

# Exhibit B

# City of Memphis

## Police Division, Inspectional Services Bureau

### Case Summary I2019-024

Printed On: 7/4/2020

#### **I) Principal Officer:**

- POLICE OFFICER II Colin Berryhill, IBM #11917	- Mt. Moriah Station - C
- LIEUTENANT Byron Johnson, IBM #0389	- Mt. Moriah Station - C

#### **II) Administrative Regulation:**

DR 301 Excessive Force/Unnecessary Force (3 Counts)  
DR 101 Compliance with Regulations to wit: Weapons (CEW) (4 Counts)  
DR 101 Compliance with Regulations to wit: Duty Member: Supervisory

#### **III) Allegation:**

It is alleged that on April 10, 2019, Officer Colin Berryhill, IBM # 11917, used excessive force/unnecessary force during the arrest of Mr. Owen Buzzard while on the scene of a traffic stop at 3955 Cochese Street.

#### **IV) Background:**

On April 10, 2019, at approximately 8:40 p.m., Officer Berryhill conducted a traffic stop in front of 3955 Cochese for a vehicle traveling on the wrong side of the street. Officer Berryhill made contact with the driver, Mr. Owen Buzzard, and requested his driver's license information. Officer Berryhill informed Mr. Buzzard that his driver's license was suspended. Officer Berryhill ordered Mr. Buzzard from his vehicle and handcuffed him. Officer Berryhill gave Mr. Buzzard verbal commands to stop resisting. There was a tussle, and Mr. Buzzard fell on his back. As he rose from the ground, he was tased in the abdominal area by Officer Berryhill. An ambulance responded to the scene. Mr. Buzzard was transported to regional One Health and later to jail.

The decision was made by the Inspectional Services Bureau to review Officer Berryhill's Response to Resistance Reports from January 2017 through April 2019 for excessive force/unnecessary force violations. The investigation resulted in three separate excessive force/unnecessary force incidents being addressed:

Incident #1: Owen Buzzard, April 10, 2019, 3955 Cochese St.  
Incident #2: Joshua Cortez, April 4, 2019, 1448 Merrycrest Dr.  
Incident #3: Terrence Barber Jr., May 23, 2018, 5093 Wooddale Ave.

#### **V) CAD #:**

Incident #1: 3855 Cochese: P191002965

Incident #2: 1448 Merrycrest: P190942140 and P19042410

Incident #3: 5093 Wooddale: P181433390 and P181431612

## **VI) Evidentiary Findings:**

### **A) Statements:**

#### **Incident# 1 Statements**

##### **3955 Cochese**

**Civilian Witness Owen Buzzard** stated on April 10, 2019, he pulled out of his driveway (3972 Cochese St.) to turn his truck and trailer around. He was parked on the wrong side of the road, and he observed the officer's blue lights. The officer, later identified as Officer Berryhill, made contact with him. Officer Berryhill requested his driver's license. He gave Officer Berryhill his personal information. Officer Berryhill ran his driver's license and informed him that his driver's license was suspended. Officer Berryhill asked him to step out of the vehicle.

Mr. Buzzard said when he stepped out of his vehicle, his pants were falling off of his waistline. Mr. Buzzard attempted to pull up his pants by his back pockets. Officer Berryhill told him to stop reaching. Mr. Buzzard said, "I'm not reaching for nothing. I'm pulling my pants up." Officer Berryhill grabbed him and pulled his arms causing him to fall to the ground. Officer Berryhill said, "Quit Resisting." Mr. Buzzard stated he did not resist at any time. He was unsure why Officer Berryhill put his hands on him in that manner. Mr. Buzzard did not know why Officer Berryhill was aggressive. He followed all directions that were given by Officer Berryhill. Officer Berryhill was very close on him, and he could see Mr. Buzzard's hands.

Mr. Buzzard stated as he was standing up, he was tased on the left side of his body by his ribcage and beltline by Officer Berryhill. Mr. Buzzard then fell to the ground injuring his right hand. After he fell to the ground, he was tased again and placed in handcuffs by Officer Berryhill. More police officers arrived along with a lieutenant, later identified as Lieutenant Wong. The lieutenant walked up and said to Officer Berryhill, "Hey, what's happening Stun Gun King?" Mr. Buzzard was transported to Regional One Hospital, via ambulance, where he received three stitches to his right hand. Mr. Buzzard was later transported to jail. Mr. Buzzard stated no weapons were located on his person.

**Civilian Witness Amanda Raithel** stated Mr. Buzzard is her significant other, and they live at 3972 Cochese Road. On April 10, 2019, Mr. Buzzard backed out of their driveway and pulled in front of a neighbor's house to make sure nothing fell from his trailer. He was parked on the wrong side of the street, and the police pulled behind his truck. Officer Berryhill told Mr. Buzzard he was being detained. Officer Berryhill asked Mr. Buzzard to stay in his vehicle while he checked his driver's license.

Ms. Raithel said as she walked towards Officer Berryhill, he told her to back up. She followed his directions and stood in a neighbor's yard. Officer Berryhill told Mr. Buzzard

that his license was suspended and to step out of the vehicle. When Mr. Buzzard got out of the vehicle he said, "I am pulling up my pants." Officer Berryhill gave Mr. Buzzard the verbal command to stop trying to pull stuff out of your pockets. Mr. Buzzard told him, "I'm not." Mr. Buzzard was tased twice by Officer Berryhill. The first time the officer tased him, he fell to the ground. The second time Officer Berryhill tased Mr. Buzzard, he was on the ground screaming.

Ms. Raithel stated she did not observe Mr. Buzzard assault or resist the officer at any time. Mr. Buzzard told the officer what he was doing. Mr. Buzzard sustained injuries to his right hand and ribs. A lieutenant (Lieutenant Wong) came to the location and would not talk to her upon her request. The lieutenant referred to Officer Berryhill as "The Stun Gun King."

**Civilian Witness Elton Williams** stated he lives at 3955 Cochese Street. On April 10, 2019, he was sitting on his front porch when he observed Mr. Buzzard leaving his driveway, 3972 Cochese, in his vehicle. Mr. Buzzard parked in front of his (Mr. Elton's) home. The police stopped Mr. Buzzard and removed him from the vehicle. Officer Berryhill tased Mr. Buzzard, and Mr. Buzzard fell on the ground.

Mr. Williams stated he did not observe Mr. Buzzard resist Officer Berryhill. Mr. Williams said he only heard the officer ask Mr. Buzzard to move his hands from his pants once. After the verbal command was given, Officer Berryhill tased Mr. Buzzard. There were several police cars on the street, and Mr. Buzzard got into an ambulance.

**Witness Major Robbin Campbell (1638)** stated he is the Charlie Shift Major at Mt. Moriah Station. After reviewing Officer Berryhill's Response to Resistance and Body Worn Camera Footage for 3955 Cochese, he observed Policy and Procedure Violations that should be addressed. Major Campbell forwarded Officer Berryhill's Blue Team entry to ISB for further review.

**Witness Officer Gustavo Tudon (13728)** stated he was working Charlie Shift April 10, 2019, at approximately 8:00 p.m. He was a two man car and his partner was Officer Helton (12381). They did not witness the incident involving Officer Berryhill at 3955 Cochese. They arrived after the incident occurred. They were on a traffic stop when they heard Officer Berryhill requesting additional cars at that location. When he arrived, Mr. Buzzard was detained in handcuffs.

Officer Tudon observed prongs to Mr. Buzzard's upper abdominal area from being tased by Officer Berryhill. Officer Tudon did not observe any injuries to Mr. Buzzard. When the ambulance arrived, Officer Tudon rode in the ambulance with Mr. Buzzard to Regional One Hospital as his partner followed the ambulance. After they arrived to Regional One Hospital, he and his partner were relieved by an Alpha Shift Officer.

**Witness Officer David Helton (12381)** stated he was working the Charlie Shift on April 10, 2019, at approximately 8:00 p.m. He was a two man car and his partner was Officer Tudon (13728). They were on a traffic stop at a nearby location. Officer Berryhill

requested additional officers due to a suspect resisting arrest. When Officer Helton and his partner arrived, Officer Berryhill had a male white handcuffed standing outside of his truck. The incident occurred prior to his arrival. Officer Berryhill informed him that he asked Mr. Buzzard to put his hands behind his back, and Mr. Buzzard reached into his back pockets. Therefore, Officer Berryhill tased Mr. Buzzard.

Officer Helton and his partner remained on the scene until given further instruction by Lieutenant Wong. Lieutenant Wong asked him to follow the ambulance while his partner, Officer Tudon, rode in the ambulance with Mr. Buzzard to Regional One Hospital. Mr. Buzzard did not complain of any injuries during their interaction. When they arrived to the hospital, they were relieved by an Alpha Shift Officer.

**Witness Lieutenant Kam Wong (9114)** stated he was the Charlie Shift Lieutenant on April 10, 2019. He made the scene at 3955 Cochese Street regarding Officer Berryhill tasing Mr. Buzzard during a traffic stop. Officer Berryhill stated he made a traffic stop and Mr. Buzzard refused to follow verbal commands when asked to stop reaching. While in handcuffs, Mr. Buzzard resisted arrest, and they both fell to the ground due to Mr. Buzzard's actions.

Lieutenant Wong stated a torch lighter was located in Mr. Buzzard's back pocket. He did not witness the incident as it occurred. While on the scene, Lieutenant Wong spoke with Ms. Amanda Raithel, Mr. Buzzard's girlfriend. He also spoke with neighbors, Mr. Darrell Cooper and Mr. Elton. They witnessed the incident while sitting on the porch at 3955 Cochese.

Lieutenant Wong observed injury to Mr. Buzzard's finger and observed the probes from the taser embedded into his skin. Mr. Buzzard was transported to Regional One in non-critical condition. He advised that he reviewed Officer Berryhill's Body Worn Camera Footage regarding this incident. Lieutenant Wong did not recall calling anyone "The Taser King" or "The Stun Gun King." Lieutenant Wong completed an incident report regarding this incident.

**Witness Officer Silas Billington (12016)** stated he was working Alpha Shift April 11, 2019. He was dispatched to Regional One to relieve the Delta Shift officers that were with Mr. Buzzard. He did not witness the incident as it occurred. He transported Mr. Buzzard from the Regional One Hospital to jail.

**Principal Officer Colin Berryhill (11917)** stated he was working the Charlie Shift April 10, 2019. He conducted a traffic stop in the area of 3955 Cochese St. due to a vehicle blocking a lane of traffic. He made contact with driver of the vehicle, Mr. Buzzard. He ran Mr. Buzzard's personal information on Station B and discovered Mr. Buzzard had a suspended driver's license. Officer Berryhill detained Mr. Buzzard. He asked Mr. Buzzard to step out of his vehicle. Mr. Buzzard stepped out of his vehicle, and Officer Berryhill handcuffed him.



Berryhill stated after Mr. Buzzard was handcuffed, Mr. Buzzard took his left hand and reached deep into his back pocket. He gave Mr. Buzzard the verbal command to remove his hands from his pockets. Officer Berryhill attempted to get Mr. Buzzard's hand out of his pocket, but he was unable to gain control of Mr. Buzzard. Mr. Buzzard attempted to break away, and Officer Berryhill pulled him to the ground. Officer Berryhill stated that he had his hands on Mr. Buzzard until he fell to the ground. When Mr. Buzzard fell to the ground, he was tased. After Mr. Buzzard was tased, he called for additional officers to make the scene. Officers located a large butane lighter in his front left pocket while conducting a pat down.

Mr. Buzzard was taken into custody. Mr. Buzzard was transported to Regional One Hospital for medical attention due to his hand injury. Lieutenant Wong made the scene. Officer Berryhill stated he was also treated at Regional One Hospital for being exposed to Mr. Buzzard's blood. Officer Berryhill completed the report for this incident along with a Response to Resistance.

Officer Berryhill stated his taser was the best available option at that time in order to subdue Mr. Buzzard in this situation. Officer Berryhill stated he was overwhelmed with fear for his life at that time. Mr. Buzzard did not comply with commands when asked to remove his hands from his pocket. Officer Berryhill stated he did not have full control of Mr. Buzzard's hands until after he was tased while in handcuffs on the ground. Mr. Buzzard had not been patted down for weapons prior to the incident.

**B) Physical Evidence:**

None

**C) Forensic Evidence:**

None

**D) Recorded Evidence:**

- 1) Arrest Documents
- 2) Audio Verification Forms
- 3) Civilian and Officer Statements
- 4) CD of Civilian and Officer's Recorded Statements
- 5) Event Chronology
- 6) Incident Reports
- 7) Log Sheets
- 8) Offense Reports
- 9) Response to Resistance Forms
- 10) Roll Calls
- 11) CEW (Taser) Audit

**E) Miscellaneous Evidence:**

None

**VII) AG Review:**

These case files were not submitted to the Attorney General's Office for review.

**VIII) Analysis:**

The purpose of this investigation was to determine whether or not Officer Colin Berryhill violated any Policies or Procedures regarding the Memphis Police Department's Excessive Force/ Unnecessary Force Policy. Statements taken from civilian witnesses, witness officers, and the principal officer, were obtained and reviewed. A copy of the incident reports, Officer's Body Worn Camera Footage and other related documents were also obtained and reviewed.

In Mr. Buzzard's statement to ISB investigators, he stated that Officer Berryhill did tell him to stop reaching as he grabbed his back pockets to pull up his pants. He stated that he told Officer Berryhill, "Im not reaching for nothing. I'm pulling up my pants." Officer Berryhill pulled on his arms and the force from the pull caused him to fall onto the ground. Mr. Buzzard was tased by Officer Berryhill in his abdominal area. Mr. Buzzard injured his right hand when he fell on the asphalt. He was transported to Regional One Hospital where he received three stitches to his right hand (Confidential Medical Records are attached). After treatment, he was transported to jail.

According to Officer Berryhill's Body Worn Camera Footage (CAD P19002965), Mr. Buzzard willingly stepped out of the vehicle as Officer Berryhill requested. He also allowed Officer Berryhill to handcuff him. Officer Berryhill asked Mr. Buzzard if he had any weapons. Officer Berryhill did not pat him down prior to placing Mr. Buzzard into handcuffs. Mr. Buzzard said, "No." Officer Berryhill said, "I don't know what you are doing, but cut... get your hands." Mr. Buzzard's hand, along with handcuffs, could be seen as Officer Berryhill pulled Mr. Buzzard to the ground (Minute Marker 5:30-5:52). Mr. Buzzard fell on his back onto the asphalt, while handcuffed, with his hands outside of his pants. As Mr. Buzzard leaned forward; he was tased on the abdominal area by Officer Berryhill.

According to Officer Berryhill's Body Worn Camera Footage (CAD P19002965), several officers made the scene. Upon searching Mr. Buzzard, Officers located a butane torch lighter in his front left pocket (Minute Marker 9:52). Mr. Buzzard informed Officer Berryhill that he was not reaching for anything; he was trying to pull up his pants. Officer Berryhill told officers, "The only thing that was available to me was my taser, because I was down on this side. So, I popped him." Lieutenant Wong, made the scene and stated, "Hey by the way. You got a new nick name. It's Taser Face." (Minute Marker 19:08). Mr. Buzzard was taken into custody and transported to Regional One Hospital in non-critical condition where he received three stitches in his right hand.

The evidence obtained during this investigation supports the allegation that excessive force/ unnecessary force was used against Mr. Buzzard. Mr. Buzzard did not resist arrest at any time. He willingly stepped out of his vehicle and allowed Officer Berryhill to place him into handcuffs. Officer Berryhill admitted to pulling him to the ground due to him actively reaching for an unknown object. According to Officer Berryhill's Body Worn Camera, Mr. Buzzard's hands and handcuffs could be seen as Officer Berryhill pulled Mr. Buzzard to the ground. Mr. Buzzard fell on his back onto the asphalt, while handcuffed, with his hands outside of his pants. As Mr. Buzzard leaned forward, he was tased on the abdominal area by Officer Berryhill. Mr. Buzzard was tased with his hands behind his back while in handcuffs on the ground. Mr. Buzzard sustained injuries to his right hand due to him falling onto the asphalt. These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 301 Excessive Force/ Unnecessary Force Policy**.

**The Memphis Police Department's DR 301 Excessive Force/Unnecessary Force states:**

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

**Excessive Force/Unnecessary Force** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as 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.

**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 Colin Berryhill near 3955 Cochese St.

The three standards applied in ***Graham v. Connor*** were used to determine the reasonableness of the use of force applied by **Officer Berryhill**, and revealed the following:

1. The crime at issue in this investigation is ***Resisting Official Detention***, a misdemeanor in the State of Tennessee.
2. The suspect, ***Owen Buzzard***, did not pose an immediate threat to the safety of **Officer Colin Berryhill while handcuffed on the ground with his hands behind his back**.
3. Mr. Buzzard did not resist arrest or pose a threat to Officer Berryhill while handcuffed.

According to Officer Berryhill's Body Worn Camera footage, Mr. Buzzard's hands were secured in handcuffs behind his back as Officer Berryhill pulled him to the ground. As Mr. Buzzard began to lean forward, he was tased on the abdominal area by Officer Berryhill.

These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: Weapons (CEW) Policy**.

**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.

**The Memphis Police Department's policy and procedures, Chapter 13 (Equipment), Section 1 (Weapons), Page 24, states in part:**

8. The CEW shall not be used:

- a. In any punitive (relating to, involving, or intending to inflict punishment) or coercive manner;
- b. In Drive Stun mode for pain compliance to prod or escort persons;
- c. On a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner;
- d. Solely as a compliance technique to overcome passive resistance or on any individual who does not demonstrate an overt intention to use violence or force against the officer or another person;
- e. To rouse unconscious, impaired or intoxicated persons (\*This does not mean that the CEW cannot be used on an intoxicated person if other factors apply);
- f. On persons operating a moving vehicle or machinery;
- g. On persons running or fleeing;
- h. For any purpose of horseplay or curiosity exposure when use of the CEW is not allowed, which includes, but is not limited to, arc display or laser pointing. Only certified CEW instructors may demonstrate the CEW to the public or media.
- i. **In any environment where the officer knows that a potentially flammable, volatile, or explosive material is present.**

**Incident #2 Statements**  
**1448 Merrycrest**

**Civilian Witness Joshua Cortez** stated on April 4, 2019, he had several alcoholic beverages, and he damaged the front door of his parent's home. He told his parents that he was feeling sad, depressed, and he felt like dying. His parents called the police for assistance. Several police officers came to his home and surrounded him. The police informed him that he was being detained. When the police asked him to place his hands behind his back, he complied. Mr. Cortez allowed officers to handcuff him. Mr. Cortez said he was unable to move at that time. He did not resist arrest at any time.

Mr. Cortez stated he was tased two times in his thigh by a male white, Officer Berryhill, for no reason. Several officers had full control of his arms. No verbal commands were given prior to him being tased. He was not in handcuffs when he was tased. Mr. Cortez does have a mental health diagnosis, and he takes his medication for his mental health conditions regularly.

**Civilian Witness Bridgett Flack** stated she is the mother of Joshua Cortez. Mr. Cortez was drinking and got out of control on April 4, 2019. He does not normally drink. He was cursing, being obnoxious, and he damaged the front door. She called the police for help. Officers arrived at her home, and Joshua was confused. Officers were trying to keep him calm. Officers asked him several times to be still while they attempted to place him into handcuffs. The officers were "very easy" with Joshua to make him comply. Joshua was tased in the leg by Officer Berryhill while in handcuffs. An ambulance made the scene. She is unsure if Mr. Cortez sustained any injuries.

**Witness Officer Dennis Williams (10892)** stated on April 4, 2019, he was working overtime on the Mt. Moriah Station Delta Shift. Officer Williams is a CIT Officer with a taser certification. He was given a mental consumer call at 1448 Merrycrest. When he arrived, several officers were on the scene. He observed Officer Berryhill talking to Mr. Cortez outside of the home. Officer Berryhill made the decision to emergency commit Mr. Cortez. Mr. Cortez was uncooperative by pulling away when officers attempted to place him into handcuffs. Several officers had control of Mr. Cortez's hands, but it was still difficult to place him into handcuffs. Mr. Cortez was given several clear verbal commands to stop resisting. Officers were able to get one hand in handcuffs before he was tased/dry stunned by Officer Berryhill due to the physical struggle. It took four to five officers, including himself, to subdue Mr. Cortez. Officer Williams did not observe any injuries to Mr. Cortez at any time.

**Witness Officer Daniel Hart (13193)** stated on April 4, 2019, he was working overtime on the Mt. Moriah Station Delta Shift. He received a consumer call to 1448 Merrycrest advising a male was threatening to harm himself and needed assistance. Mr. Cortez's mother, Ms. Flack, said he had a knife and was trying to harm himself prior to officers arrival. Officer Berryhill made the decision to emergency commit Mr. Cortez. Mr. Cortez was very upset, verbally aggressive, and moving his body as officer attempted to handcuff him. Several officers had control of Mr. Cortez's hands, but it was still difficult to place him into custody.

Mr. Cortez was drive stunned on his leg with the taser by Officer Berryhill. Verbal commands were given to Mr. Cortez prior to him being tased. It took a minimum of three officers to take Mr. Cortez into custody. He did not observe any injuries to Mr. Cortez, nor did he complain of injury after being tased. An ambulance came to render aid. Officer Hart transported Mr. Cortez to Regional One Hospital in his squad car, and Officer Cavette followed for officer safety. Officer Hart completed a response to resistance regarding this incident. Officer Hart stated officers would have been able to successfully handcuff Mr. Cortez without the use of the taser, but the taser did assist in getting him to comply.

**Officer Gustavo Tudon (13728)** stated he was working Mt. Moriah Charlie Shift on April 4, 2019. He was a two man car, and his partner was Officer Berryhill. They were dispatched to an armed party call at 1448 Merrycrest. Officer Berryhill spoke with Mr. Cortez outside of the home. When they came back inside, Officer Berryhill informed him that he met the criteria to be transported to MMHI for Emergency Commitment. Mr. Cortez became upset. He would not allow the officer to handcuff him. Mr. Cortez was moving his body and pulling away from officers. Four officers attempted to handcuff Mr. Cortez. Mr. Cortez was tased on the left side of his body by Officer Berryhill. Officer Berryhill gave Mr. Cortez verbal commands prior to Mr. Cortez being tased. After he was tased, Mr. Cortez fell to the ground, and officers were able to place him in handcuffs. Mr. Cortez did not complain of any injuries, nor did he observe any injuries to Mr. Cortez.

**Witness Officer Donal Cavette (12777)** stated on April 4, 2019, he was working overtime on the Mt. Moriah Station Charlie Shift. He was dispatched to a mental consumer call to 1448 Merrycrest regarding a male threatening to harm himself. When he arrived, he made contact with the parents of Mr. Cortez. Due to his behavior, the officers made the decision to take Mr. Cortez into custody and transport him to a mental health facility. Officers attempted to place Mr. Cortez in custody, and he resisted by pulling away. While being handcuffed, Mr. Cortez stated that he did not want to go back to a mental health center.

When Mr. Cortez refused to place his hands behind his back, he was tased on his left leg by Officer Berryhill. After being tased, officers were able to take Mr. Cortez into custody. It took several officers to take Mr. Cortez into custody. Officer Cavette did not observe any injuries to Mr. Cortez. An ambulance made the scene. Mr. Cortez was transported to Regional One Hospital for medical treatment via patrol car.

**Lieutenant Byron Johnson (0389)** stated he was the Charlie Shift Supervisor on April 4, 2019. He made the scene at 1448 Merrycrest regarding Mr. Cortez being tased. Officers had made the scene to that particular home several times in the past. Officers informed him that they were attempting to take Mr. Cortez into custody for emergency commitment, but Mr. Cortez refused to allow officers to place him into handcuffs. Mr. Cortez was tased and taken into custody. He did speak with Mr. Cortez. Mr. Cortez informed him that the officer did not have to tase him. Mr. Cortez was taken to Regional One for medical treatment.

**Principal Officer Colin Berryhill (11917)** stated he was working the Charlie Shift on April 4, 2019, and Officer Tudon was his partner. They were dispatched on a mental consumer call at 1448 Merrycrest. When they arrived he observed six to seven additional officers at the location. Officer Berryhill stated Mr. Cortez seemed to be very unstable. He asked Mr. Cortez to step outside of the home to talk with him alone.

While conversing outside, Mr. Cortez admitted to being suicidal and having a knife prior to officer's arrival. They both went inside, and Officer Berryhill made contact with Ms. Flack, Cortez's mother. Based on the information gathered, Officer Berryhill made the decision to emergency commit Mr. Cortez. When Officer Berryhill asked him to stand up and place his hands behind his back he became upset. Mr. Cortez began to cry asking officers not to take him to take him to Lakeside. Mr. Cortez allowed officers to handcuff his right arm. As officers began to handcuff his left arm, Mr. Cortez began to resist by pulling away. There was a minimum of six or seven officers attempting to handcuff Mr. Cortez.

Officer Berryhill gave Mr. Cortez verbal commands to stop resisting or he would be tased. Mr. Cortez continued to resist, and Officer Berryhill drive stunned Mr. Cortez on the left side of his body for pain compliance. Although there were several officers' hands on Mr. Cortez, there was a struggle to take him into custody. After being dry stunned with the taser, officers were able to handcuff him in a timely manner. Mr. Cortez was taken into custody and transported to Regional One Hospital for medical treatment.



### Analysis:

The purpose of this investigation was to determine whether or not Officer Colin Berryhill violated any Policies or Procedures regarding the Memphis Police Department's Excessive Force/ Unnecessary Force Policy. Statements taken from civilian witnesses, witness officers, and principal officer were obtained and reviewed. A copy of incident reports, and officer's Body Worn Camera Footage along with other related documents were obtained and reviewed.

On April 4, 2019, at approximately 8:15 p.m., Officers were dispatched to a mental consumer call to 1448 Merrycrest. Mr. Cortez's parents called for police due to him expressing suicidal thoughts and him damaging the front door to the home. Officers made contact with Mr. Cortez, and based on the CIT Officer's observation, the officers made the decision to transport Mr. Cortez to a mental health facility. As officers attempted to take Mr. Cortez into custody, he was tased on his left leg by Officer Berryhill.

According to Officer Williams and Officer Hart's statements to ISB Investigators, officers had control of Mr. Cortez's hands. It was still difficult to place him into handcuffs due to Mr. Cortez pulling away from officers as they attempted to handcuff him. According to Officer Hart's statement, he felt that the officers on the scene could have successfully handcuffed Mr. Cortez without the use of the taser, but the taser did assist. In Officer Berryhill's statement to ISB investigators, he advised there were five to seven officers on the scene, and four of the officers were hands-on with Mr. Cortez. Officer Berryhill stated to ISB investigators, "I felt that a simple pain compliance for a second would get him to comply long enough to where we could get him into cuffs. I drive stunned him for about two seconds which it immediately worked." He also advised that he did not have any physical contact with Mr. Cortez prior to tasing him.

According to Officer Berryhill's BWC (CAD P190942140), there were a minimum of four officers on the scene that had full control of Mr. Cortez's arms and hands. He did not demonstrate any overt intentions to use violence or any uncontrollable force against the officers on the scene. Officer Berryhill stated that he did not have any physical contact with Mr. Cortez prior to tasing him on the scene. Mr. Cortez was drive stunned on his left leg by Officer Berryhill. Officer Berryhill's actions were unnecessary and needless. These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 301 Excessive Force/Unnecessary Force Policy**.

**The Memphis Police Department's DR 301 Excessive Force/Unnecessary Force states:**

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

**Excessive Force/Unnecessary Force** is defined as the amount of force which is beyond



the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as 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.

*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 Colin Berryhill at 1448 Merrycrest.

The three standards applied in *Graham v. Connor* were used to determine the reasonableness of the use of force applied by Officer Berryhill, and revealed the following:

1. The crime at issue in this investigation is ***Resisting Official Detention***, a misdemeanor in the State of Tennessee.
2. The suspect, ***Joshua Cortez***, did not pose an immediate threat to the safety of ***Officer Colin Berryhill and scene officers. Officers had full control of Mr. Cortez's arms and hands prior to him being tased.***
3. There was a minimum of three officers that were hands on with Mr. Cortez prior to him being tased. He was not overly combative. He did not pose a threat to officers.

In Officer Berryhill's statement to ISB investigators, he advised there were five to seven officers on the scene, and four of the officers were hands on with Mr. Cortez. Officer Berryhill stated to ISB investigators, "I felt that a simple pain compliance for a second would get him to comply long enough to where we could get him into cuffs. Officer Berryhill's BWC (CAD P190942140) revealed there were a minimum of four officers on the scene that had full control of Mr. Cortez's arms and hands. He did not demonstrate any overt intentions to use violence or any uncontrollable force against the officers on the scene. These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: Weapons (CEW) Policy.**

**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.

**The Memphis Police Department's policy and procedures, Chapter 13 (Equipment), Section 1 (Weapons), Page 24, states in part:**

**8. The CEW shall not be used:**

- j. In any punitive (relating to, involving, or intending to inflict punishment) or coercive manner;
- k. In Drive Stun mode for pain compliance to prod or escort persons;
- l. On a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner;
- m. Solely as a compliance technique to overcome passive resistance or on any individual who does not demonstrate an overt intention to use violence or force against the officer or another person;
- n. To rouse unconscious, impaired or intoxicated persons (\*This does not mean that the CEW cannot be used on an intoxicated person if other factors apply);
- o. On persons operating a moving vehicle or machinery;
- p. On persons running or fleeing;
- q. For any purpose of horseplay or curiosity exposure when use of the CEW is not allowed, which includes, but is not limited to, arc display or laser pointing. Only certified CEW instructors may demonstrate the CEW to the public or media.

- r. **In any environment where the officer knows that a potentially flammable, volatile, or explosive material is present.**

**Incident #3 Statements**  
**5039 Wooddale**

**Civilian Witness Marveyun Depriest** stated on May 23, 2018, he was walking with his friends, Travis Griffin, Traveyon Griffin, and Terrance Barber, near Wooddale Middle School. He advised that the principal of the school directed the police to them, by pointing at them and accusing them of being responsible for a burglary. The police officers asked Marveyun Depriest and his friends to, "Come here," as the officers detained Traveyon Griffin, and placed him in the police car. Marveyun Depriest stated they were given verbal commands to get back/move. They used profane language towards the officers as they walked down the street.

Marveyun Depriest said he observed Travis Griffin strike an officer in the face with his fist. He also stated that he witnessed an officer tase and choke Terrence Barber with a black pole. He was arrested and transported to Juvenile Court along with Terrence Barber, Jr., and Travis Griffin. Traveyon Griffin was released.

**Civilian Witness Terrence Barber, Jr.**, stated on May 23, 2018, he and his friends were walking in the area of Wooddale Middle School, and the principal pointed in their direction. The police approached them and attempted to place them in police cars one at a time. As the police officer grabbed him, he yanked away. The officer asked him to just leave. Terrence Barber Jr. stated as he was walking away, the officer approached him from behind. He yanked away from the officer as he tried to grab him again. He and the officer fell to the ground. Terrence Barber, Jr. stated the officer attempted to use his stick to hit him, but he grabbed the officer's stick to prevent the officer from hitting him. Terrence Barber, Jr. said he was tased in the back at that time. He further stated the officer threw him to the ground and tased him in the back of the neck as he attempted to get away. He said the ambulance came and they told him that he was "straight". He went to Juvenile Court along with Marveyun Dupriest, and Travis Griffin.

**Witness Officer Garrett O'Brien (12814)** stated he was working the Charlie Shift May 23, 2018. He was working an accident call in the area of Scottsdale when dispatch advised of a possible auto burglary suspect in the area of Wooddale Middle School. Officer O'Brien observed the possible suspect, Traveyon Griffin, conversing with two other juveniles in front of a house. As he went to detain Traveyon Griffin, two other juveniles became rambunctious regarding Tavion Griffin being taken into custody. The juveniles' behavior was very irate and uncontrollable during the interaction. One juvenile walked towards Officer O'Brien and he pushed the juvenile away. Travis Griffin ran towards Officer O'Brien in an aggressive manner, and Officer O'Brien took him to the ground. He resisted arrest. Officer O'Brien said Travis Griffin refused to be handcuffed. Officer O'Brien stated he was able to gain control of Travis Griffin, and he took him into custody.



Officer O'Brien said as he was taking Travis Griffin into custody, Officer Berryhill had a juvenile, Terrence Barber, Jr., resisting arrest. Terrence Barber, Jr. was tased as a result. Officer O'Brien stated he did not see Officer Berryhill tase a juvenile, but he heard the taser. Officer O'Brien stated Terrence Barber, Jr. was taken into custody and transported to Juvenile Court along with Travis Griffin, and Marveyun Depriest. Officer O'Brien further stated an ambulance responded to the location, along with the juvenile's parents.

**Witness Lieutenant Byron Johnson (0389)** stated he was working as the Charlie Shift Supervisor on May 23, 2018. He did make the scene in the area of Wooddale Middle School. Lieutenant Johnson was informed by officer Berryhill that several juveniles were creating a disturbance. Officers were giving the juveniles verbal commands, but they refused to leave. A juvenile, Terrence Barber, Jr., was drive stunned by Officer Berryhill. The juvenile did not complain of injury. The juvenile's guardians made the scene. Three juveniles were taken into custody and transported to Juvenile Court.

**Principal Officer Colin Berryhill (11917)** stated he was working Charlie Shift May 23, 2018. Officer O'Brien was flagged down by Wooddale Middle School Security regarding possible wanted juvenile suspects. When he arrived to the area of Castleman and Wooddale, he observed Officer O'Brien struggling to detain a juvenile on the ground that may have been the wanted subject. Officer Berryhill attempted to keep the juveniles away by asking them to disperse and leave the location. Terrence Barber, Jr. was walking away from the incident location yelling profane language at him, but he was not walking as fast as the other juveniles.

Officer Berryhill stated he made up in his mind that he wanted to detain Terrence Barber, Jr. for further investigation. He did not feel it was safe detaining him around other individuals until Terrence Barber, Jr. made it to the end of the sidewalk away from the group of kids. Officer Berryhill grabbed Terrence Barber, Jr.'s arm and he pulled away. Officer Berryhill said he and Terrence Barber, Jr. both went to the ground. His ASP fell out of the holster and landed in front of Terrence Barber, Jr.'s head. He stated as Terrence Barber, Jr. was reaching for his night stick, he placed his arm underneath Terrence Barber, Jr.'s facial area. Officer Berryhill stated he did not use his ASP at any time. Officer Berryhill said Terrence Barber, Jr. was bigger and stronger than him, and there was a struggle to place him into handcuffs. He tased Terrence Barber, Jr. to gain control.

### **Analysis:**

Officers were flagged down by Wooddale Middle School Security in the area of Wooddale Middle School regarding possible wanted juvenile suspects. Officers made contact with several juveniles and Officer O'Brien detained Traveyon Griffin. As he detained Traveyon Griffin, Travis Griffin became irate and aggressive. Officer O'Brien detained Travis Griffin, and Officer Berryhill cleared the scene. Terrence Barber, Jr. was detained and tased by Officer Berryhill.

According to Officer Berryhill's statement to ISB Investigators, Officer O'Brien was attempting to detain one juvenile when another juvenile interfered. Officer Berryhill gave

verbal commands for the juveniles to disperse. The juveniles dispersed and left the scene, but Terrence Barber, Jr. was walking slower than the other juveniles. Officer Berryhill stated, "Uh, at the beginning he was walking way, um, much slower than everyone else but still making verbal contact with me, but he was walking away." Officer Berryhill wanted to detain him for further investigation. Officer Berryhill stated, "I feel like it was safer once everyone was away from him because up to that point there had been at least one other teenager around him. I wanted to have the upper hands, surprise him, detain him, uh, while we went further into our investigation."

According to Officer Berryhill's BWC Footage (P1805018287), Terrence Barber, Jr. was walking away as Officer Berryhill requested. Terrence Barber, Jr. stated, "I am walking away. (3:15 minutes). Officer Berryhill went hands on with Terrence Barber, Jr. and a tussle ensued. Terrence Barber, Jr. stated, "You see I was walking away right. You didn't give me time."

According to Berryhill's BWC Footage, Terrence Barber, Jr. was seen walking away. There was another juvenile standing on the sidewalk not moving or clearing the location as Officer Berryhill requested (Minute Marker 3:15). Officer Berryhill grabbed Terrence Barber, Jr. and he said, "I'm walking away." A tussle ensued. Officer Berryhill's right arm is seen around Terrence Barber, Jr.'s neck. He said, "Stop choking me Cuz... Stop choking me Cuz." (Minute Marker 3:20-3:34). Officer Berryhill had one hand on his ASP as his right arm was around Terrence Barber, Jr. neck. Terrence Barber, Jr. was reaching for Officer Berryhill's ASP as he was trying to get away from Officer Berryhill. The ASP was located in front of Terrence Barber, Jr. within arms reach. As Terrence Barber, Jr. got off the ground and attempted to walk away, he was tased in the back twice by Officer Berryhill. Terrence Barber, Jr. was taken into custody. He told Officer Berryhill, "I was walking away and you tackled me Bruh." (Minute Marker 4:55). Officer Berryhill told officers on the scene, "I waited until he turned around to get him, and take him to the ground." (Minute Marker 7:23). He turns his back. So that's when I decided to take him down. When he didn't see me coming or whatever." (Minute Marker 26:45-26:55) The amount of force used in this particular event was unnecessary. Terrence Barber, Jr. was walking away after being ordered by Officer Berryhill. These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 301 Excessive Force/Unnecessary Force Policy**.

**The Memphis Police Department's DR 301 Excessive Force/Unnecessary Force states:**

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

**Excessive Force/Unnecessary Force** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as 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.**

*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/ Unnecessary Force' by Officer Colin Berryhill near 5039 Wooddale.

The three standards applied in *Graham v. Connor* were used to determine the reasonableness of the use of force applied by **Officer Berryhill**, and revealed the following:

1. The crime at issue in this investigation is ***Resisting Official Detention***, a misdemeanor in the State of Tennessee.
2. The suspect, ***Terrence Barber, Jr.***, did not pose an immediate threat to the safety of ***Officer Colin Berryhill while walking away as Officer Berryhill requested.***
3. Per BWC Footage and Officer Berryhill's statement, Terrence Barber Jr. was not resting as he was walking away from Officer Colin Berryhill.

Terrence Barber, Jr., was tased twice in the back by Officer Berryhill. Officer Berryhill requested an ambulance. The first time MFD Squad 17 arrived to render aid to Terrence Barber, Jr. The second time MFD Unit 4 arrived. When asked by Lt. Johnson if the juvenile had to go to the hospital, Officer Berryhill stated, "No, no we ain't got to do all of that. I didn't shoot him with the full taser. I just did a drive stun. I didn't tase him tase him." (Minute Marker 34:32- 34:55). The suspect was not transported to a medical facility after being tased. These actions place Officer Berryhill in violation of the Memphis Police Department's **DR 101 Compliance with Regulations to wit: Weapons (CEW) Policy**.

**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.

**The Memphis Police Department's policy and procedures, Chapter 13 (Equipment), Section 1 (Weapons), Pages 24-27, state in part:**

7. The CEW (Conducted Electrical Weapon/ Taser) may be used only against persons who:
  - a. Present a risk of harm to officers;
  - b. Are physically resisting;
  - c. Present a risk of harm to others; or
  - d. Present a risk of harm to themselves.
8. **The CEW shall not be used:**
  - s. In any punitive (relating to, involving, or intending to inflict punishment) or coercive manner;
  - t. In Drive Stun mode for pain compliance to prod or escort persons;
  - u. On a handcuffed or secured individual absent an overly combative behavior that may cause harm to the officer or others and that cannot be reasonably dealt with in any other less obtrusive manner;
  - v. **Solely as a compliance technique to overcome passive resistance or on any individual who does not demonstrate an overt intention to use violence or force against the officer or another person;**
  - w. To rouse unconscious, impaired or intoxicated persons (\*This does not mean that the CEW cannot be used on an intoxicated person if other factors apply);
  - x. On persons operating a moving vehicle or machinery;
  - y. On persons running or fleeing;
  - z. For any purpose of horseplay or curiosity exposure when use of the CEW is not allowed, which includes, but is not limited to, arc display or laser pointing. Only certified CEW instructors may demonstrate the CEW to the public or media.
  - aa. **In any environment where the officer knows that a potentially flammable, volatile, or explosive material is present.**

**D. CEW Procedures**

1. Memphis Police Crisis Intervention Team Officers certified to operate the TASER International, Inc. TASER X2 are the only authorized carriers/operators.
2. When practical, CEW Operators should notify their supervisor or commanding officer that an event may require use of the CEW.
3. The Conducted Electrical Weapon (CEW) may be used to control violent or potentially dangerous individual(s) when an officer reasonably believes the following conditions or facts exist:
  - a. Attempts to control the conflict by using alternate methods have failed, and the officer's assessment of the facts and circumstances reasonably concludes that other means will be ineffective, useless, or hazardous to the officer(s) or some third party. The immediacy of action is an important element to be considered.
  - b. The officer must communicate his/her identity and purpose, unless these facts are already known or cannot reasonably be made known to the individual under the circumstances.
  - c. The officer must have a clear field of fire that would reasonably protect others.
  - d. Officers shall use only the minimum amount of force which is consistent with the accomplishment of their duties and, if possible, should attempt any reasonable means of prevention, apprehension, or defense before using the Conducted Electrical Weapon (CEW).
  - e. Upon firing the CEW the officer shall only expose the subject the minimum number of times and no longer than necessary to accomplish the legitimate compliance objective.
  - f. Any officer who is not issued a CEW who encounters a situation where it is determined that a CEW may be required will, when feasible, request a CEW equipped CIT officer be dispatched to the scene. The intent is to not alert the non-compliant individual or bystanders. If at some point the CEW is no longer required prior to the CEW CIT officer arriving on the scene then the CEW request should be cancelled.
  - g. For any situation where the use of a CEW is expected, a backup officer should be requested, and if at all possible, the use of the CEW postponed until backup arrives.
4. The CEW is to be utilized under controlled situations to maximize safety of everyone involved. Because of safety precautions, **the use of the CEW is not intended for events that cannot reasonably be considered as being controlled (e.g. foot pursuit is NOT a controlled event)**. Controlled means the individual's movement has been contained and/or restricted (stand-off). Prior to deployment each event should be assessed and meet the requirements for use. Officers shall not intentionally target a subject's head, neck, or genitalia, except where lethal force would be permitted, or where the officer has reasonable cause to believe there is an imminent risk of physical injury.
5. For all response to resistance situations certain individuals may be more susceptible to injury. **Unless there are exigent circumstances, the use of the CEW is discouraged for the following individuals: children or elderly, persons of small stature regardless of age, possibly pregnant or pregnant individuals, individuals with a pacemaker, and individuals obviously in poor health.**
6. **Great care and consideration will be given to any environment where the individual could fall or suffer severe injury or death.** This includes but is not

limited to an individual standing in water or rain, on an elevated structure, or next to structures that could cause the individual harm should they fall (e.g. steps, stairs or other harmful objects).

7. The individual should be secured as soon as practical while disabled by the CEW to minimize the number of deployment cycles. **In determining the need for additional exposed cycles, the officer should be aware that an exposed individual may not be able to respond to verbal commands during or immediately after CEW exposure.**
8. In any event in which a CEW has been used either in Drive Stun mode, Probe mode with probes discharged, officers (operators) are required to notify their supervisor and complete the **Response to Resistance Incident in BlueTeam**. A supervisor will report to the scene to ensure departmental policies and procedures have been adhered to. This includes the accidental use of a CEW. Only the use of a CEW by Firearms Training Unit personnel for testing or training purposes is excluded from reporting.
9. If an individual(s) has been struck by probes or stunned and the event is under control, the CEW officer/operator and/or the supervisor should immediately request medical assistance from the Memphis Fire Department.
10. **All individuals who have been stunned using drive stun mode or struck by CEW probes are to be transported to an appropriate medical facility (Regional One Hospital) by MFD paramedics. If probes are still embedded in the individual, an officer must ride in the ambulance with the individual to ensure chain of custody of the CEW probes, cartridge and wires. A second officer will follow the ambulance.**

While reviewing Body worn camera, Lieutenant Johnson asked if the juvenile had to go to the hospital, Officer Berryhill stated, "No, no we ain't got to do all of that. I didn't shoot him with the full taser. I just did a drive stun. I didn't tase him tase him." (Minute Marker 34:32- 34:55). Terrence Barber, Jr. was not transported to the proper medical facility for treatment after being tased by Officer Berryhill. Lieutenant Johnson did not ensure that departmental policies and procedures were followed during this incident. These actions place Lieutenant Johnson in violation of Memphis Police Department's Policy and procedures **DR 101 Compliance With Regulations to wit: Duties of Member: Supervisory Members Policy.**

#### **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 procedures, Chapter 1, Section 1: (Organization), Pages 12 and 13, states in part:**

#### **I. Regulations Establishing The Duties Of Members:**

To attain the Department's goals, the member's goals and to implement the regulation of



the Department, the following duties are established for the Director, supervisory members, sworn, and civilian members of the Department.

## **B. Supervisory Members**

**Supervisory members will be responsible for adherence to the Department's policies, regulations, orders, and procedures.** They are responsible and accountable for the maintenance of discipline and will provide leadership, supervision, training, and ensure the efficiency of unit operations. They have the responsibility to influence subordinate members and to motivate them to perform at a high level of efficiency. They have the responsibility for the performance of all subordinates placed under them and while they can delegate authority and functions to subordinates, they cannot delegate responsibility.

They remain answerable and accountable for failures or inadequacies on the part of their subordinates. Shift assignments for all supervisory and management personnel will be determined by the Director of Police Services. (PM 62-02) (11.3.2)

Supervisory members are members who are at the rank of Lieutenant and above. Pursuant to Article 4, Bargaining Unit, of the Memorandum of Understanding (MOU), the MOU applies to "all commissioned officers below the rank of Lieutenant."

The rank of Lieutenant and higher (management) are not covered by this agreement. As such, members of management will not hold an elected office with the Memphis Police Association. Any member of management that has/ will be elected as an MPA officer will hold the position of Sergeant or patrolman. This complies with the negotiated agreement between the City of Memphis and the Memphis Police Association.

### **Supervisory members will:**

1. Lead, direct, train, supervise, and evaluate members in their assigned duties.
2. Provide leadership and guidance in developing loyalty and dedication to the police profession.
3. Perform specific duties and functions as assigned by the Director or a superior officer.
4. Uphold a member who is properly performing his duty, deal fairly and equitably with all members and, when necessary, correct a subordinate in a dignified manner.
5. Cooperate with other units of the Department, other City agencies and other police agencies.
6. Recommend remedial or disciplinary action for inefficient, incompetent or unsuitable members.
7. **Ensure that all policies, rules, regulations, orders and directives of the Department are enforced and implemented by their subordinates.**
8. **Remain accountable for the failure, misconduct or omission by their subordinates.**



**IX) Conclusion:**

**Incident#1**

**(Count 1)**

Based on the facts of the investigation of Incident #1, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR 301 Excessive/Unnecessary Force**. Therefore, the allegation **is Sustained.**

Based on the facts of the investigation of Incident #1, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR-101 Compliance with Regulations to wit: Weapons (CEW)**. Therefore, the allegation **is Sustained.**

**Incident#2**

**(Count 2)**

Based on the facts of the investigation of Incident #2, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR 301 Excessive/Unnecessary Force**. Therefore, the allegation **is Sustained.**

Based on the facts of the investigation of Incident #2, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR-101 Compliance with Regulations to wit: Weapons (CEW)**. Therefore, the allegation **is Sustained.**

**Incident #3**

**(Count 3)**

Based on the facts of the investigation of Incident #3, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR 301 Excessive/Unnecessary Force**. Therefore, the allegation **is Sustained.**

Based on the facts of the investigation of Incident #3, the preponderance of evidence shows that, **Officer Colin Berryhill, IBM #11917, is** in violation of **DR-101 Compliance with Regulations to wit: Weapons (CEW)**. Therefore, the allegation **is Sustained.**

Based on the facts of the investigation of Incident #3, the preponderance of evidence shows that, **Lieutenant Byron Johnson, IBM #0389, is** in violation of **DR-101 Compliance with Regulations to wit: Duties of Member: Supervisory Members Policy**. Therefore, the allegation **is Sustained.**