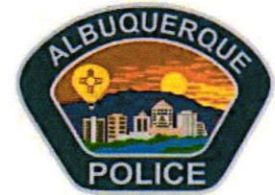




Timothy M. Keller  
Mayor

# City of Albuquerque

## Albuquerque Police Department



Eric J. Garcia  
Superintendent of Police Reform

February 7, 2024

### Interoffice Memorandum

**To:** Diane McDermott, Executive Director, CPOA  
**From:** Jimmy Collins, Major, Office of the Superintendent  
**Subject:** Non-Concurrence of Finding re: CPC-200-2024

This memorandum serves to convey the articulation for APD's points of non-concurrence in the above captioned administrative investigation conducted by the Civilian Police Oversight Agency.

Policy	CPOA Finding	APD Finding
2-104-4-A-1c	Sustained	Exonerated

#### Rationale for non-concurrence of action for 2-104-4-A-1c:

During my review of the investigation, I noted some concerns I have with the sustained finding for Officer W. regarding 2-104-4-A-1c which requires officers to contact CYFD to take the child into custody and determine appropriate placement if child abuse or neglect is suspected. At the time of the incident, it was apparent Officer W., and Officer S. did not consider any charges related to child abuse and treated this call as a domestic violence incident where Officer W. identified a primary aggressor and subsequently made an arrest. During Officer W's CPOA interview he was asked if child abuse was considered and he stated maybe child endangerment but he did not think he had enough to charge that crime. It was noted in the CPOA Investigative Report the charge of child abuse was added to the charges against the father by the DA's office and this information was presumably included to validate the claim Officer W. should have charged child abuse. However, all charges against the father were dismissed by the prosecution approximately two weeks later due to an inability to prosecute the case (Nolle Prosequi) with no explanation, so I can only surmise there was not enough evidence to support any of the filed or amended charges. Since this information was available to me during my disciplinary review, I can consider this as evidence Officer W. did not have sufficient evidence to charge child abuse.

It was established in the CPOA investigation, that Officer W. did review the documents provided to him by the father and he did not note any custodial prohibitions on either side (mother or father). With no court directed prohibitions on custody, Officer W. allowed the biological mother to take the child with her as the father was going to be booked into custody. Officer W. trusted the judgment of Officer S., who primarily spoke with the mother and grandmother, and determined the mother was not intoxicated. Based on the objective evidence, it does not appear Officer W's decisions on that day would have triggered a situation where APD would have needed to have CYFD take custody of the children.

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Sergeant B. arrived on-scene and spoke with the father and also reviewed the documents. On OBRD, Sergeant B. can be heard confirming there was no custodial paperwork present. I noted Sergeant B. did not provide any guidance during the call to Officer W. to contact CYFD nor was he included as a witness in this investigation since he was the approving supervisor on Officer W's police report. I would think if Sergeant B. felt Officer W. should have charged child abuse, he would have corrected that immediately.

On the arrest report, which is the statement of probable cause, Sergeant Ss was the approving supervisor and like my comments regarding Sergeant B, I would also think Sergeant Ss would have corrected the charges had he felt child abuse should have been charged.

Lastly, I spoke with one of our IAPS investigators, MP, who worked for CYFD prior to becoming employed with IAPS. He told me based on the fact pattern, CYFD would not have responded to the scene and the paperwork provided by the father to Officer W. sounded to him like a safety plan. Investigator P. said safety plans are voluntary and are not binding documents and can only last as long as the case and they do expire. It is worth noting I was not able to locate this paperwork in the evidence in order to review the contents.

**Conclusion:**

I have recommended the finding be changed to exonerated and no action be taken against Officer W. Superintendent Garcia reviewed these circumstances and concurred.

Respectfully,



Major Jimmy Collins,  
Deputy Superintendent of Reform  
Albuquerque Police Department

Cc: Eric Garcia, Superintendent of Police Reform