. 39-16-602 Resisting Arrest.**
 - 7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)
- C. The *Response to Resistance* incident in Blue Team need not be completed for:
 - 1. The mere presence of police officers, the issuance of tactical commands; or
 - 2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
 - 3. **The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a Pointed Weapon Incident in Blue Team will be completed. This report will NOT be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention.** After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

Body Worn Camera Footage revealed the passenger window to the vehicle was rolled down. An officer's flash light illuminated the vehicle to where officers could see inside. Both of the suspect's hands could be seen above his head. A cell phone was in his left hand. You walked down to the truck and struck the passenger window with your duty weapon three times. You opened the passenger door, and the suspect's

hands were above his head as you pulled him from the vehicle. You struck the suspect on the top of the head with your duty weapon. When asked by ISB investigators, "Why did you hit him in the head with the gun?" You said, "At that point I had no other options. I was I had grabbed him with my left hand. I didn't want to lose grip with my left hand, he tensed up." You stated the suspect posed a threat when he tensed up as you removed him from the vehicle. Body Worn Camera Footage revealed that the suspect did not resist or pose a threat to you at any time. Therefore, these actions place you in violation of **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force\ Unnecessary Force' *by you at Longcrest Road and Hill Drive*. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by you, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee,
2. **The suspect** did not pose an immediate threat to your safety of while sitting on the passenger side of the vehicle with his hands above his head.
3. **The suspect** did not actively resist **you at any time**.

The primary issue related to this investigation centers upon your actions and whether his actions transcend the standards of the Memphis Police Department's Policy and

Procedures. These stands are established in **Memphis Police Department's DR-301 Excessive/ Unnecessary Force Policy.**

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

Video Analysis records indicated that you did not record the event on your Body Worn Camera. You stated you did not record the event due to you being a "plain clothes" officer on that day. Based on the current policy there are no exceptions to an officer assigned to uniform patrol wearing "plain clothes" to not utilize their Body Worn Camera during citizen interaction. There is only written policy for undercover OCU Officer to not utilize their Body Worn Camera during citizen interaction. Therefore, these actions place you in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras Policy.**

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

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.

The Memphis Police Department's Policy and Procedures Chapter 13, Page 5, and 6 states in part:

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)

Lt. Det. Lee #2009


Issuing Officer

Det. J. Williams #12843

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.

 #12833
Signature of Officer: _____

Written Response Ordered? ☐ Yes ☐ No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by:  ☒ Dep. Dir. ☐ Dep. Chief ☐ Work Station Commander

Delegated to:  ☒ Dep. Chief ☐ Station/Bureau

Major/Lt. Colonel/Colonel

Dlc Crowe

City of Memphis

Police Division, Inspectional Services Bureau

Case Summary I2020-010

I) Principal Employee:

POLICE OFFICER II Evan Smith #12833	Raines Station Task Force
POLICE OFFICER II Phillip Andrews#13016	Raines Station Task Force
POLICE OFFICER II Sheridan Cross#13619	Raines Station Task Force
POLICE OFFICER II Marcus Robinson #13124	Raines Station Task Force
POLICE OFFICER II Lawrence Williams #12284	Raines Station Task Force
LIEUTENANT Lorenzo Young #1237	Raines Station Delta Shift

II) Administrative Regulation:

DR 101 Compliance with Regulations: to wit In- Car Video/Body Worn Camera
DR 301 Excessive Force/ Unnecessary Force
DR 101 Compliance with Regulations: to wit Response to Resistance (Pointed Weapon)
DR 120 Neglect of Duty

III) Allegation:

It is alleged that on February 6, 2020, Officer Evan Smith, IBM #12833, used excessive force/ unnecessary force to take a citizen, Terry Stuart, into custody at Longcrest Road and Hill Drive.

IV) Background:

On February 6, 2020, at approximately 12:59 a.m., Officer Evan Smith was working a burglary and theft detail on the Raines Station Task Force in the area of Longcrest Road and Hill Drive. A black Ford F-150 was following his unmarked police vehicle. While following the unmarked police vehicle, the driver of the truck placed it in reverse while attempting to flee, subsequently becoming stuck in a ditch. Additional Raines Station Task Force Officers came to the location to assist. The driver of the vehicle, Stacy Hardwick, again attempted to flee by accelerating and turning the steering wheel to the vehicle in all directions. The vehicle could not gain traction. Officer Smith walked to the passenger side of the vehicle and struck the passenger window with his duty weapon. Officer Smith removed the passenger, Terry Stuart, from the vehicle and struck him on the head with his duty weapon. Mr. Stuart fell to the ground. Body Worn Camera Footage was reviewed by a supervisor in order to complete the Response to Resistance Form. Body Worn Camera Footage revealed possible policy and procedure violations. An incident report was submitted to ISB for investigation. As a result, an administrative case was opened to determine if Departmental Policies or Procedures were violated at any time.

V) CAD #:

P200370084

VI) Evidentiary Findings:

A) Statements:

Lieutenant Joe Owen (6420) stated he is assigned to the Raines Station Bravo Shift, and he is also the supervisor of the Raines Station Task Force. Lieutenant Owen stated he was not the supervisor over the task force on April 6, 2020. He only worked Bravo Shift that day, but he signed off on the pay roll for the Task Force. When he returned to work he received a Blue Team e-mail notification. Lieutenant Owen reviewed Officer Blevins' Body Worn Camera Footage, and he observed Officer Smith strike a male, Mr. Stuart, in the head with a gun. He completed an incident report, notified Security Squad, and his Lieutenant Colonel.

Lieutenant Owen stated that he may have informed the Task Force Officers that they could wear plain clothes. The attire for Task Force is black BDU, badge, gun belt, and Body Worn Camera. He has never seen the Task Force wear plain clothes, and they have never worn plain clothes under his supervision. The Task Force is to wear Body Worn Cameras according to departmental policy and procedure.

Principal Officer Evan Smith (12833) stated he was working Raines Station Task Force on February 6, 2020, at approximately 12:00 a.m. He was a two man car and his partner was Officer Cross. On that day they drove an unmarked police vehicle provided by GIB; a black Ford Fusion with government tags. He stated his attire was plain clothes, blue jeans, Nike hoodie, and gym shoes. Officer Smith said the Task Force was working a burglary and theft detail in the area of Third and Holmes when he spotted a suspicious Ford F-150 in the neighborhood making several turns in the area. He said he followed the vehicle for a few blocks. The truck noticed they were following them. The truck turned around and began to follow his unmarked police vehicle at a high rate of speed. Officer Smith stated the vehicle was trying to run them off the road. He got on his radio, car-to-car, and informed Task Force Officers of the situation.

Officer Smith stated Officer Andrews and Officer Blevins came to the area of Longcrest and Hill and attempted to conduct a traffic stop. The driver of the vehicle put the vehicle in reverse and backed into a ditch. Officers exited their vehicles and drew their weapons. The driver became stuck in the ditch and continued to accelerate at a high speed. Officer Smith said he got out of his vehicle, drew his weapon, and gave loud verbal commands to the occupants to exit the vehicle. The driver continued to accelerate the vehicle in the mud as he rocked back and forth attempting to gain traction. The occupants of the vehicle disregarded verbal commands given by officers. Officer Smith said he went to the passenger side of the vehicle and struck the passenger window several times with his duty weapon. Officer Smith stated after he

struck the window with his duty weapon, he opened the door and removed Terry Stuart from the passenger side of the vehicle. He then struck Mr. Stuart in the head with his gun. When asked by ISB investigators, "Why did you hit him in the head with the gun?" Officer Smith said, "At that point I had no other options. I was I has grabbed him with my left hand. I didn't want to lose grip with my left hand, he tensed up." Officer Smith stated that Mr. Stuart posed a threat when he tensed up as he was removed from the vehicle.

The additional Task Force Officers took control of Mr. Stuart, and Officer Smith went to assist Officer Williams with taking the driver, Mr. Stacy Hardwick, into custody. Officer Smith stated he observed an injury to Mr. Stuart's head. MFD came to the location and rendered aid to Mr. Stuart and Mr. Hardwick. Officers located a handgun under the driver's seat of the vehicle. Officer Smith tagged the handgun at 201 Poplar Property and Evidence. Officer Smith also completed the report for the incident. Officer Smith admitted he was not wearing his Body Worn Camera at the time of the incident.

Witness Officer Sheridan Cross (13619) stated she was working Raines Station Task Force on February 6, 2020, at approximately 12:00am. Officer Cross stated she was a two man car and her partner was Officer Smith. On that day, she and her partner were plain clothes and they drove an unmarked police car. Officer Cross stated plain clothes attire consists of black uniform pants, gun belt, and black shirt. Officer Cross stated she and Officer Smith noticed a black Ford pick-up truck circling the area. They observed the Ford pickup truck, occupied by two male whites, pull onto a street and park in front of a house where people are known to strip stolen cars. The driver of the vehicle noticed them following their pick-up truck. Officer Cross stated the driver of the vehicle turned around and began to follow their unmarked police car. At that time, Officer Smith notified the marked patrol unit, Officer Blevins and Andrews, who initiated a traffic stop. The driver of the pick-up truck put the vehicle in reverse and attempted to leave. The truck backed into a ditch and was stuck in the mud. She and her partner drew their weapons and gave verbal commands to occupants in the vehicle.

Officer Cross stated Officer Smith approached the passenger side vehicle and struck the window with his duty weapon. Officer Smith opened the door and pulled the passenger, Terry Stuart, from the vehicle. Officer Cross stated she assisted with taking Mr. Stuart into custody. It took four officers to subdue Mr. Stuart, due to him refusing to comply with verbal commands given by officers. Officer Cross said she struck Mr. Stuart in the back as an attempt to get his hands from underneath him while he was in a fetal position. Officer Cross stated she heard Mr. Stuart say, "Stop beating me!" Officer Cross said she observed a small laceration to Mr. Stuart's face after he was taken into custody. An ambulance came to the location to render aid to Mr. Stuart. Officer Cross stated Lieutenant Young was notified, but she did not see him at that location. Officer Cross stated she tagged the drugs and a weapon that was located on Mr. Stuart's person.

Witness Officer Phillip Andrews (13016) stated he was working Raines Station Task Force on February 6, 2020, at approximately 12:00 a.m. He was a two man unit, and his partner was Officer Blevins. Officer Andrews stated they were driving a marked Memphis Police car. During his tour of duty, he wore Task Force attire which consisted of a black hoodie, black pants, and a black vest with POLICE written on the front and back. He stated Officer Smith was driving a plain car while on duty. Officer Smith informed him that a black Ford F-150 pickup truck was following him in the area of Longcrest and Hill. When he got into the area, he observed the black pick-up truck trailing Officer Smith's vehicle. Officer Andrews stated he activated his blue lights to conduct a traffic stop. When he activated his blue lights, the driver of the black truck put the vehicle in reverse, went into a ditch, and was stuck in the mud.

Officer Andrews said he, along with other officers, drew their weapons and gave verbal commands for the two male white suspects to exit the vehicle. The driver, Stacy Hardwick, tried to get out of the ditch, but the ground was wet. The tires were rotating and unable to gain traction. Officer Andrews stated he witnessed Officer Smith strike the passenger window of the truck with his duty weapon; however he did not witness Officer Smith strike Mr. Stuart in the head with his duty weapon. He assisted with taking Mr. Stuart into custody. Officer Andrews said he struck Mr. Stuart in his lower back, near his left arm, while Mr. Stuart was on the ground in the fetal position due to him passively resisting when asked to give his hands. He stated Mr. Stuart did not pose a threat to him while on the ground in fetal position.

Mr. Terry was taken into custody. An ambulance came to the location to render aid to Mr. Hardwick and Mr. Stuart. Upon searching Mr. Stuart, officer located contraband on his person. He transported Mr. Stuart to Regional One and to jail.

Witness Officer Sean Blevins (11758) stated he was working Raines Station Task Force on February 6, 2020, at approximately 12:00 a.m. He was a two man car, and his partner was Officer Andrews. They were driving a marked Memphis Police car, and he was dressed in his duty uniform. Officer Blevins stated Officer Cross and Officer Smith were riding plain clothes in an unmarked police car. He stated Officer Smith informed him, on car- to- car, that a black truck was following him. When he got in the area, Longcrest Rd. and Hill Dr., he observed the black truck traveling at a high rate of speed. Officer Blevins stated he activated his blue lights and siren to conduct a traffic stop. At that time, the vehicle reversed off the roadway and drove into a ditch.

Officer Blevins said he drew his duty weapon and gave verbal commands for the suspects to exit the vehicle. The driver, Stacy Hardwick, continued to shift gears between drive and reverse as he attempted to get out of the ditch but was unsuccessful due to the wet ground. Officer Blevins said Officer Smith approached the vehicle and struck the passenger window two or three times with his duty weapon. Officer Smith then opened the passenger door, pulled Mr. Stuart from the vehicle, and struck him in the head with his gun. Mr. Stuart fell to the ground. Officers Robinson, Officer Andrews, and Officer Cross took Mr. Stuart into custody. Officer Blevins stated he

observed Mr. Stuart bleeding from his facial area. An ambulance arrived to administer aid to both Mr. Stuart and Mr. Hardwick. Officer Blevins transported Mr. Stuart to Regional One Hospital for medical treatment and to jail. Officer Blevins stated he did not have any physical interaction with Mr. Stuart. He assisted with the arrest of Mr. Hardwick.

Witness Officer Marcus Robinson(13124) stated he was working Raines Station Task Force on February 6, 2020, at approximately 12:00 a.m. Officer Robinson stated he was a two man car and his partner was Officer Williams. He stated he and his partner wore Task Force attire and drove an unmarked police car. They were looking for burglars within the precinct area. Officer Robinson stated Officer Smith and Officer Cross requested additional cars in the area of Longcrest and Hill. When he arrived to the location, Officer Blevins and Officer Andrews were present, and officers had their weapons drawn on a black Ford F-150. The black Ford F-150 was stuck in a muddy ditch trying to get out by pressing the gas and turning the steering wheel. The suspects were removed from the vehicle. Officer Robinson stated he used hard-hand techniques to affect the arrest when he assisted with taking Mr. Stuart into custody. Officer Robinson said he hit Mr. Stuart in the, face, head, shoulder, back and arm as he attempted to arrest Mr. Stuart. He further stated that he stood up and kicked Mr. Stuart while he was on the ground in a fetal position. Officer Robinson said he witnessed Officer Cross and Officer Andrews hit Mr. Stuart in the back.

Officer Robinson stated Mr. Stuart did not pose a threat to officers while on the ground in a fetal position. He observed a gash in the top of Mr. Stuart's head. Mr. Stuart asked officers, "Why y'all beat me like that?" after officers placed him into handcuffs. An ambulance came to the location to render aid to Mr. Stuart and Mr. Hardwick. Both Mr. Hardwick and Mr. Stuart were transported to jail.

Witness Officer Lawrence Williams (12284) stated he was working Raines Station Task Force on February 6, 2020, at approximately 12:00 a.m. He stated he was a two man car and his partner was Officer Robinson. He was a plain clothes spotter looking for burglars. Plain clothes consisted of all black attire. Officer Williams said he was occupying an unmarked police car on that day. He heard Officer Smith and Officer Cross saying that the suspects were following them in the area of Longcrest and Hill. When he arrived to the location, he observed a pick-up truck backing up trying to get out of a ditch. Officers were yelling and requested the occupants to get out of the vehicle. He ran to the driver side of the vehicle and assisted with taking Mr. Hardwick into custody.

Witness Officer Marc Piantedosi (13882) stated on he was working Raines Station Alpha Shift on February 6, 2020, at approximately 12:00 a.m. Officer Piantedosi said he went to Longcrest and Hill due to officers requesting assistance. When he arrived to the location, he observed Mr. Stacy Hardwick in handcuffs and Mr. Terry Stuart on the hood of the police car as officers checked them for weapons. Officer Piantedosi said he transported Mr. Hardwick to Regional One Hospital for medical clearance due to his chest pain. Afterwards, he transported Mr. Hardwick to jail. He stated he did

not observe any injury to Mr. Hardwick, and he did not have any contact with Mr. Stuart.

Witness Lieutenant Lorenzo Young (1237) stated he was working Raines Station Delta Shift on February 6, 2020, at approximately 12:00 a.m. He was not the supervisor of the Raines Station Task Force on that day. Officer Robinson called him, as a supervisor, regarding the incident that occurred at Longcrest and Hill. He stated that Officer Robinson did inform him that there were injuries, and officers had to use force to take the suspects into custody. He stated when he arrived to the location; all cars had cleared the location. Lieutenant Young made contact with Officer Robinson as he was leaving the location. Lieutenant Young then stated he did not go to the location where the incident occurred. He did not make contact with the suspects, and he did not to observe injuries. He called Felony Response and advised them of the situation, and he completed an incident report. Lieutenant Young stated he did not give the Task Force permission to wear plain clothes on that day. The order comes from their lieutenant, Lieutenant Owen, or the command staff.

B) Physical Evidence:

None

C) Forensic Evidence:

None

D) Recorded Evidence:

Arrest Documents
Audio Verifications CD of Civilian and Officer Recorded Statements
Body Worn Camera Footage
Event Chronology
Incident Reports
Response to Resistance
Video Request Form

E) Miscellaneous Evidence:

None

VII) AG Review:

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

VIII) Analysis:

The purpose of this investigation was to determine whether or not Officer Evan Smith violated the Memphis Police Department's Excessive Force\Unnecessary Force Policy. Statements taken from witness officers and the principal officer were obtained and reviewed. A copy of Incident Reports and Offense Report were reviewed. Officers Body Worn Camera Footage, MPD Communication information, arrest documents, and other related documents were obtained and reviewed. A contact letter was mailed to Mr. Stuart and Mr. Hardwick's home address. Mr. Stuart wrote a letter to ISB regarding excessive force used by officers. A letter was mailed to Mr. Stuart, from ISB, informing him that a case has been opened regarding his complaint.

Lieutenant Owen reviewed Body Worn Camera Footage related to the incident that occurred on February 6, 2020, at approximately 12:59 a.m. He submitted a memo to ISB regarding possible policy violations related to the Body Worn Camera Footage he observed. Officer Evan Smith, along with the Raines Station Task Force, were working a burglary and theft detail when they observed a suspicious black Ford F-150 in the target area. The truck passed Officer Smith's unmarked police car and made a u-turn and began to follow Officer Smith. Officer Smith informed the marked patrol units, and they attempted to conduct a traffic stop. The blue lights were initiated. The driver of the truck placed the vehicle in reverse and became stuck in the mud. Officer Smith approached the passenger door, struck the window with his duty weapon three times, and pulled the passenger, Mr. Stuart, from the vehicle. Officer Smith struck Mr. Stuart on the head with his duty weapon, and Mr. Stuart fell to the ground. This was corroborated by Officer Blevins' Body Worn Camera Footage and Officer Smith's statement to ISB investigators.

This investigation also revealed Mr. Stuart was struck by several Raines Station Task Force Officers simultaneously while in a fetal position. This was corroborated by Officer Andrews Body Worn Camera Footage. Mr. Stuart and Mr. Hardwick were taken into custody and treated by MFD Unit 42 at the incident location. Mr. Stuart was transported to Regional one for medical clearance. Mr. Hardwick was transported to Felony Response. Both suspects were then transported to jail.

According to Officer Smith's statement to ISB Investigators, he acknowledged that he drew his weapon and pointed it at both suspects in the vehicle. Records indicated that a Response to Resistance Form related to this incident was completed. However, Officer Smith did not complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place Officer Smith in violation of the Memphis Police Department's **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:
1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 2. Chemical agent use. (1.3.6c)
 3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
 4. The use of an MPD canine to apprehend a suspect.
 5. The use of the Baton/Expandable Baton. (1.3.6c)
 6. Whenever a suspect is charged with **T.C.A. 39-16-602 Resisting Arrest**.
 7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)
- C. The *Response to Resistance* incident in Blue Team need not be completed for:
1. The mere presence of police officers, the issuance of tactical commands; or
 2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
 3. The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a **Pointed Weapon Incident in BlueTeam will be completed**. This report will NOT be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention. After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

Officer Blevins' Body Worn Camera Footage revealed the passenger window to the vehicle was rolled down. Officer Blevins' flash light illuminated the vehicle to where officers could see inside. Both of Mr. Stuart's hands could be seen above his head. A cell phone was in his left hand. Officer Smith walked down to the truck and struck the passenger window with his duty weapon three times (3:03- 3:06 Minutes). Officer Smith

opened the passenger door, and Mr. Stuart's hands were above his head as Officer Smith pulled him from the vehicle. He struck Mr. Stuart on the top of the head with his duty weapon (3:14-3:20 Minutes). When asked by ISB investigators, "Why did you hit him in the head with the gun?" Officer Smith said, "At that point I had no other options. I was I has grabbed him with my left hand. I didn't want to lose grip with my left hand, he tensed up." Officer Smith stated that Mr. Stuart posed a threat when he tensed up as he removed him from the vehicle. Body Worn Camera Footage revealed that Mr. Stuart did not resist or pose a threat to Officer Smith at any time.. Therefore, these actions place Officer Smith in violation of **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force\ Unnecessary Force' ***by Officer Evan Smith at Longcrest Road and Hill Drive***. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by Officer Evan Smith, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee,
2. The suspect **Terry Stuart** did not pose an immediate threat to the safety of **Officer Evan Smith** while sitting on the passenger side of the vehicle with his hands above his head.
3. **Mr. Stuart** did not actively resist **Officer Smith at any time**.

The primary issue related to this investigation centers upon the actions of Officer Smith and whether his actions transcend the standards of the Memphis Police Department's

Policy and Procedures. These stands are established in **Memphis Police Department's DR-301 Excessive/ Unnecessary Force Policy.**

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

Video analysis records indicated that Officer Smith did not record the event on his Body Worn Camera. Officer Smith stated he did not record the event due to him being a "plain clothes" officer on that day. Based on the current policy, there are no exceptions to an officer assigned to uniform patrol wearing "plain clothes" to not utilize their Body Worn Camera during citizen interaction. There is only written policy for undercover OCU Officers to not utilize their Body Worn Cameras during undercover operations. Therefore, these actions place Officer Smith in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras Policy.**

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

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.

The Memphis Police Department's Policy and Procedures Chapter 13, Page 5, and 6 states in part:

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 Memphis Police Department's Policy and Procedure definitions relating to Undercover and Plainclothes officers are written in Chapter 2, Section 18, page 2 and 3:

II. Definitions:

- A. **Undercover Officer**- an officer in an undercover role whose primary duties involve collecting information, conducting surveillance, and transactions with criminals or the criminal element that may or may not immediately lead to an arrest. Normally, the work is covert in nature and may involve situations in which the officer has broken ties with the police department. In some situations, the officer may assume an entirely different identity in order to infiltrate targets (drug dealers, gambling syndicates, fencing operations, motorcycle and street gangs, etc.)
- B. **Plainclothes Officer**- an officer who performs law enforcement duties and assignments while wearing civilian attire. Examples include Bureau Detectives such as Homicide, Burglary, Street Crimes Units, Precinct Task Forces, Auto Cargo Task Force, and Narcotics Detectives who are not involved in undercover work, officers temporarily assigned to a plainclothes detail, and all off-duty officers wearing civilian attire.

III. Procedures:

A. **Undercover Officers**

Undercover officers should make every effort to avoid revealing their true identity. However, when an undercover officer observes an incident requiring immediate police action, the undercover officer will not intervene unless the incident involves a life-

threatening situation. In those situations that are not life threatening, the undercover officer should notify the appropriate personnel as soon as possible.

If an undercover officer takes official action and/or needs assistance from other police units, time-permitting, he/she should contact the Communications Bureau via radio or telephone. If the situation dictates, undercover officers are encouraged to notify the Communications Bureau of their race, sex, clothing description, and when applicable, their vehicle description, so that the information can be provided to responding units.

B. Plainclothes Officers

Plainclothes officers responding to an “in progress” crime or incident should notify the Communications Bureau of their presence and that they are in plainclothes.

Circumstances permitting, the officer should also advise the dispatcher of their race, sex, clothing description and a brief description of their vehicle for broadcast to all responding units. Plainclothes officers are encouraged to wait until the dispatcher has broadcast this information to responding units before engaging in any law enforcement activity.

Uniformed officers responding to an “in progress” crime or incident should immediately notify the dispatcher when they observe a plainclothes officer on the scene or in the area.

Plainclothes officers performing routine investigative tasks should notify the dispatcher of their location. If the nature of their work is secretive, such as a stationary surveillance or stakeout, plainclothes officers should notify the Communications Bureau or their supervisor or commanding officer by telephone of their location and activity.

Due to the facts of this investigation, Officer Cross became a principal officer as well. According to Officer Cross’ statement to ISB Investigators, she acknowledged that she drew her weapon and pointed it at the suspects in the vehicle. Records indicated that a Response to Resistance Form related to this incident was completed. However, Officer Cross did not complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place Officer Cross in violation of **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department’s DR 101 Compliance with Regulations 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.

Memphis Police Department’s Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:
1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 2. Chemical agent use. (1.3.6c)
 3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
 4. The use of an MPD canine to apprehend a suspect.
 5. The use of the Baton/Expandable Baton. (1.3.6c)
 6. **Whenever a suspect is charged with T.C.A. 39-16-602 Resisting Arrest.**
 7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)
- C. The *Response to Resistance* incident in Blue Team need not be completed for:
1. The mere presence of police officers, the issuance of tactical commands; or
 2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
 3. **The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a Pointed Weapon Incident in BlueTeam will be completed. This report will NOT be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention.** After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

According to Officer Cross' statement to ISB Investigators, she assisted with taking Mr. Stuart into custody. She advised in her statement that she struck Mr. Stuart in the back to get his arms from underneath him. She heard him say, "Stop beating me." Officer Cross stated that Mr. Stuart posed a threat while on the ground due to him refusing to show his hands. Officer Andrew's Body Worn Camera Footage refuted this. Additionally, Mr. Stuart was heard saying, "Oww, I'm not fighting." (3:50-3:55 Minutes). Officer Andrews' Body Worn Camera revealed Mr. Stuart said several times, "Why did you beat me like that? Why are you beating me?" (4:38-4:58 Minutes). Officer Andrews' Body Worn Camera Footage also revealed that Mr. Stuart was in a fetal position as several officers hit and kicked him at the same time. Mr. Stuart did not resist officers at any time, and he did not pose a threat to Officer Cross before or after he was struck on head with

Officer Smith's duty weapon. Therefore, these actions place Officer Cross in violation of violation of the Memphis Police Department's **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force/Unnecessary Force' by **Officer Sherdian Cross at Longcrest Road and Hill Drive**. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by **Officer Sherdian Cross**, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee,
2. The suspect **Terry Stuart** did not pose an immediate threat to the safety of **Officer Sheridan Cross or other officers**.
3. **Mr. Stuart** did not actively resist **Officer Cross at any time**.

This investigation centers upon the actions of Officer Cross and whether her actions transcend the standards of the Memphis Police Department's Policy and Procedures. These stands are established in **Memphis Police Department's DR-301 Excessive/ Unnecessary Force Policy**.

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

In Officer Cross' statement to ISB Investigators, she stated that she did not wear her Body Worn Camera because she was riding plainclothes. However, Video Analysis revealed that Body Worn Camera related to this event was captured. Officer Cross only recorded the event after both suspects were in custody. She did not record the event in its entirety. Based on the current policy, there are no exceptions to an officer assigned to uniform patrol wearing "plain clothes" to not utilize their Body Worn Camera during citizen interaction. There is only written policy for undercover OCU Officers to not utilize their Body Worn Cameras during undercover operations. Therefore, these actions place Officer Cross in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras Policy**.

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

B. Use of BWC During the Shift

7. 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.

8. **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.
9. 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.
10. 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").
11. 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.
12. 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.

The Memphis Police Department's Policy and Procedures Chapter 13, Page 5, and 6 states in part:

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 Memphis Police Department's Policy and Procedure definitions relating to Undercover and Plainclothes officers are written in Chapter 2, Section 18, page 2 and 3:

II. Definitions:

A. Undercover Officer- an officer in an undercover role whose primary duties involve collecting information, conducting surveillance, and transactions with criminals or the criminal element that may or may not immediately lead to an arrest. Normally, the work is covert in nature and may involve situations in which the officer has broken ties with the police department. In some situations, the officer may assume an entirely different identity in order to infiltrate targets (drug dealers, gambling syndicates, fencing operations, motorcycle and street gangs, etc.)

B. Plainclothes Officer- an officer who performs law enforcement duties and assignments while wearing civilian attire. Examples include Bureau Detectives such as Homicide, Burglary, Street Crimes Units, Precinct Task Forces, Auto Cargo Task Force, and Narcotics Detectives who are not involved in undercover work, officers temporarily assigned to a plainclothes detail, and all off-duty officers wearing civilian attire.

III. Procedures:

A. Undercover Officers

Undercover officers should make every effort to avoid revealing their true identity. However, when an undercover officer observes an incident requiring immediate police action, the undercover officer will not intervene unless the incident involves a life-threatening situation. In those situations that are not life threatening, the undercover officer should notify the appropriate personnel as soon as possible.

If an undercover officer takes official action and/or needs assistance from other police units, time-permitting, he/she should contact the Communications Bureau via radio or

telephone. If the situation dictates, undercover officers are encouraged to notify the Communications Bureau of their race, sex, clothing description, and when applicable, their vehicle description, so that the information can be provided to responding units.

B. Plainclothes Officers

Plainclothes officers responding to an “in progress” crime or incident should notify the Communications Bureau of their presence and that they are in plainclothes. Circumstances permitting, the officer should also advise the dispatcher of their race, sex, clothing description and a brief description of their vehicle for broadcast to all responding units. Plainclothes officers are encouraged to wait until the dispatcher has broadcast this information to responding units before engaging in any law enforcement activity.

Uniformed officers responding to an “in progress” crime or incident should immediately notify the dispatcher when they observe a plainclothes officer on the scene or in the area.

Plainclothes officers performing routine investigative tasks should notify the dispatcher of their location. If the nature of their work is secretive, such as a stationary surveillance or stakeout, plainclothes officers should notify the Communications Bureau or their supervisor or commanding officer by telephone of their location and activity.

According to Officer Andrews’ statement to ISB Investigators, he acknowledged that he pointed his weapon at the suspects in the vehicle. Records indicate that Officer Andrews completed a Response to Resistance Form. However, he did not complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place Officer Andrews in violation of **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department’s DR 101 Compliance with Regulations 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.

Memphis Police Department’s Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:

1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B.** It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:
1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 2. Chemical agent use. (1.3.6c)
 3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
 4. The use of an MPD canine to apprehend a suspect.
 5. The use of the Baton/Expandable Baton. (1.3.6c)
 6. **Whenever a suspect is charged with T.C.A. 39-16-602 Resisting Arrest.**
 7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)
- C.** The *Response to Resistance* incident in Blue Team need not be completed for:
1. The mere presence of police officers, the issuance of tactical commands; or
 2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
 3. **The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a **Pointed Weapon Incident in BlueTeam will be completed.** This report will **NOT** be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention.** After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

According to Officer Andrews' statement to ISB Investigators, he admitted to striking Mr. Stuart. "Uh, with my closed fist one, once, or twice trying to get his left arm from out underneath him clinched. Just like in the lower back maybe like where the left arm, it was kinda clinched up in fetal position. Maybe just loosen his arm up." When asked by ISB Investigators if Mr. Stuart posed a threat to him while in a fetal position, Officer Andrews said, "No." Officer Andrews also acknowledged that he was aware that Mr. Stuart was struck in the head with a weapon prior his interaction with Mr. Stuart.

Officer Andrews' Body Worn Camera Footage revealed that Mr. Stuart did not resist officers. Officers were seen striking Mr. Stuart at the same time. Mr. Stuart was seen in a fetal position as officers kicked and hit him. Mr. Stuart said, "You can have my hands, God damn, why are you beating me? I had my hands up the whole time bro. Oww God damn." (3:33- 3:39 Minutes). Officer Andrews was also seen pulling Mr. Stuart's hair. (4:24-4:30 Minutes). When Officer Andrews asked for Mr. Stuart's hands, Mr. Stuart

said, "You got it man, get off me. Why did you beat me like that? Why are you beating me like that?" (4:23- 4:58 Minutes). These actions place Officer Andrews in violation of the Memphis Police Department's **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force/Unnecessary Force' ***by Officer Phillip Andrews at Longcrest Road and Hill Drive***. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by Officer Philip Andrews, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee.
2. The suspect **Terry Stuart** did not pose an immediate threat to the safety of **Officer Andrews** while in fetal position as Officer Andrews struck him.
3. **Mr. Stuart** did not actively resist nor did he pose a threat to **Officer Andrews at any time**.

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

Upon further investigation, Officer Robinson became a principal officer. According to Officer Robinson's statement to ISB Investigators, he acknowledged that he drew his weapon and pointed it at the suspects in the vehicle. He stated, "When I first got out the car, I draw my weapon, I draw my weapon, but I immediately put it back up." Records indicated that a Response to Resistance Form related to this incident was completed. However, Officer Robinson did not complete a Pointed Weapon Incident as required by departmental policy and procedure. Therefore, these actions place Officer Robinson in violation of the Memphis Police Department's **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
 - 1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:

1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
2. Chemical agent use. (1.3.6c)
3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
4. The use of an MPD canine to apprehend a suspect.
5. The use of the Baton/Expandable Baton. (1.3.6c)
6. Whenever a suspect is charged with **T.C.A. 39-16-602 Resisting Arrest**.
7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)

C. The *Response to Resistance* incident in Blue Team need not be completed for:

1. The mere presence of police officers, the issuance of tactical commands; or
2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
3. The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a **Pointed Weapon Incident in BlueTeam will be completed**. This report will **NOT** be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention. After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

According to Officer Robinson's statement to ISB Investigators, he assisted with the arrest of Mr. Stuart. Officer Robinson admitted to using hard hands. He stated, "Well, I hit him a couple of times, um, in the back, in the shoulder. Um also, I think I kicked him and, um.. After I stood up, I think I kicked him." Officer Robinson admitted to kicking Mr. Stuart after he stood up. "Yeah, I had to stand up first. Reason I stood up because it was muddy and Officer Cross was still on the scene, and she had a weapon still out. That's why I stood up." Officer Andrews' Body Worn Camera Footage also showed Officer Robinson kicking Mr. Stuart repeatedly (3:30-3:40 minutes). Officer Robinson stated that he did not know if Mr. Stuart posed a threat. When asked if Officer Robinson heard Mr. Stuart say, "Stop it. Y'all are beating me." Officer Robinson said, "I heard him say that after the fact. After we got him in cuffs." He was asking, "Why we, why we, beat him like that, that what he said." Officer Andrews' Body Worn Camera Footage showed Officer Robinson pulling Mr. Stuart's hair and hitting his head on the ground (4:04-4:10 Minutes).

Officer Andrews' Body Worn Camera Footage revealed that Mr. Stuart did not resist or fight at any time. Officers struck Mr. Stuart simultaneously while he was in a fetal position. Officer Robinson was seen pulling Mr. Stuart's hair and hitting his head on the

ground. Officer Robinson's actions were needless and unnecessary. These actions place Officer Robinson in violation of violation of the Memphis Police Department's **DR-301 Excessive/ Unnecessary Force**.

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 'Excessive Force/Unnecessary Force' ***by Officer Marcus Robinson at Longcrest Road and Hill Drive***. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by Officer Marcus Robinson, and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct, Electronic Arrest Warrants, Resisting Stop Arrest, Methamphetamine Possession Felony and Possession of Drug Paraphernalia*** are both misdemeanor and felony charges in the state of Tennessee.
2. The suspect **Terry Stuart** did not pose an immediate threat to the safety of **Officer Robinson** while in a fetal position as Officer Robinson stood up and kicked him.
3. **Mr. Stuart** did not actively resist or did he pose a threat to **Officer Robinson at any time**.

The Memphis Police Department's DR-301 Excessive/ Unnecessary Force 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.

Officer Robinson did not record the event in its entirety as required by departmental policy and procedure. Video Analysis revealed that Officer Robinson only recorded the incident after the suspects were taken into custody. These actions place Officer Robinson in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras Policy**.

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

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.

Records indicated that Officer Williams completed a Response to Resistance Form. However, a Pointed Weapon Incident was not completed as required by departmental policy and procedure. Officer Williams denied drawing his weapon in his interview with ISB Investigators. Officer Williams Response to Resistance Form indicated that he pointed his weapon at the truck that the suspects were currently occupying at the time. Therefore, these actions place Officer Williams in violation of **DR 101 Compliance with regulations to wit: Response to Resistance. (Pointed Weapon)**

The Memphis Police Department's DR 101 Compliance with Regulations 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.

Memphis Police Department's Policy and Procedures regarding Pointed Weapon Incident: Chapter 2, Section 8: Response to Resistance, page 4 which states in part:

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
 1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:

1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
2. Chemical agent use. (1.3.6c)
3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
4. The use of an MPD canine to apprehend a suspect.
5. The use of the Baton/Expandable Baton. (1.3.6c)
6. Whenever a suspect is charged with **T.C.A. 39-16-602 Resisting Arrest**.
7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)

C. The *Response to Resistance* incident in Blue Team need not be completed for:

1. The mere presence of police officers, the issuance of tactical commands; or
2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
3. The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a **Pointed Weapon Incident in BlueTeam will be completed**. This report will **NOT** be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention. After chain of command approval of the response to resistance incident, the Workstation Commander or his designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c).

Video Analysis revealed that Officer Williams did not record the event. Officer Williams admitted to ISB Investigators that he did not wear his Body Worn Camera during the event due to him being a spotter wearing "plain clothes." Based on the current policy, there are no exceptions for officers assigned to uniform patrol wearing "plain clothes" not to utilize their Body Worn Camera during citizen interaction. There is only written policy for undercover OCU Officers not to utilize their Body Worn Cameras during undercover operations. Therefore, these actions place Officer Williams in violation of in the Memphis Police Department's **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras**.

The Memphis Police Department's DR 101 Compliance with Regulation 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.

The Memphis Police Department's Policy and Procedure Regarding IN-Car Video/ Body Worn Cameras: Chapter 13, Section 15, Pages 3 and 4 states in part:

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.

The Memphis Police Department's Policy and Procedures Chapter 13, Page 5, and 6 states in part:

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 Memphis Police Department's Policy and Procedure definitions relating to Undercover and Plainclothes officers are written in Chapter 2, Section 18, page 2 and 3:

II. Definitions:

- A. **Undercover Officer**- an officer in an undercover role whose primary duties involve collecting information, conducting surveillance, and transactions with criminals or the criminal element that may or may not immediately lead to an arrest. Normally, the work is covert in nature and may involve situations in which the officer has broken ties with the police department. In some situations, the officer may assume an entirely different identity in order to infiltrate targets (drug dealers, gambling syndicates, fencing operations, motorcycle and street gangs, etc.)
- B. **Plainclothes Officer**- an officer who performs law enforcement duties and assignments while wearing civilian attire. Examples include Bureau Detectives such as Homicide, Burglary, Street Crimes Units, Precinct Task Forces, Auto Cargo Task Force, and Narcotics Detectives who are not involved in undercover work, officers temporarily assigned to a plainclothes detail, and all off-duty officers wearing civilian attire.

III. Procedures:

A. Undercover Officers

Undercover officers should make every effort to avoid revealing their true identity.

However, when an undercover officer observes an incident requiring immediate police action, the undercover officer will not intervene unless the incident involves a life-threatening situation. In those situations that are not life threatening, the undercover officer should notify the appropriate personnel as soon as possible.

If an undercover officer takes official action and/or needs assistance from other police units, time-permitting, he/she should contact the Communications Bureau via radio or telephone. If the situation dictates, undercover officers are encouraged to notify the Communications Bureau of their race, sex, clothing description, and when applicable, their vehicle description, so that the information can be provided to responding units.

B. Plainclothes Officers

Plainclothes officers responding to an "in progress" crime or incident should notify the Communications Bureau of their presence and that they are in plainclothes. Circumstances permitting, the officer should also advise the dispatcher of their race, sex, clothing description and a brief description of their vehicle for broadcast to all responding units. Plainclothes officers are encouraged to wait until the dispatcher has broadcast this information to responding units before engaging in any law enforcement activity.

Uniformed officers responding to an "in progress" crime or incident should immediately notify the dispatcher when they observe a plainclothes officer on the scene or in the area.

Plainclothes officers performing routine investigative tasks should notify the dispatcher of their location. If the nature of their work is secretive, such as a stationary surveillance or stakeout, plainclothes officers should notify the Communications Bureau or their supervisor or commanding officer by telephone of their location and activity.

According to Lieutenant Young's statement given to ISB Investigators, Officer Robinson called and informed him of the incident that occurred at Longcrest and Hill. Lieutenant Young stated when he arrived at the location; the officers had cleared. He stated Officer Robinson was leaving the area as he arrived. Lieutenant Young said he did not make contact with the suspects, therefore, he never observed their injuries. He acknowledged that he was aware that suspects were injured, officers used force, and the suspects resisted arrest. He stated that he was ill on that evening. When asked by ISB investigators if he notified another supervisor of his illness, or if he was going to be late to the scene, Lieutenant Young said, "Well, I, I, I notified their supervisor later." Officers stated that a supervisor was called, however they did not see a supervisor at the location prior to clearing the incident location. Lieutenant Young admitted that he did not make the scene. Therefore, these actions place Lieutenant Young in violation **DR 120 Neglect of Duty**.

The Memphis Police Department's DR 120 Neglect of Duty 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.

IX) Conclusion:

Based on the facts of the case, the preponderance of evidence shows that, **Officer Evan Smith #12833, IS** in violation of the stated allegation **DR 101 Compliance with regulations to wit: Response to Resistance (Pointed Weapon)**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Evan Smith #12833, IS** in violation of the stated allegation, **DR- 301 Excessive/ Unnecessary Force**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Evan Smith #12833 IS** in violation of the stated allegation **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Sheridan Cross #13619, IS** in violation of the stated allegation **DR 101 Compliance with regulations to wit: Response to Resistance (Pointed Weapon)**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Sheridan Cross #13619 IS** in violation of the stated allegation, **DR- 301 Excessive/ Unnecessary Force**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Sheridan Cross #13619, IS** in violation of the stated allegation **DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras**. Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Phillip Andrews #13016, IS in violation of the stated allegation DR 101 Compliance with regulations to wit: Response to Resistance (Pointed Weapon).** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Phillip Andrews #13016, IS in violation of the stated allegation, DR- 301 Excessive/ Unnecessary Force.** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Marcus Robinson #13124, IS in violation of the stated allegation DR 101 Compliance with regulations to wit: Response to Resistance (Pointed Weapon).** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Marcus Robinson #13124, IS in violation of the stated allegation, DR- 301 Excessive/ Unnecessary Force.** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Marcus Robinson #13124, IS in violation of the stated allegation DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras.** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Lawrence Williams #12284, IS in violation of the stated allegation DR 101 Compliance with regulations to wit: Response to Resistance (Pointed Weapon).** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Lawrence Williams #12284, IS in violation of the stated allegation DR 101 Compliance with Regulations to wit: In-Car Video / Body Worn Cameras.** Therefore, the allegation is **Sustained.**

Based on the facts of the case, the preponderance of evidence shows that, **Lieutenant Lorenzo Young #1237, IS in violation of the stated allegation DR 101 Neglect of Duty** Therefore, the allegation is **Sustained.**