



OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

CASE REVIEW

OPO21-0039

OIA21-0275

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THE SITUATION – Summer of 2021

Officers #1 and #2 were dispatched to a call of a person trespassing and possibly camping at an unoccupied property. Upon arrival, they saw what appeared to be a subject covered by a piece of cardboard. Officer #2 announced their presence and identified themselves as BPD officers. As Officer #2 lifted the cardboard, the subject sat up and pointed a large handgun at the officers. The officers told the subject to drop their weapon, and they refused to comply. Both the subject and the officers fired their weapons. The subject was struck multiple times and was fatally injured.

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.*

FOCUS OF THE INVESTIGATION

As its primary focus, this investigation had the use of force used by officers and the vehicle pursuit. The related sections of the BPD Policy and Procedures Manual (herein referred to as PM) in force at the time of this incident.

PM § 1.001 Authorization (Use of Force)

PM § 1.003 Use of Firearms in the Line-of-Duty

THE INVESTIGATION

The Office of Police Accountability opened an independent administrative investigation. The following steps were taken during that investigation.

1. Review of BPD records, including reports, statements, audio, video, and photographs.
2. Review of available body-cam footage from officers #1 and #2.
3. Review of Ada County dispatch records and submitted reports.
4. Review of BPD Internal Affairs (hereinafter referred to as IA) investigative documents, including statements, records, audio, reports, photographs, and diagrams.
5. Review of the Critical Incident Task Force (hereinafter referred to as CITF) investigation, including reports, statements, photos, records, and audio.
6. OPA Investigator participation in the interview of Officer #1 in conjunction with IA.

WHAT THE INVESTIGATION FOUND

Officers #1 and #2 were riding together and volunteered to handle a call for a property check within the city of Boise. While en route to the location, Officer #2 called the complainant to gather additional information about the situation and placed the phone on speaker so both officers could hear the conversation. The complainant told the officers it appeared a person or persons were camping out in a recently vacated rental house in the area. The complainant added that they were concerned about people camping near their home. The officers decided they needed to go and check the site for trespassing or a violation of the disorderly conduct ordinance.

After arriving in the area and parking their police vehicle, Officers #1 and #2 began to search for the possible location. As they checked the area, the officers located what appeared to be an alley behind a restaurant. Officer #1 searched the area with their flashlight and looked over a fence, where they saw a subject with their eyes closed, lying prone underneath a piece of cardboard. Officer #1 believed this location was where the complainant was referring to since it was reasonable that someone with permission to be at the location would not be sleeping on the ground in the carport. Officer #1 indicated to Officer #2 that they had located the subject. Officer #1 contacted BPD dispatch and advised of their location.



Officer #2 opened the gate to the fence and entered the property. Officer #1 looked over the gate since they could not see through the fence as Officer #2 walked through and toward the subject. Officer #2 announced their presence as Boise Police and pulled the V-shaped piece of cardboard off the subject while Officer #1 stood at the open gate. The subject suddenly turned to their left and reached toward the left side with their right hand as Officer #2 told them, "Hey, go ahead and keep your hands...". The subject sat up and pointed a large black handgun at the officers. Both Officers #1 and #2 fired their handguns at the subject while repeatedly yelling at them to drop their weapon. The subject's handgun was clicking as they pointed it at the officers. During a brief lull in the gunfire, the officers repeatedly told the subject to drop their weapon. The subject told them "No," cursed at them several times, and did not comply with their commands to lower the weapon. The officers engaged the subject again and fired their handguns.

When the subject ceased firing, Officer #1 called dispatch for paramedics, and the officers secured the subject and their weapon. They immediately began first aid until relieved by Ada County paramedics.

Upon examination, the suspect's weapon was a large dark-colored BB handgun. Officer #1 sustained what appeared to be an injury caused by a BB to their arm. The subject was transported by ambulance to the hospital, ultimately succumbing to their injuries.

DIRECTOR'S ANALYSIS & CONCLUSION

PURSUANT TO PM § 1.001 USE OF FORCE AUTHORIZATION

The decision to use force "should be based on the facts and circumstances of each particular case, including the severity of the crime, whether the subject poses an immediate threat to the safety of the officer or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight." The facts and totality of the circumstances demonstrate the imminent danger to the officers including the subject pointing a firearm at the officers and continuing to fire after having been given several opportunities to surrender and cease their use of deadly force against the officers. Officers #1 and #2 reasonably believed that it was necessary to use deadly force to prevent death or serious bodily harm to them.

PURSUANT TO PM § 1.003 USE OF FIREARMS IN THE LINE OF DUTY

BPD policy permits an officer to use deadly force in defense of his life or the life of another when they, "reasonably believes that imminent danger of death or serious bodily injury exists" (PM § 1.003). Officers #1 and #2 came under the immediate threat of deadly force as the subject pointed a handgun at them and continued to fire after being told numerous times to drop their weapon. The officers believed, based on the totality of the subject's actions, that their lives were in imminent danger of death or serious bodily injury and discharged their weapons at the subject.



A finding of **EXONERATED** has been issued in respect to Officer #1's use of deadly force in the matter in question. Exonerated is defined as a specific act or omission of the police officer or police employee that was justified, lawful, and proper.

A finding of **EXONERATED** has been issued in respect to Officer #2's use of deadly force in the matter in question. Exonerated is defined as a specific act or omission of the police officer or police employee that was justified, lawful, and proper.

The Director also finds that the BPD, IA, and CITF investigation of this incident was thorough, objective, and complete. Finally, the Director finds no need to investigate this incident further.

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