



CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board

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September 21, 2017

Gorden Eden Jr., Chief of Police
C/O Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

Re: I-22-17

Dear Chief Eden:

The shooting occurred on June 4, 2015. The Multi-jurisdictional Investigative team concluded its investigation May 7, 2015. APD Internal Affairs completed its investigation August 23, 2017. The District Attorney's Office has not ruled on this case. This case **does not** have time waivers for the officers.

This case comes before the Board as a review of an investigation conducted by the Internal Affairs Division of the Albuquerque Police Department. The findings by IA exonerate the officers on all counts. I do not concur with those findings.

My non-concurrence is as follows:

2-52-4 Deadly Force

A. The decision to use Deadly Force still falls under the general requirements for all uses of force as outlined in 2-52-3 of this policy. Additionally, the reasonableness of the officer's decision will include:

Reasonable belief the subject presents an immediate threat to cause serious physical injury to the officer, another officer, or another member of the public

OR

Probable cause for the officer to believe the subject has just committed a crime involving inflicted/threatened infliction of serious physical injury to another and deadly force is necessary to prevent the escape of the subject in order to protect the public or another officer(s).

PO Box 1293

Albuquerque

NM 87103

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B. Officers need not exhaust lesser options of force in order to use deadly force.

STATEMENT OF THE CASE AGAINST THE USE OF DEADLY FORCE

On June 4, 2015 numerous members of the Gang Squad of APD and other specialized units set out to find and arrest Danan Gabaldon. Mr. Gabaldon was wanted on a felony warrant for allegedly driving a vehicle at an officer of the Albuquerque Police Department. The incident happened a few days earlier and caused the officer to discharge his weapon at the vehicle. Members of the unit were advised of these allegations. They developed information he was staying in a trailer at 98th and Central. Members of the unit “sat on” the trailer and eventually a male they believed to be Gabaldon entered a vehicle and drove away from the trailer.

Members of the unit began to follow and track the vehicle. During this tracking a member of the unit was able to positively identify the driver as Mr. Gabaldon. The Sgt. in charge of the unit authorized a VBM (vehicle-block maneuver) to stop the vehicle. All members of this unit were driving undercover vehicles without government license plates.

Mr. Gabaldon continued to operate the vehicle within an adjacent southwest neighborhood. Members of the unit began to position themselves to perform the VBM. Prior to executing the VBM according to statements from the unit a decision was made to conduct a “high risk stop” instead of a VBM. While executing this high risk stop Det. M collided with one of the undercover units by backing into it. He then exited his vehicle, placing himself directly in the path of the vehicle still under the control of Mr. Gabaldon. **This is in violation of 2-52-4 (E) 2(b) Deadly Force and Motor Vehicles** which states: “When the only means of assault on an officer is by motor vehicle, officers: (b) Shall not knowingly place themselves into the path of a moving vehicle or into the likely path of a moving vehicle that is currently stopped but still under the immediate control of the driver”.

Mr. Gabaldon drove his vehicle in the direction of Det. M. Det. M discharged his firearm at Mr. Gabaldon, striking the vehicle twice. The vehicle being driven by Mr. Gabaldon then collided with another member of the unit’s vehicle. This allowed officers to temporarily contain Mr. Gabaldon.

As stated in the Deadly Force Policy, 2-52-3 is incorporated as a requirement. **2-52-3 (H) & (I)** state: **(H)** Officers are expected to recognize their approach to citizen interactions may influence whether a situation escalates to the need to use force. **& (I)** When practicable officers must not engage in unreasonable actions or tactics that precipitate the use of force as a result of tactical, strategic, and procedural errors that unduly jeopardizes their safety or the safety of others.

Det. M. precipitated the **Use of Deadly Force 2-54-4 (A)** by his poor tactics and approach during the “high risk stop” The units should have requested a marked unit to conduct a traffic stop. He should have never exited his vehicle being in the direct path of this driver.

Finding: The CPOA finds Det. M.’s conduct **SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged misconduct did occur.

Det. S. arrived on the scene after the VBM and while officers attempted to arrest Mr. Gabaldon. He parked just adjacent to the group of vehicles. Officers were using less than lethal means to extract Mr. Gabaldon from the vehicle including: bean bag rounds and Taser probes fired at Mr. Gabaldon through broken out vehicle windows. Mr. Gabaldon was not complying with officer commands.

Mr. Gabaldon exited the vehicle rolling on the ground and simultaneously removing the Taser probes. He then fled on foot and officers gave chase. Det. S returned to his vehicle to engage in the chase. Det. S. passed the officers chasing on foot and caught up to Mr. Gabaldon. He then turned his vehicle to the right and struck Mr. Gabaldon with his vehicle. Mr. Gabaldon was knocked onto the sidewalk and officers engaged Mr. Gabaldon to take him into custody.

The striking of Mr. Gabaldon constitutes Deadly Force. Det. S. did not articulate any perceived fear of immediate threat of death or great bodily harm to officers or the public. In fact, Det. Mk the officer closest to Mr. Gabaldon during the foot chase was asked directly by detectives, if he perceived Mr. Gabaldon was an immediate threat of death or great bodily harm. He answered, no! Mr. Gabaldon had abandoned his weapon, the vehicle.

Finding: The CPOA finds Det. S.’s conduct **SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged misconduct did occur.

2-52-6 (B) Use of Authorized Tools states: Officers will use only tools and techniques with which they have been trained unless the threat escalates so rapidly the officer must use any means necessary to defend themselves or another.

Det. S’s striking of Mr. Gabaldon with his vehicle was not a “by any means necessary scenario”.

Finding: The CPOA finds Det. S.’s conduct **SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged misconduct did occur.

Other Issues Related to the Incident

2-25-6 (G) ELECTRONIC CONTROL DEVICE (TASER)

1. The ECD is a use of force tool which is designed to use propelled wires or direct contact to conduct electrical charge to primarily affect motor functions and/or the sensory nervous system. It can be used in three distinct modes.

2. Deployment Considerations

i. Not utilize a ECD in any environment where an officer knows that potentially flammable, volatile, or explosive material is present (including but not limited to OC spray with volatile propellant, gasoline, natural gas, drug lab flammables, or propane).

ii. Not utilize an ECD/TASER in any environment where the subject's fall could reasonable result in death (such as in water or on an elevated structure).

iii. Officers shall consider other available force options prior to deploying an ECD on potentially at risk individuals such as pregnant women, the elderly, frail or infirm and small children.

iv. Due to the incapacitating effects of the ECD, officers should not expect an individual under the effects of the ECD to comply with commands.

v. The device may also be used in certain circumstances in a "drive stun" mode. This involves removing or not removing the cartridge, based on the situation, and pressing the unit against an appropriate area of the body based on training. Officers must understand that when the device is used in this manner, it:

1. Limits the effectiveness of the device by rendering it as primarily a pain compliance tool.

2. Is minimally effective compared to deployments in standoff mode (probe deployments) as it will generally not cause incapacitation. For this reason, probe deployments are usually more desirable/effective than drive stuns.

3. Will likely leave marks on the subject's skin.

4. Is subject to the same deployment (use) guidelines and restrictions as those of the ECD/TASER in stand off deployments.

After Mr. Gabaldon is struck by the vehicle officers converge and attempt to take him into custody. Det. M and Det. P are observed simultaneously deploying their Electronic Control Device (Taser) on Mr. Gabaldon. Both are using the weapon in the drive stun mode: Det. P on Mr. Gabaldon's legs, while Det. M is drive stunning Mr. Gabaldon's neck

and upper back. The officers were not allowing Mr. Gabaldon to comply with their commands. Instead the officers continue to shock Mr. Gabaldon while other officers attempt to handcuff the subject. Additionally, Det. M strikes Mr. Gabaldon in the head with the Taser. There were enough officers in position to contain and restrain Mr. Gabaldon without the misuse of the Tasers.

Finding: The CPOA finds Det. M.'s conduct **SUSTAINED** regarding the allegation of a violation of this SOP, which means the investigation determined, by a preponderance of the evidence that the alleged misconduct did occur.

RECOMMENDATIONS & OBSERVATIONS

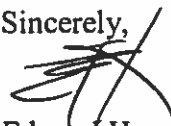
1. The scope of this Internal Investigation is too narrow and needs to include a review of Det. P, Sgt. V's and the entire operation.
2. The criminal investigation of this case clearly focused on the actions of Mr. Gabaldon and not the actors in this case. For example, there were no crime scene photos of the entire VBM, no photos of the truck and the point of impact where Det. H's vehicle struck Mr. Gabaldon.
3. The IA investigator's analysis of this case should not be focused on Graham v. Conner or Tennessee v. Garner, it should focus on the policies in place when the incident occurred. This is an administrative review, not a legal brief.
4. The exoneration of the officers in this case further illustrates the Monitor's opinion that the department lacks the ability to hold its officers accountable.

Review of the investigative file of Internal Affairs and any opinion expressed in this letter are pursuant to the duties of the CPOA as described in the POB Ordinance and are not intended for any other purpose.

Please contact me if there are questions or concerns. I look forward to your response to the concerns and recommendations contained in this letter.

Please ensure the findings are placed in the officer's retention file.

Sincerely,



Edward Harness, Esq.
Executive Director
Civilian Police Oversight Agency
(505) 924-3770

Enclosures

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Detective M.

SOP Violation(s): 2-54-4 (E) Level 4, 2-52-3 (H) & (I) Level 3, 2-54-4 (G) Level 5, 2-54-4 (A) Level 2

Date and Time of Incident: June 4, 2015

Investigating Officer: Det. D. G. Kissler

Date Investigation Completed: August 23, 2017

Completed Case Reviewed by _____ CPOA/POB _____ Date: 9/21/17

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->

ON ALL VIOLATIONS LISTED ABOVE
- 2. **Not Sustained** The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->
- 3. **Sustained Violation not based on original complaint** The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->
- 4. **Unfounded** The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->
- 5. **Exonerated** The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->
- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:

JUSTIFIED

UNJUSTIFIED

ACCIDENTAL

RECOMMENDATIONS

NO DISCIPLINARY ACTION

VERBAL REPRIMAND

WRITTEN REPRIMAND

SUSPENSION 512 HOURS

TERMINATION

OTHER: _____

NO DISCIPLINE IN 2015 OR CURRENTLY THEREFORE ALL ARE FIRST OFFENSE LEVEL SANCTIONS

Civilian Police Oversight Agency
EXECUTIVE DIRECTOR'S
Recommendation Form

Employee Involved: Detective S.

SOP Violation(s): 2-54-4 (A) Level 2 2-52-6 (B) Level 6

Date and Time of Incident: June 4, 2015

Investigating Officer: Det. D. G. Kissner

Date Investigation Completed: August 23, 2017

Completed Case Reviewed by _____ CPOA/POB _____ Date: 9/21/17

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

- 1. **Sustained** The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->
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- 6. **Administratively Closed** The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->

7. **FIREARM DISCHARGE** Will be classified as:

JUSTIFIED

UNJUSTIFIED

ACCIDENTAL

RECOMMENDATIONS

NO DISCIPLINARY ACTION

VERBAL REPRIMAND

WRITTEN REPRIMAND

SUSPENSION 240 HOURS

TERMINATION

OTHER: _____

NO DISCIPLINE IN 2015 OR CURRENTLY. THEREFORE ALL ARE FIRST OFFENSE LEVEL SANCTIONS