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RE: In the Matter of: Sean Emmer and Adam Cooley      Docket No. 56.00-119030J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

**BEFORE THE ADMINISTRATIVE LAW JUDGE  
ON BEHALF OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA**

**IN THE MATTER OF:**

**SEAN EMMER AND ADAM COOLEY**

**DOCKET NO. 56.00-119030J**

**NOTICE**

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 9, 2013**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 ROSA PARKS AVENUE, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**BEFORE THE ADMINISTRATIVE LAW JUDGE  
ON BEHALF OF THE CITY COUNCIL OF THE CITY OF CHATTANOOGA**

**IN THE MATTER OF:**

**CITY OF CHATTANOOGA and  
CHATTANOOGA POLICE DEPARTMENT,  
*Petitioner,***

**vs.**

**SEAN EMMER and ADAM COOLEY,  
*Grievants.***

**DOCKET NO: 56.00-119030J**

**INITIAL ORDER**

This contested case was heard on June 26, June 27 and July 3, 2013, in Chattanooga, Tennessee, before Administrative Judge Kim Summers, assigned by the Tennessee Secretary of State, Administrative Procedures Division to preside in this matter on behalf of the City Council of the City of Chattanooga. Mr. Phillip Noblett, Deputy City Attorney, and Mr. Keith Reisman, Assistant City Attorney, represented the City of Chattanooga and the Chattanooga Police Department (hereinafter referred to as "Chattanooga"). Grievant Officer Sean Emmer was present and was represented by attorneys Bryan Hoss and Stevie Phillips. Grievant Officer Adam Cooley was present and was represented by attorney Jonathon Guthrie. The purpose of the hearing was to determine the propriety of the Grievants' termination from the Chattanooga Police Department.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that Chattanooga did not show by a preponderance of the evidence that termination of the Grievants was appropriate. Accordingly, the Grievants are hereby reinstated to their positions with the Chattanooga Police Department.

This decision is based upon the following Findings of Fact and Conclusions of Law.

### SUMMARY OF EVIDENCE

The following witnesses were called to testify on behalf of Chattanooga – Alex Mercado, Internal Affairs Investigator; Captain Susan Blaine, retired; Chief of Police Bobby Dodd; Mark Wills, Staff Instructor with the POST Training Academy; and Deputy Chief of Police Mike Williams, retired. The testimony on behalf of Chattanooga included the following –

- A neck restraint can be deadly force; a choke hold would have been appropriate if, at the time, Officer Emmer was aware that Mr. Tatum had a knife; and it would not have been appropriate for Officer Emmer to use a choke hold to take Mr. Tatum to the floor.
- The initial use of the taser and baton were appropriate; and there was no need for additional baton strikes when Mr. Tatum's resistance becomes passive.
- The strikes to Mr. Tatum's face by Officer Cooley did not appear to be appropriate, especially since other officers were arriving on the scene; punches are generally used for defense; punching a suspect in the head while on a hard surface can be lethal; and active resistance would permit baton strikes to the body but not hard hand strikes to the head.
- The punches and baton strikes were excessive and not necessary to make an arrest.
- The officers could have used a brachial stun which is an open palm strike to the side of the neck; the Officers should have used their size and strength to get Mr. Tatum under control; Officer Emmer had the alternative of getting a cuff on at least one arm and then using force to get the cuff on the other arm even if Mr. Tatum's wrist was broken in the process; and the Officers should have gone "hands on" when the baton strikes were not successful.
- The length of the fight could justify a reasonable increase in force.
- If Officer Emmer was concerned about Mr. Tatum spitting, he could have moved away rather than knocking Mr. Tatum over; an officer should not kick a suspect in restraints; when

outside, Officer Emmer was standing too close to Mr. Tatum; and Officer Emmer should have discussed with Mr. Tatum that spitting blood would cause a contamination problem.

- The video of the incident would be very public, and the Chief would have to explain if he chose not to terminate Officers Emmer and Cooley.

- A fact-finding investigation against Officers Emmer and Smith was requested after receipt of a non-specific inquiry about the incident from Mr. Tatum's attorney.

- A report from the Tennessee Law Enforcement Training Academy found that the actions of the Officers were out of policy and excessive.

- The testimony provided by the Officers during their pre-termination hearing was not consistent with the information provided in their incident reports; and the Officers were terminated, rather than suspended, in part, because of the belief that they were not truthful in their pre-termination hearings.

- It was concluded that the conduct of Officers Emmer and Cooley could not be fixed with additional training.

The following witnesses were called to testify on behalf of the Grievants – Officer Sean Emmer; Officer Adam Cooley; Officer Chip Smith; Sergeant Darryl Turner; Sergeant Michael Wenger; former Officer LaToya Tate, Master Patrol Officer Phillip McClain<sup>1</sup>, Use of Force Instructor; Deputy Chief of Police T.E. Vaughn, retired; and Audra Wilson, Salvation Army Housing Monitor. The testimony on behalf of the Officers included the following –

- Kicking and trying to stand are considered defensive resistance, which would justify baton strikes; baton strikes were within policy; and defensive resistance can become aggressive and dangerous very quickly.

- Even with a baton, shins are in the “green” (acceptable) zone.

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<sup>1</sup> Officer McClain was called to testify by the Grievants but also provided testimony in support of the termination.

- The presence of the other residents posed an additional threat.

- Cuffing would not have gone well when Mr. Tatum was jerking away when Officer Emmer got his handcuffs out; a suspect should be under control before cuffing; and getting a suspect rolled over on his belly is the preferred position for an arrest.

- Punches to the face are not preferred, but policy does not prohibit punches to the face or make punches deadly force; punches to the face require justification; face punches are common practice, even in non-deadly force situations; policy allows for limited use of a weapon on a suspect's head / neck; and hard-empty hand includes punches.

- The line between enough force and too much force is not clear; use of force policy is affected by use of drugs by a suspect; and a lot of deference must be given to the decisions made by the officers on the scene.

- If there is knowledge of a knife, deadly force is warranted; and if deadly force is warranted, the means employed do not matter.

- Suspects suffer the same energy depletion that is experienced by officers in a fight / struggle.

- Out in the lobby, the other residents could be heard beating on the other side of the door; and the door had to be guarded in order to make the arrest of Mr. Tatum.

- Once outside, it did appear that Mr. Tatum was attempting to spit.

- Officers are not trained on a maximum number of baton strikes but that efforts should continue until compliance; the Officers were not aware of the number of strikes without the benefit of the video; and the Officers were not given an opportunity to view the video before the disciplinary hearings;

- Officers Emmer and Cooley were considered to be good and trusted Officers.

- The incident reports submitted by Officers and Emmer and Cooley did not appear to be dishonest.

- Having other possible alternatives does not equate to a policy violation for the method chosen; a technique may be used if not specifically prohibited; and, at most, this would be a training issue.

The following fifty-nine exhibits were entered into evidence – EXHIBIT 1, August 27, 2012 Internal Affairs Investigative Report submitted by Investigator Mercado; EXHIBIT 2, CD with 911 Call from June 14, 2012; EXHIBIT 3, DVD of June 14, 2012 incident at the Salvation Army submitted by Chattanooga; EXHIBIT 4, Officer Emmer's June 14, 2012 Incident Report; EXHIBIT 5, Officer Cooley's June 14, 2012 Incident Report; EXHIBIT 6, ADM-5 – Use of Force Policy of the Chattanooga Police Department; EXHIBIT 7, September 4, 2012 Internal Affairs Commander's Recommendation submitted by Captain Susan Blaine; EXHIBIT 8, June 28, 2011 Internal Affairs Commander's Recommendation submitted by Captain Susan Blaine; EXHIBIT 9, Review of Use of Force Incident prepared by Mark Wills with the Tennessee Law Enforcement Training Academy; EXHIBIT 10, Pictures of Adam Tatum; EXHIBIT 11, Emails from the morning of June 14, 2012; EXHIBIT 12, Emails from the afternoon of June 14, 2012; EXHIBIT 13, September 19, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 14, October 2, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 15, October 11, 2012 letter to Officer Emmer regarding Disciplinary Hearing; EXHIBIT 16, October 15, 2012 letter from Bryan Hoss to Chief Dodd; EXHIBIT 17, October 16, 2012 letter from Chief Dodd to Bryan Hoss; EXHIBIT 18, November 7, 2012 letter to Officer Emmer regarding termination; EXHIBIT 19, PPCT Defensive Tactics Student Manual; EXHIBIT 20, April 17, 2012 Employee Performance Review for Officer Cooley; EXHIBIT 21, April 28, 2011 Employee Performance Review for Officer Cooley; EXHIBIT 22, April 27, 2010 Employee Performance Review for

Officer Cooley; EXHIBIT 23, CD of audio and video from Officer Cooley's police vehicle from June 14, 2012; EXHIBIT 24, September 19, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 25, October 2, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 26, October 11, 2012 letter to Officer Cooley regarding Disciplinary Hearing; EXHIBIT 27, Transcript from November 7, 2012 disciplinary hearing for Officer Cooley; EXHIBIT 28, Two CDs of November 7, 2012 Disciplinary Hearing for Officer Emmer; EXHIBIT 29, Four CDs of November 7, 2012 Disciplinary Hearing for Officer Cooley; EXHIBIT 30, Response from Chattanooga to Requests for Admissions; EXHIBIT 31, Email from June 25, 2012; EXHIBIT 32, Internet link for news story in the Chattanooga Times Free Press; EXHIBIT 33, Expert Witness Report submitted by Mike Williams; EXHIBIT 34, Officer Smith's June 14, 2012 Incident Report; EXHIBIT 35, Body Diagram specifying Green, Yellow, and Red Target Areas; EXHIBIT 36, No True Bill against Officer Emmer for Aggravated Assault; EXHIBIT 37, Officer Emmer's OC Spray Training Video; EXHIBIT 38, Officer Emmer's Taser Training Video; EXHIBIT 39, Letter to Officer Emmer from the Civil Rights Division of the U.S. Department of Justice; EXHIBIT 40, CD of audio and video from Officer Cooley's police vehicle from June 14, 2012; EXHIBIT 41, No True Bill against Officer Cooley for Assault; EXHIBIT 42, Letter to Officer Cooley from the Civil Rights Division of the U.S. Department of Justice; EXHIBIT 43, DVD of June 14, 2012 Incident with synced audio and video; EXHIBIT 44, Chattanooga Police Department Academy Curriculum; EXHIBIT 45, DT Basic Exam B for Cadet Cooley; EXHIBIT 46, April 28, 2011 Employee Performance Review for Officer Emmer; EXHIBIT 47, April 17, 2012 Employee Performance Review for Officer Emmer; EXHIBIT 48, PER-6 – Disciplinary Procedures from the Chattanooga Police Department Policy Manual; EXHIBIT 49, June 28, 2012 Affidavit of Complaint against Adam Tatum for Aggravated Assault; EXHIBIT 50, Documents pertaining to the Internal Affairs Investigation of Sergeant Wenger pertaining to his investigation of June 14,



2012 incident ; EXHIBIT 51, July 22, 2012 Supplemental Report from Sergeant Wenger; EXHIBIT 52, August 6, 2012 Email from Investigator Mercado; EXHIBIT 53, Officer Cooley's OC Spray Training Video; EXHIBIT 54, PPCT Defensive Tactics Student Manual – Chapter 1 (for identification only); EXHIBIT 55, Use of Force Training Video; EXHIBIT 56, DVD of June 14, 2012 Incident – knife angle; EXHIBIT 57, Report and Conclusion on Officer Use of Force / Injury for Officer Emmer submitted by T.E. Vaughn; EXHIBIT 58, Report and Conclusion on Officer Use of Force / Injury for Officer Cooley submitted by T.E. Vaughn; and EXHIBIT 59, Documents pertaining to Disciplinary action against Sean Morris (for identification only).

### **FINDINGS OF FACT**

1. Sean Emmer was hired as a police officer by the Chattanooga Police Department in 2008. Prior to his termination in November 2012, Officer Emmer had not been subject to any other disciplinary action.
2. Adam Cooley was hired as a police officer by the Chattanooga Police Department in 2007. Prior to his termination in November 2012, Officer Cooley had not been subject to any other disciplinary action.
3. In the early morning hours of June 14, 2012, Adam Tatum returned to the Salvation Army halfway house in Chattanooga, Tennessee, where he was staying following his release from federal prison.
4. Mr. Tatum's behavior and demeanor suggested possible drug use to Audra Wilson, a staff person at the halfway house. Ms. Wilson asked Mr. Tatum to take a drug test. At first, Mr. Tatum consented and then refused, becoming hostile and belligerent.
5. Mr. Tatum encountered another resident of the halfway house in the hallway of the secure area of the facility after passing through a locked door in the lobby area. A verbal altercation ensued during which Mr. Tatum pulled a knife on the other resident while holding

him by the front of his shirt. Mr. Tatum was also kicking violently on the door to the control room where Audra Wilson and her co-worker, Clayton Payne, had retreated for security.

6. Mr. Tatum's actions damaged the bolts on the control room door that held the window pane in place.

7. When the altercation continued for several minutes, Ms. Wilson became concerned about the safety of the individuals in the facility and called 911 from the control room. The call mentioned a violent offender at the Salvation Army halfway house. In her eight years of employment at the Salvation Army facility, Ms. Wilson had never before felt the need to call 911.

8. Several patrol officers from the Chattanooga Police Department responded to the request for assistance and left the scene after checking the exterior perimeter of the facility. Officers Sean Emmer and Chip (James) Smith remained and went inside the facility.

9. The Officers were not provided details by the dispatcher but believed the situation to be serious based on what they were told. The Officers thought that someone was trying to break into the room where the 911 caller was located and could hear someone beating on a door immediately upon entering the lobby of the facility. The Officers did not discuss the situation with either Ms. Wilson or Mr. Payne but it was clear that they were in distress. The Officers were admitted into the secure area of the facility where they encountered Mr. Tatum still in the hallway, holding the shirt of the other resident.

10. Loud banging was captured by Officer Emmer's police vehicle as soon as he entered the facility.

11. The Officers determined Mr. Tatum to be the aggressor and tried to engage him in conversation. Mr. Tatum pulled the other resident away from the Officers by the shirt and

attempted to enter another room behind a closed door. He was instructed by Officer Emmer to remain in the hallway because the other room contained weights that could be used as weapons.

12. Mr. Tatum entered the other room but came back to the hallway when he was told to do so. When he began swearing at the Officers and suggesting that they arrest him, the Officers instructed Mr. Tatum to turn around and place his hands behind his back. He did not comply. Officer Emmer then placed his arm around Mr. Tatum to keep him from reentering the weight room. Upon noticing the knife that was in Mr. Tatum's right hand, Officer Emmer placed Mr. Tatum in a neck restraint and wrestled him to the ground. In the midst of the scuffle, the knife that Mr. Tatum had been holding was knocked out of his hand and fell to the floor.

13. While on the floor with Mr. Tatum, Officer Emmer attempted to secure the knife, which was, ultimately, carried off by another resident of the facility.

14. Police officers are taught that, when a deadly weapon has been found on a suspect, a second deadly weapon should be anticipated.

15. When he was on the floor, Officers Emmer and Smith, at a combined weight of approximately 500 pounds, again, attempted to bring Mr. Tatum under control so that he could be handcuffed and taken into custody. Mr. Tatum, weighing less than 200 pounds, managed to escape the hold of both Officers even after being tased by Officer Smith. Mr. Tatum just stood up and pulled out the taser barbs. After being touch tased by Officer Smith near his left shoulder, Mr. Tatum opened the door and ran into the lobby.

16. The Officers were surprised by Mr. Tatum's response to the tasing. It is unusual and unexpected for an individual not to suffer some measure of debilitation from being tased and to be able to remove the barbs from his body while they are still actively charged.

17. Mr. Tatum first said "you broke me" after the first tasing.

18. By policy, officers should make an attempt to cuff immediately after using a taser or OC spray.

19. The Officers ran into the lobby and chased Mr. Tatum down a narrow hallway where Officer Smith used his OC Spray in order to gain compliance. The OC spray had no apparent effect on Mr. Tatum. The Officers deployed their batons and repeatedly ordered Mr. Tatum to roll over onto his stomach. He did not comply.

20. It is unusual and unexpected for an individual not to suffer negative effects from OC spray.

21. In order to get away from the OC spray, which was affecting the Officers, and have some additional room to maneuver, the Officers grabbed Mr. Tatum by the leg and dragged him from the hallway into the main part of the lobby. Mr. Tatum resisted and kicked several times at the Officers. For several more minutes, the Officers made additional baton strikes on various parts of Mr. Tatum's body while ordering him to roll over. Mr. Tatum was guarding his shins and said a few times that his leg had been broken. He begged the Officers to stop the baton strikes but continued to resist and made several efforts to stand.

22. During a moment when Mr. Tatum appeared to be less combative, Officer Emmer tried to get Mr. Tatum handcuffed. Mr. Tatum pulled his arm away and said "Don't do me like that, man." The effort was still unsuccessful.

23. Officer Emmer did not think he could get Mr. Tatum cuffed while he was standing and Mr. Tatum was on the ground.

24. Mr. Tatum was struck by the baton approximately forty times. The majority of the baton strikes were done by Officer Emmer to Mr. Tatum's legs.

25. Officer Smith became preoccupied with guarding the door due to the residents gathering on the other side.

26. The Officers were exhausted and short of breath from the OC spray lingering in the air as well as the unsuccessful efforts to bring Mr. Tatum into compliance. The Officers also had a growing concern about noises from the other residents coming from behind the locked door. At this time, Officer Emmer used the police radio attached to his uniform to communicate these concerns to dispatch and to request assistance.

27. Over the radio, a winded Officer Emmer called in a 4-12, officer in a fight, and can be heard saying, "They're trying to come in on us." In response, Dispatch directs other officers to "clear the air" and for "all units to step up."

28. Officers Emmer and Smith spent approximately 4.5 minutes attempting to bring Mr. Tatum into compliance while requesting assistance from other officers for a 4-12.

29. Officer Adam Cooley was several miles away responding to another incident when he heard the request for assistance over his police radio. Because he believed Officers Emmer and Smith to be in trouble and in need of emergency assistance, Officer Cooley drove up to eighty miles per hour across the streets of downtown Chattanooga to the Salvation Army location which he knew to be a halfway house for individuals released from federal prison.

30. Officer Cooley was required to take as true the expressions of danger from his police radio.

31. Upon arrival, Officer Cooley ran into the building where he smelled OC spray in the air and saw blood on the floor, as well as two large, worn-out and winded police officers. He was directed by Officer Emmer to use his taser. His first effort was not successful because only one barb made contact with Mr. Tatum's body but then Officer Cooley did accomplish a touch tase, which still did not succeed in bringing Mr. Tatum into compliance as he continued to disregard directives from the Officers to roll over.

32. As other officers arrived on the scene, they were instructed to guard the door leading to the secure area of the facility to prevent other residents of the halfway house from entering the lobby. There were twelve to fifteen other residents gathering in the hallway on the other side of the door, causing a loud commotion.
33. Many, if not all, of the officers were affected in some way by the OC spray which still lingered in the air.
34. The presence of the OC spray and the other residents elevated the danger of the situation and the need for split-second decisions.
35. With a sense of urgency, Officer Cooley continued his efforts to roll Mr. Tatum onto his stomach. Standing astride Mr. Tatum with one leg on either side of his body, Officer Cooley first tried to use Mr. Tatum's arms to roll him over, warning Mr. Tatum that he would strike him in the face if he did not comply. Officer Cooley then struck Mr. Tatum several times, in the face and elsewhere, and then, again, tried to roll him over, which Mr. Tatum continued to resist. Officer Cooley repeated this process until, finally, Mr. Tatum was on his stomach. Even then, Mr. Tatum continued to pull his arms away and otherwise resist the efforts to place him in handcuffs. Five officers were ultimately required to get Mr. Tatum under control and handcuffed. Because of his continued resistance, two sets of handcuffs were needed.
36. Mr. Tatum was in handcuffs 2.5 minutes after the arrival of Officer Cooley.
37. A suspect remains a threat until in custody / handcuffs.
38. Mr. Tatum's resistance to being rolled over justified a judicious increase in force.
39. Mr. Tatum disregarded approximately seventy verbal commands for him to roll over so that he could be handcuffed.
40. Officers Emmer and Cooley experienced tunnel vision and were not aware of all that was going on around them while trying to get Mr. Tatum in handcuffs.

41. When responding to the call for assistance at the Salvation Army facility, Officers Emmer and Cooley had no idea what situation they would encounter.

42. Mr. Tatum was escorted outside by an officer and directed to sit on a short retaining wall to the side of the walkway. From this position, Mr. Tatum still had the ability to stand. When he appeared to be trying to do so, Officer Emmer used his foot to push him back down on the ground. Officer Emmer was also concerned that Mr. Tatum was attempting to spit blood.

43. Mr. Tatum was bleeding but did not appear to be in pain. Eventually, he was taken to the hospital by ambulance where he tested positive for cocaine and was diagnosed with a broken leg. There was no recorded injury to Mr. Tatum's neck. He remained combative for several more hours and had to be handcuffed to the bed.

44. Marijuana was found in Mr. Tatum's shoe.

45. Cocaine is known to increase the strength of the user and to desensitize the individual to pain.

46. Officers are trained to use reasonable force under the circumstances, and officer exhaustion can justify escalation of force.

47. Officers have been trained not to back off from a struggle until a suspect is cuffed. It is unusual for a suspect to resist all trained techniques for bringing someone into compliance.

48. A video of the incident was captured on the cameras installed throughout the Salvation Army Facility. The audio was recorded in Officer Emmer's car through his police radio.

49. As required, Officers Emmer and Cooley each turned in a report of the incident by the end of their shift on June 14, 2012, without the benefit of either rest or the video. The incident reports were not precisely consistent with the facts learned following review of the

video and the recording from Officer Emmer's police vehicle – both reports under-stated the number of strikes to Mr. Tatum, and Officer Emmer's statement about the initial appearance of the knife was not consistent with his subsequent recollection.

50. When an individual is suffering from Critical Incident Amnesia, they will initially only remember general information about the incident. Full recall will occur only after two full sleep cycles.

51. Recall immediately following a traumatic incident is often not the most reliable. The extent to which memory is impaired is generally determined by the amount of stress felt during the incident.

52. Several days after the incident, a criminal investigation was commenced by Major Wenger of the Department's Major Crimes division to determine any criminal wrong-doing by either the Officers or Mr. Tatum.

53. In his statement to Investigator Wenger, Clayton Payne quoted Mr. Tatum as having said during the incident, "Ya'll already broke me up and I am not giving up."

54. In her statement to Investigator Wenger, Audra Wilson stated that Mr. Tatum "was pretty wild" and that the Officers handled the situation very well.

55. In his statement to Investigator Wenger, Officer Daryl Slaughter stated that he saw Officer Emmer push Mr. Tatum back down with his foot and that, on account of all the blood, he would have done the same if he had seen Mr. Tatum trying to stand.

56. In his statement to Investigator Wenger, Officer Emmer stated that Mr. Tatum was one of the strongest people he had ever encountered and that there was no way he and Officer Smith would have gotten him into custody without assistance. He also stated that he used baton strikes in lieu of going hands on since he was not sure whether or not Mr. Tatum had another weapon.



57. The investigation determined that Mr. Tatum refused verbal commands by the Officers and resisted arrest. Mr. Tatum admitted to resisting arrest. He was charged with three counts of aggravated assault, including one count for assaulting the other resident with a knife; resisting arrest; and possession of marijuana. He ultimately received a sentence of 11 months, 29 days.

58. The Major Crimes investigation found no criminal wrong-doing by Officers Emmer and Cooley; however, Sergeant Wenger was instructed to present the case against the Officers to the Grand Jury, which returned a No True Bill. The Officers were also cleared of any criminal wrong-doing by the Federal Bureau of Investigation.

59. The incident was investigated in late July by Alex Mercado with the Police Department's Internal Affairs (IA). The IA investigation largely relied on the interviews conducted by Major Crimes. Investigator Mercado interviewed Officers Emmer and Smith but did not interview Officer Cooley. During the investigation, Mr. Tatum admitted to spitting blood on the ground and trying to stand but denied that he ever had a knife. Ultimately, Officer Mercado concluded that Officers Emmer and Cooley followed the Department's use of force policy as much as possible.

60. Officer Cooley was not aware of the IA investigation while it was in process but, ultimately, believed that the report had cleared him of any wrong-doing.

61. The IA report compiled by Investigator Mercado was reviewed by the IA Commander, Captain Susan Blaine, who made a finding of excessive force and made a recommendation on appropriate discipline to Assistant Chief of Police Randy Dunn. The findings and recommendation were reviewed and sanctioned by the Department's Administrative Review Committee and, ultimately, Chief Dodd.