



City of Albuquerque

Civilian Police Oversight Agency



Diane McDermott
Executive Director

To: Scott Norris, Commander IAFD

From: Diane McDermott, Executive Director

Subject: CPOA Report on Serious Use of Force APD Case # 23-0017255

Incident Summary:

The incident transpired on March 2, 2023. While engaged in proactive policing duties, the officer observed a male individual, subsequently identified as Mr. H, who was jaywalking, a violation of state law that mandates the use of sidewalks when available. This action occurred during an on-site operation, as officers had not been dispatched to the location. Mr. H was subsequently seen attempting to traverse a dirt lot to access a property with a damaged fence in order to cross to the opposite side. At this juncture, the officer exited his patrol vehicle to establish contact with the individual. It is pertinent to emphasize that Mr. H momentarily stepped onto the roadway from the sidewalk but returned to the sidewalk prior to navigating through the dirt lot to proceed to the other side.

The officer approached Mr. H and informed him that he could not leave. The officer requested his identification; however, he continued to provide incorrect names, prompting the officer to persist in seeking an accurate identity. The officer suspected that Mr. H was concealing his true identity. He instructed Mr. H to sit on the sidewalk and requested that he cross his feet, thus placing him in a position of disadvantage. Nevertheless, Mr. H consistently straightened his legs. The officer checked the database for any information regarding Mr. H, but no relevant data was retrieved. Consequently, the officer made the decision to handcuff him to prevent any possibility of escape.

The officer subsequently escorted Mr. H to the patrol vehicle. Upon initiating a search incident to the arrest, Mr. H began to pull away from the officers, resulting in his wrist coming into contact with the handcuffs, which reportedly caused him discomfort. He then attempted to evade apprehension by pulling in a westbound direction, straightening his arms, and using his body to resist. Despite multiple requests from the officers for him to cease this behavior, he persisted, prompting the use of force. At this point, he kicked the officer several times. He was then subdued on the ground, and the search incident to arrest was concluded.

Mr. H was subsequently evaluated by emergency medical personnel on the scene and transported to the hospital, where he was medically cleared. Following this, he was taken to the crime lab for identification, which revealed that he had outstanding felony warrants. He was later booked into the Metropolitan Detention Center (MDC). The charges levied against Mr. H included pedestrian on roadways, concealing identity, resisting or evading an officer, along with two felony warrants.

During the initial encounter, it was noted that at least two additional individuals crossed the fence in a similar manner to Mr. H's attempt; they were detained by another officer and released shortly

thereafter. Mr. H's initial failure to identify himself and his subsequent resistance served to escalate the situation.

Case Review:

Computer-Aided Dispatch Reports

APD Field Reports

Internal Affairs Reports

On-Body Recording Device Videos

APD policies regarding force

CPOA Director's attendance at the Force Review Board Briefing 6/15/23

IAFD force investigation

IAPS misconduct investigation

Use of Force Types and Involved Officers:

- UOF 1 Level (3) Empty Hand Takedown (Leg Sweep handcuffed) Officer M
- UOF 2 Level (3) Empty Hand Strike Officer M
- UOF 3 Level (3) Empty Hand Takedown (Leg Sweep handcuffed) Officer C
- UOF 4 Level (1) Empty Hand Control (x2) Officer C

Policy Consideration and Outcome:

The applicable policies that the Internal Affairs Force Division investigated for the uses of force are:

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 or any show of force.

a. Any Level 1 use of force against an individual in handcuffs remains a Level 1 use of force.

Level 3 Use of Force: Any use of force that results in, or could reasonably result in, serious physical injury, hospitalization, or death, regardless of whether the use of force was unintentional or unavoidable.

Level 3 use of force includes:

h. Any Level 2 use of force against a handcuffed individual;

The investigation determined Mr. H was actively resisting, not following commands, attempting to flee, and kicking the officers. Investigation listed officers perceived he was thought to be armed with a knife. IAFD determined all force applications to be minimal, reasonable, and necessary.

The uses of force were found to be within APD policy by IAFD.

Findings:

The CPOA and CPOAB agreed with APD's determination to find the uses of force **within policy**.

Additional Policy and Training Considerations:

During the incident review, it was observed that both the officers and the IAFD investigator consistently underscored the rationale for being "armed with a knife." It is crucial to emphasize that the individual was handcuffed and restrained by multiple officers when it was perceived that Mr. H was armed with a knife. The lawful justification for utilizing force is unquestionable, as Mr. H was actively resisting and concealing his identity. However, the circumstances that preceded the use of

force, as well as the gravity of the offenses committed by Mr. H, may incite scrutiny, particularly since two other individuals involved in the encounter were witnessed on the OBRD engaging in a comparable infraction of jaywalking, yet were permitted to proceed by the officers. An additional training issue was discussed regarding the officers calling out their involvement in a use of force while still being engaged in the use of force and prior to the individual being secured. This concern has been addressed with the Academy for training purposes.

No misconduct was determined during the investigation. Nevertheless, concerns regarding equipment associated with the OBRD and a magazine detaching during the confrontation with Mr. H were recorded and appropriately handled during the IAFD investigation.

No additional recommendations were proposed.

The Civilian Police Oversight Advisory Board reviewed this case at its December 9th, 2024 meeting. The Board's discussion can be found in the December minutes here: cabq.gov/cpoa

