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

Case # FD2015-009 Statement of Charges

Officer's Name: Marks, Clement

IBM # 12482

Rank: POLICE OFFICER II

Assignment: Airways Station - "C"

Date: April 24, 2015

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

(20) DR 101 Compliance With Regulations: to wit Use of Deadly Force ; **SUSTAINED**
Twenty days Suspension without pay and (8) Hours of Remedial
Date of Occurrence: April 10, 2015
Firearms / Use of Force Training

Statement of Particulars:

On April 10, 2015, at approximately 2300 hours, you responded to a call from an off-duty officer regarding a possible suspect vehicle from an earlier homicide on Durby Circle where a 7 year old female was shot and killed. You stopped the vehicle at 2745 Airways. Eric Williams, a passenger in the vehicle, bailed out and a foot chase ensued, ending when you shot him and took him into custody. At no time before firing shots, did you articulate that you saw a weapon or anything resembling a weapon. Although you clearly perceived a threat, absent any physical description of a weapon, and having only the belief that Williams may be armed, you cannot justify that Williams posed an immediate threat of death or serious bodily injury, which is required by policy before deadly force is authorized.

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 Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11, states in part:

IV. Use of Deadly Force Authorized

Officers shall use only the NECESSARY amount of force that is consistent with the accomplishment of their duties, and must exhaust every other reasonable means of prevention, apprehension, or defense before resorting to the use of deadly force (if the situation allows time for this). (1.3.2)

A. Use of Deadly Force in Defense of Self or Others

Officers are authorized to use deadly force:

1. In self defense where the officer has been attacked with deadly force, is being threatened with the use of deadly force, or where the officer has probable cause and reasonably perceives an immediate threat of deadly force; or
2. In defense of others where a third party has been attacked with deadly force, is being threatened with the use of deadly force, is in danger of serious bodily injury or death; or where the officer has probable cause and reasonably perceives an immediate threat of deadly force to a third party.

B. Use of Deadly Force to Affect an Arrest

Officers are authorized to use deadly force to effect the arrest of a fleeing felon only when:

1. The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; AND
2. The officer has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the officer or to others unless immediately apprehended; AND
3. Where feasible, the officer has identified himself/herself as a police officer and given warning such as, "STOP--POLICE--I'LL SHOOT," that deadly force is about to be used unless flight ceases; AND
4. If all other means of apprehension available to the officer under the attendant circumstances have been exhausted.

V. Use of Deadly Force Prohibited

The use of DEADLY FORCE is prohibited in the following circumstances:

- A. To apprehend or arrest a person for a misdemeanor offense; or
- B. To effect the arrest of any person for escape from the commission of any misdemeanor offense; or
- C. As warning shots [Warning shots will not be utilized under any circumstance (1.3.3)]; or

- D. To apprehend or arrest a person known to be or believed to be a juvenile, unless the use of deadly force is immediately necessary in the defense of the officer's life or of another person's life after all other reasonable means have been exhausted [The officer's knowledge or belief of a person's age may be based upon factors such as the officer's previous knowledge of the person, his observations of the person's appearance, or upon reliable information given to him by other persons]; or
- E. To apprehend or arrest a person fleeing from a felony which is not a violent felony [This includes, but is not limited to, felonies such as auto theft, larceny, embezzlement, fraud, burglary of an auto, or any other felony, which does not involve the use of deadly force, attempted use of deadly force, or threatened use of deadly force]; or
- F. From or at any moving vehicle, except in a case where an officer has probable cause to believe that the suspect committed a violent felony and the poses a direct threat of serious bodily injury or death to other persons if not immediately apprehended [If the officer is in the path of the vehicle, the officer's first responsibility, if possible, is to move from the path of the oncoming vehicle, as shooting the driver of a moving vehicle raises the danger from an uncontrolled vehicle]; or
- G. In any case, where the officer does not have a clear field of fire and cannot be reasonably certain that only the suspect will be hit and that the potential for harm to innocent persons is minimum.

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

Lt. Sharon Cunningham #5618
Issuing Officer

Sgt. Mike [Signature] #1696
Charging Officer