



# City of Albuquerque

## Civilian Police Oversight Agency



**Diane McDermott**  
Executive Director

**To:** Scott Norris, Commander IAFD, APD  
**From:** Diane McDermott, Executive Director, CPOA  
**Subject:** CPOA Report on Officer Involved Shooting APD Case # 23-0047865

**Incident Summary:**

Both NMSP and APD used force in this incident, but only APD's use of force will be discussed. There were injuries in this incident, but none were received from law enforcement.

The incident occurred on June 16, 2023. An initial call for service at a restaurant was that a male subject was causing a disturbance outside of the business. Not long after, several calls were received that the same male subject was waving a gun around in the parking lot. The male was later identified as Mr. M. Continuous updates were being received by citizens updating and calling the police that Mr. M was pointing his firearm at passing vehicles. Given the location's proximity to the NMSP substation, NMSP was the first to respond. APD officers were sent to assist. Mr. M's actions posed a significant threat of death or serious harm.

Both NMSP officers and APD officers responded with lethal and less lethal force options. Not long after arrival, and while officers were still establishing known information on the scene, gunfire erupted. The location was very busy, with both cars and pedestrians. Mr. M was seen on a nearby business surveillance video firing directly into an occupied pickup truck, which was the gunfire officers heard. The driver and passenger were both struck with bullets. The driver managed to drive away from Mr. M and stopped on a different side of the business. Officers ran toward the sounds of gunfire, and the response turned into an active shooter situation.

One NMSP officer fired his shotgun once at Mr. M, who was behind a pickup truck. When APD Sgt. W reached the front of the business; Mr. M fired shots at Sgt. W and NMSP officers. APD Sgt. W fired his rifle two times at Mr. M. As Mr. M continued to fire, a different NMSP officer repositioned and fired at Mr. M. Mr. M then dropped his firearm and cooperated with being taken into custody. NMSP officers handcuffed Mr. M. Mr. M did not receive an injury.

As Mr. M was firing on one side of the business, APD Officer S arrived and encountered the pickup that Mr. M had fired at. APD Officer S did not know the full scope of the situation yet. Ms. C was exiting the vehicle, and Officer S pointed his rifle at Ms. C until he quickly established that she was a victim. APD Officer S immediately called for rescue once he observed her injuries.

Medical aid was provided to both occupants of the pickup truck until rescue arrived.

**Case Review:**

Computer-Aided Dispatch Reports  
APD Field Reports  
Internal Affairs Force Reports  
On-Body Recording Device Videos  
APD policies regarding force  
CPOA Director's attendance at the Force Review Board Briefing 10/5/23  
IAPS misconduct investigation

**Use of Force Types and Involved Officers:**

- Level 3 UOF1 OIS Sergeant W
- Level 3 UOF2 OIS Sergeant W
- Level 1 UOF3 show of force APD Officer S

**Policy Consideration and Outcome:**

The applicable policy for the uses of force (UOF 1-2) is:

*2.52.6.B.1.c 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.*

Mr. M posed a threat of death or serious physical injury when he was pointing a gun at vehicles and people. Mr. M then fired his handgun directly at two random citizens, which caused serious bodily injury, striking both occupants. Mr. M then fired directly at NMSP officers and APD Sgt. W. Sgt. W fired his weapon to stop the actions and threats Mr. M posed.

**These uses of force were found within APD policy by IAFD.**

The applicable policy for the uses of force (SOF 3) is:

*IAFD utilized 2-52-5-A-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.*

*The CPOA believes a more applicable SOP would have been 2.54.4.B.4: Sworn personnel shall not point a firearm at an individual unless the officer reasonably believes the individual presents a threat to the officer, other sworn personnel, or community members. The change in SOP would not change the finding outcome.*

Officer S responded to the call, heard gunshots, and observed a parked pickup truck with visible bullet damage. Officer S pointed his rifle at the passenger as she opened the truck door and stepped out, not knowing at the time Ms. C was a victim. Officer S lowered his rifle and rendered aid once he saw her hands were clear, and he quickly determined she was a victim.

**This show of force was found within APD policy by IAFD.**

**Findings:**

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

**Additional Policy Considerations:**

Potential policy violations were identified and investigated by Internal Affairs Professional Standards:

- One of the backup officers was identified as failing to activate their OBRD. This was sustained.
- Sgt. W failed to activate his OBRD upon arrival, which resulted in the use of force not being recorded. This was sustained
- Officer S failed to document a potential show of force. This was sustained

The IAPS investigation into these issues appeared to address these concerns appropriately.

Due to the nature of the two agencies involved in this incident, photographs of the APD officers involved were not taken since NMSP was the primary. An agreement in the future was that each agency would be responsible for photos of its own officers.

No additional recommendations were proposed.

The Civilian Police Oversight Advisory Board reviewed this case at its June meeting. The Board's discussion can be found in the June minutes of 6/13/24.

