



TENNESSEE
PEACE OFFICER STANDARDS AND TRAINING COMMISSION

CHANGE OF STATUS

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

DEPARTMENT: Memphis Police Department CERTIFICATION NUMBER: 0775-3619

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

Type of Separation

Effective Date (mm/dd/yyyy)

☐ Resigned _____/_____/_____

☐ Retired _____/_____/_____

☐ Terminated _____/_____/_____

☐ Discharged _____/_____/_____

☐ Other _____/_____/_____

Reason: _____

New Employer, if known _____

☐ **CHANGE OF NAME/RANK:** From _____ to _____

Effective Date of Change: _____/_____/_____

☒ **LEAVE:** This officer has been granted leave as indicated:

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

☒ Administrative

☐ Educational

☐ Military

☐ Medical

☐ Maternity

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

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

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

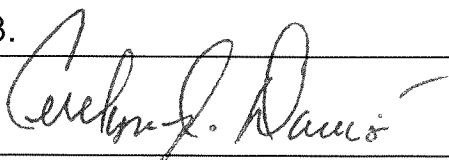
Officer relieved of duty effective January 8, 2023.

FOR POST USE ONLY

File _____ DOE _____/_____/_____

Card: 4x6 _____ 3x5 _____ DOB: _____

DOC: _____/_____/_____ #: _____


Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



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Signature of Agency Head

Cerelyn J. Davis

Print/Type Name of Agency Head

Memphis Police Department

AGENCY



Peace Officer Standards and Training Commission
Decertification Request

Agency Requesting Decertification: Memphis Police Department

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

Address: [REDACTED]

Please check all that apply:

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

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

Cerelyn J. Davis

Signature of Law Enforcement Agency Head

Date: 1 / 25 / 2023

Cerelyn J. Davis

Print Name

City of Memphis
Police Division
Inspectional Services Bureau

Memphis Police Dept.
Human Resources

JAN 25 2023

RECEIVED

Case # I2023-001 Statement of Charges

Officer's Name: Smith, Justin L.

IBM # 13999

Rank: Police Officer II

Assignment: OCU/Scorpion Unit

Date: January 14, 2023

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

DR 104 Personal Conduct: TERMINATION

DR 120 Neglect of Duty: TERMINATION

DR 127 Duty to Intervene and Reporting Improper Conduct: TERMINATION

DR 301 Excessive Force/Unnecessary Force: TERMINATION

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

Date of Occurrence: January 7, 2023

Statement of Particulars:

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

DR 104 PERSONAL CONDUCT

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

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

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

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

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

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

DR 101 COMPLIANCE WITH REGULATIONS

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

B. Use of BWC During the Shift

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

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

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

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

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

D. OCU Procedures

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

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

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

2. OCU Personnel Working Non-OCU related details:

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

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

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

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

Written Response Ordered?

☐ Yes ☒ No

J.D. JKM - #1844
Issuing Officer

Sgt. D. Craig #4164
Charging Officer

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

[Signature] 13999
Signature of Officer:

Was officer relieved of duty? ☒ Yes ☐ No

Reviewed by: ☒ Assistant Chief ☐ Deputy Chief ☐ Work Station Commander

Delegated to: ☒ Deputy Chief ☐ Station/Bureau D/C Michael Hardy

[Signature] A Chief

[Signature] Major/Lt. Colonel/Colonel
A. Crone / D. Hardy

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

Administrative Summons

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

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

I. Allegation

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

II. Rules, regulations or orders violated.

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

III. Hearing

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

You are entitled to representation during this hearing.

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

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

Signature of Officer: [Signature] 13999

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

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

HEARING SUMMARY FORM

#I2023-001

Hearing:

January 20, 2023

Date

1200 hrs

Time

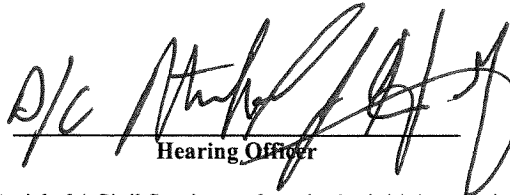
Location: 2714 Union Ave Ext, Suite 700

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

Hearing Officer: Deputy Chief M. Hardy #3581

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

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


Hearing Officer

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

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

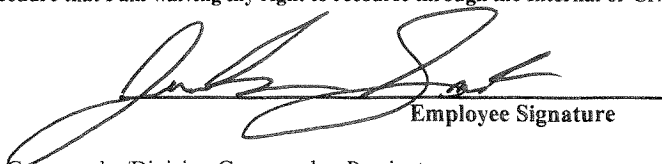
Appeal: ☐ Will ☒ Will Not Be Filed

Grievance: ☒ Will ☐ Will Not Be Filed

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

01-20-23

Date


Employee Signature

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

JLS

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

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

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

DR 104 PERSONAL CONDUCT

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

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

DR 120 NEGLECT OF DUTY

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

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

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

DR 127 DUTY TO INTERVENE AND REPORTING IMPROPER CONDUCT

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

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

DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Use of BWC During the Shift

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

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

DR 104 Personal Conducts: SUSTAINED and TERMINATION is ordered.

DR 120 Neglect of Duty: SUSTAINED and TERMINATION is ordered

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

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

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

*Memphis Police
Association*



Essica Cage-Rosario, President

Matt Cunningham, Vice President

Jeremy White, Secretary/Treasurer

John Covington, Chief Steward

Shannon Bowen, Sergeant at Arms

January 20, 2023

To Whom It May Concern:

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

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

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

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

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

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

STATEMENT OF JUSTIN L. SMITH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

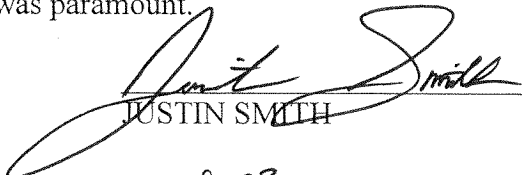
Obviously, because one officer believed that the use of OC spray was reasonable and necessary to gain control over the suspect, I then attempted to utilize my OC spray. I am not sure whether or not it was effective when used.

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

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

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


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


JUSTIN SMITH
01-19-23
DATE

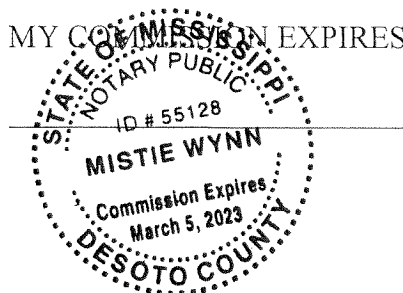
STATE OF MISSISSIPPI
COUNTY OF DESOTO

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

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


NOTARY PUBLIC

MY COMMISSION EXPIRES:





MEMPHIS POLICE DEPARTMENT MEMORANDUM



To: Assistant Chief Don Crowe Subject: Hearing Status

From: Deputy Chief Hardy

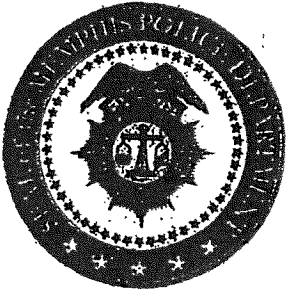
Date: 01/20/2023

Assistant Chief Crowe,

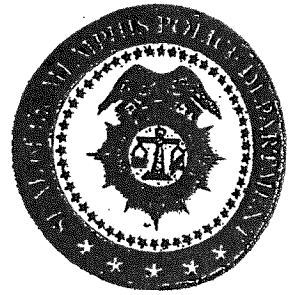
On January 20, 2023 at 1740 hrs, the Administrative hearing for Officer Justin Smith #13999 was held. Deputy Chief Hardy #3581 was the Hearing Officer. The charges for DR 104 Personal Conduct, DR 120 Neglect of Duty, DR 127 Duty to Intervene and Reporting Improper Conduct, and DR 301 Excessive Force/Unnecessary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

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

[illegible]



MEMPHIS POLICE DEPARTMENT
DEPUTY DIRECTOR'S OFFICE



RECEIPT OF SOC'S

NAME/IBM #

Smith, Justin - #13999

SOC #

IAB FILE #

(if applicable)

12023-001 (F)

SECURITY SQUAD FILE #

(if applicable)

Shenne Washington
A/C's Office (received)

1/25/2023
Date

Deputy Chief's Office

Date

Shenne Washington
A/C's Office (after hearing)

1/25/2023
Date

Carlton Gibson
MPD Human Resources

1-25-2023
Date

IAB/Security Squad

Date

PDR