



# OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

CASE REVIEW  
OPO19-0038  
OIA19-0479

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Prepared by:

John Meyer  
Jesus Jara

## THE SITUATION – Fall of 2019

During the early morning hours in late October of 2019, Boise Police (hereinafter referred to as BPD) received a call for service regarding a subject acting suspiciously in a residential neighborhood in the City's Northwest area. It was reported the subject was knocking on doors and driving around the neighborhood looking for an individual who allegedly had taken some property from them. BPD Officer #1 was the first to arrive and observed the subject seated in a vehicle on the street. Officer #1 saw the reporting party pointing at the subject in the vehicle, indicating that they were the individual involved.

Officer #1 stopped their marked patrol vehicle facing the front of the vehicle the subject was seated in and directed his forward-facing lights and spotlight to illuminate the subject's and the vehicle's interior. Officer #1 approached the subject from the front and contacted them at the driver's door. Officer #1 began speaking with the subject about what they were doing and asked them for identification. BPD Officers #2 and #3 (riding together in the same marked patrol vehicle) arrived to assist during Officer #1's initial contact with the subject. Officer #2 positioned themselves by the passenger door of the subject's vehicle, and Officer #3 stood by the rear of the vehicle on the driver's side behind and adjacent to Officer #1.

As Officer #1 spoke with the subject, they noted that the subject was very nervous and fidgeting with items in the car. Officer #1 saw an empty holster on the car's front seat and asked the subject about it. The subject said it belonged to a relative who had recently purchased a BB gun. Officer #1 asked the subject if there was a gun in the vehicle, and they replied that they didn't own a gun. Officer #1 again asked the subject for identification. They observed the subject begin to look through their personal items, and while they was doing that, the officer observed syringes inside their belongings. Based on this observation, Officer #1 felt it was possible the syringes were related to drugs or other paraphernalia in the vehicle, so the officer asked the subject for their bag and placed it on top of the vehicle for temporary safekeeping.

The subject then reached down to the passenger seat area where numerous items were cluttered on the floor. Officer #2 observed the subject manipulate a handgun from the floor with their fingers into a position where they were able to grab it with their right hand. Officer #2 immediately called out, "Hey,

don't grab that!" Holding the gun in their right hand, the subject reached around to the driver's window and pointed the gun at Officer #1. At that point, Officer #2 and Officer #3 could now clearly see the gun pointing at Officer #1, and both fired their duty weapons at the subject simultaneously. Officer #2 fired three rounds and Officer #3 fired five rounds. Officer #1 did not fire their weapon as they were taken by surprise and responded by rapidly retreating toward cover. Immediately after firing, Officer #2 and Officer #3 retreated to find a position of cover behind a parked vehicle on the street nearby. Officers gave commands for the subject to show their hands; however, they remained motionless, slumped over in the driver's seat. A BPD K-9 Officer arrived a short time later, and the K-9 performed a life check on the subject who was not responsive to the presence of the K-9. When Officers approached the vehicle, they determined the subject was deceased from gunshot wounds.

During the subsequent investigation of this shooting by the Critical Incident Task Force, it was learned that the subject's weapon pointed at Officer #1 was a BB gun and not an actual firearm. The size, color, and physical design of the BB gun were strikingly similar to an actual 9mm firearm that is currently manufactured and sold to the public. Photos depicting the similarity of the involved BB gun and the 9mm firearm that is strikingly similar were included in the Critical Incident Task Force investigation of this shooting. It was also learned that the involved subject discharged the BB gun when they pointed it at Officer #1. The discharged BB struck a vehicle that was parked on the street, causing a broken window.

### **REASON FOR THE REVIEW**

Boise City Code defines the authority and duties of the Office of Police Accountability (OPA). It grants the Office the authority to investigate and evaluate the performance of Officers whenever certain criteria are met.

### **INVESTIGATION OF CRITICAL INCIDENTS**

*If a BPD Officer or employee is involved in a critical incident, defined below, as a principal, victim, witness or custodial Officer, BPD shall immediately notify the Office of Police Accountability. The Director may provide on-scene monitoring of critical incidents and may act as a real-time observer to any criminal, administrative, or civil investigation conducted by or on behalf of BPD (e.g., the Critical Incident Task Force). The Director shall be given full access to observe interviews or any other aspects of the investigation. If the Director believes additional investigation is necessary, the Director may employ an outside investigator who will perform investigatory functions at the discretion of the Director. Critical incidents include:*

- 1. Use of deadly force (excluding animals).*
- 2. Use of force or any other police or law enforcement action that results in the death of one or more persons, or serious bodily injury requiring hospital admission.*
- 3. Vehicle pursuits, roadblocks, or intercepts resulting in the death or serious bodily injury requiring hospital admission.*
- 4. Vehicular collisions resulting in death or serious bodily injury requiring hospital admission that occurred while a police Officer or police employee was operating a city vehicle (either on-duty or off-duty) or a private vehicle while on-duty.*



## ***THE REVIEW***

The Office of Police Accountability has reviewed this incident that took place in October of 2019. The following steps were taken during the review.

1. Review of BPD records including reports, statements, audio, video, and photographs.
2. Review of available body-cam footage from officers #1, #2 and #3
3. Ada County dispatch records and reports.
4. Ada County Coroner's report.
5. BPD Internal Affairs (herein after referred to as IA) investigative documents including statements, records, audio, reports, photographs, and diagrams.
6. Critical Incident Task Force (herein after referred to as CITF) investigations including reports, statements, medical records, photos, records, and audio.

## ***DIRECTOR'S ANALYSIS***

BPD policy permits an officer to use deadly force in defense of their life or the life of another when he or she, reasonably believes that imminent danger of death or serious bodily injury exists. The subject in this incident was being questioned by Officer #1 in response to a call for service regarding her presence and actions in the neighborhood. During their questioning, additional officers arrived to assist in the investigation. Officer #1 noted the subject's nervous and fidgety actions and the presence of a gun holster and hypodermic syringes on their person. These factors and the totality of the circumstances led Officer #1 to believe the subject was possibly engaged in illegal activity. As the officer continued to question the subject, the subject reached for and grabbed a BB gun on the passenger seat floorboard that closely resembled a semi-automatic firearm and pointed it at Officer #1. Observing this and fearing for their safety as well as the safety of Officer #1, Officers #2 and #3 responded to this threat by firing their duty weapons at the subject. The subject was struck by gunfire from Officer #2 and #3 and succumbed to their injuries.

The actions of Officer #2 and Officer #3 in firing their duty weapon at the subject in defense of Officer #1 due to a perceived deadly threat were consistent with BPD policy concerning the use of deadly force in defense of life.

## ***DIRECTOR'S CONCLUSIONS***

The Director finds that the BPD, IA and the CITF investigations were thorough, objective, and complete. Finally, the Director finds no need to conduct any additional investigations of this incident.

Based on my review, I have come to the following conclusions:

1. The BPD internal review of this incident was thorough, objective, and complete.
2. I find no need to conduct any additional investigation of this incident.
3. I concur with BPD's conclusion that the involved officers acted in a manner consistent with BPD's policy and procedures governing use of deadly force.



Jesus Jara



Director – Office of Police Accountability

Email – [jjara@cityofboise.org](mailto:jjara@cityofboise.org)

Office: (208) 972-8380

[www.cityofboise.org/opa](http://www.cityofboise.org/opa)

