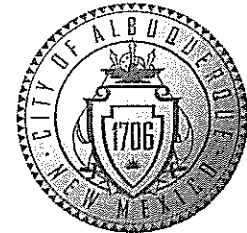


# CITY OF ALBUQUERQUE



## POLICE OVERSIGHT COMMISSION

*Matthew Archuleta, Chair*

*Bambi Folk, Vice Chair*

*David Adkins*

*Hank Cadena*

*Scott Carreathers*

*Bob Francis*

*Linda Martinez*

*Don Peterson*

William W. Deaton, Independent Review Officer

November 29, 2010

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

Subject: CPC # 173-10

Citizen: [REDACTED]

Officer: Matthew Reeder

Officer: Jerrod Pelot

Dear Chief Schultz,

PO Box 1293

The citizen's complaint was received at the IRO office on August 26, 2010. Paul Skotchdopole investigated this case.

Albuquerque

The attached investigation is forwarded for your review. Please return the file immediately after you have made your findings. Thank you for your prompt attention to this complaint. It is important to provide the citizens of Albuquerque as timely a response to their complaint as possible. Please review my draft letter and advise me if you believe the summary of the officer's statement is too extensive or if you have other areas of concern.

NM 87103

Please contact me if there are questions or concerns.

www.cabq.gov

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)

**POLICE OVERSIGHT COMMISSION**

*Matthew Archuleta, Chair*  
*Bambi Folk, Vice Chair*  
*David Adkins*  
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*Scott Carreathers*  
*Bob Francis*  
*Linda Martinez*  
*Don Peterson*  
William W. Deaton, Independent Review Officer

DRAFT

December 9, 2010



Subject: CPC # 173-10

Dear Mr. [REDACTED]

The complaint you filed was received in our office on August 26, 2010. 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.

A summary of the investigation and my findings are below.

**THE COMPLAINT**

**Mr. [REDACTED] complains that on 08/21/10 at about 7:00 AM, two officers from the APD pursued him without cause and chased him into his home. The officers entered his home without a warrant or consent and once inside they use excessive force in apprehending Mr. [REDACTED]. He also alleges that the officers used foul language when dealing with him and his girlfriend’s minor children.**

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

### Officer P

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

B. 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:

2. 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. There is sufficient evidence to support the allegation.

The evidence in this case shows that there was probable cause to believe that Mr. [REDACTED] had committed a misdemeanor offense of Criminal Trespass when he refused to leave the neighbor's yard after asking her for work. When the officers approached Mr. [REDACTED] and he fled, he probably committed an additional offense of Evading an Officer, also a misdemeanor offense. Mr. [REDACTED] was subject to arrest at that point in time.

The officers were in pursuit of Mr. [REDACTED] when they forced entry into the home, however, that forced entry was not allowed according to APD policy. The policy requires that before an officer can force entry into a home into which a suspect has fled, the officers must have probable cause to believe that the suspect has committed and act of domestic violence or a felony and exigent circumstances exist. The evidence in this case shows that there were no exigent circumstances, nor had Mr. [REDACTED] committed a felony or an act of domestic violence.

The forced entry to the home was not within policy and therefore this issue is sustained.

2. Did Officer P comply with Albuquerque Police Department General Order 1-04-4 P which reads:

Personnel shall not use coarse, violent, profane, or insolent language or gestures.

I find this issue to be Sustained. There is sufficient information to support the allegation.

The complainant alleges that when the officers forced entry to his home that the officers used foul language in telling his step children to get out of the house. The children state that the officers did use foul language and the officers deny that they did.

The belt tape recording that Officer R made of the incident does not start until after the children were told to get out of the house.

In the absence of any independent evidence to prove or disprove the allegation, that issue is not sustained.

There is an additional allegation that one of the children makes that when she went back in and saw Mr. [REDACTED] being arrested that the officers told her to "get the (expletive) out." The belt tape recording does capture that moment and the allegation that the officers used foul language in telling her to get out is false. The officers do not use foul language with the child. That allegation is unfounded.

However, there is captured on the belt tape, one time where Officer P does use foul language while he is telling Mr. [REDACTED] to come out of the bathroom. That allegation is sustained.

The overall finding regarding foul language use by Officer P is sustained.

3. Did Officer P comply with Albuquerque Police Department Procedural Order 2-52-2 A which states:

Where force is warranted, officers should assess the incident in order to determine which technique or weapon will reasonably de-escalate the incident and bring it under control safely. Officers shall use only that force which is reasonably necessary to effect lawful objectives.

I find this issue to be Exonerated. The incident that occurred/complained of was lawful and proper.

Although the forced entry to the home should not have been made, once it was, Mr. [REDACTED] should have not continued running from the officers. Mr. [REDACTED] was subject to arrest even though he believed he had done nothing wrong.

There is an allegation made that the officers pointed their guns at the children when they told the children to get out. There is no evidence to prove or disprove that the officers did that. The officers had their weapons out but maintain that they did not point their weapons at the children. The children say that they did. That allegation is not sustained.

The evidence is clear that Mr. [REDACTED] was aware that the police were attempting to apprehend him. Mr. [REDACTED] purported to the investigator that he did not understand one word of English. That simply is not true. The belt tape captures him questioning the officers in English when he is in the bathroom and he is being ordered to come out. He clearly asks, "For what?"

The belt tape captures Mr. [REDACTED] refusing to obey the officer's orders to give up and submit to arrest. When a person refuses to do that in the manner that the evidence shows that Mr. [REDACTED] did, the officers are authorized under policy to use their tasers and to use physical force to subdue that person. In this case, that is exactly what happened.

Mr. [REDACTED] should not have run from the officers and he should have complied with the officer's commands to submit to arrest.

Overall, this issue is exonerated.

#### Officer R

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

B. 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:

2. 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. There is sufficient evidence to support the allegation.

The evidence in this case shows that there was probable cause to believe that Mr. [REDACTED] had committed a misdemeanor offense of Criminal Trespass when he refused to leave the neighbor's yard after asking her for work. When the officers approached Mr. [REDACTED] and he fled, he probably committed an additional offense of Evading an Officer, also a misdemeanor offense. Mr. [REDACTED] was subject to arrest at that point in time.

The officers were in pursuit of Mr. [REDACTED] when they forced entry into the home, however, that forced entry was not allowed according to APD policy. The policy requires that before an officer can force entry into a home into which a suspect has fled, the officers must have probable cause to believe that the suspect has committed and act of domestic violence or a felony and exigent circumstances exist. The

evidence in this case shows that there were no exigent circumstances, nor had Mr. [REDACTED] committed a felony or an act of domestic violence.

The forced entry to the home was not within policy.  
This issue is sustained.

2. Did Officer R comply with Albuquerque Police Department General Order 1-04-4 P which reads:

Personnel shall not use coarse, violent, profane, or insolent language or gestures.

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

The complainant alleges that when the officers forced entry to his home that the officers used foul language in telling his stepchildren to get out of the house. The children state that the officers did use foul language and the officers deny that they did.

The belt tape recording that Officer R made of the incident does not start until after the children were told to get out of the house.

In the absence of any independent evidence to prove or disprove the allegation, the issue is not sustained.

There is an additional allegation that one of the children makes that when she went back in and saw Mr. [REDACTED] being arrested that the officers told her to “get the (expletive) out.” The belt tape recording does capture that moment and the allegation that the officers used foul language in telling her to get out is false. The officers do not use foul language with the child. That allegation is unfounded.

3. Did Officer R comply with Albuquerque Police Department Procedural Order 2-52-2 A which states:

Where force is warranted, officers should assess the incident in order to determine which technique or weapon will reasonably de-escalate the incident and bring it under control safely. Officers shall use only that force which is reasonably necessary to effect lawful objectives.

I find this issue to be Exonerated. The incident that occurred/complained of was lawful and proper.

Although the forced entry to the home should not have been made, once it was, Mr. [REDACTED] should have not continued running from the officers. Mr. [REDACTED] was subject to arrest even though he believed he had done nothing wrong.

**There is an allegation made that the officers pointed their guns at the children when they told the children to get out. There is no evidence to prove or disprove that the officers did that. The officers had their weapons out but maintain that they did not point their weapons at the children. The children say that they did. That allegation is not sustained.**

**The evidence is clear that Mr. [REDACTED] was aware that the police were attempting to apprehend him. Mr. [REDACTED] purported to the investigator that he did not understand one word of English. That simply is not true. The belt tape captures him questioning the officers in English when he is in the bathroom and he is being ordered to come out. He clearly asks, "For what?"**

**The belt tape captures Mr. [REDACTED] refusing to obey the officer's orders to give up and submit to arrest. When a person refuses to do that in the manner that the evidence shows that Mr. [REDACTED] did, the officers are authorized under policy to use their tasers and to use physical force to subdue that person. In this case, that is exactly what happened.**

**Mr. [REDACTED] should not have run from the officers and he should have complied with the officer's commands to submit to arrest.**

This issue is exonerated.

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

*Complaint to initiate - 11/11/10 01/27/2010*

**ALBUQUERQUE POLICE DEPARTMENT  
CITIZEN POLICE COMPLAINT FORM**

Official Use Only:  
Date/Time Received: 8/24/10 1:31pm  
Received By: [Signature]  
CPC#: 113-10  
Assigned To: PAUL

**INSTRUCTIONS:**

This form should only be completed if you wish to initiate a complaint against the Department or an employee(s). According to City Ordinance, written complaints must be filed within ninety (90) calendar days of the incident to be accepted. If you would rather attempt to resolve this issue with the employee's supervisor, you may contact the employee's supervisor directly. For assistance, please contact the Internal Affairs Unit at (505) 768-2880 during business hours.

**IF YOU DECIDE TO FILE A COMPLAINT:**

Please complete the complainant information and statement portions below. Once the form is completed and signed it may be delivered to the Independent Review Office/Police Oversight Commission at 600 2<sup>nd</sup> St. NW, Room 813, Albuquerque, NM, 87102, or mailed to PO Box 1293, Albuquerque, NM 87103. Please notify the Independent Review Office if your address or phone number changes prior to the resolution of your complaint.

**COMPLAINANT INFORMATION**

NAME: [Redacted] [Redacted] [Redacted]  
(First) (Middle) (Last)

ADDRESS: [Redacted]  
(Street Name and Number)

[Redacted] [Redacted] [Redacted]  
(City) (State) (Zip Code)

TELEPHONE: Home: [Redacted] Cell/Work: [Redacted]

Date and Time of Incident: 8/21/10

Address where incident happened: [Redacted]

**NOTE:** This complaint form along with other necessary documentation will be forwarded to the Independent Review Office for evaluation and investigative direction. Your complaint may be investigated by the Independent Review Office *or* assigned to APD's Internal Affairs Unit for investigation. The Independent Review Office also will review the completed investigation and will submit findings to the Chief of Police. You will be notified by certified mail, at your above-listed address, of the final disciplinary findings (normally within 60 days after the complaint has been filed.)



## STATEMENT

Please describe both the incident and the specific nature of your complaint as completely as possible. Be sure to give the names, addresses and phone numbers of any witnesses of which you are aware. Be as specific as possible about the details such as exactly what was said, time and dates of incident. Identify the exact location of the incident, identification of the officers involved, if known. If officer's names are not known, please include detailed descriptions of officers. Be specific, it is important to provide as much information as possible. Attach additional sheets if necessary. Please feel free to include any other relevant information or items (pictures, witness statements, etc.)

On 8/21/10 I was outside ~~by~~ my house at [REDACTED] when I seen 2 police vehicles down the road coming towards my house, I started walking to get in and I noticed that they started speeding to get to where I was at. That's when I got scared because I didn't know what was going on. I had been drinking with my neighbor the night before and ~~the~~ before the cops arrived I had gone over to his house and knocked on his door a few times, when I ran inside my house I told my stepkids not to open the door and I locked the front door and went straight to my room that's where I went in the bathroom and I locked both my bedroom door and the bathroom door at this time I

(Statement continued)

didn't think the cops were even going to come in my house. I was about to use the restroom when I heard the Police breaking in the doors they kept yelling 'Police' It happen so fast that when I want to unlock the restroom door they had already kicked and broken the door making a ~~hole~~ hole in the middle at this time when the officers got to me he grabbed me and threw me on the floor and tased me after the first tased I fell to the floor and they picked me up and ~~and~~ threw me in the bathtub and started kicking me on my chest several times and again got tased 2 more times I could see them laughing to what they were doing to me. I called my stepdaughter [REDACTED] to please tell them to stop that I wasn't doing anything and wasn't resisting arrest I heard them telling her to get the hell out both my stepkids

(Statement continued)

were told to get out of my house. after I got handcuffed and at this time I was still on the floor and I tried to tell them why they were doing this to me and I got punch on my face, after I started noticing more officers started arriving. I started feeling a lot of pain on my left side of my chest. I told one of the officers that spoke Spanish and after a while the paramedics arrived they started checking me and one of the med's that spoke Spanish kept telling me not to act stupid that I was fine to just let them take me to jail I told him no, that I was in pain. after a while they took me outside and as I was walking towards the ambulance I told my girlfriend that I had done nothing wrong, I was taken to U.N.M between 8 and 9 AM after 12:00 noon I was told that they were going to insert a tube in my left lung due to getting assaulted by the police. I was admitted to the hospital

(Statement continued)

on 8/21/10 and discharge on 8/23/10  
and I was taken to jail. I was booked  
and I was released on my own  
recognizance on 8/24/10

My medical service was trauma

(Statement continued)

**WITNESSES:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

(If more, please list on a separate sheet.)

Names of officers you are complaining about: \_\_\_\_\_

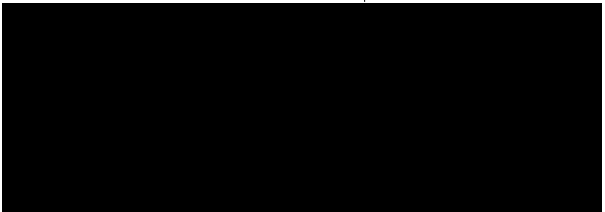
*Pelot Jerrod 5246 APD*

Would you be interested in mediation to resolve this complaint: \_\_\_\_\_

*NO*

**End of Statement**

The information provided in this statement is true and factual to the best of my knowledge. I understand that I may be required to appear in the Independent Review Office or the Internal Affairs Office for further interview or to provide other investigative assistance as necessary.



ALBUQUERQUE POLICE DEPARTMENT  
MEDICAL RECORDS RELEASE

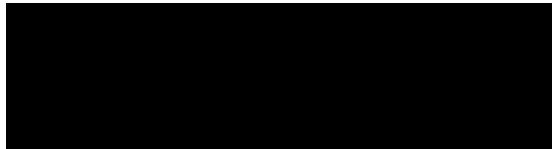
8/25/10  
(Date)

The University of New Mexico  
(Name of Medical Facility)

I, , DOB  SSN \_\_\_\_\_,

do hereby authorize the above-named medical facility to release to the bearer of this document any and all records of my medical treatment and/or diagnosis on 8/21/10.

I do hereby waive my rights to privacy normally maintained between doctor and patient. I do hereby release the above-named medical facility and/or the attending physician from any and all liability.



\_\_\_\_\_  
(Signature of Party Receiving Said Record)

\_\_\_\_\_  
(Date Received)