



JIM STRICKLAND
MAYOR

EXECUTIVE DIVISION

CIVILIAN LAW ENFORCEMENT REVIEW BOARD

January 6, 2023

Chief Cerelyn Davis
Memphis Police Department
170 North Main Street
Memphis, TN 38103

Re: CLERB'S letter/ISB # I2021-044

Dear Chief Davis,

I pray that this communication finds you doing well in the New Year.

Please find attached the board's letter regarding the above referenced ISB case number. If you have any questions regarding the same, please let me know.

Thank you in advance for your time and attention to this matter.

Sincerely,


Virginia B. Wilson
CLERB Administrator
901-636-6457 O / 901-208-0202

Attachment:



Civilian Law Enforcement Review Board

City of Memphis



555 Beale Street ~ Memphis, TN 38103
(901) 636-66457

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CLERB Liaison

December 30, 2022

Chief Cerelyn Davis  
Memphis Police Department  
170 North Main Street  
Memphis, TN 38103

Re: ISB File # I2021-044

Dear Chief Davis,

During the Board meeting on July 14, 2022, the Civilian Law Enforcement Review Board (CLERB) heard evidence from complainant Mr. Martez Smith ("Complainant Smith") concerning the incident that occurred on June 26, 2021, at the location of West Levi Road and McCain Street. Mr. Smith alleged that his 2012 Chevrolet Camaro was struck by a Jeep Grand Cherokee driven by an intoxicated male driver. That driver was identified as Micheal James ("Mr. James"). Complainant Smith stated that two officers arrived on the scene, and he told the officers that Mr. James was intoxicated, smelled of alcohol, and had a bottle of liquor that he had discarded before they arrived. Complainant Smith was frustrated that the officers never made any inquiry into whether Mr. James was intoxicated, despite him having relayed to the officers several times his observations of Mr. James.

The evidence of this case consisted of statements made under oath by Complainant Smith, body-worn video camera footage from the Memphis Police Department, and a closed Inspectional Service Bureau (ISB) file.

Internal Affairs Findings:

Internal Affairs identified the responding officers as Joseph James and Dartelle Joyner. Internal Affairs determined that Officers James and Joyner were in violation of DUI policy (DR 101 Compliance with Regulation: to wit DUI) regarding their lack of investigation of an individual alleged to be intoxicated while driving a vehicle. At no time did the officers address Complainant Smith's concern regarding Mr. James' purported intoxication, even after responding to a dispatched call of a vehicle crash involving a fight on the scene and being made aware of the possibility of Mr. James being intoxicated and taking a liquor bottle

from his vehicle and throwing it away on the scene. The officers, in their statement, acknowledged they were told by Complainant Smith that Mr. James had been drinking. They also acknowledged they could smell a strong odor of marijuana on the person of Complainant Smith. They acknowledge they did not investigate either driver for being impaired or intoxicated after both were involved in a vehicle accident.

Officer Joyner also was found to have violated the body-worn camera policy (DR 101 Compliance with Regulations: to wit Body-Worn Camera). Officer Joyner turned off his body-worn camera during a conversation with Mr. James who was said to have been intoxicated by Complainant Smith. After the conversation, Officer Joyner turned the camera back on.

Officer Joyner: violations (2)

(1) DR-101 Compliance with Regulations to wit: DUI (Sustained)

(2) DRI-101 Compliance with Regulations to wit: Body Worn Camera (Sustained)

Officer James: violations (1)

(1) DR-101 Compliance with Regulations to wit: DUI (Sustained)

Both officers were brought up on departmental charges for discipline and correction.

CLERB's findings:

After careful consideration of the evidence presented and subsequent deliberation, board members found that the investigation by Internal Affairs was correct in finding the officers violating the DUI policy. The Board agreed after viewing the video that the Jeep Grand Cherokee driver (Mr. James) appeared to be visibly staggering and intoxicated and that Complainant Smith told the officers that Mr. James had been drinking and was intoxicated. The video did show Mr. James failing to comply with the instructions of Officer Joyner throughout the scene investigation. Several times, Officer Joyner had to tell Mr. James to stand on the curb and that he could not drive his vehicle home. On one occasion, Mr. James got into his vehicle to start the ignition and had to be asked to get out of his vehicle and sit down on the curb by the officers. The Board also found that Officer Joyner had to believe or have some concern that Mr. James was intoxicated because he would not allow him to drive his vehicle around the corner to his home.

The Board also agreed with the Internal Affairs investigation that Officer Joyner violated the body-worn camera policy by turning his camera off while handling the accident. When asked why his camera was turned off, Officer Joyner stated, "the other involved driver [Mr. James] was really doing too much. He got into his car and tried to crank it up. I told him to sit down on the curb. I just had to have some colorful words with him. I didn't want him on camera."

When we considered the evidence presented during the hearing, the Board was very concerned that the sustained Internal Affairs charges (DR-101 Compliance with Regulations; to wit DUI) against both officers were dismissed and the sustained charge of (DR 101 Compliance with Regulations: to wit Body Worn Camera) against Officer Joyner was corrected by a written reprimand in light of the negative coverage and potential liability of officers disabling body-worn cameras.

CLERB recommends the following:

The Command Officers should review the body-worn camera footage to determine whether the dismissal and corrective action are justifiable despite being contrary to IA's findings. If the dismissal and/or corrective action are not justifiable based on the body-worn camera footage, appropriate discipline consistent with the policies should be discussed for officers found to be in violation. The discussion with the officers and Hearing Officer should take place to ensure the officers are aware of their error. The Hearing Officer should be made aware of his failure to capture an opportunity to help groom these officers for the good of the community, the department, and the Officers themselves. Also, this should be used as a teaching moment for Command Officers to consider the negative impact of dismissing charges filed against officers when overwhelming evidence supports the violation. Dismissing sustainable charges also sends the Internal Affairs Investigators a negative message that their work means nothing at the Command level. Failure to correct violations leads to similar future infractions as well as sends the message to other officers that the Command level does not take policy violations seriously.

We value your input and sincerely believe your assistance will help to improve trust and accountability and build a stronger relationship between the citizens and the Memphis Police Department.

We look forward to your written reply to the action you propose in response to the CLERB's recommendation to the referenced complaint.

Please contact me if you have any questions about the Board's findings regarding this matter.

Sincerely,



James Kirkwood