



CCA Case No. 20246

Janetta Amison

Investigation Report and Finding

Robert Stephens
Investigator

Gabriel Davis
Director

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COMPLAINTS SUMMARY

Date: December 26, 2020

Time: 10:05 PM

Location: [REDACTED]

CCA Receipt: December 29, 2020

On 12/26/2020, Ms. Janetta Amison called the Emergency Communications Center (ECC) to have her brother Lawon Amison removed from her residence. Specialist Kenneth Byrne and Officer Adarryl Birch responded and attempted to remove Mr. Amison from the premise. Ms. Amison stated that force was used on Mr. Amison. Ms. Amison told responding officers that Mr. Amison had a cardiac condition and grabbing him incorrectly can harm his condition.

Mr. Amison complained of pain when the officers grabbed him by the arms. Mr. Amison also stated he was pushed down the stairs (6 steps) to the ground from the front patio. Mr. Amison stated he was released from the Justice Center and had pain in his shoulder from the incident. Mr. Amison went to Good Samaritan and was told he has mild inflammation to his shoulder.

INVOLVED SUBJECT STATEMENTS

Janetta Amison

CCA interviewed Janetta Amison on 12/29/2020 at 10:15 AM. She provided the following information:

On December 26, 2019, Ms. Janetta Amison, F/B/50, was having a disagreement with her brother, Lawon Amison. Ms. Amison wanted Mr. Amison to take a walk. When she stepped outside to talk with the officers, Officer Birch asked her to step to the side so they could talk. She then noticed her brother being grabbed by the arm by Specialist Byrne. Mr. Amison upon getting his arm grabbed expressed his previous heart attack and told Specialist Byrne to please let go of his arm. Ms. Amison stated that Specialist Byrne grabbed her brother, squeezed his arm yet again, ignoring the first request. She then informed the officers of his previous medical condition and that she could handle this and to just let her brother go back inside. Officer Birch ran up the porch steps and moved around Ms. Amison. The next thing she remembers was Mr. Amison laying on the lawn past the porch.

Lawon Amison

CCA interviewed Lawon Amison on 12/30/2020 at 10:00 AM. He provided the following information:

On 12/26/2020 Mr. Amison, M/B/50, was talking with his sister on the porch as she was loading up his belongings. This was due to the argument that he was having with his sister, Janette Amison. Specialist Byrne and Officer Birch approached the residence and went onto the front

porch. He stated that while he was talking to Specialist Byrne his back was turned to Officer Birch. Specialist Byrne grabbed his arm. Mr. Amison asked why he was grabbing his arm. From there, Officer Birch threw him off the porch to the ground. The porch that Mr. Amison fell from had six steps leading to the top.

When the officers were arresting him, he stated that the handcuffs were too tight on his wrists. He asked several times for the handcuffs to be loosened, the officers refused to do so. After the officers arrested him, they took him straight to the justice center. He was charged with disorderly conduct. On the morning of December 29, 2020, Mr. Amison went to Good Samaritan Hospital and was told that he had inflammation in his shoulder.

INVOLVED OFFICER STATEMENTS

Officer Adarryl Birch

Officer Adarryl Birch, #PO108, M/B/46, is currently assigned to District 5, and he has been a CPD member since 2004. Officer Birch was on routine patrol, in uniform and operated a marked cruiser with Specialist Byrne, his BWC was activated at the time of the incident. Officer Birch advised CCA that he did not review his BWC in preparation for his interview.

CCA interviewed Officer Birch on April 4, 2022, at 6:30 AM. He provided the following information:

Officer Birch was dispatched to a family trouble that was taking place between two people. They were met at the door by Mr. Amison, who remained inside near the door. Officer Birch explained Ms. Amison, wanted her brother to be escorted out of the residence. Mr. Amison would not leave on his own, so she had to call the police. Officer Birch stated Mr. Amison was “belligerent” from the start once he came outside. Mr. Amison; “turned and squared up on my partner and was about to rear back as if he was going to hit him.” Mr. Amison then took a “fighting stance” tensed up, and had his right fist clenched. At that point to prevent his partner from getting assaulted, Officer Birch intervened and performed a “shade” maneuver.

To Officer Birch’s explanation a “shade is, a push to create distance between you and the suspect. To remove the person from your personal space. This tactic is not used to create any harm but just to create distance.”

Mr. Amison then stumbled down the steps and was placed under arrest. Officer Birch explained that only once Mr. Amison was in handcuffs did he start to state that he had a previous medical condition. Officer Birch observed no injuries on Mr. Amison. He has had no further contact with Mr. Amison after that incident.

OFFICER WITNESS STATEMENTS

Specialist Kenneth Byrne

Specialist Kenneth Byrne, #PS195, M/W/49, is currently assigned to District 5, and he has been a CPD member since 2002. Specialist Byrne was on routine patrol, in uniform and operated a marked cruiser with Officer Birch; his BWC was activated.

CCA interviewed Specialist Byrne on March 30, 2022, at 6:30 AM. He provided the following information:

Specialist Byrne's initial statement corroborated Officer Birch's statement. Specialist Byrne added upon making approach to the residence Ms. Amison was loud and expressed her desire for Mr. Amison to be removed from the property. Both officers made their way on to the porch to be met by Mr. Amison trying to exit the residence through the front door. Specialist Byrne stopped Mr. Amison at the door and offered to talk with Mr. Amison inside. This was to separate the brother and sister. Specialist Byrne noted in the interview that Mr. Amison was showing signs of intoxication in his volume, disorderly behavior, and the smell of alcohol on him. Mr. Amison did not want to go inside due to him wanting to hear what Ms. Amison had to say. Specialist Byrne after insisting on having the discussion inside allowed Mr. Amison to come outside.

When Mr. Amison exited there was limited space on the porch, causing Specialist Byrne to be pushed up against the wall. Specialist Byrne then guided Mr. Amison with his hand on his back, due to the space restraints. Mr. Amison responded by turning towards Specialist Byrne in an aggressive stance and raising his arms. Officer Birch, then pushed Mr. Amison back. After Mr. Amison was pushed, he stumbled down some steps. Mr. Amison was then arrested and searched. Specialist Byrne expressed "the handcuffing procedure was done as it always has been done, even adjusting them for Mr. Amison once situationally able." Mr. Amison complained after he was in handcuffs that he had previously had a heart attack and made no complaint about immediate injuries from the arrest. Mr. Amison was charged with disorderly conduct while intoxicated and transported to Hamilton County Justice Center (HCJC).

WITNESS STATEMENTS

There were no witnesses.

EVIDENCE

Police Documents

CCA reviewed all CPD-related forms, including but not limited to arrest forms, the IIS Report, and information from CPD's Records Management System (RMS).

Body Worn Camera (BWC)

Officer Birch

The events recorded by Officer Birch BWC occurred on 12/26/2022 starting at 9:49 PM, according to the BWC's timestamp. A review of that recording reveals the following:

The officers exited the cruiser and approached the residence. The officers were met at the door by Ms. Amison. The officers at the time of first contact were at the base of the stairs. Ms. Amison exclaimed, "I want my brother; I want my brother out of my house." Expressing this sentiment several times. The officers made it up the stairs before Mr. Amison made it to the inside of the door frame. Yelling occurred among both Ms. And Mr. Amison. The officers then attempted to separate the two parties. Ms. Amison made her way to the far side of the porch to talk with Officer

Birch. Specialist Byrne asked Mr. Amison to stay where he was at (inside the threshold). Mr. Amison retorted with "You can talk with me outside".

Mr. Amison was stopped by Specialist Byrne at the door. Specialist Byrne used his left hand to hold the screen door and placed the back of his right hand upon Mr. Amison's lower chest to prevent him from exiting the building any further. Specialist Byrne offered to talk with Mr. Amison inside. Mr. Amison expressed that Ms. Amison was outside. Then questioned why Specialist Byrne placed his hands on him. At this point into the contact with the officers, the only physical contact made was the back of Specialist Byrne's hand on Mr. Amison's lower chest. Ms. Amison yelled "Go in the house!" At that point Specialist Byrne removed his left hand from the screen door and placed his right hand on Mr. Amison left triceps. Mr. Amison raised his left arm to remove Specialist Byrne's hold on him. Mr. Amison asked why the officer was on his arm.

Officer Birch then offered to talk with Mr. Amison in Specialist Byrne's place. Officer Birch then directed Mr. Amison outside. All four people involved were standing on the top of the porch at this time. Mr. Amison then moved to the direction that Officer Birch offered. Mr. Amison maintained head and eye contact with Specialist Byrne while he moved. Mr. Amison was in the process of walking when he stopped and turned his body back towards Specialist Byrne. In this angle you can see Mr. Amison did slightly move his right arm but unable to see the left arm of Mr. Amison. Officer Birch then grabbed Mr. Amison and pushed him to the officer's left. The stairs were located directly to Officer Birch's left. Mr. Amison was seen falling to the ground landing on his right shoulder in the grass. Both officers then placed Mr. Amison in handcuffs. The officers searched Mr. Amison and then adjusted his handcuffs before placing him inside the police cruiser.

Specialist Byrne

Specialist Byrne's BWC footage collectively affirmed most information provided in Officers Birch's BWC. There are a few moments in which the different perspective provided additional information on the incident.

The events recorded by Specialist Byrne BWC occurred on 12/26/2022 starting at 9:49 PM, according to the BWC's timestamp. A review of that recording reveals the following:

Once Mr. Amison started to walk towards the steps, Specialist Byrne placed his hand on the back of Mr. Amison. At that point Mr. Amison turned his body to Specialist Byrne. In this angle you can see Mr. Amison did not move his left arm but unable to see the right arm of Mr. Amison. Officer Birch's right hand comes into view, grabbing the left arm of Mr. Amison pushing him to the left.

Clerk of Courts

CCA was unable to verify Mr. Amison's criminal charge on December 26, 2020, with Hamilton County Clerk of Courts

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

1. There are conflicting accounts of what Mr. Amison was doing with his hands in the moments that preceded Officer Birch's push of Mr. Amison. Specialist Byrnes told CCA that Mr. Amison, who had been walking away from the house, turned around to face Specialist Byrnes, took an aggressive stance, and raised both arms before Officer Birch pushed Mr. Amison. Officer Birch attested that Mr. Amison turned and faced Specialist Byrnes with his right fist clenched

at the time of him turning around. Mr. Amison reported to CCA that his arm was grabbed by Specialist Byrnes and he was thrown off the porch by Officer Birch after protesting the grabbing. The BWC footage showed that after walking away from the house and in the direction that Specialist Byrne instructed, Mr. Amison stopped walking and turned back toward Specialist Byrne with his right elbow at slight flexion. Mr. Amison's fist was not observed on the either BWCs.

2. The Hamilton County Clerk of Courts have Mr. Amison's first name spelled both as Lawan and Lawon.

AUTHORITIES

I. CPD Procedure Manual (in part)

§ 12.545 Use of Force

Definitions:

Actively Resisting Arrest – When the subject is making physically evasive movements **to defeat the officer's attempt at control**, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

De-escalation – Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

Escorting – The use of light pressure to guide a person or keep a person in place.

Force – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of: firearms, TASERs, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

Hard Hands – The use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics.

Objective Reasonableness – The standard, as set forth by the Fourth Amendment U.S. Constitution and defined by Supreme Court of the United States, by which all uses of force will be judged.

Policy:

The Cincinnati Police Department recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight ... The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight ... the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Connor, 1989).

A number of factors may be taken into consideration to evaluate whether an officer used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- The distance between the officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- The seriousness of the suspected offense or reason for the contact with the individual.
- The potential for injury to citizens, officers and suspects.
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.
- Any other exigent circumstance or special knowledge.

Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others.

Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. The subject should be allowed to submit to arrest before force is used, unless this causes unnecessary danger to the officer or others.

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject.

Information:

Use of Force Continuum

Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or deescalate as the situation evolves.

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: Subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes, or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

Force options may be used simultaneously, for instance, combining verbal commands with use of chemical irritant. An officer must choose the necessary response based on law, department policy, training and experience. An officer must exercise proper use of force decision making, which means the use of reasonable force, including proper tactics, and de-escalation techniques.

§ 12.600 Prisoners: Securing, Handling, and Transporting

Procedure:

A. Handcuffing

1. When possible, handcuff all prisoners with their hands behind their back. Apply handcuffs between the hand and protruding wrist bone with the prisoner's palms facing out and the keyholes facing up.
 - a. Apply handcuffs directly over the skin. Never apply them over clothing or jewelry. They should be reasonably snug and double locked

Allegation 1: Excessive Force

On December 26, 2020, Officer Birch, and Specialist Byrne responded to a call for service and were met by both Mr. and Ms. Amison. Ms. Amison wanted her brother out of the house. Specialist Byrne stated he believed Mr. Amison was intoxicated due to the smell of alcohol and the volume of Mr. Amison. According to BWC and statements from the officer, from the initial contact, the officers tried to deescalate the situation by first separating the two parties. The officers were unable to do such when Mr. Amison refused to stay inside the residence. At that point, Specialist Byrne used his left hand to hold the screen door, and the back of his right hand against the lower chest of Mr. Amison. Mr. Amison expressed anger and concern about the physical contact being made. Officer Birch offered to talk to Mr. Amison in place of Specialist Byrne due to the apparent conflict Mr. Amison had with Specialist Byrne's physical contact.

Due to the proximity of the two and the limited space presented on the porch, Specialist Byrne attempted to escort Mr. Amison past him to be able to speak with Officer Birch. CPD Procedure § 12.545 Use of Force defines escorting as "The use of light pressure to guide a person or keep a person in place." This escort was conducted in two parts, one was with his right hand on Mr. Amison's left triceps and that hand then moved to Mr. Amison's mid back. Mr. Amison was walking to the porch steps while maintaining eye contact with Specialist Byrne. Once Mr. Amison made it past Specialist Byrne, he turned his body back to Specialist Byrne.

The BWC footage showed that once Mr. Amison turned, his right elbow begins to have a slight flexion. Officer Birch attested that Mr. Amison's right fist was clenched at the time of him turning around. Mr. Amison's fist was not observed on the either BWCs.

Officer Birch at that point felt it necessary to "Not let my partner get punched in the face". In doing so he performed a "Shade." According to Officer Birch's explanation a "shade" is, a push to create distance between you and the suspect, with the goal of removing the person from your personal space. This tactic is not used to create any harm but just to create distance. Regardless of the intentions of this maneuver, the force used did result in Mr. Amison falling and landing on his right shoulder, and it apparently caused injury in the form of inflammation.

CPD Procedure § 12.545 Use of Force defines "force" as any "physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. It further states an officer's use of force "extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject," defining active resistance to include when a "Subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody."

When looking at when use of force is justified, the totality of the circumstances must be taken into consideration. These factors include but are not limited to the physical and mental state of the suspect, nature of the crime, threat being imposed, the space and proximity. See CPD Procedure § 12.545 Use of Force. Some of these factors were observed on the BWC recording and others were taken from statements. It can be seen on the BWC that Mr. Amison turned back to Specialist Byrne after appearing to being visually and audibly upset with him. It can also be seen that a

flection in Mr. Amisons right elbow occurred once he turned back to the officer. What cannot be seen is Mr. Amison's right fist in both BWCs. This piece of evidence is crucial to CCA's determination as to the reasonableness of the force used based on the totality of the circumstances.

The presence of one or more of these factors do not inherently permit or prohibit the use of force for an officer but must be taken in as a whole. Having a fist clenched with the other factors presented to the officers is reasonably indictive of an immediate threat to an officer. CPD Procedure § 12.545 Use of Force specifies the type of conduct that constitutes an "[a]ssault or threat of assault" to police officer as follows: "Subject assumes fighting stance, charges, strikes, or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault." The policy permits an officer to use an objectively reasonable amount of force to prevent such a threat. Without corroborated information regarding whether Mr. Amison made a fist, the picture is incomplete. CCA cannot fully assess the threat presented or the objective reasonableness of the response. Therefore, CCA is unable to determine if Officer's Birch's use of force was justified.

The officers placed Mr. Amison into handcuffs to effectuate the arrest. It is seen in the BWC and by officer statements that after placing him in handcuffs initially they readjusted them prior to placing Mr. Amison in the patrol cruiser. This is after Mr. Amison made several complaints about the tightness of the handcuffs. § 12.600 Prisoners: Securing, Handling, and Transporting explains that officers should apply the handcuffs to be reasonably snug and double locked. By this account, officers followed CPD policies, procedures, or training. Mr. Amison made no mention of previous medical conditions prior to the use of force nor did the officers have prior contact with Mr. Amison.

FINDINGS

Original Allegation

Officer Adarryl Birch

Excessive Force – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**



Robert Stephens, Investigator



Gabriel Davis, Director

July 15, 2022

Date

**PREVIOUS
CONTACTS AND
COMMENDATIONS**

Officer Kenneth Byrne

Previous Contacts with CCA

Officer Byrne had six previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19110	Excessive Force	Exonerated
19128	Excessive Force	Unfounded
20007	Lack of Service	Referred to CPD
20170	Lack of Service	Pending
20170	Pointing of a firearm	Pending
20170	Discourtesy	Pending
20170	Discrimination (Age)	Pending
21041	Sexual Misconduct	Referred to CPD
21187	Discourtesy	Referred to CPD
21187	Lack of Service	Referred to CPD

Previous Contacts with IIS

Officer Byrne had 2 previous contacts with IIS in the past three years.

Case Number	Allegation	Finding
2019-158	Excessive Force	Unfounded
2019-172	Excessive Force	Unfounded

Commendations

Officer Byrne received 1 commendation in the past three years.

Date	Source of Commendation Received
05/13/2019	CPD

Officer Adarryl Birch

Previous Contacts with CCA

Officer Birch had 5 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19110	Excessive Force	Exonerated
19110	Discourtesy	Sustained
20007	Lack of Service	Referred to CPD
20061	Discourtesy	Referred to CPD
20191	Discourtesy	Referred to CPD
21041	Sexual Misconduct	Referred to CPD

Previous Contacts with IIS

Officer Birch had 1 previous contact with IIS in the past three years.

Case Number	Allegation	Finding
2019-172	Excessive Force	Unfounded

Commendations

Officer Birch has not received any commendations in the past three years.