



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 Officer Involved Shooting APD Case # 23-0050102

Incident Summary:

The incident occurred on June 24, 2023, at approximately 1525 hours. Officers were dispatched to a call about a suspicious vehicle where a male was slumped over the steering wheel with the engine running. The license plate was run through NCIC, and the owner, Mr. P, returned with felony and misdemeanor warrants.

Initially, two officers responded, but due to the outstanding warrants, five additional officers arrived on the scene. The Sergeant took command of the situation, planning on-site how to approach the unresponsive individual in the running car. Officers cleared the area, formed a force array, deployed stop sticks, and used a PA system from a safe distance from the suspect's vehicle. After about 15 minutes of verbal commands, the individual became responsive, took off from the officers through the stop sticks, and crossed the street. He exited the vehicle; Officer 2 confronted him and asked him to stop. He then started walking and gradually ran away from Officers 1 and 2. Multiple officers pursued, with officers 1 and 2 entering the El Mezquite Market behind him. Officer 2 deployed a Taser, but it was ineffective because Mr. P produced a gun, fired while falling to the ground, prompting four officers to discharge their firearms (49 rounds).

The lawful objective shifted from arresting Mr. P to preventing and ending his criminal acts and protecting officers and the public from his actions, as he shot at them. Mr. P actively resisted during his flight from officers and when entering El Mezquite Market. He continued to resist inside the store because he had a handgun, which he used to shoot at officers. The incident occurred inside a crowded grocery store, increasing the risk of death or serious injury. Officers responded with deadly force to eliminate the imminent threat posed by Mr. P, resulting in his death. The use of lethal force is classified as a level three use of force per APD policy.

Case Review:

Computer-Aided Dispatch Reports
APD Field Reports
Internal Affairs Reports
On-Body Recording Device Videos
APD policies regarding force
MATF Reports
IAFD force investigation
IAPS misconduct investigation

Use of Force Types and Involved Officers:

- UOF 1 Level (3) OIS: Handgun x14 Sergeant (1)
- UOF 2 Level (3) OIS: Rifle x12 Officer (2)
- UOF 3 Level (3) OIS: Handgun x12 Officer (3)
- UOF 4 Level (3) OIS: Handgun x11 Officer (4)
- UOF 5 Level (2) ECW Discharge hit Officer (2)
- UOF 6 Level (2) ECW Discharge miss Officer (3)
- SOF 1 Level (1) ECW Pointing Officer (2)

Policy Consideration and Outcome:

The applicable policies that were investigated by Internal Affairs Force Division for the use and show of force for all involved officers are:

2-52-4-C Core Principles

C. Based on the totality of the circumstances, Department personnel shall:

- 1.) Only use force to accomplish a lawful objective;*
- 2.) Only use force that is objectively reasonable;*
- 3.) Only use force when force is necessary;*
- 4.) Only use the minimum amount of force necessary; and*
- 5.) Continually assess whether they are using the minimum amount of force, whether the use of force is necessary, and whether the use of force is objectively reasonable.*

2-53-3-X.1

Levels of Resistance

1.) Active Resistance: An individual's resistance that poses an imminent threat of harm to the officer or other people, such as when an individual attempts to attack or attacks an officer; exhibits combative behavior (e.g., lunging towards the officer, striking the officer with hands, fists, feet or any instrument that may be perceived as a weapon, such as a knife or stick); or attempts to leave the scene, flee, hide from detection, or pull away from the officer's grasp. An individual who is brandishing or in possession of a weapon while also not following lawful commands is considered actively resisting. Verbal statements alone do not constitute active resistance.

Target glancing alone does not constitute active resistance, but may if they pose a threat of harm to the officer or other people.

2-54-4-B.3

Intermediate Weapon System Guidelines:

3.) Shows of force are not considered the same as the application of the same force option. With the exception of pointing a firearm at an individual, sworn personnel may use a show of force to gain compliance with an individual who is passively resistant so long as the force is otherwise reasonable and is the minimum amount of force necessary.

2-52-5-B.1-4

B. Pre-Use of Force

1.) When feasible, consistent with SOP Use of Force: De-escalation, Department personnel shall use de-escalation techniques to gain the voluntary compliance of an individual to reduce or eliminate the need to use force.

2.) When feasible, sworn personnel shall identify themselves as “police” and announce their intent to detain, search, or arrest an individual before using force when it is not plainly obvious that they are a law enforcement officer by virtue of their uniform and equipment, or by the circumstances of the contact with the individual. a. When working in a plainclothes capacity, sworn personnel shall verbally identify themselves as “police.”

3.) When feasible, Department personnel shall: a. Recognize and use distance, cover, concealment, or intermediate barriers in order to maximize their reaction time and deployment of resources; b. Issue a verbal warning to the individual before using force when doing so would not increase the danger to Department personnel or other people; c. Allow an individual an objectively reasonable amount of time to submit to arrest or a lawful order before using force; d. Consider whether an individual’s failure to comply with their command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual’s control; and e. Consider whether specific techniques or resources would help resolve the situation without resorting to force.

2-54-6-B.1, 2

ECW Discharging Guidelines:

1.) Sworn personnel shall be authorized to discharge an ECW to control an actively resistant individual when attempts to subdue the individual by other tactics have been, or will likely be, ineffective, and there is a reasonable expectation that it will be unsafe for the officer to approach the individual within contact range.

2.) Sworn personnel may discharge an ECW only when such force is necessary to protect themselves, the individual, or other people from physical harm and after considering less intrusive means based on the threat or resistance encountered.

2-52-6-B.1.c:

Prohibited Uses of Force

B. Deadly Force

(1) Department personnel shall not use deadly force:

(c) Against an individual unless the officer has an objectively reasonable belief that an individual poses a threat of death or serious physical injury to Department personnel or another person.

Officers established a lawful objective to apprehend Mr. P due to an outstanding felony warrant. He exhibited active resistance upon being informed that he was not free to leave, choosing to flee and disregarding verbal commands. He armed himself and entered a densely populated market. The officers had a lawful objective to discharge their firearms as Mr. P was in the process of committing a felony, thus posing a threat of death or serious bodily injury to both the officers and the public. The force used by the officers was deemed necessary, predicated on the belief that Mr. P constituted a lethal threat and could inflict severe physical harm upon the officers, the public, and himself when he retrieved a handgun and fired at the officers. The use of force was minimal, as the officers were required to respond with an immediate force option to stop the individual’s actions effectively. It was also reasonable, considering he was armed with knives in addition to having equipped himself with a firearm.

The uses and show of force were found within the APD policy by IAFD.

Findings:

The CPOA and CPOAB agreed with APD's determination that the uses and shows of force were **within policy**.

Additional Considerations:

Numerous potential policy violations were identified during the use of force investigation, which involved nine officers at the scene. The Internal Affairs investigation appeared to adequately address these concerns.

Furthermore, deficiencies in equipment were noted and subsequently addressed. The investigation disclosed that the 2023 Use of Force policy suite training for all officers involved had not been completed. The department appropriately rectified this issue.

As a result of this case, the Sergeant and the three other officers involved were recognized for their bravery.

CPOAB discussed concerns about officers' tactics in crossfire situations. Discussions also pertained to the number of shots fired in this incident and whether it was addressed during the investigation.

CPOAB also addressed issues related to witnesses and how they are traumatized, as well as what can be done to ensure resources are available for those individuals during traumatic events.

No additional recommendations were proposed.

The Civilian Police Oversight Advisory Board reviewed this case at its January 9th, 2025 meeting. The Board's discussion can be found in the January minutes here: cabq.gov/cpoa