



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 # 24-0039795

Incident Summary:

The incident occurred on May 15, 2024. Officer #1 was conducting proactive patrol near Louisiana Blvd NE and Zuni Rd SE when he observed a black Kia Optima without a visible license plate traveling northbound on Louisiana Blvd NE and Zuni Rd SE. Officer #1 initiated a traffic stop on the vehicle. Officer #2 was dispatched to assist during the traffic stop. Officer #1 approached the driver, Ms. V, and informed her of the reason for the stop. When questioned, Ms. V acknowledged she did not have a license. The passenger, identified as Mr. T, also confirmed he did not have a license. Officer #2 approached the vehicle on the passenger side and observed a bulge in Mr. T's waist area, with a knife nearby. He instructed Mr. T to exit the vehicle and conducted a pat-down search, after which Mr. T was permitted to re-enter the vehicle.

Officers informed Ms. V and Mr. T that they were detained and issued a force warning. Officer #1 returned to his vehicle and investigated Ms. V, during which he identified Mr. T. It was established that Mr. T had a felony warrant for his arrest on charges of aggravated burglary. Mr. T exited the vehicle, was placed in handcuffs, and was escorted back to the patrol vehicle. When questioned, Ms. V confirmed Mr. T's identity.

Prior to Mr. T being secured within the patrol vehicle, he indicated possession of a firearm. He stated, *"I have a gun on me right now. I'll air both you guys out right now."* Officers stepped back and attempted to close the patrol vehicle door. Mr. T extended his right leg, impeding the door's closure. Officers retreated to take cover behind the patrol vehicle, drew their firearms, and pointed them at Mr. T as he exited the vehicle. Observing that Mr. T did not possess a firearm in his hands, Officer #1 holstered his firearm, drew his Electronic Control Weapon (ECW), and issued verbal commands for Mr. T to get on the ground. Mr. T disregarded the lawful commands and, upon reaching his vehicle, entered the driver's seat.

Mr. T was still handcuffed behind his back and in the driver's seat of the Kia, attempting to escape from officers. Officer #1 discharged his ECW twice at the left side of Mr. T, which did not result in a successful connection. He then discharged his ECW two additional times at the same side, achieving a successful connection. Officer #2 extracted Mr. T from the vehicle and placed him on the ground. Due to being handcuffed and complaining of a rib injury following the takedown, the force was categorized as level 3 use of force. Mr. T subsequently became compliant and was placed into custody. He was charged with two counts of aggravated assault on a peace officer, escape from custody of a peace officer, a felony warrant, and concealing identity.

Case Review:

Computer-Aided Dispatch Reports
APD Field Reports
IAFD Investigation
Misconduct Investigation
On-Body Recording Device Videos
APD policies regarding force
CSS Photos
CPOA Director's attendance at the Force Review Board Briefing

Use of Force Types and Involved Officers:

- UOF1, Level 3 Officer #2 ECW Discharge
- UOF2, Level 3 Officer #2 EH takedown with injury
- UOF3, Level 3, Officer #1 EH takedown with injury
- SOF1, Level 1, Officer #2 Handgun Pointing
- SOF2, Level 1, Officer #2 ECW Pointing
- SOF3, Level 1, Officer #1 Handgun Pointing

Policy Consideration and Outcome:

The applicable policy for the uses and show of force are:

APD SOP 2.52.5.A.1: Authorization to Use Force

A. Department personnel derive their authority to use force from the United States Constitution, federal and state laws, Department policies, and the community.

1. Department personnel who use force shall use the minimum amount of force that is objectively reasonable and necessary and based on the totality of the circumstances confronting them in order to bring about a lawful objective.

*APD SOP 2.53.3.N.1.c: Definitions**N. Force*

1. Any physical means used to defend the officer or other people, restrain, or otherwise gain physical control of an individual who is resisting.

c. An inadvertent covering of an individual with a weapon is not a reportable use of force.

*APD SOP 2.53.3.W.1:**Definitions 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; or any show of force.

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

*APD SOP 2.53.3.MM: Definitions**MM. Show of Force*

Pointing a firearm, beanbag shotgun, 40-millimeter impact launcher, OC spray, or ECW at an individual, or by pointing the laser sights of the ECW at an individual or by using a warning arc. A show of force shall be reported to the appropriate first line supervisor and reviewed as a Level 1 use of force.

APD SOP 2.53.3.X.1: Definitions

X. 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.

APD SOP 2.53.3.W.3.h Definitions

W. Levels of Force

3. 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;

APD SOP 2.54.6.C.1&2 (b, h, and i): Electronic Control Weapon (ECW)

C. ECW Restrictions

1. Sworn personnel shall not discharge an ECW solely as a pain compliance technique or to overcome passive resistance.

2. The following restrictions, considerations, and conditions apply to an ECW discharge:

b. Sworn personnel shall not use an ECW on a handcuffed, restrained, or subdued individual unless doing so is necessary to prevent them from causing serious physical injury to themselves, sworn personnel, or other people, and if lesser attempts to control have been ineffective;

h. Generally, sworn personnel shall not discharge an ECW based solely on the fact that an individual is fleeing a lawful detention or arrest.

i. However, sworn personnel may be justified to discharge their ECW based on the totality of the circumstances. Sworn personnel shall consider the totality of the circumstances before discharging an ECW on a fleeing individual, including, but not limited to:

1. Severity of the offense;

2. Whether the individual is actively resisting; or

3. Whether the individual poses an imminent threat to sworn personnel, other people, or themselves.

APD SOP 3.53.3.I: Definitions

I. Empty-Hand Technique

A technique used by an officer with the specific intent to gain control of or separate the individual's mind from body and break their focus, through the manipulation of an individual's joints, limbs, extremities, and pressure points. When effective, an empty-hand technique creates time for the officer to react and allow them to transition to another tool or technique in order to gain control of the individual, or to disengage and create distance between themselves and the individual.

Considering the totality of the circumstances and the preponderance of the evidence, the use and show of force were deemed reasonable, minimal, proportional, and necessary. Officers had a lawful objective to arrest Ms. T based on a felony warrant. Mr. T posed a threat to officers when he threatened them with a gun while handcuffed in the back of the patrol car. He attempted to scare and flee from officers, and they utilized force to control him and take him into custody.

IAFD found these uses and shows of force to be within APD policy.

Findings:

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

Additional Policy Considerations:

The department's force investigation identified other potential misconduct related to the use of ECW, search-and-seizure issues, and the mandatory recording of the incident. Our review found that the department handled all issues appropriately.

No additional recommendations were proposed.

The Civilian Police Oversight Advisory Board reviewed this case at its July 10, 2025 meeting. The Board's discussion can be found in the July 2025 minutes here: cabq.gov/cpoa

