

Response to Resistance Report

Key West Police Department

Case No: 21-1374

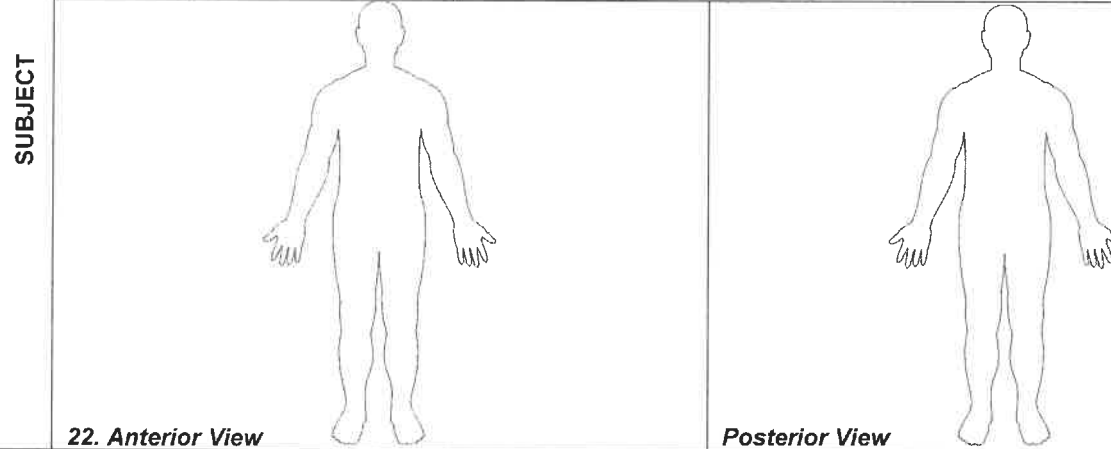
1. A Response to Resistance Report will be completed by the supervisor for: (Check all that apply)

- ☐ A response through the use of non-lethal weapons,
☒ Applies weaponless physical force of strikes, kicks, or "take-downs"
☐ When any person sustains an apparent substantial or fatal injury as a result of the application of force
☐ When any person complains of injury as a result of the application of force
☐ Discharge of firearm in the line of duty off-duty or on-duty (other than for training, maintenance or ballistics testing)

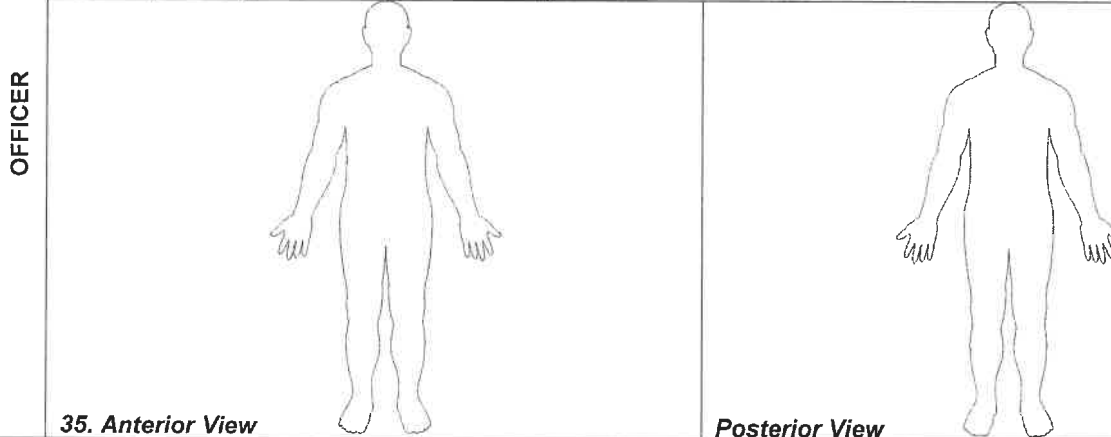
2. Date: 3.12.21 3. Time: 2230 4. Location: 245 Front St/Opal 5. Incident type: S36B

INCIDENT
6. Resistance Level 7. Explanation 8. Response Option 9. Explanation
☐ Passive: ☒ Physical Control Hip roll takedown
☐ Active: ☐ Non-lethal Weapon
☒ Aggressive: Hit and scratched officer ☐ Deadly Force
☐ Deadly Force:

SUBJECT
10. Last Name: Johnson 11. First: Mistie 12. Race: W 13. Sex: F
14. DOB: 06.09.68 15. Height: 5.04 16. Weight: 210
17. Did you observe the subject: ☐ No ☒ Yes If NO, explain why in Section 42. If "YES", complete sections 18-22
18. Appeared to be: ☒ Intoxicated ☐ Under the influence of controlled substance ☐ Emotionally / mentally disturbed
19. Injuries: ☒ No ☐ Evident ☐ Alleged (If Evident or Alleged, describe and indicate areas on charts in Section 22)
20. Photographed: ☐ No ☒ Yes 21. Treated: ☒ No ☐ Yes By: ☐ EMT/Paramedic on scene ☐ Hospital ☐ Detention



OFFICER
23. Officer: Timothy Malak 24. Race: W 25. Sex: M 26. Age: 30 27. Height: 6.00 28. Weight: 230
29. Duty Status: ☐ On-duty ☐ Off-duty ☒ Extra duty employment ☒ Uniformed ☐ Plain clothes 30. Yrs Exp: 7
31. Injuries: ☒ No ☐ Evident ☐ Alleged (If Evident or Alleged, describe and indicate areas on charts in Section 35)
32. Photographed: ☒ No ☐ Yes 33. Treated: ☐ No ☐ Yes By: ☐ EMT/Paramedic on scene ☐ Hospital
34. Response option used by this officer: (If TASER®, also reference line number from TASER® section)



Response to Resistance Report (continued)

Key West Police Department

Case No: 21.1374

TASER USE ONLY	36. TASER® device serial #	37. TASER® device serial #			
	TASER®Cam serial #	TASER®Cam serial #			
	Cartridge 1 serial #	Cartridge 1 serial #			
	Cartridge 2 serial #	Cartridge 2 serial #			
	Number of cycles:	Number of cycles:			
	Type of contact: <input type="checkbox"/> Probe <input type="checkbox"/> CODS <input type="checkbox"/> Drive Stun	Type of contact: <input type="checkbox"/> Probe <input type="checkbox"/> CODS <input type="checkbox"/> Drive Stun			
	Did probes penetrate skin: <input type="checkbox"/> Yes <input type="checkbox"/> No	Did probes penetrate skin: <input type="checkbox"/> Yes <input type="checkbox"/> No			
	Target distance at probe launch:	Target distance at probe launch:			
	Distance between probes:	Distance between probes:			
	Probes removed by (name):	Probes removed by (name):			
Device downloaded by:	Device downloaded by:				
<input type="checkbox"/> 38. Check and list any additional TASER® devices, cartridges or details in the incident description section.					
REPORT	39. Offense/Incident Report and/or Warrant Affidavit must include:				
	<input checked="" type="checkbox"/> All necessary criminal elements. <input checked="" type="checkbox"/> All details of the arrest <input checked="" type="checkbox"/> Details articulating the subject's words, mannerisms and actions that justify the use of force. <input checked="" type="checkbox"/> Details outlining the response to resistance utilized by each officer. <input checked="" type="checkbox"/> Detailed description of injury complaints and/or observed injuries <input checked="" type="checkbox"/> Details outlining the decontamination, first aid or medical treatment provided to the officer and/or subject.				
SUPERVISOR'S INQUIRY	40. Notified Date: 3.12.21	41. Time: 2230			
	42. Did you respond to the scene: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "No", explain why)				
	43. Did you watch all relevant videos associated with the use of force? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "No", explain why)				
	44. Did you meet with the Officer(s): <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "No", explain why)				
	45. During your review did you find any potential policy violations or training issues associated with the incident? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (If "Yes," list below)				
	46. Were you able to locate any independent witnesses: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If "Yes," list below)				
	Name	Address	Phone Number		
	Tucker Barnes	245 Front St Key West, FL 33040- Manager- Opal Resort	305.294.4000		
	Lenny Delia	245 Front St Key West, FL 33040- Security- Opal Resort	305.294.4000		
INT. AFF.	47. Is further review recommended: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
	FORWARD COMPLETED ORIGINAL REPORT TO INTERNAL AFFAIRS				
	48. Preparing Supervisor's Signature / ID	49. Date			
	50. Did the review of this incident conclude that use of force was in compliance with Departmental policy? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes If "No", complete section 51	51. Signature of Internal Affairs Inspector	52. Date		
53. If section 48 is "No" record the Professional Standards Control Number:			54. Date Entered:		

INCIDENT DATA

PROPERTY

Incident Report Additional Name List

Key West Police Department

OCA: 21-001374

Additional Name List

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) VI 4	JOHNSTON, KENNEDY MARIE	2	08/11/1999	21	W	F
Address	526 POPLAR DR, GREENSBURG, PA 15601-		H: - -			
Empl/Addr	Unknown		B: - -			
			Mobile #: - -			

INCIDENT/INVESTIGATION REPORT

Key West Police Department

Case # 21-001374

Status Codes L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found

D R U G S	UCR	Status	Quantity	Type Measure	Suspected Type	Up to 3 types of activity

Assisting Officers

DANTU, N. (3835), SIMS, F.C. (2301), AGLEEV, D. (4007), MALAK, T.J. (4045)

Suspect Hate / Bias Motivated:

NARRATIVE

REPORTING OFFICER NARRATIVE

Key West Police Department

Victim <i>JOHNSTON, MISTIE M</i>	Offense <i>BATTERY</i>	OCA <i>21-001374</i>
		Date / Time Reported <i>Fri 03/12/2021 22:14</i>

On March 12, 2021 at approximately 2214 hours, Ofc. Malak and I, Ofc. Lopez were dispatched to the Opal Key Resort located at 245 Front Street. The caller reported two females fighting near the marina area. The second caller communicated to Key West Dispatch that the fight involved a mother and her daughter.

Upon arrival, Ofc. Malak and I located two females. I observed a young female yelling at an elderly female. The young female was identified with her Pennsylvania driver's license as Kennedy Johnston, (dob:08/11/1999). The elderly female was later identified with her Pennsylvania as Mistie Johnston, (06/09/1968).

It should be noted Kennedy is Mistie's biological daughter.

Kennedy began walking away after yelling at Mistie. I ran to catch up to Kennedy and Kennedy finally stopped walking. Kennedy started yelling, "We were not in a fight". Kennedy told me she was going to walk away, and I told her she was not going anywhere. Mistie was walking towards Kennedy and I told Kennedy to speak to me on the side while Ofc. Malak talked to Mistie.

When Kennedy and I began walking away from Mistie, Kennedy started crying. Kennedy told me she got into a fight with her mom. Kennedy told me she does not know why they were arguing. I observed blood on Kennedy's mouth and a large red scratch on the left side of her neck. I asked Kennedy how she got hurt and she said, "I don't know". Kennedy turned to her right side and used her middle finger as she said, "Fuck you" to her mother.

I smelled a strong odor of an alcoholic beverage emanating from Kennedy's body. Kennedy told me was drinking downtown with her mother early in the evening.

I asked Kennedy why she was bleeding from her mouth, and she told me she does not know. Kennedy told me she punched her mother first and then her mom punched her. Kennedy the altercation took place near the marina area. Kennedy told me this was her fault and her mother did nothing wrong.

I checked Kennedy's hand and I observed red marks on her right hand. Kennedy said the red marks on her right hand was from hitting her mother.

Ofc. Malak asked me to speak with me on the side about the incident and I told Kennedy not to move.

Ofc. Malak told me Mistie had a swollen lip and marks on her face. When Ofc. Malak and I were talking I heard yelling in the background, and I saw Mistie walking up to Kennedy. Ofc. Malak instructed Mistie to step away several times. Mistie hugged Kennedy and I pulled Mistie's right arm to separate them. Ofc. Malak said he grabbed Mistie to pull her away from Kennedy.

I told Kennedy to place her hands behind her back and I placed handcuffs on her. I was double locking the handcuffs on Kennedy and I heard Ofc. Malak telling Mistie to stop pulling away.

Ofc. Malak told me Mistie became very resistant towards him and continue to pull away. Ofc. Malak advised Mistie, if she could not control herself and comply with his instructions, she will be placed into handcuffs and sit on the ground. Ofc. Malak told me Mistie refused to comply with his instruction and Mistie pulled away for the third time.

Ofc. Malak told me he altered Mistie's balance by placing his right leg in front of Mistie's legs and assisted her to

REPORTING OFFICER NARRATIVE*Key West Police Department*

OCA

21-001374

Victim

JOHNSTON, MISTIE M

Offense

BATTERY

Date / Time Reported

Fri 03/12/2021 22:14

the ground. Ofc. Malak told me he placed handcuffs on Mistie and explained to Mistie why this action was taken, and Mistie stated, "I am not black, I am white".

Ofc. Malak completed a supplement report.

Ofc. Malak and Ofc. Dantu walked Mistie to the rear passenger side of Ofc. Dantu's vehicle. Sgt. Sims responded on scene and Ofc. Malak advised Sgt. Sims of the incident.

I informed Kennedy she was under arrest for domestic battery.

I placed Kennedy in the rear passenger side of my vehicle. I transported Kennedy to the Monroe County Detention Center.

I used my Axon capture app to photograph Kennedy's face, neck and hands. I observed Kennedy's left eye was swollen and turning purple. Kennedy's bottom lip was swollen, and she had blood on her lips.

Ofc. Dantu transported Mistie to the Monroe County Detention Center. I used my Axon capture app to photograph Mistie's face and hands. I noticed Mistie had a small bump underneath her left eye and it was turning purple. Mistie had one scratch with blood underneath her eye.

It should be noted Kennedy and Mistie reside together in the same household and they have the same physical address on their Pennsylvania driver's licenses.

This incident was recorded with my body worn camera, 3722.

Based on the facts and evidence, Mistie Johnston did actually and intentionally hit Kennedy's face causing bodily harm. Kennedy's left eye was swollen and turning purple. Kennedy's bottom lip was swollen, and she had blood on her lips. Kennedy had a red large scratch on the left side of her neck. Mistie did commit the offense of domestic battery as defined in 741.28. Contrary to F.S.S. 784.03(1)(A)(2).

Based on the facts and evidence, Mistie Johnston did oppose to follow Ofc. Malak's verbal commands. Mistie became very resistant by pulling away from Ofc. Malak several times. Ofc. Malak was wearing his class B Police uniform. Ofc. Malak had the Key West Police insignia on both sleeves of his shirt. Ofc. Malak was recognizable as an Officer. Contrary to F.S.S. 843.02.

Based on the facts and evidence, Kennedy Johnston did actually and intentionally hit Mistie's face causing bodily harm. Mistie had a small bump underneath her left eye and it was turning purple. Mistie had one scratch with blood underneath her eye. Kennedy did commit the offense of domestic battery as defined in 741.28. Contrary to F.S.S. 784.03(1)(A)(2).

Incident Report Suspect List

Key West Police Department

OCA: 21-001374

1	Name (Last, First, Middle) JOHNSTON, MISTIE M					Also Known As					Home Address 526 POPLAR DR GREENSBURG, PA 15601																																													
	Business Address UNKNOWN, UNKNOWN																																																							
	DOB 06/09/1968	Age 52	Race W	Sex F	Eth U	Hgt 504n	Wgt 190	Hair BLN	Eye BRO	Skin FAR	Driver's License / State. 21585318 PA																																													
	Scars, Marks, Tattoos, or other distinguishing features																																																							
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<div>Notes</div> <div>Physical Char</div>																																																								

2	Name (Last, First, Middle) JOHNSTON, KENNEDY MARIE					Also Known As					Home Address 526 POPLAR DR GREENSBURG, PA 15601																																													
	Business Address UNKNOWN, UNKNOWN																																																							
	DOB 08/11/1999	Age 21	Race W	Sex F	Eth U	Hgt 505n	Wgt 150	Hair BLN	Eye BLU	Skin FAR	Driver's License / State. 32139058 PA																																													
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OCA: 21001374

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Investigator: MALAK, TIMOTHY J (4045)

Date / Time: 03/12/2021 23:34:34, Friday

Supervisor: SIMS, FRED CARTER (2301)

Supervisor Review Date / Time: 03/13/2021 02:43:13, Saturday

Contact:

Reference: General Supplemental Report

On 3/12/21, I, Officer Malak, was working a private detail at the Opal Resort (245 Front Street), when a report of two females fighting on property was brought to my attention. As I made my way outside, I could hear arguing towards the marina portion of the resort. I was flagged down and shown the two females that were engaged in a fight.

As I approached the two females, the situation seemed to be calmed down. Before speaking to either of the two, I observed the younger of the two females with large red scratches to the left side of her neck, along with a swollen bloody lip. The older female had a swollen lip and minor swelling to her face.

I spoke to the older of the two, who was identified as Mistie Johnston 6/9/1968, while Officer Lopez spoke to the younger female, Kennedy Johnston 8/11/1999. I asked Mistie what had taken place and after multiple attempts, she explained the following in summary;

Mistie and he daughter, Kennedy, were at Sloppy Joe's Bar drinking alcoholic beverages. Kennedy left to go to the bathroom and was gone for sometime, so Mistie left to look for her. Mistie looked for Kennedy outside the bar and the two began to argue about going off alone. They eventually walked towards the Opal Resort and Kennedy sat down on a bench and started to cry. Mistie approached her and the two began to Physically fight. Mistie punched her daughter, Kennedy in the face and Kennedy punched Mistie in the face. The two fought for sometime, but thought it was ok since they were family.

I explained to Mistie that in the state of Florida, this was a Domestic Battery, and due to the injuries, appropriate actions must be taken. I instructed Mistie to stay where she was so I could speak to Officer Lopez about the incident. As I was talking to Officer Lopez, Mistie and Kennedy approached each other and tried to "hash" things out. I instructed Mistie to step away from Kennedy with her refusing. I grabbed Mistie by the right arm and pulled her away from Kennedy. Mistie began to tense up and she balled her right fist. I grabbed Mistie by both arms and assisted her away from Kennedy. Mistie became very resistant towards me and continued to pull away. I advised Mistie, if she could not control herself and comply with basic instruction, she would be placed into handcuffs and sat on the ground. Mistie again refused to comply with basic instruction and pulled away for the third time.

I redirected Mistie to the ground in a controlled manner using a hip roll takedown, where she was handcuffed (Checked for proper fit and double locked). I explained to Mistie why this action was taken, and she stated, "I am not Black, I am White". Once Mistie was secured in Handcuffs and proper transportation was acquired, I contacted Sgt. Sims and advised him of the incident.

Mistie was placed in the Rear Passenger side of Officer Dantu's Patrol Vehicle, while Kennedy was placed in the back of Officer Lopez's Patrol vehicle.

Investigator Signature: _____

OCA: **21001374**

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Investigator: *MALAK, TIMOTHY J (4045)*Date / Time: *03/12/2021 23:34:34, Friday*Supervisor: *SIMS, FRED CARTER (2301)*Supervisor Review Date / Time: *03/13/2021 02:43:13, Saturday*

Contact:

Reference: *General Supplemental Report*

Sgt. Sims arrived on location and spoke to myself and Mistie about the incident. Mistie reported no injuries other than her swollen lip from the fight with her daughter.

Once the investigation was completed, all parties were transferred to the Monroe County Jail for further.

My BWC was active for this incident in its entirety and I cleared with no further actions.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT
NOT SUPERVISOR APPROVED

Printed: 03/13/2021 03:04

OCA: **21001374**

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Investigator: *AGLEEV, DENIS (4007)*

Date / Time: *03/13/2021 01:03:04, Saturday*

Supervisor: *(0)*

Supervisor Review Date / Time: *NOT REVIEWED*

Contact:

Reference: *Witness Interview*

On March 12, 2021 at approximately 2215 hours I, Officer Agleev, responded to 271 Front Street, reference a battery.

Upon arrival I saw Officer Malak talking to a middle-aged white female, and Officer Lopez talking to a younger white female. The females turned out to be a mother and a daughter separated after a domestic fight.

I talked to Noel Perry, who witnessed the incident. Perry told me the following: Perry was staying in room 326 of Opal Resort at 245 Front Street. Perry's balcony was facing the boardwalk. Perry heard the above-mentioned females yelling. At some point the middle-aged woman started hitting the younger female into the face. After several punches, the fight moved to the ground. At that point the younger female started protecting herself and hitting the older female. Perry heard multiple passers by calling police and came down for a witness statement.

After interviewing Perry, with a corner of my eye I saw Officer Malak redirected the middle-aged female to the ground for resisting. I ran towards Officer Malak and assisted him with handcuffing the resisting female. The female was relocated into Officer Dantu's vehicle, where she was interviewed by Sergeant Sims, who had responded to scene.

Both females ended up being arrested for domestic battery.

My BWC was activated and uploaded to Axon Evidence.

Investigator Signature: _____