City of Albuquerque
Civilian Police Oversight Agency

ALBUQUERQUE CIVILIAN POLICE OVERSIGHT

Diane McDermott
Executive Director

To: **Scott Norris, Commander IAFD**

From: **Diane McDermott, Executive Director**

Subject: **CPOA Report on Serious Use of Force APD Case # 23-0086360**

Incident Summary:

On October 26, 2023, an officer stopped a speeding vehicle and approached the driver's side. After returning to his marked patrol unit, he saw passenger Ms. V exit, gesture toward the driver, and make unintelligible statements before getting back in. The officer requested backup, cited the driver, then approached Ms. V's side. She continued making incomprehensible statements through the closed window.

The officer asked why she was screaming. She said she would force the door open and hit him with it if he didn't move the light from her face. Believing her threat constituted an assault, the officer requested her identification. She opened the door and struck the officer, who was standing beside it. Ms. V exited the vehicle. When the officer ordered her to turn around and place her hands behind her back, she refused and remained by the open door. The officer took her left arm and directed her toward the vehicle. She resisted, turning toward the rear and trying to pull away as he held her arm.

The officer conducted a takedown while holding her arm. Once on the ground, Ms. V turned onto her back and tried to remain in that position. The officer relinquished his grip on Ms. V's right arm and repositioned her onto her stomach. Her hands scraped the asphalt as the officer placed her in this position. Ms. V resisted by refusing to turn onto her stomach. The officer's OBRD turned off during this moment, and he noted in his use of force narrative that Ms. V kicked out her right leg toward his face. The officer struck Ms. V on the right hip with a knee. Subsequently, he rolled her back onto her stomach and secured her with handcuffs. Upon being restrained, Ms. V ceased resisting, was examined by medical personnel, and was subsequently booked at MDC on charges including battery on a peace officer, assault on a peace officer, and escape from custody of a peace officer. The escape-from-custody charge was not pursued because an officer cannot charge someone with escape from custody while they are actively resisting.

Case Review:

Computer-Aided Dispatch Reports
APD Field Reports
IAFD Investigation
Misconduct Investigation
Mandatory Training Referral
On-Body Recording Device Videos
APD policies regarding force

CPOA Director's attendance at the Force Review Board Briefing

Use of Force Types and Involved Officers:

- UOF1, Level 2 Empty Hand Control (injury)
- UOF2, Level 1 Empty Hand Takedown (no injury)
- UOF3, Level 1 Empty Hand Control (x2)
- UOF4, Level 1 Empty Hand Strike (knee strike)

Policy Consideration and Outcome:

The applicable policies for the uses of force are:

SOP: 2-52-4
C Based on the totality of the circumstances, Department personnel shall:
1. Only use force to accomplish a lawful objective.

SOP: 2-53-3
W. Levels of Force
1. Level 1 Use of Force: Any use of force that is likely to cause only temporary pain, disorientation, and/or discomfort during its application as a means of gaining compliance.

SOP: 2-53-3.Y
b. Low-level control tactics that do not include overcoming active resistance.

SOP: 2-53-3
W. Levels of Force
2. Level 2 Use of Force: Any use of force that causes injury, that could reasonably be expected to cause injury, or that results in a complaint of injury greater than temporary pain, regardless of whether the use of force was unintentional or unavoidable.
d. Use of empty-hand techniques that result in injury or complaint of injury (e.g., strikes, kicks, takedowns or leg sweeps).

SOP: 2-53-3.Y
b. Low-level control tactics that do not include overcoming active resistance.

Based on a preponderance of evidence, the use of force occurred without establishing a factually supported lawful objective; therefore, it is an out-of-policy use of force incident.

The uses of force were found not within the APD policy by the IAFD. However, the Superintendent of Police Reforms overturned the out-of-policy force finding during a hearing.

Findings:

The CPOA and CPOAB agreed with APD's determination that the uses of force were not within policy. The CPOA review noted that the officer's involvement or contact with the passenger was unnecessary, regardless of her aggressive demeanor. Officers should refrain from arguing with hostile individuals unless there is reasonable suspicion that the individual is involved in criminal activity. The totality of the circumstances did not warrant contact with the passenger, Ms. V. Once contact was made, the officer established probable cause.

Additional Policy Considerations:

The female passenger's threat to the officer qualifies as an assault on the officer under NM Statute 30-22-21, which states, “any unlawful act, threat or menacing conduct which causes a peace officer to reasonably believe that they are in danger of receiving an immediate battery.” This is a misdemeanor even without physical contact, if it causes the officer to reasonably fear immediate harm. The officer can lawfully effect an arrest on the spot based on probable cause that the misdemeanor has been committed.

The initial investigative findings found the force to be out of policy. At the disciplinary hearing, when the officer appealed the 40-hour suspension, the Superintendent overturned the decision and exonerated the officer, citing that a lawful objective existed.

No additional recommendations were proposed.

The Civilian Police Oversight Advisory Board reviewed this case at its August 14, 2025 meeting. The Board’s discussion can be found in the August 2025 minutes here: cabq.gov/cpoa