



Colorado Police Quarterly

**The Official Journal of the Colorado
Association of Chiefs of Police**

Volume 2, Number 2, Summer 2016

Editorial Mission Statement



Colorado Police Quarterly: The Official Journal of the Colorado Association of Chiefs of Police

The editorial mission statement of the *Colorado Police Quarterly* is to provide a resource of information among law enforcement professionals. The journal serves as a professional forum for the dissemination of original research, legal updates, training strategies as well as best practices and literature reviews. The journal incorporates the expertise of both practitioners and academics to achieve these goals. Promoting the publication of peer-reviewed research and providing sound advice from practitioners for law enforcement within the state of Colorado are the journal's main goals.

The editorial board of the *Colorado Police Quarterly* considers for publication the following types of articles:

Commentaries: Short papers of a philosophical nature addressing important issues, innovative training strategies, and best practices are invited. The journal welcomes the thoughts and comments of the association's members and its other readers.

Legal Updates: Pertinent reviews of legal cases and articles addressing legal issues are published as well.

Original Research: Research articles of interest to the members of the Colorado Association of Chiefs of Police are welcome.

Literature and Book Reviews: The journal publishes literature and book reviews of well-documented manuscripts on pertinent topics and newly available texts within the discipline.

Letters to the Editor: Relevant letters are published, with authorship, on important topics.

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The *Colorado Police Quarterly* is published quarterly by the Colorado Association of Chiefs of Police.



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Volume 2, Issue 2, 2016

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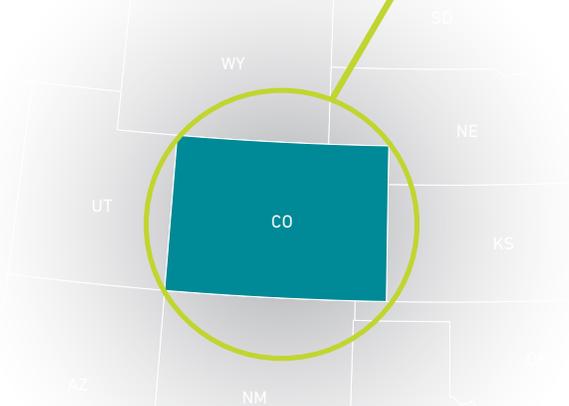


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The State of the CACP

Rick D. Brandt



It's hard to believe a year has passed and the time to pass the torch is already upon us! And what a memorable year it has been! It is a good time to recap where we have been and where we are going as an association. I began my tenure as president of the CACP at the end of the *Year of Destruction!* Chief John Jackson, AKA The Wrecking Ball, spent much of his term tearing apart the old structure and systems that got the CACP in the trouble we found ourselves. From there it was my job to begin the rebuilding process. My strategy involved a couple of steps; first, get our finances stabilized. We did this in a number of ways, not the least of which were to hold our conferences in cost-effective venues. Second, develop a strategic plan to move the organization forward. Finally, get the CACP under professional management.

Financially, we are in a much better position than we were a couple of years ago. Chief Barbour is working with our CPA and establishing a baseline of operational expenses and viewing them in light of stable income sources. The association currently is contracting for some critical services including legislative lobbying and legislative advocacy. We also contract for CPA services, limited administrative services, and web page management. Under this temporary structure we are financially stable, but we cannot maintain working in this capacity moving forward. More on this later.

Last August the Board of Directors met for a strategic planning meeting. We retained the services of Ron Sloan to facilitate the process, and from the process we identified organizational shared values and four critical goals for the future success of the CACP. Our values: Integrity, Duty, Professionalism, Respect/honor, Life-Long Learning, and Service.

Goal 1: *Define, Select, and Hire Professional Management.* We are in discussions with a firm that specializes in professional association management. The strategic plan has a target date of September 30, 2016 to accomplish this. I anticipate achieving that goal by the due date.

Goal 2: *Develop an Annual, Sustainable Revenue Plan.* Working with our CPA we have a pretty clear picture of how much money we bring in through annual dues. Other strategies being developed include selling advertising space in this publication, developing professional corporate partnerships, and increasing value of membership to the CACP through a proposed stratified-membership structure.

Goal 3: *Re-evaluate the Legislative Advocacy Plan.* Outcomes from this goal resulted in two mission-critical conclusions; utilizing professional lobbyist to represent the CACP continues to be an imperative, and the testifying during legislative season was straining our abilities on Capitol Hill. The past few legislative sessions certainly exacerbated those strains, with the scores of bills requiring review and action! Moving forward we retained the services of Jensen Public Affairs and contracted with Ron Sloan to testify on behalf of the CACP on specific legislation.

Goal 4: *Improve Member Services.* The committee continues to bring value to our members and is working on improving in this area. Our member benefits include CACP Accreditation, CACP Executive Certification, mid-year and annual conferences, LPO, legislative representation, and many more. Looking ahead the committee is working to bring added value to our members in the form of both tangible and non-tangible benefits.

The strategic planning process has been productive and valuable, and we will continue to grow and benefit from this road map as we move forward. More information will be shared regarding the strategic plan at the conference in Grand Junction.

Marijuana and related legislation has kept the Legislative Committee and our marijuana SME's, Chiefs Jackson and Vasquez, extraordinarily busy. A second Marijuana Conference was hosted in Colorado through a partnership between POST, CACP, and others. By all accounts the conference was a huge success and Colorado continues to lead the nation in breaking this new and ever evolving ground.

This past year has driven home for me the importance of members staying involved in the CACP and the legislative process. Were it not for the engagement and assistance from many of the chiefs, our association may well have been overwhelmed! I thank each of you that have contributed your time and resources this year!

I regret that I am unable to attend the conference in Grand Junction, as I will be in Boston attending SMIP. So, I will take this opportunity to thank the board and all of the regional representatives for their dedication to the CACP and their help and support this past year. The team accomplished great things! It has been an amazing honor to represent Colorado law enforcement as CACP president.

Rick D. Brandt
Chief of Police, Evans Police Department

Leadership Lessons from the “Little Voices” in My Head

Rick D. Brandt



This will be my last article as CACP president. My instinct was to highlight the successes of the past year and to talk about the future of this awesome association, but the adult side of me was stomped into unconsciousness by one of the many voices in my head. If you are a chief reading this, you know what I am talking about. You have some of those same voices. I think those voices appeared about the same time I pinned on the badge that read “FEIHC.”

The first voice said, “You are standing in front of a mirror.” Sometimes the voices are very helpful. Other times, less so. Like the sultry female voice that rents space in my cranium. I call her Gracie Lucille. The first time Gracie Lucille spoke she said, “The first rule of being a police chief; everything is your fault.” At the time I thought she was kidding. Now, not so much. I had no idea that everything, and I mean *everything*, up to and including the weather, is my fault. Gracie Lucille visits me often with examples of what is my fault. “Morale is low; it’s your fault.” “Your officers are not paid enough and it’s your fault.” “Why do we have to drive Dodge Chargers? It’s your fault.” “Officer Jones is having a root canal, and it’s your fault.” All righty, then. My lesson? Take responsibility for everything that goes wrong and give my folks credit for everything that goes right.

Then there is Claude. Claude has a really affected French accent and he follows every sentence with that weird nasal laugh that some Frenchmen have. A few years ago he asked, “Are you looking behind you? Is anyone following? Huh.. If so, it is out of a sense of morbid curiosity, no? Huh.” I learned to go out occasionally and see if anyone is following me! Gracie Lucille seems quite enamored with Claude and calls him *suave* and *debonair*. “It’s your own fault that you lack the suave sophistication of Claude,” she tells me. Merde!

The loudest voice in my head is Boris. I call him Boris because he sounds just like that guy that sings *Monster Mash*, kind of all Transylvanian-vampire. He is so annoying and in so many ways. For one thing, he only talks to me in the middle of the night after waking me from a sound sleep. His favorite tactic is to list all of the things he thinks I should worry about. Sometimes he lists them alphabetically: “Accountable, Budget, Communication, Discipline, Employees, Fairness, Glover, Finances, Human Resources. . .” “Wait,” I say as I’m in bed in a pitch dark room, a light sweat breaking out and my heart racing. . . “You listed two F words, and what the heck is a Glover?” Boris says, “I wanted to see if you ver paying attention. A Glover is zomeone veeth no friends. Like you. Now, where vas I?” Fabulous. Boris constantly reminds me that I am paid to worry. A lot. About everything. It comes with the territory.

I think the most important leadership lesson I learned is from Espresso, a little Italian fellow who looks like he fell off of a charm bracelet. Well, he sounds like he looks that way; I’ve never actually *seen* him. I mean, how weird would that be? He likes to pipe up when I get frustrated or angry with one of my staff. Espresso likes to taunt me when he knows my own Italian blood is starting to boil. “So, you get mad at that officer, eh? You want, I should maybe give him some cement loafers? You want, I put a horse’s head in his bed? Maybe I hit him with a wooden spoon!” What? “Well, you are so angry! Now is a good time to really let him have it! Maybe you yell at him, just like your mama used to do!” He pauses for a while and goes on. “How about you wait a while?” he says softly. “Maybe 24-hours. Then you talk to him. That way you treat him with respect and courtesy and not let your mouth outrun your brain.” Respect and courtesy. That is the very least my folks should expect from me. If my words or

body language transmit anything else, I am doing a wrong. Espresso likes to remind me that everyone is going through something; money problems, health issues, kids, finances, a fight with a spouse, whatever. He tells me, “Ricky (roll the R), do not judge the person by the singular act. Nothing is more important than your relationship with the people who look to you for leadership.” Espresso is right. I’m glad he is there when the emotion comes for a visit.

My greatest lesson is that leadership matters! What each and every one of you do day in and day out matters! I am honored and blessed to be a part of this amazing profession and to count so many of you among my friends. It has been a true privilege serving as your president this past year! Thank you for doing what you do!

Rick D. Brandt
Chief of Police, Evans Police Department



Police Recruitment in Colorado in the 21st Century

Craig Dodd



In light of local and national events exposing conflict between police and their communities, there is no better time to revisit recruitment and selection strategies in an effort to maximize our ability to field the most qualified candidates. These individuals will be instrumental in our efforts to address and overcome the “Public Trust” challenges we face today. While many will argue the policing talent pool is limited, I subscribe to the opposite belief. By searching the right market, appropriating the correct amount of resources, and by becoming more flexible with our process, recruitment and selection success is well within our grasp. I suggest organizations struggling with recruitment and selection consider the MAP (Market–Approach–Personalization) principle.

Market Area

Where should we be looking? Many organizations expend vast amounts of time and effort trying to attract local, quality, lateral candidates that are, quite honestly, few and far between. Yet, we avoid looking in our own communities for non-certified candidates because of the inherent costs associated with academy sponsorship and training.

If an organization is set on attracting laterals, be open to looking outside of Colorado. Organizations should explore migration data paired with professional policing cultures. It is no surprise that data suggests the greatest state-to-state migration into Colorado comes from California, Texas, and Arizona. Each of these states possesses advanced and progressive police cultures signifying a good starting point for recruiting efforts.

If an organization is financially willing and able to seek non-certified candidates, there is no better place than your own community. In addition, many community colleges offering POST academies and universities offering Criminal Justice Programs are filled with great candidates simply in need of information and outreach. Local candidates naturally offer aligned demographics, while community colleges and universities will offer energetic and excited candidates who relish the opportunity to begin their public safety career almost anywhere.

Approach

Approach is how we work together as an industry of professionals. If you think about it, there is no reason for us to compete with each other; most candidates know exactly where they want to work and it is usually either local, or far away. In an effort to reach and attract these candidates, we must rethink academy sponsorships by making valuable investments into community members who ultimately know how to best police in their own communities. Yes, this costs money and takes time, but ends in a sustainable result and could lower employee turnover.

If you agree that local (non-certified) candidates are a viable avenue, consider being more innovative in your approach. How often do you engage your community to educate (good to great) candidates on what to expect from a hiring process. Organizing community outreach meetings and informing citizens about hiring standards and processes will make us more efficient and leave a good impression in the community. The same can be done with hundreds of community college and university students in POST academies and/or degree programs.

Our approach must also change in terms of testing administration and background investigations. As an industry, we are inefficient and needlessly competitive. In an effort to make better use of limited resources, we should champion legislation creating a central repository for all background investigations that is accessible by all law enforcement

organizations and requires all city, county, and state agencies to contribute and provide any and all information regarding prospective policing candidates.

Finally, recruitment and selection must become a priority in each of our organizations. In many organizations, we have historically neglected understaffed Human Resource Departments and Professional Standards Units and yet expect them to perform miracles year after year. If we truly wish to achieve positive results, consider adding resources to these teams.

Personalization

It has been my experience that organizations struggling with recruiting do so partially as a result of an inability to adjust or unfamiliarity with the changing needs of the market/workforce. When most of us came up in the business, the job was so competitive that 10-15 process steps and 6-12 months' time was well worth the effort. While this was fine for us; it is not acceptable today. I venture to guess many of you would agree in most of today's candidate's eyes, being a cop does not have the same allure or prestige as before. In fact, we see this daily with what appears to be a lessened sense of organizational and industry loyalty. Guess what? We can complain and be disgusted all we want; or WE CAN ADJUST. So, how do we do this?

Adjusting does not mean lowering our standards, but it does mean we should consider changing the number of process steps, length of time from application to employment, and be willing to look locally and sponsor recruits in an academy. In addition, we must adapt our communication platforms (social media) and be more adaptable and responsive to candidate questions, requests, and needs. This will require more resources, but it will pay off.

Summary

The bottom line is WE MUST CHANGE! If we wish to conform to the 21st Century policing reforms that are expected, we must recognize and reward the importance of human capital and adjust to the needs of a changed workforce. The decision is yours!

Craig Dodd is a thirty-year Colorado law enforcement veteran employed as the Police Recruitment Administrator for the City of Commerce City. He owns and operates 911 HR Solutions, LLC, a private consulting firm.

Organizational Culture and Leadership Within a Law Enforcement Organization

Travis Anderson



Organizational culture is very powerful and impacts the entire law enforcement organization. Organizational culture has been defined as a system of shared values and beliefs that controls behavior (Ferrell, Fraedrich, & Ferrell, 2013). How agency leadership addresses organizational culture will exacerbate an already unhealthy culture, cause the organization to remain in the status quo, or move the agency forward. Society desires and demands a healthy organizational culture, as without it, services diminish to a basic or undesirable level. Is not the community why we exist as a public safety organization in the first place? The goal of this article is to encourage you to critically think about your leadership and organizational culture within your organization and provide you with ideas on how to assess your agency and integrate change.

The establishment of organizational culture rests primarily on the chief executive officer (CEO) of the agency. The agency head sets the tone of organizational beliefs, expectations, and values based on community ideals. Other leaders within the agency are not without responsibility in creating a healthy organizational culture. They must be willing to ensure those strong cultural beliefs, expectations, and values are upheld. Those who review the underlying causes of an unhealthy organizational culture tend to find there was a failure of leadership at some level, typically at the upper echelons of the agency. We have seen throughout our profession how dysfunctional organizational culture and leadership has caused the demise of agency CEO's. Allowing the damaging culture to subsist without intervention or failing to acknowledge its existence can create extreme mistrust within an agency and the community. In contrast, a healthy organizational culture has leadership who are engaged and willing to embrace change even if that change is uncomfortable.

Assessing Organizational Culture

Whether you have been a CEO for 30 days or 30 years, assessing your organizational culture should be a continual process. Unfortunately, many agencies only conduct assessments when turmoil arises. Conducting proactive assessments ensures deficiencies are addressed, while positive aspects of organizational culture are expounded upon. Assessment of organizational culture is measured best by conducting a management audit. The management audit is designed to recognize if the overall administration of the organization is meeting the requirements and expectations of internal and external stakeholders. An organization may decide on any combination of the following management audit formats:

- An internal audit involves an assessment of the organizations work practices and procedures and is conducted by internal management teams. Typically these types of audits are limited in scope. When using an internal auditing system, an agency CEO or designee may also decide to obtain input from other policing agencies to gain a larger perspective. An internal audit may disclose cultural problems before they become detrimental to the agency.
- A secondary audit typically comes from external stakeholders after upper management has received unsolicited feedback from the community. Agency leaders often mistake this feedback as a grievance against the agency, but in fact, it may be an opportunity for the agency CEO to identify a potential cultural

problem. Another form of secondary auditing is the continual use of citizen surveys on the delivery of services; citizen surveys are highly valuable as they disclose both positive and negative cultural issues in addition to guiding the organization toward overall expectations of the community of their policing agency.

- An external management consulting company conducts a third party audit. Unfortunately, these audits are conducted only after an agency has been wrought with turmoil or serious agency-wide misconduct has been identified. Regrettably, it is too little too late at this point as damage has already resulted to the organization and rebuilding trust is now paramount. Third party audits typically identify if the agency has the ability to meet related objectives and identifies opportunities for improvement. They may also identify other unidentified risk areas.

Leadership requires vision, enthusiasm, trust, and courage; it also requires passion, coaching, and developing others (More, Wegener, & Miller, 2003). How does this pertain to culture? Remember organizational culture involves beliefs, expectations, and values. Leadership is influencing those behaviors toward organizational goals. Two important areas regarding leadership and organizational culture specifically relates to leadership personality and internal politics.

Leadership Personality

Healthy or unhealthy organizational culture can and has been enacted by one individual. Take a moment and reflect upon a leader who has ratified a healthy or unhealthy organizational culture. What personality traits did he/she display? A leader who instilled a healthy organizational culture surely had charisma, was an expert in his/her field, was forward looking, honest, and had passion for the agency and the profession. This brings to light a specific characteristic of an unhealthy leadership personality trait that many organizations unintentionally or intentionally overlook. Agency CEOs and other management team members must be cognizant of Machiavellianism.

Machiavellian leaders/personalities have a strong potential to create an unhealthy organizational culture by manipulation of other individuals toward their own self-interests (Gaines & Worrall, 2012). As an agency leader, your interests should always be for the community you serve. Individuals exhibiting Machiavellianism are capable of engaging in noble cause corruption and are willing to seek unsanctioned ends and use unsanctioned means. People who follow Machiavellian personalities often tend to do so in groups and are influenced by the individual to engage in unethical conduct, therefore, creating an unhealthy organizational culture. Some Machiavellian individual types may demonstrate:

- A high need for power and a willingness to engage in internal politics.
- The use of an ends justify the means philosophy and disregard industry and organizational ethical standards.
- A lack of desire to reveal their reasons for doing something until it is determined to be advantageous to them; the whole picture is not there for you to see.

Internal Politics

Internal politics have a direct effect on organizational culture. Most agencies have some sort of internal political system. Problems arise when internal politics become detrimental to the success of the agency. Widespread internal politics, unfortunately, may diminish the agency beliefs, values, and expectations causing performance related issues to occur. Internal politics can, and, often do result in organizational behavior that, if left unchecked, can become historical to the agencies legacy in a destructive manner.

Although internal politics is utilized on an individual basis within an organization, it typically does not have the same impact on organizational culture as those that are utilized by teams. Others typically observe individual internal politics within the ranks who informally address the situation, thus causing the behavior to cease. Internal politics within either sanctioned (detectives, task forces, patrol) or unsanctioned teams (clique's or shift units) are where organizations experience problems. These teams create an unhealthy culture when they turn to internal politics by taking credit for the success of others, keeping and controlling scarce information, leading or gaining power from informal groups, and altering the situation to achieve personal goals or outcomes. All are ethical issues

that negatively drive organizational culture (Dessler, 2011). Agency management should ensure these sub-cultural units do not overtake the positive underlying assumptions of the agency.

The negative aspects of internal politics tends to reduce job satisfaction among employees, creates undue stress and anxiety; causing employees to always be on guard which in turn causes performance problems. Any policing agency experiencing a high turnover rate may identify an unhealthy culture that needs corrected immediately. Granted, individuals will leave the organization for a host of reasons, yet their reasoning can only be truly identified during an exit interview with the agency CEO or Human Resources representative.

Methods to assist in reducing internal politics starts in the hiring process, and identifying individuals who participated in internal politics with previous employers. A second method is to encourage transparency in organizational decisions and activities. This method creates an environment for employees to buy into the organizational goals. Conduct audits (management/financial/internal affairs/citizen surveys) should not have negative connotations. A CEO may decide to view them as agency best business practices for risk management and overall agency improvement.

Changing Organizational Culture

Changing an organizational culture is not an easy task to undertake. Any manager must realize they will likely face resistance from organizational members who have grown accustomed to a culture that may have been embedded in the agency for years. When embarking upon organizational cultural change, you must have a clear vision of where you want the agency to go and develop a strategic plan on how to get there. Clearly define the role of the management team and draw upon their capabilities, constantly reinforce the agency values by communicating to the agency team members directly.

You may also need to evaluate your organizational structure; unfortunately, you may need to be a change agent by restructuring your management team to align with the agency core values, beliefs, and expectations. Lastly, review all work systems such as employee promotions, performance management, and compensation practices. Changing the organizational culture takes time and commitment, yet the agency and community will experience positive outcomes based upon your steadfast dedication toward organizational success.

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United States v. Fager

U.S. 10th Circuit Court of Appeals 15-3104. Decided January 21, 2016

Phillip J. Baca, Esq.



Every pat-down (frisk) requires reasonable suspicion to believe the suspect is armed with a deadly weapon.

Facts:

Officer Justin Dobler of the Topeka PD stopped Fager’s car around 8:00 p.m. for a turn signal violation near an apartment complex in a high-crime area. Off. Dobler approached the passenger side of the vehicle. Fager was driving, and Gregory Walls was in the front passenger’s seat. Off. Dobler noticed Fager’s eyes were watery, his speech was soft, and an unopened beer can sat in the center console. Suspiciously, Walls continually leaned forward in a way that made Officer Dobler think Walls was trying to obstruct his view of Fager. Off. Dobler asked for and received both Fager’s and Walls’s identifications. He returned to his patrol car and ran them for warrants. Walls had several warrants for his arrest. With backup assistance, the officers approached Fager’s vehicle and asked him to step out.

Off. Dobler spoke with Fager at the back of his car and asked if he had been drinking or doing drugs. Fager stated “no.” Although Off. Dobler had discovered Fager had at least one prior DUI, he determined Fager was not impaired. Off. Dobler testified that at this point Fager had not done anything to cause him any fear. After further questioning, Off. Dobler asked Fager if he could search his car. Fager replied he could but because it was cold, Off. Dobler gave Fager the option to sit in his patrol car during the search. Fager took Off. Dobler up on the offer. Off. Dobler then explained to Fager, “For our safety, I want to pat you down real quick to make sure you don’t have any weapons or anything on you at all.” Fager did not verbally respond but positioned himself for a pat-down. Off. Dobler explained to him that he was not being arrested. During the course of the pat-down Off. Dobler found a gun in Fager’s waistband.

Issue:

Did Dobler have reasonable suspicion to believe that Fager could be armed and a threat? Yes.

Court Decision:

The 10th Circuit upheld the trial court’s decision to deny Fager’s motion to suppress the gun.

Restatement of the Law:

A reasonable pat-down occurs when an officer has “reasonable suspicion that a person is armed and dangerous.” United States v. Rice, 483 F.3d 1079, 1082 (10th Cir. 2007); “we reaffirmed in United States v. Garcia, 751 F.3d 1139 (10th Cir. 2014) that a reasonable suspicion analysis is still first and foremost a multi-factor test based on the totality of the circumstances.” Id. at 1144–46; see also Rice, 483 F.3d at 1083.

In addition to the officer having to turn his or her back on the defendant, other factors that can influence an officer’s reasonable suspicion include (but are not limited to) the time of day when and the place where the pat-down occurred, any previous encounters the officer had with the defendant, the defendant’s criminal history, the

defendant's nervousness, and the defendant's history of drug use. Garcia, 751 F.3d at 1144–47.

When finally weighing the totality of the circumstances, ***we must be careful to “take into account an officer’s reasonable inferences based on training, experience, and common sense,”*** Rice, 483 F.3d at 1083, and to that extent ***“we look at the objective facts, not the officer’s state of mind” when “measuring the actions of a police officer under the Fourth Amendment,”*** *United States v. Neff*, 300 F.3d 1217, 1222 (10th Cir. 2002); ***reasonable suspicion must meet only a “minimum level of objective justification.”*** Garcia, 751 F.3d at 1143 (Rice, 483 F.3d at 1083).

Court Reasoning:

In this case, additional circumstances existed that justified reasonable suspicion. For instance, ***although the officers were not aware of the bases for Walls’s arrest warrants, they were entitled to “infer a common purpose or enterprise between the two men*** and believe that Fager knew of Walls’s arrest warrants and would want to conceal evidence of any wrongdoing.” *Dennison*, 410 F.3d at 1213. ***Walls had also been acting suspiciously when Off. Dobler initially approached the vehicle by blocking his view of Fager.*** See Rice, 483 F.3d at 1085 (“***A reasonable officer can infer from the behavior of one of a car’s passengers a concern that reflects on the actions and motivations of the other passengers.***”). To top it off, the traffic stop occurred in a high-crime area in nighttime darkness. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), “Officers are ***not required to ignore the relevant characteristics of a location*** in determining whether the circumstances are sufficiently suspicious to warrant further investigation.”

When added to the fact that the officers would have been ***vulnerable to an attack when searching Defendant’s vehicle***, these additional circumstances indicate that the ***officers could reasonably be concerned for their own safety***. And because of these heightened officer safety concerns, the officers could reasonably suspect Fager was armed and pat him down. This conclusion remains true even though Off. Dobler testified that Fager had not done anything to cause him any fear during the stop. See *Neff*, 300 F.3d at 1222 (holding that ***courts must “look at the objective facts, not the officer’s state of mind” when “measuring the actions of a police officer*** under the Fourth Amendment”); *McRae*, 81 F.3d at 1536. Allowing Fager to sit in the back of the patrol vehicle without frisking him would have invited an attack on the officers, and the officers were justified in ensuring this risk did not become reality.

Bottom Line:

The articulable facts which lead an officer to believe that a subject may be armed can be based on a number of factors: being alone; it’s dark; it’s a high crime area; prior criminal convictions of the individual stopped; outstanding warrants; exhibited belligerent and aggressive behavior; refusing to remove hands from the pockets; the subject not adhering to your request or demands, etc.

Remember any of these facts individually may be meaningless but together they compile the “totality of circumstances”, those facts which the court will consider when deciding whether or not our behavior is reasonable and falls within the confines of the Fourth Amendment.

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Perea v. Baca

U.S. 10th Circuit Court of Appeals 14-2214. Decided April 4, 2016

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Every pat-down (frisk) requires reasonable suspicion to believe the suspect is armed with a deadly weapon.

Facts:

Officer Justin Dobler of the Topeka PD stopped Fager's car around 8:00 p.m. for a turn signal violation near an apartment complex in a high-crime area. Off. Dobler approached the passenger side of the vehicle. Fager was driving, and Gregory Walls was in the front passenger's seat. Off. Dobler noticed Fager's eyes were watery, his speech was soft, and an unopened beer can sat in the center console. Suspiciously, Walls continually leaned forward in a way that made Officer Dobler think Walls was trying to obstruct his view of Fager. Off. Dobler asked for and received both Fager's and Walls's identifications. He returned to his patrol car and ran them for warrants. Walls had several warrants for his arrest. With backup assistance, the officers approached Fager's vehicle and asked him to step out. The repeated use of a taser against a subdued offender is clearly unreasonable and constitutes excessive force under the Fourth Amendment.

Facts:

Merlinda Perea called 911 and told the operator that her son, Perea, was on drugs and that she was afraid of what he might do. Around the same time, a neighbor also called 911, reporting that Perea was pacing in his yard, clutching a Bible, and asking forgiveness of a higher power.

Albuquerque PD officers Baca and Jaramillo were dispatched to the call. They were informed that they were responding to a verbal fight, that no weapons were involved, and that Perea suffered from mental illness and may be on drugs. Upon arrival, the officers were told that Perea left on his bicycle. In separate patrol cars, Baca and Jaramillo began to search the area. The officers located him pedaling his bicycle through the neighborhood. Perea saw the patrol car and began to pedal faster, at which point Jaramillo turned on his emergency lights. According to Baca, Perea did not stop, and instead pedaled through a stop sign.

The officers used their patrol cars to force Perea to pedal into a parking lot. Jaramillo parked his vehicle to pursue Perea on foot. After a brief chase, Jaramillo pushed Perea off his bicycle. The officers did not tell Perea why they were following him or why he was being seized, and they never asked Perea to halt or stop. After pushing Perea off his bicycle, Jaramillo reached for Perea's hands in an attempt to detain him. Perea struggled and thrashed while holding a crucifix. During the struggle Baca told Jaramillo to use his taser on Perea.

Jaramillo did so and first shot Perea in the chest with his taser in "probe" mode. When this proved ineffective, Jaramillo put the taser in "drive stun" mode. **Jaramillo tased Perea nine additional times, for a total of ten tasings in less than two minutes.** At some point before the tasings stopped, Baca and Jaramillo were able to get Perea on the ground and on his stomach, with both officers on top of him, effectively subduing him. After the tasings had concluded, Baca called an ambulance and a supervisor to the scene as required by department policy. While waiting for the ambulance, the officers noticed that Perea had stopped breathing. The officers successfully performed CPR, and Perea began to breathe normally. However, when Perea heard the sirens from the approaching ambulance, he began to struggle and started to scream and ask God for forgiveness. Upon arrival, the paramedics attempted to treat

and calm Perea, but he stopped breathing again. Perea was transported to the hospital and pronounced dead a short time later.

Issue:

Do repeated tasings after being subdued constitute a violation of the Fourth Amendment right to be free from excessive force? Yes.

Court Decision:

The 10th Circuit affirmed the trial court's denial in granting qualified immunity to the officers.

Restatement of the Law:

To overcome a presumption of *qualified immunity*, the *plaintiffs must show* that (1) *the officers' alleged conduct violated a constitutional right, AND (2) it was clearly established at the time of the violation, such that "every reasonable official would have understood," that such conduct constituted a violation* of that right. *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

The court evaluates excessive force claims under an *objective reasonableness standard*, which it judges *from the perspective of a reasonable officer on the scene*. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). To determine if an officer's actions were objectively reasonable, the court carefully *considers the totality of the circumstances*, "including the *severity of the crime* at issue, *whether the suspect poses an immediate threat to the safety of the officers or others*, and *whether he is actively resisting arrest or attempting to evade arrest* by flight." *Id.* at 396.

The relevant inquiry is whether the taser use was reasonable and proportionate given Perea's resistance. *Cortez*, 478 F.3d at 1126 "*The excessive force inquiry evaluates the force used in a given arrest or detention against the force reasonably necessary to effect a lawful arrest or detention under the circumstances of the case.*"

Although *use of some force against a resisting arrestee may be justified, continued and increased use of force against a subdued detainee is not*. See *Dixon v. Richer*, 922 F.2d 1456, 1463 (10th Cir. 1991). More specifically, *it is likewise clearly established that officers may not continue to use force against a suspect who is effectively subdued*. See, e.g., *Fancher v. Barrientos*, 723 F.3d 1191, 1201 (10th Cir. 2013).

Court Reasoning:

Viewing the facts as stated by the district court in the light most favorable to Perea (Appellees), *Jaramillo and Baca's actions were objectively unreasonable*. Perea was *tackled to the ground for—at most—a traffic infraction*. He *posed no threat to the officers or others* until the officers initiated the arrest. The *officers' then tased him repeatedly despite not explaining what they were doing or why they were attempting to subdue him*. Most egregiously, they *continued tasing Perea after he was effectively subdued and brought under the officers' control*. The *repeated use of the taser* against a subdued offender is *clearly unreasonable and constitutes excessive force under the Fourth Amendment*.

Bottom Line:

The use of force in every situation is measured against the *Graham analysis* and it is clearly established that the use of a taser is a "serious use of force" which violently subdues an individual. The taser cannot be used against a passive resister or a misdemeanor subject who poses no threat to the officers or others. Multiple tasings will be measured individually as a separate use of force, whether used in the drive stun mode or probe. See *Training Bulletin 2016-1 Estate of Armstrong v. Village of Pinehurst*.

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Authors' Biographies



Travis Anderson has been in policing for 23 years where he has managed and supervised many areas of the profession. He holds a Bachelor's Degree in Law Enforcement Administration and a Master's Degree in Organizational Management from Ashford University; he is currently pursuing a second Master's Degree in Public Administration. His accomplishments include strategic planning, policy development, fiscal management, and providing overall staff assistance. Mr. Anderson has authored or co-authored many articles related to management and leadership including a National publication in Law and Order Magazine.



Craig Dodd is the Police Recruitment Administrator of the Commerce City Police Department in Colorado and is owner of 911 HR Solutions, LLC, a private public safety consulting business. During his 32 year career in public safety, Craig served 27 years as a member of Fort Collins Police Services and nearly 3 years as Chief of Police of the Alamosa Police Department. During his career in Fort Collins, Craig led the Patrol Division as Police Captain and the Information Services Division, as its Director. Craig also served as Professional Standards Lieutenant, Drug Task Force Commander, and Crimes against Person's Sergeant. During his time in Alamosa, Craig served 6 months as Interim City Manager. Craig earned his bachelor's degree in Criminal Justice Administration and master's degree in Organizational Leadership from Columbia Southern University. He is also a graduate of the Police

Executive Research Forum's Senior Management Institute for Police at the John F. Kennedy School of Government and he has held certifications as a Colorado Law Enforcement Executive and Senior Professional in Human Resources.



Philip J. Baca is the Director of the Jefferson County Sheriff's Office and Lakewood Combined Regional Law Enforcement Academy. He served for fifteen years with the Denver Police Department in various positions, ultimately attaining the rank of lieutenant before he left law enforcement to practice law for seven years. During this time, he continued to develop law enforcement training programs and materials. Mr. Baca was selected as the initial Director of the Highlands Ranch Law Enforcement Academy. Two years later, Mr. Baca went to the Jefferson County Sheriff's Office to manage its training academy and Support Services Division. While at Jefferson County, he served as the Captain of the Support Services Division, Captain of the Patrol Division, and as the Division Chief of the Criminal Investigations Division. Mr. Baca served as the Chief of Police in Commerce City from 2008 to 2012, and then he returned to the Jefferson County Sheriff's Office. Mr. Baca earned his bachelor's degree in Pre-Law/Political Science from Colorado State University, and his Juris Doctor from the University of

Denver. Shortly thereafter he was admitted to the Colorado State Bar as a practicing attorney. Mr. Baca can practice law in all Colorado courts, the United States District Court, and the 10th Circuit Court of Appeals. Additionally, he is a graduate of the 216th Session of the FBI National Academy.

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Please see the *Editorial Mission Statement* for a more detailed description of these articles located on the inside cover of this journal. All manuscripts submitted for publication must be computer-generated submissions. Manuscripts must be double-spaced, with margins of 1 inch, and may range from 250 to 3,000 words in length. Letters to the editor and commentaries may be no longer than 1,000 words and may be abridged at the editor's discretion. All accepted manuscripts shall be edited and formatted to meet the needs of the journal. Authors do have final approval of the manuscripts. All manuscripts published become the property of the Colorado Association of Chiefs of Police; however, personal and professional use of the articles shall be granted to all authors provided that the original publication is attributed.

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