

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR. NO. 2:23-cr-20191-MSN-5

EMMITT MARTIN, III,
TADARRIUS BEAN, DEMETRIUS
HALEY, DESMOND MILLS, JR.,
AND JUSTIN SMITH

Defendants.

DEFENDANT, JUSTIN SMITH'S RENEWED AND SUPPLEMENTAL MOTION
FOR ACQUITTAL PURSUANT TO FRCP 29 OR IN THE ALTERNATIVE
MOTION FOR NEW TRIAL PURSUANT TO FRCP 33 AND MEMORANDUM
IN SUPPORT OF SAME

COMES NOW, the Defendant, Justin Smith (hereinafter "Justin Smith"), and files this his Renewed and Supplemental Motion for Acquittal Pursuant to FRCP 29 or in the Alternative Motion for New Trial Pursuant to FRCP 33 and Memorandum in Support of same, and would state as follows:

INTRODUCTION

1. Justin Smith was convicted of one single count of a four (4) count multi-part indictment alleging civil rights violations and conspiracy.

2. Justin Smith's Count 4, alleged as follows:

Obstruction of Justice: Witness-Tampering

On or about January 7, 2023, within the Western District of Tennessee, defendants EMMITT MARTIN III, TADARRIUS BEAN, DEMETRIUS HALEY, DESMOND MILLS JR., and

JUSTIN SMITH, while aiding and abetting one another, knowingly engaged in misleading conduct towards, corruptly persuaded, and attempted to corruptly persuade, their supervisor (MPD Supervisor 1) and an MPD Detective (MPD Detective 1) with the intent to hinder, delay, and prevent the communication to a law enforcement officer and judge of the United States of truthful information relating to the commission and possible commission of a Federal offense. Specifically, defendants MARTIN, BEAN, HALEY, MILLS, and SMITH provided false and misleading information and withheld and intentionally omitted material information in their communications with MPD Supervisor 1 and MPD Detective 1, each of whom was tasked with writing MPD reports for the arrest of Tyre Nichols, including: defendants MARTIN, BEAN, HALEY, MILLS, and SMITH omitted that defendant MARTIN repeatedly punched Nichols; defendants MARTIN, BEAN, HALEY, MILLS, and SMITH omitted that defendants MARTIN and HALEY kicked Nichols; defendants MARTIN, BEAN, HALEY, MILLS, and SMITH omitted that Nichols had been struck in the head; defendants falsely stated to MPD Detective 1 that Nichols was actively resisting at the arrest scene; defendants falsely stated to MPD Detective 1 that Nichols grabbed defendant SMITH by his vest and pulled on officers' duty belts; and defendants MILLS and SMITH falsely stated to MPD Detective 1 that Nichols lifted both of them in the air.

In violation of 18 U.S.C. § 1512(b)(3). (Emphasis Added)

3. Only two (2) sources of evidence of substance could have been relied upon by the government to establish a prima facie case for conviction. That would be that Justin Smith misled, omitted, or lied to Lieutenant DeWayne Smith (hereinafter "Lt. Smith") or Detective Valandria McKinnie (hereinafter "Detective McKinnie") with the specific intent to delay or hinder a federal criminal investigation.

4. Lt. Smith and Detective McKinnie testified at trial, and both witnesses completely disproved any allegation of Justin Smith's intentional, obstruction worthy, conduct towards them.

5. The only other method of establishing obstruction of justice (but not witness tampering) would be in Justin Smith's completion of his "Blue Team" "Response to Resistance" form. Same is attached as Exhibit "A."

6. Multiple supervisors testified that while Justin Smith's "Blue Team" wording might be "unclear," they would have simply asked him to clear it up utilizing appropriate Memphis Police Department terminology. None of them found that that procedure would have been in any way misleading or "sneaky." See testimony of retired Lieutenant Mark Wojcicki, Lieutenant Brian Nemec, and retired Lieutenant DeWayne Smith. [ECF No.: 647, Pages 47-48]

7. As it relates to Detective McKinnie, she was confronted with her recorded statement she gave to Internal Affairs wherein she stated that all of her information for her criminal report came from Emmitt Martin and Demetrius Haley, and no information came from any other source. [ECF No.: 647, Pages 84; 87-88]

8. Detective McKinnie adopted as "truthful" her earlier recorded and transcribed statement (Exhibit "75") to the Memphis Police Department and went so far in response to a question from Mr. Forrest Christian to state that the single assertion in her report involving Justin Smith which stated "While attempting to detain suspect Tyre Nichols, he began actively resisting by pulling duty belts and grabbing Officer Smith by his vest" came directly and only and from Emmitt Martin and not Justin Smith. [ECF No.: 647, Pages 87-88]

9. Therefore, it is impossible to fathom what evidence the jury could convict Justin Smith of a single count of obstruction of justice – witness tampering, and what material evidence supported, beyond a reasonable doubt, Justin Smith's guilt.

ARGUMENT – PROOF AT TRIAL

10. What is very enlightening for this Court to consider is the government's Response to Defendant, Justin Smith's, initial FRCP 29 Motion for Judgment of Acquittal and in the renewed motion at the close of the government's case.

11. At page six (6) of the government's Response [ECF No.: 620], the government examined Count 3 – Conspiracy to Obstruct Justice. The jury has now spoken – Justin Smith was involved in no conspiracy on any count. Therefore, the government's argument regarding the actual Count 4 – Obstruction of Justice – Witness Tampering begins at page seven (7) with two (2) paragraphs summarizing the proof the government contended supported a verdict against Justin Smith on the individual charge of "Obstruction of Justice – Witness Tampering."

12. The government stated:

To prove Count 4, the government must prove that the defendants (Justin Smith) with the intent to hamper a potential criminal investigation of their conduct (presumably civil rights violations and conspiracy; for all of which Justin Smith was acquitted), knowingly made false statements about criminal civil rights violations to, or intentionally omitted and concealed material facts about criminal civil rights violations from, their supervisor (Lt. Smith) and the MPD detective (Detective McKinnie) tasked with writing the offense report. (Emphasis and parentheticals for clarity)

The government proved that the defendants (Justin Smith) provided false and misleading information, and omitted material information, to these two individuals through the above-described evidence (Referring to the conspiracy evidence laid out by the government on pages six-seven (6-7) for which the jury acquitted Justin Smith) about what the defendants (Justin Smith) did and said, including video and eyewitness testimony, plus (1) testimony from their supervisor (Lt. Smith) and the MPD detective (Detective McKinnie) about what the defendants (Justin Smith) did and did not tell them, and (2) the offense report reflecting the defendants' (Justin Smith) false and misleading statements and omissions. (Emphasis and parentheticals for clarity)

13. The government relies exclusively on the proof that they claim was presented that Justin Smith individually, as opposed to as a part of a conspiracy, provided, or omitted information to Lt. Smith and Detective McKinnie.

14. The undisputed, unrefuted, and uncontroverted proof from the witness stand and in the record was that Justin Smith played no actual or active part in the reporting to Detective McKinnie. Detective McKinnie herself stated, on direct examination from questions from Department of Justice Attorney, Forrest Christian, when asked who, in particular, provided her the information to put in her report regarding Tyre Nichols grabbing Justin Smith's vest – Detective McKinnie testified without any hesitation that that information came only from Martin and not Justin Smith. The Court may recall that in questioning Detective McKinnie, Mr. Christian instructed his paralegal to apply yellow highlighter to the line in Detective McKinnie's report displayed on the Court's ELMO to which Detective McKinnie responded that the assertion highlighted came from Emmitt Martin. [ECF No.: 647, Pages 87-88]

15. Additionally, on cross-examination, Detective McKinnie listened to her recorded statement and was shown her transcript (Exhibit "75") wherein she stated that the only people who provided her information for her criminal report was Martin and Haley. [ECF No.: 647, Pages 125-129]

16. The government attempted to rehabilitate her testimony and adopted statement by asking Detective McKinnie if she provided her report to the defendants to review. Detective McKinnie testified in substance that the report was typed on her handheld P.D.A., and it was passed amongst a group of unidentified people who had the "opportunity" to review it for accuracy. [ECF No.: 647, Pages 114-116]

17. In no way did Detective McKinnie testify that Justin Smith reviewed this handheld P.D.A., or that he agreed with its contents. [ECF No.: 647, Page 84]

18. Even the Government's cooperating witness/defendant, Emmitt Martin, stated that he had no recollection of anyone other than he and Haley providing information or being present for Detective McKinnie's report. [ECF No.: 597, Page 82; ECF No.: 599, Page 63]

19. As it relates to Lt. Smith, his testimony was abundantly clear that once Justin Smith later learned of possible excessive force on the part of Haley and Martin, he reported what he had heard from Martin and Haley to Lt. Smith and sought Lt. Smith's advice on how to make the Memphis Police Department record clear. Justin Smith's phone call to Lt. Smith was on or about January 11, 2023, long before any federal investigation was opened. [ECF No.: 647, Page 59]

20. The government's argument against granting a Rule 29 Order of Acquittal to Justin Smith as to Count 4 speaks volumes as it relates to the proof that they believe they presented at trial. Obviously, the evidence that they claim they presented at trial to establish a conspiracy to obstruct justice miserably failed.

21. As it relates to any individual conduct or omissions on the part of Justin Smith, the government's own proof established that Justin Smith had no intentional knowing desire to obstruct justice or withhold information in the reporting process or persuaded, or attempted to persuade, a witness in order to hinder or delay any investigation.

22. The jury was shown, and the Court will recall that Justin Smith's own "Blue Team" "Response to Resistance" form was accurate as it relates to the points of impact between Justin Smith and Tyre Nichols wherein Justin Smith identified in his report Tyre Nichols' injuries to Nichols' face received from Justin Smith, and the injuries to Nichols' wrists received

from Justin Smith. The fact that Justin Smith used a “word salad” of “soft hands technique with a closed hand” was testified to by at least three (3) supervisors who indicated that had the lieutenants had the opportunity, they would have appropriately asked Justin Smith to use the correct Memphis Police Department terminology or to explain what was meant by the phrase. However, Lt. Smith could not seek clarification because the Blue Team Report process was locked out by the Tennessee Bureau of Investigation and Internal Affairs. This “blocking” was also coupled with Justin Smith’s relief from duty. Therefore, no edits could be made. Those same supervisors testified that edits to Blue Team and Response to Resistance forms are common, and in no way “sneaky.” [ECF No.: 647, Pages 47-48]

23. Additionally, the Court should review its Jury Instruction Nos 31, 32, 33, 34, 35, 36, and 37 [ECF No.: 630] to analyze the law presented to the jury which would permit a jury to find Justin Smith guilty of the individual act of obstruction of justice – witness tampering. Attached as Exhibit “B” are those relevant Jury Instructions as given to the jury.

24. Count 4 – Obstruction of Justice, Definition of the Crime of Jury Instruction No. 31, states at “Second:”

That the defendant (Justin Smith) acted with the intent to hinder, delay, or prevent the communication of information to a law enforcement officer of the United States or a judge of the United States; and . . .

25. That instruction, in substance, states that the allegation was that Justin Smith lied to either Lt. Smith or Detective McKinnie with the intent to hinder, delay, or block the communication of a witness to federal law enforcement officials.

26. The actual proof was that not only did Justin Smith not lie to either one of those parties, but that he did not lie with the intent to hinder, delay, or prevent communication to federal law enforcement officers.

27. Jury Instruction No. 32 defines and examines for the jury whether or not Justin Smith aided or abetted any other party to commit obstruction of justice.

28. The elements set out for the jury to determine was “First: That the crime of obstruction of justice, as charged in Count Four, was committed;” (that is that a lie was told with the intent to hinder, delay, or prevent the Government from the truth by Justin Smith); or paragraph “Second; That the defendant (Justin Smith) helped to commit the crime or encouraged someone else to commit the crime.” In other words, that Justin Smith helped or encouraged someone else to lie.

29. Paragraph “Third:” states “That the defendant (Justin Smith) intended to help commit or encourage the crime.” In other words, that Justin Smith intended to help someone else lie to Lt. Smith or Detective McKinnie.

30. The Court instructed the jury in the very next paragraph that proof that Justin Smith may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider his presence in “deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.”

31. At most, the prosecution proved that Justin Smith was in and out of a room where Detective McKinnie was taking Emmitt Martin’s criminal report, but as the instruction states, “without more, it is not enough.”

32. The jury was instructed that the government must prove that the defendant (Justin Smith) did something to help or encourage the crime with the intent that the crime be committed. In other words, that Justin Smith actually did something to help someone else lie. There was no proof from the witness stand that Justin Smith did anything to help someone else lie, nor did he do so intentionally to delay or hinder federal law enforcement officers.

33. As it relates to Jury Instruction No. 33, the undisputed and unrefuted testimony was that the “Blue Team” or “Response to Resistance” form recites the amount of force used by the individual officer preparing the report. It is not in any way to include alleged uses of force by anyone else. Those “anyone else” officers are to present in their own “Blue Team” form noting what force they individually utilized.

34. Justin Smith truthfully and accurately filled out his own uses of force both in narrative and in demonstrative fashion. It may have been inartful, but it was not criminal in nature.

35. As it relates to Detective McKinnie’s report, the undisputed, unrefuted, and uncontroverted proof was that Detective McKinnie relied exclusively on Martin and Haley for the information contained in her report which was a recitation of supporting facts for a charge of aggravated assault upon Emmitt Martin by Tyre Nichols surrounding Nichols’ alleged attempt to grab Martin’s gun while at the first scene at Ross and Raines. Indisputably, Justin Smith was not involved in the Ross and Raines Road traffic stop, so it would be non-sensical to interview witnesses to a crime who admittedly were not present.

36. Importantly, the indictment alleges that Justin Smith told Detective McKinnie that Nichols lifted Mills and Smith in the air. The Court and government must concede (1) the lifting of Mills and Smith assertion is nowhere in Detective McKinnie’s report (Exhibit “42”); and (2) not one bit of testimony supporting the indictment allegations against Justin Smith was elicited at trial. The testimony from Lt. Smith established without question that the unindicted officer Hemphill is who made the comment to Lt. Smith at Ross and Raines, but Hemphill was referring to himself and the other two (2) officers (Martin and Haley) at the traffic stop being lifted in the air.

37. The undisputed, unrefuted, and uncontroverted proof was that once Justin Smith found out, after the fact, that there was possible excessive force on the part of Martin and Haley, he immediately reported that to his supervisor, Lt. Smith.

38. Jury Instruction No. 34 speaks of the misleading behavior of a defendant towards an officer or employee of the federal government.

39. The government's proof and argument was that Justin Smith in fact made admissions which were truthful to the FBI agent assigned the investigation of the case. The FBI agent himself testified that Justin Smith was truthful. The government repeatedly argued to the jury that Justin Smith truthfully admitted his involvement administering and witnessing excessive force and "confessed" to those uses of excessive force during the FBI investigative interview.

40. The government has never alleged that Justin Smith lied to federal law enforcement officers, and in fact, the government presented proof diametrically opposed to that allegation. The government then argued that Justin Smith admitted and "confessed" to excessive uses of force on his part during his FBI interview.

41. The fact that the jury saw through the government's scheme to present "admissions" and "confessions" and yet acquitted Justin Smith of use of his own alleged excessive force or knowledge of others' alleged excessive force speaks volumes and serves as a basis for overturning Justin Smith's conviction for individual obstruction of justice coming from the very lips of the government's lawyers and witnesses themselves.

42. Importantly, since the jury has spoken that Justin Smith did not know of excessive force, he could not intervene and could not report that excessive force. Once he learned verbally

that there was possible excessive force, after the fact, Justin Smith, indisputably, communicated that revelation to his supervisor. No proof was put on by the government to the contrary.

43. Jury Instruction No. 35 references Justin Smith's obstruction of justice by referring to "possible commission of a federal offense." This has been adequately addressed above in once that Justin Smith learned of a possible commission of a federal offense on the part of Martin and Haley, he reported same to Lt. Smith, and Lt. Smith testified under oath that this occurred long before a federal investigation was opened or the reports could have been communicated by the Memphis Police Department to the U.S. Government in order for the prospective investigation to be opened.

44. Jury Instruction No. 36 is for Pinkerton Liability, and since the jury spoke very clearly that Justin Smith was in no way involved in any conspiracy of any sort, Justin Smith cannot have Pinkerton Liability for the acts of others.

45. Jury Instruction No. 37 gives the option to the jury to find Justin Smith guilty of obstruction of justice by unanimous verdict that one or more of the six (6) means were in fact committed by Justin Smith.

46. Through its verdict, the jury found that Justin Smith could not have exercised means one (1), two (2), five (5), and six (6) by finding him not guilty of all counts except for direct and individual obstruction of justice.

47. Inasmuch as Justin Smith reported his own attempted strikes to Tyre Nichols' face and was found by the jury not to know of any other strikes to Tyre Nichols' head, means number three (3) is excluded.

48. The undisputed proof from Detective McKinnie herself is that Justin Smith had no involvement (other than at times limping through the office) with the report made by her, so therefore, means number four (4) was excluded. [ECF No.: 647, Pages 130-133]

49. Means number five (5) was testified to under oath by Detective McKinnie to have come solely from Martin. Therefore, the only involvement in the words “Justin Smith” in her report came from Martin and not Justin Smith. [ECF No.: 647, Pages 87-88; 114-116; 125-129; 130-133]

50. As it relates to aiding and abetting liability in means number six (6), as the judge addressed the jury, being present during someone else’s obstruction is not enough to convict, and at most, the proof was that Justin Smith was limping in and out of the room at 51 Flicker Street during Martin’s recitation of the alleged facts to McKinnie. Therefore, means number six (6) also fails.

LAW AND ARGUMENT

51. In ruling on a Motion for Judgment of Acquittal made pursuant to FRCrP 29, the District Court must “review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilty beyond a reasonable doubt based on the available evidence.”

52. In challenges under FRCrP 29, it is reviewed “de novo the sufficiency of the evidence to sustain a conviction.” *United States v. Emmons*, 8 F.4th 454, 477 (6th Cir. 2021)(quoting *United States v. Gunter*, 551 F.3d 472, 482 (6th Cir. 2009).

53. When considering the sufficiency of the evidence, a court may not “reweigh the evidence, reevaluate the credibility of witnesses, or substitute its judgment for that of the jury.” *Emmons* at 478.

54. Even though FRCrP 29 appears to be an extremely high obstacle for a defendant in having a Rule 29 motion granted, in the case at hand, logic dictates that no rational juror could have found Justin Smith guilty of the individual act of obstruction of justice – witness tampering.

55. Universally, witness tampering involves threats made to a witness to avoid their harmful testimony at trial. This fact is common sense. See *United States v. Sadler*, 24 F.4th 515 (6th Cir. 2022).

56. This Court, weighing the government's evidence against Justin Smith individually in a light most favorable to the government, cannot help but determine that no rational juror could have found Justin Smith guilty of witness tampering by misleading or omitting facts when the only evidence consists of the government's witnesses excluding Justin Smith from having any involvement in the preparation of Detective McKinnie's criminal report, and further, that only Justin Smith contacted Lt. Smith when Justin Smith first learned from Haley and Martin that they had kicked and punched Tyre Nichols.

57. The jury specifically and clearly found that Justin Smith had no knowledge of excessive force while it was being administered by finding him not guilty of civil rights violations; a duty to intervene; or failure to advise medical personnel of the injuries received by Tyre Nichols.

58. The acquittals of those counts to the benefit of Justin Smith necessarily and logically concludes that he was not guilty of any individual acts of obstruction of justice – witness tampering which involved conduct of other parties of the Scorpion Team.

59. There was NO evidence, and this Court should exercise courageous discretion to tell the Department of Justice in its ruling on this Rule 29 motion that the government did not present any evidence against Justin Smith that the Court can weigh in a light favorable to the

government to support the conviction of Justin Smith of individual acts of obstruction of justice – witness tampering.

60. The Defendant, Justin Smith, challenges the government, or the Court for that matter, to describe how Justin Smith “corruptly persuaded” any witness in this case. Analysis of the phrase “corruptly” has been repeatedly commented on and referred to as unduly vague in countless cases across the country. See *United States v. Shotts* 145 F.3d 1289 at 1300 (11th Cir. 1998); *United States v. Edwards*, 869 F.3d 490, 501-502 (7th Cir. 2017); *United States v. Morrison*, 98 F.3d 619 (D.C. Cir. 1996); *Fisher v. United States*, 144 S. Ct. 2176 (U.S. 2024); and importantly, *United States v. Poindexter*, 951 F. 2d 369 at 385 (D.C. Cir. 1991).

61. The United States Supreme Court struggled with corruptly persuading witnesses or employees in the landmark case of *Arthur Andersen, LLP v. United States*, 544 U.S. 696 (U.S. 2005).

62. But aside from the statutory requirement of “corruptly,” the government and the Court must answer how Justin Smith persuaded anyone to provide hindering or delaying evidence to the federal government in their investigation of Tyre Nichols’ death. Not one witness for the government testified that Justin Smith made any attempts to persuade any witnesses to do or say or not to say anything.

63. Justin Smith simply filled out his Response to Resistance Report and did so quite accurately but inartfully. Justin Smith had nothing to do with Detective McKinnie’s criminal investigation report prepared on behalf of Emmitt Martin, the victim of an alleged aggravated assault, and the jury has already determined that Justin Smith had no knowledge of excessive force at the time the excessive force was being administered by finding him not guilty of any

civil rights violations causing bodily injury, or death, or failing to intervene, or depriving Mr. Nichols of medical care as a result of knowing that Mr. Nichols had a serious medical need.

64. Therefore, not one shred of proof was presented by the government that Justin Smith took any action to persuade any witness to delay or hinder a federal investigation.

65. Aside from the unconstitutionally vague reference to “corruptly,” the government nor the Court can point to any “persuasion” on the part of Justin Smith of any witness through force or intimidation or lies or omissions.

CONCLUSION

66. The jury has acquitted Justin Smith of:

1. Administering excessive force (Count 1);
2. Knew of, in order to intervene in, any other person’s use of force (Count 1);
3. Depriving the arrestee medical treatment of serious medical needs by failing to render aid or by advising dispatchers or EMTs of the circumstances of being struck repeatedly (Count 2);
4. Conspiracy to witness tamper by engaging in misleading conduct by way of seven (7) overt acts (Count 3).

67. Justin Smith prays that this Honorable Court either vacate the guilty verdict as to Count 4 of the indictment and enter an acquittal as to Count 4 of that indictment pursuant to FRCrP 29 as finding Justin Smith guilty of individual acts of Obstruction of Justice – Witness Tampering is impossible in light of the proof and acquittals of Counts 1-3, or in the alternative grant the Defendant, Justin Smith, a new trial, pursuant to FRCrP 33.

Respectfully submitted,

/s/Martin Zummach

Martin Zummach #16352

Attorney for Defendant, Justin Smith

7125 Getwell Road, Ste. 201

Southaven, MS 38671

(662) 349-6900

CERTIFICATE OF SERVICE

The undersigned certifies that on the 11th day of October, 2024, a copy of the foregoing document was electronically filed with court clerk using the ECF System, and that upon filing, a copy will be sent via the Court's ECF System to all registered parties in this case.

S/Martin Zummach

[Print](#)

Memphis Police Department Response To Resistance Report

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
01/07/2023	01/07/2023	20:29
Record ID Number	Related CAD or Case #	ISB #
55402	P220072328	
Date/Time Entered	Entered By	
01/07/2023 23:06	POLICE OFFICER II Justin Smith - 13999	
BlueTeam Assigned Investigator	IAPro Assigned Investigator	
SERGEANT Delwan Waller - 10638	Un-assigned	

Incident Summary

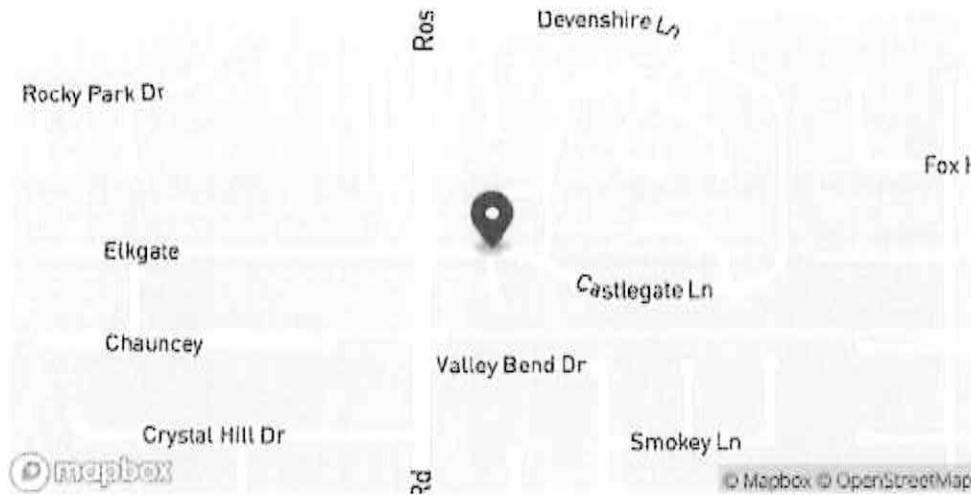
On 01/07/2023 Detectives J.Smith (13999) with Scorpion Team 1 answered a call for help at Ross Rd/ E Raines Road where individual active resisting officer and fled on foot from the scene. Detective J. Smith began checking the area and observed male black later identified as Tyre Nichols being taken to the ground by an officer. Suspect Tyre Nichols began actively resisting officers verbal and physical commands refusing to place his hands behind his back. After struggling with the above suspect, Detective J.Smith utilized soft hands technique with a closed hand which was not effective. Detective J. Smith then utilized his department issued chemical agent standing approximately 3 feet away into Tyre Nichols eyes which was still not effective, he continued to actively resist officers. Tyre Nichols was eventually place into custody after additional unit made the scene to assist. Memphis Fire Department unit #28 and engine #55 made the scene for treatment. Tyre Nichols was transport to St. Francis Hospital.

Incident Location

Addresses

Latitude, Longitude = [35.03019, -89.83910]
 Castlegate Lane and Bear Creek Lane, Memphis, TN, 38141
 923 Ward

EXHIBIT
A



- Location of Occurrence: Shelby County

Use of Force Details

Reason For Using Force	Service Being Rendered	More Than 1 Citizen Involved
Effect Arrest	Arresting	No
Weather Condition	Light Condition	Distance to Citizen
Clear	Night	1 feet to 3 feet
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	Yes
Citizen Build	Citizen Height	Citizen Influence Assessment
Medium	6'1" to 6'3"	Combative
Employee(s) Injured	Employee(s) Taken to Hospital	
No	No	

Reporting/Involved Citizen

Tyre D Nichols

Date of Birth: [REDACTED] **Race:** Black **Ethnicity:** Not Hispanic or Latino **Gender:** Male

Addresses

Phone Numbers [None Entered]

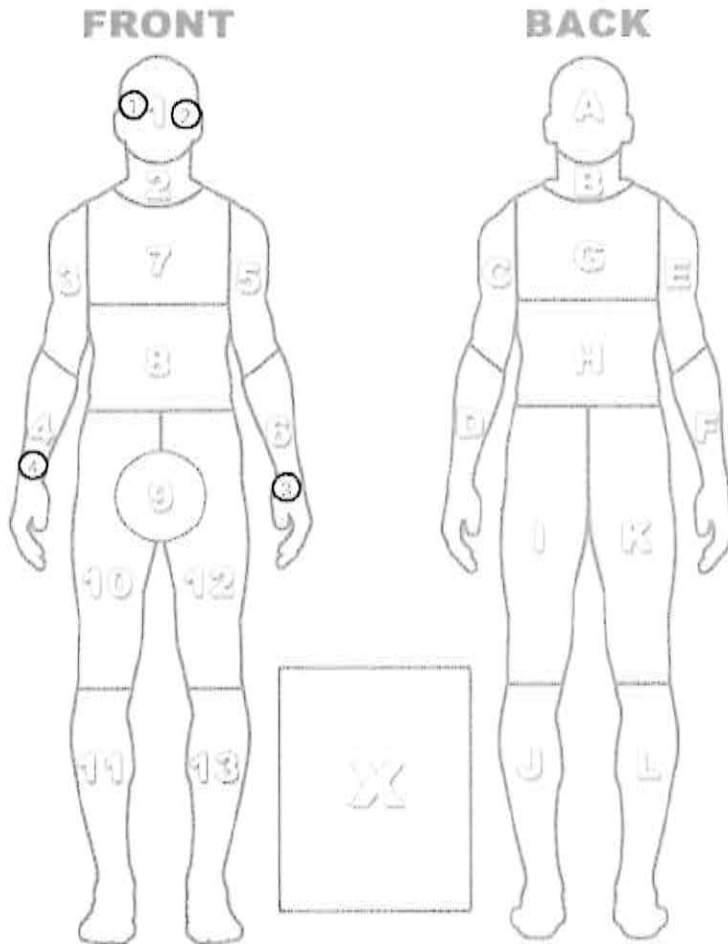
Role: Suspect

Type of Resistance Citizen Used Against Employee

- Non-Compliance
- Fled

Injuries Sustained By Citizen

Injury	Pre-existing Injury	Region	Injury Location
Abrasion	Unk	1, 1, 6, 4	1, 2, 3, 4



Medical Treatments

- Transported to Hospital

Charges Against Citizen

- Resisting/Evading Arrest
- Felony

Involved Employees

POLICE OFFICER II Justin Smith - 13999

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit **Video Footage:** BWC Video - Captured

Role: Backup Officer

Policy Outcome: Not yet entered

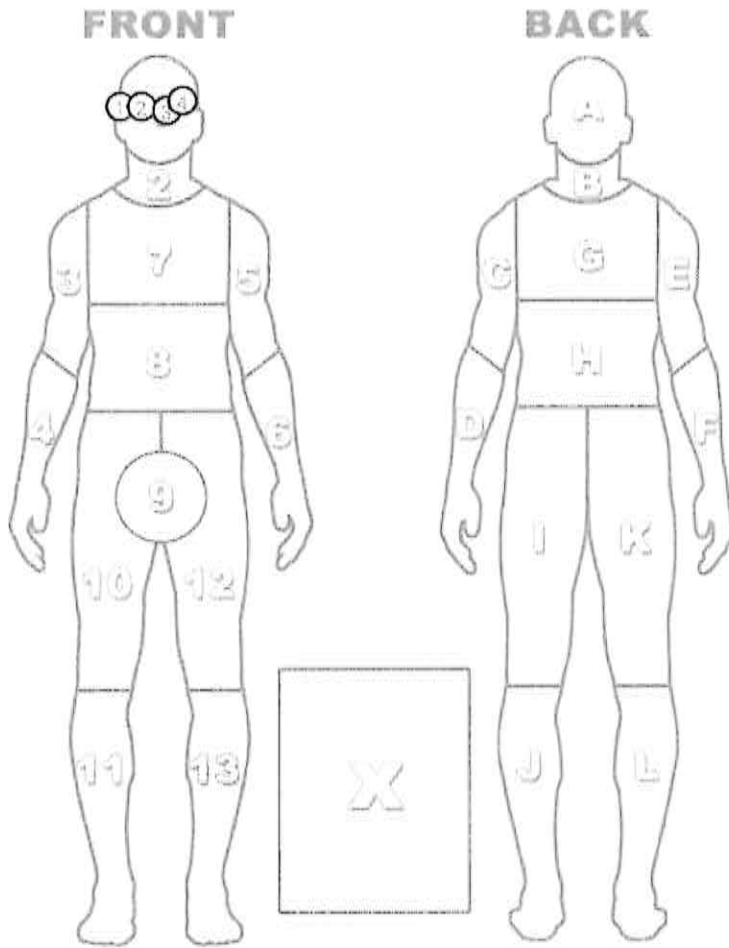
Force used by this Employee against Citizen

- Chemical Agent - Force Effective: No
- Physical Force - Force Effective: No

Less lethal force used by this Employee against Citizen

Force Used	Force Effective	Region	Point of Contact
Chemical Agent	No	1, 1, 1, 1	1, 2, 3, 4
Physical Force	No		[Force Location Unknown]

Missed



Injuries Sustained By Employee

Injury	Pre-existing Injury	Region	Injury Location
No injuries noted or visible			

Medical Treatments

- No treatments applied

Employee Witnesses

POLICE OFFICER II Preston Hemphill - 13941

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit

Video Footage: BWC Video - Captured

Role: Contact Officer

POLICE OFFICER II Emmitt Martin - 13985

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit

Video Footage: BWC Video - Captured

Role: Contact Officer

POLICE OFFICER II Tadarrius Bean - 14711

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit

Video Footage: BWC Video - Captured

Role: Backup Officer

POLICE OFFICER II Demetrius Haley - 14730

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit

Video Footage: BWC Video - Captured

Role: Contact Officer

POLICE OFFICER II Desmond Mills, Jr. - 13678

Assignment at time of incident: POLICE OFFICER II/SCORPION Unit

Video Footage: BWC Video - Captured

Role: Cover Officer

Tasks

No tasks to show

Running Sheet Entries

No running sheet entries to show

Attachments

Date Attached	Attachment Description	Attachment Types
01/09/2023	01-07-2023 Use of Force Raines & Ross	docx

JURY INSTRUCTION NO. 31

Count Four: Obstruction of Justice Definition of the Crime

Count Four of the indictment accuses the defendants of obstruction of justice, in violation of 18 U.S.C. § 1512(b)(3).

For you to find a defendant guilty of this crime, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt with respect to that defendant:

First. That the defendant knowingly corruptly persuaded, attempted to corruptly persuade, or engaged in misleading conduct toward Lt. DeWayne Smith or Detective Valandria McKinnie;

Second. That the defendant acted with the intent to hinder, delay, or prevent the communication of information to a law enforcement officer of the United States or a judge of the United States; and

Third. That such information related to the commission or possible commission of a federal offense.

If you are convinced that the government has proven all these elements with respect to a defendant, or that a defendant aided or abetted as defined in the next instruction, say so by returning a guilty verdict on this charge as to that defendant. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

JURY INSTRUCTION NO. 32

Aiding and Abetting on Count Four

Like Counts One and Two, Count Four also charges that each defendant both directly committed the crime and that each defendant aided and abetted the others in committing the crime. For you to find a defendant guilty of Count Four, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime.

To find a defendant guilty as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt with respect to that defendant:

- First. That the crime of obstruction of justice, as charged in Count Four, was committed;
- Second. That the defendant helped to commit the crime or encouraged someone else to commit the crime; and
- Third. That the defendant intended to help commit or encourage the crime.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved all these elements with respect to a defendant, say so by returning a guilty verdict on Count Four as to that defendant. If you have a reasonable doubt about any one

of these elements, then you cannot find the defendant guilty of Count Four as an aider and abettor.

JURY INSTRUCTION NO. 33

Count Four: Obstruction of Justice

First Element – Corruptly Persuaded or Engaged in Misleading Conduct

The first element that the government must prove with respect to Count Four is that the defendant knowingly corruptly persuaded, attempted to corruptly persuade, or engaged in misleading conduct toward r 1 or MPD Detective 1.

A person acts “corruptly” if he acts knowingly and for an improper purpose, or with the purpose of wrongfully impeding the due administration of justice.

The term “misleading conduct” means knowingly making a false statement, intentionally omitting material information from a statement and thereby causing a portion of such a statement to be misleading, or intentionally concealing a material fact and thereby creating a false impression by such statement.

JURY INSTRUCTION NO. 34

Count Four: Obstruction of Justice Second Element – Intent to Hinder, Delay, or Prevent the Communication of Information

The second element that the government must prove with respect to Count Four is that the defendant acted with the intent to hinder, delay, or prevent the communication of information to a law enforcement officer of the United States or a judge of the United States.

The term “law enforcement officer of the United States” means an officer or employee of the federal government, a person authorized to act for or on behalf of the federal government, or a person serving the federal government as an adviser or consultant, who is authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

The government does not have to prove that a federal investigation was underway at the time the defendant acted. The government also is not required to establish that the defendant intended to keep truthful information from a specific federal law enforcement officer or a specific federal judge, or that the defendant knew that the persons from whom he intended to conceal truthful information were federal law enforcement officers or judges. However, the government must prove that there was a reasonable likelihood that the information would have been transferred to a federal law enforcement officer or federal judge.

You have heard testimony that officers with the Memphis Police Department are trained that the use of excessive force could lead to a potential prosecution for federal crimes. You may consider such evidence along with all the other evidence in deciding whether the government has proved this element beyond a reasonable doubt.

JURY INSTRUCTION NO. 35

Count Four: Obstruction of Justice

Third Element – Related to the Commission or Possible Commission of a Federal Offense

The third element that the government must prove with respect to Count Four is that the information related to the commission or possible commission of a federal offense.

Information “relates to” the commission or possible commission of a federal crime if it concerns the incident in which the crime may have occurred.

The United States does not need to prove that the defendant knew the federal nature of the offense. Also, because the statute refers to the *possible* commission of a federal offense, the United States does not need to prove that any person was actually guilty of any underlying federal offense.

JURY INSTRUCTION NO. 36

Count Four: Obstruction of Justice

Pinkerton Liability for Substantive Offenses Committed by Others

Count Four of the indictment accuses the defendants of committing the crime of obstruction of justice. In addition to proving that a defendant personally committed this crime or that a defendant aided and abetted someone else in committing this crime, there is a third way that the government can prove a defendant guilty of this crime. The third is based on the legal rule that all members of a conspiracy are responsible for acts committed by the other members as long as those acts are committed to help advance the conspiracy and are within the reasonably foreseeable scope of the agreement.

In other words, under certain circumstances, the act of one conspirator may be treated as the act of all. This means that all the conspirators may be convicted of a crime committed by only one of them, even though they did not all personally participate in that crime themselves.

For you to find any one of the defendants guilty of obstruction of justice based on this legal rule, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

- First. That the defendant was a member of the conspiracy charged in Count Three of the indictment;
- Second. That after he joined the conspiracy, and while he was still a member of it, one or more of the other members committed the crime of obstruction of justice;
- Third. That this crime was committed to help advance the conspiracy;
and

Fourth. That this crime was within the reasonably foreseeable scope of the unlawful project. The crime must have been one that the defendant could have reasonably anticipated as a necessary or natural consequence of the agreement.

This does not require proof that each defendant specifically agreed or knew that the crime would be committed. But the government must prove that the crime was within the reasonable contemplation of the persons who participated in the conspiracy. No defendant is responsible for the acts of others that go beyond the fair scope of the agreement, as the defendant understood it.

If you are convinced that the government has proved all these elements, say so by returning a guilty verdict on Count Four as to that defendant. If you have a reasonable doubt about any one of them, then the legal rule that the act of one conspirator is the act of all would not apply as to that defendant.

But as to a particular defendant, in order to find him guilty of Count Four, you must find guilty beyond a reasonable doubt as to one of them.

JURY INSTRUCTION NO. 37

**Count Four: Obstruction of Justice
Unanimity Not Required – Means**

One point about the requirement that your verdict must be unanimous on Count Four.

Count Four of the Indictment accuses the defendants of committing the crime of obstruction of justice in more than one possible way. Note that the first five ways apply to all the defendants.

- (1) The first way is that the defendants omitted that Emmitt Martin repeatedly punched Mr. Nichols;
- (2) The second is that the defendants omitted that Emmitt Martin and Haley kicked Mr. Nichols;
- (3) The third is that the defendants omitted that Mr. Nichols had been struck in the head;
- (4) The fourth is that the defendants falsely stated to MPD Detective 1 that Mr. Nichols was actively resisting at the arrest scene; and
- (5) The fifth is that the defendants falsely stated to MPD Detective 1 that Mr. Nichols grabbed defendant Smith by his vest and pulled on officers' duty belts.
- (6) The indictment also alleges that the defendants aided and abetted one another in making these omissions and false statements, and you have just been instructed about the legal rule that the act of one conspirator is the act of all.

The government does not have to prove all of these for you to return a guilty verdict on Count Four. Proof beyond a reasonable doubt of any one is enough.

To return a guilty verdict, all twelve of you must agree that at least one of these has been proven with respect to that defendant; however, all of you need not agree that the same one has been proved.

That concludes the part of my instructions explaining the elements of the crimes and the defendants' position. Next, I will explain some rules that you must use in considering some of the testimony and evidence.