

CITY OF ALBUQUERQUE



POLICE OVERSIGHT COMMISSION

Steve Smothermon, Chair

Linda Martinez, Vice Chair

Matthew Archuleta

Hank Cadena

Scott Carreathers

Bambi Folk

Bob Francis

Don Peterson

William W. Deaton, Independent Review Officer

February 1, 2010

Ray Schultz, Chief of Police
C/O Lt. Doug West, Internal Affairs Unit
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

Subject: CPC # 164-09

Dear Chief Schultz,

We concurred on our findings in this case. This complaint will be presented to the POC for final review and, if approved, the attached public record letter will be mailed to the citizen. These findings are now considered final. If any changes to these findings are ever contemplated, inform the Police Oversight Commission and the Independent Review Officer immediately. Please ensure the findings are placed in the officer's retention file.

Please review the summary of the officer's statement and advise me if you think it is too extensive or does not comply with the union contract and Police Oversight Ordinance.

Please contact me if there are questions or concerns.

William W. Deaton
Independent Review Officer

By: Valerie Morales

Senior Administrative Assistant
(505) 924-3771

vmorales@cabq.gov

File Accompanies Letter
CC: Police Oversight Commission
(W/O names)

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

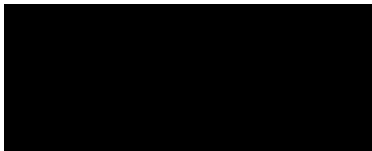
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February 11, 2010



Subject: CPC # 164-09

Dear Mr. [REDACTED],

PO Box 1293 The complaint you filed was received in our office on August 10, 2009. Based on the complaint and our investigation we have determined whether the Standard Operation Procedures (SOPs) listed below have been violated. You will be referred to below as 'the citizen' or by name.

Albuquerque A summary of the investigation and my findings are below.

THE COMPLAINT

NM 87103 Mr. [REDACTED] complains that on May 12, 2009, at about 2:45 PM, he parked in a fire lane at the Walmart Store located at 2550 Coors Boulevard NW. He was with his son and his pregnant wife. His wife was in labor and they stopped at Walmart so they could turn in some movies on the way to the hospital. The officer asked www.cabq.gov [REDACTED] to move his truck and as [REDACTED] was trying to explain why he was parked there, the officer yelled at him, got him out of his truck and handcuffed him, and placed him in the patrol car. He was detained for an hour and a half, and was eventually cited for Disorderly Conduct, and was released. [REDACTED] alleges that the officer's conduct was unprofessional and that he should not have been arrested.

Since the officers are compelled to cooperate in the investigation, Sections 9-4-1-13 and 9-4-1-14 of the Police Oversight Ordinance state that these statements will not be made public. I am only allowed to summarize the conclusions I reached from their compelled statements.

Your complaint has been thoroughly and impartially investigated. We make findings based on a preponderance of the evidence. A preponderance of the evidence means that one side has a greater weight of evidence that is more credible and convincing than the

other side. Another way of saying it is more than 50% of the credible evidence. If the credible evidence is 50-50, the proper finding is Not Sustained.

ISSUES, FACTS AND CONCLUSIONS

1. Did Officer W comply with Albuquerque Police Department General Order 1-04-1 F which reads:

Personnel shall conduct themselves both on and off duty in such a manner as to reflect most favorably on the department.

I find this issue to be Not Sustained. There is insufficient evidence to prove or disprove the allegation.

The investigation revealed that there were a lot of things that could have been done differently in this incident. First, the evidence shows that Mr. [REDACTED] clearly violated the law by parking in the fire lane at the store. Even though he and his wife believed that they were not causing a hazard, the video shows that they were. Just moments after parking in the fire lane, a man with a toddler in hand comes out of the store and they have to look around the rather large truck before crossing into the parking lot. Numerous other patrons had to do the same. The police officer saw this and was absolutely right to be concerned with the potential danger to pedestrians who were entering and exiting the Walmart store. It was within his power to ask Mr. and Mrs. [REDACTED] to move the truck or to ticket Mr. [REDACTED] for parking in the fire lane.

The evidence shows that Mr. [REDACTED] declined to move the truck and, also, that Officer W gave him very little time to comply with the direction given him. Mr. [REDACTED] clearly told Officer W that his wife was pregnant and in labor and that his son was inside the store returning videos. Mr. [REDACTED] should have been cited for parking illegally. Although an arrest was questionable under the circumstances, the evidence is not clear that Officer W failed to behave in a manner that would reflect most favorably on the department.
This issue is not sustained.

2. Did Officer W comply with Albuquerque Police Department General Order 1-02-2 B 2 which reads:

Officers shall familiarize themselves with and have working knowledge of all laws of the State of New Mexico and the Ordinances of the City of Albuquerque which they are required to enforce. Officers shall:

Make only those arrests, searches, and seizures which they know or should know are legal and in accordance with departmental procedures.

I find this issue to be Sustained. The allegation is supported by sufficient evidence.

The evidence indicates that the only law that Mr. [REDACTED] violated was parking in a fire lane. He was arrested and charged with disorderly conduct.

The State Statute 30-20-1 A for Disorderly Conduct reads:

Disorderly conduct consists of engaging in violent, abusive, boisterous, unreasonably loud, or otherwise disorderly conduct which tends to disturb the peace.

The evidence in this investigation shows that none of the conduct above took place during the incident. The video evidence shows that in a three minute period of time in which the officer was watching or dealing with Mr. [REDACTED], 23 people walked around the illegally parked truck; however, no one stopped to watch nor were they disturbed by Mr. [REDACTED].

There is little evidence to support the charge of Disorderly Conduct which resulted in the arrest.

This issue is sustained.

3. Did Officer W comply with Albuquerque Police Department General Order 1-39-1 A 2 which reads:

Personnel will use issued tape/digital recorders to document the incidents listed below:

Disorderly Conduct Arrests

I find this issue to be Sustained. The allegation is supported by sufficient evidence.

The evidence shows that Officer W did not utilize his belt tape in this case and no belt tape was tagged into evidence. Officer W first spoke with Mr. and Mrs. [REDACTED] from his car. Officer W apparently made up his mind before exiting the police car that he was going to arrest Mr. [REDACTED] for Disorderly Conduct. He had the ability and the opportunity to utilize his belt tape and he did not do that. In this incident, use of the belt tape was absolutely required and Officer W failed to comply with that requirement.

This issue is sustained.

Chief Schultz agrees with these findings.

Your complaint and these findings are made part of the officer's permanent record.

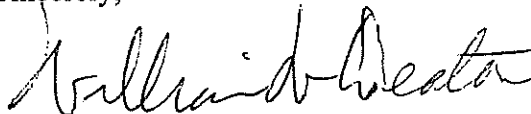
You have the right to appeal this decision. §9-4-1-9(A) of the Police Oversight Ordinance allows any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO or the Chief may appeal that decision to the POC within ten

business days of receipt of this letter. Please promptly communicate your desire to appeal in a signed writing to the undersigned. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/iro/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers are held accountable, and improving the process.

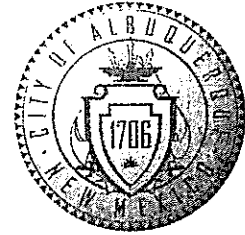
Sincerely,



William W. Deaton
Independent Review Officer
505-924-3774
Police Oversight Commission
P. O. Box 1293
Albuquerque, New Mexico 87103

CC: Police Oversight Commission
(W/O names)

CITY OF ALBUQUERQUE



POLICE OVERSIGHT COMMISSION

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Matthew Archuleta

Hank Cadena

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Bambi Folk

Bob Francis

Don Peterson

William W. Deaton, Independent Review Officer

August 11, 2009



Re: CPC # 164-09

Dear Mr. [REDACTED]:

The Independent Review Office will investigate your Citizens Police Complaint (CPC) concerning the Albuquerque Police Department. IRO investigator **Paul Skotchdopole (505) 924-3773** will contact you soon to schedule an interview with you. If you did not provide a telephone number with your complaint, please call the above listed investigator as soon as possible. Also, please give the investigator your email address when you call.

Your complaint was received via e-mail, and therefore does not bear a signature. All complaints must be signed in order to be considered "valid". Please sign the copy of your complaint and return it immediately using the self addressed envelope provided.

Once we receive your signed complaint the investigator will contact you to discuss the details. If we do not receive your signed complaint by August 21, 2009, the investigation will be inactivated as required by statute.

Investigations of complaints require approximately 60 to 90 days to complete. After completion, the officer's superiors including the Chief of Police will review the investigation to determine whether any discipline is appropriate based on the findings. Once the departmental review is complete, the Police Oversight Commission will review the findings letter at their next scheduled meeting. Once approved by the Police Oversight Commission you will be notified of the investigative results by certified letters from the IRO and the Chief of Police.

Please remember that complaints involving APD personnel are administrative investigations to determine whether any Standard Operating Procedures have been violated. Such violations may result in discipline of the officer. If you desire other relief, please seek additional information on how to proceed. If you have questions, please contact the investigator named above.

Thank you for your patience and cooperation in the civilian oversight of the police.

William W. Deaton
Independent Review Officer

By: Valerie Morales

Senior Administrative Assistant

(505) 924-3771

vmorales@cabq.gov

CC: Internal Affairs Unit

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

CPC 164-09 Paul

Deaton, William W.

From: webmaster@cabq.gov
Sent: Monday, August 10, 2009 11:30 AM
To: Deaton, William W.
Cc: Morales, Valerie C.
Subject: Online Police Complaint Form Submission

Your Name

[REDACTED]

Your Mailing Address

[REDACTED]

Please contact my attorney:

[REDACTED]

Your Phone Number

[REDACTED]

Date the Incident Occurred

8/12/2009

Your Date of Birth

[REDACTED]

Your Complaint

I was taking my wife to the hospital since she was in labor with our third child. The contractions weren't far enough apart yet according to her doctor, so my son wanted to drop off his DVD rentals at the Walmart located at 2550 Coors Blvd on the way to the hospital. I stopped in the fire lane so that I could watch my son and stay with my wife. I never left the driver's seat or turned off my truck. Officer Troy Weekley (I.D. No. P2179) asked me to move my truck. I attempted to explain why I was there, but he began yelling at me and had me exit my vehicle. In less than a few minutes, I was cuffed and placed in his patrol car. My wife and I both tried to explain the situation, but he refused to listen. My wife had to call the police because she was so worried due to the officer's conduct. I was left in the patrol car for about an hour and a half while my wife was in labor in my truck. Finally, Sergeant Kerry Kendrick arrived and I was cited with disorderly conduct and allowed to leave. This was extremely upsetting to both myself and my wife. Her blood pressure was elevated when she finally reached the hospital with my in-laws. I have serious concerns about this officer's conduct and wish to bring this to the department's attention.