



# USE OF FORCE INVESTIGATIVE REPORT

**DATE OF INCIDENT:** 06/24/2023

**INVOLVED PERSON:** Payton Wasson

**INVOLVED BPD OFFICER:** Ofc. Chance Feldner

**WITNESS BPD OFFICER:** Cpl. Brian Holland

**WITNESS BPD OFFICER:** Ofc. Chase Fiddler

**WITNESS BPD OFFICER:** Ofc. Jacy Palic

**OIA:** OIA23-0136

**DATE OF REPORT:** 08/13/2024

## CASE SYNOPSIS

On June 24, 2023, BPD officers working in downtown Boise observed two men thought to be affiliated with the Norteños street gang. Officers ran their car license plate and other records checks. They found the car was registered to the driver, Mario Garza. They also found that Mr. Garza had a significant history of violent crime, was on felony parole, legally prohibited from possessing firearms, and was as an affiliate of the Norteños gang.

After the two men walked away from the car, officers looked through the windows and saw a handgun in plain view on the front passenger floorboard.

When the men returned to their car, officers saw the second man, Payton Wasson, obtain something from the passenger floorboard and place it in his waistband. Officers believed Mr. Wasson was now in possession of the gun. Officers contacted the men as they again walked away from the car. Mr. Garza complied with officer's commands. Mr. Wasson refused to comply with commands and ran from officers toward the crowded downtown bar and restaurant district. As officers chased after him, Mr. Wasson pulled the gun from his waistband. He pointed the gun at an uninvolved civilian and at Ofc. Feldner. Ofc. Feldner fired his duty handgun 4 times at Mr. Wasson, striking him once in the head. Mr. Wasson fell and dropped his gun. Officers provided medical aid at the scene. Mr. Wasson later died at the hospital because of his injury.

## DETAILED DESCRIPTION OF INCIDENT

On June 24, 2023, at approximately 1 a.m., four BPD officers working downtown as part of a Gang Enforcement Team<sup>1</sup> observed two men exit a parked car in a parking lot in the 100 block of 5<sup>th</sup> Street near Idaho Street. The driver of the car, later identified as Mario Garza, was wearing clothing associated with gang attire. Specifically, officers

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<sup>1</sup> This unit was formed by officers as a pilot program in March 2023 in response to increasing gang activity in Boise. This program is no longer in operation.

observed Mr. Garza wearing a red hat, red shoes, and cuffed pants with red on the bottom, which are known to officers to be associated with the Norteños Gang. Officers ran records checks and found that the car was registered to Mr. Garza. They also found that Mr. Garza had a significant history of violent crime, was on felony parole, legally prohibited from possessing firearms, and was known to law enforcement as an affiliate with the Norteños gang. Mr. Garza and the passenger, later identified as Payton Wasson, walked away from the car into the downtown area, which was crowded with bar patrons.

Officers looked through the windows of the car and observed the grip of a Glock handgun in plain view on the front passenger floorboard. The pistol was partially concealed under the seat. They photographed the handgun and sent the photos to other officers working in the downtown area. Officers then informed the Idaho Probation and Parole duty officer of their observations regarding Mr. Garza. The duty officer instructed BPD officers to detain Mr. Garza and

search him and his vehicle pursuant to Mr. Garza's court ordered parole conditions. The duty officer told the BPD officers to arrest Mr. Garza if they found him to be in violation of his parole restrictions.

The officers continued to observe Mr. Garza and Mr. Wasson as they walked to two bars and engaged in what officers suspected to be drug sales. The officers decided to contact the men. The purpose of contacting the men was to detain and search Mr. Garza because of his felony parole status. Based on their observations, officers believed they also had probable cause to detain Mr. Wasson to determine whether he was involved in illegal drug sales or related criminal activity.

The officers decided to let the men return to their car before contacting them. They decided to permit the men to get inside their car and then use police cars to block Mr. Garza's car in place. Officers reasoned that if the men got into the car, there would be stronger evidence of Garza's possession of the handgun. The officers also wanted the men contained in the car, so they could block it and minimize the possibility of a foot or vehicle pursuit. During post-incident interviews, some officers said they understood that the plan was to first block the car and then approach Garza's car on foot using a dynamic vehicle assault tactic to gain compliance and detain the men. Another officer understood that once blocked in, officers would call the suspects back to them in a controlled manner from positions of cover.

When the bars closed at 2 a.m., officers watched as the men walked several blocks towards their car. Officers noticed that the men were accompanied by an unidentified

female. When Mr. Garza, Mr. Wasson, and the female reached the car, officers observed the female get into the driver's seat. Officers decided not to contact them at that moment to avoid risk to the female. Mr. Garza and Mr. Wasson stood outside the car with the car doors open. Officers saw Mr. Wasson obtain something from the front passenger floorboard and place it in his waistband. Officers believed Mr. Wasson was now in possession of the gun they had seen earlier in the car. Mr. Wasson also took a backpack from the car and put it on his back. After a few moments, Mr. Garza, Mr. Wasson, and the female closed the car doors and began walking toward downtown. The officers then decided to drive up and initiate contact as the three suspects walked away from the car.

Four officers were operating two marked police cars with two officers assigned to each car. They were wearing full police uniforms and were equipped with body-worn video cameras. Officers Feldner, Fiddler, and Cpl. Holland activated their cameras, which functioned properly and captured the incident. Ofc. Palic failed to activate her camera until after the incident, although she was not in a location to physically observe or record the shooting.

Officers contacted the group at the corner of 5<sup>th</sup> and Idaho Streets. Mr. Garza and the female complied with officers' commands and were safely detained. Mr. Wasson did not obey the officers' commands. He immediately thrust his right hand into his waistband, turned away, and then ran south on 5<sup>th</sup> Street towards Main Street, in the direction of the crowded downtown bar district. Ofc. Feldner chased after him, followed by Cpl. Holland. Ofc. Feldner's on-body video showed that Mr. Wasson pulled the handgun from his waistband two or three seconds into the pursuit. Ofc. Feldner gave multiple commands for Mr. Wasson to drop the gun. As they approached the corner of 5<sup>th</sup> and Main Streets, Mr. Wasson pointed the gun toward a bystander and at Ofc. Feldner. As he continued to flee toward the crowd and was approaching the corner of a building with the gun in his hand, Ofc. Feldner fired his duty handgun 4 times at Mr. Wasson striking him once in the back of the head. Mr. Wasson fell and dropped his gun. Officers provided medical aid at the scene. Mr. Wasson later died at the hospital because of his injury.

During the Critical Incident Task Force (CITF) investigation, detectives discovered that Mr. Wasson's backpack contained two baggies of methamphetamine, 4 pouches of Naloxone (used to reverse opioid overdose), digital scales, a pipe for smoking illegal drugs, and 11 rounds of .45 caliber handgun ammunition. Digital forensic analysis of his cell phone revealed text messages indicative of fentanyl sales, photographs of what appeared to be illegal drugs, and photographs of a person off screen pointing a handgun at Mr. Wasson's girlfriend's head.



Mr. Wasson was previously convicted of felony eluding/fleeing from a police officer, had served a prison sentence, and had been on felony probation. As a convicted felon, it was illegal for him to possess a firearm. Toxicology findings during Mr. Wasson's autopsy revealed the presence of methamphetamine and fentanyl in his bloodstream. Mr. Garza was found in possession of a vial containing fentanyl pills and \$1,367 in US currency. Their female associate was considered a witness and not charged with any crimes.

## **SCOPE OF REVIEW**

Boise City Code Title 2 Chapter 10 defines the authority and duties of the Office of Police Accountability (OPA). As the City's police oversight entity, the OPA is authorized to investigate and evaluate the conduct of Boise City police officers involved in critical incidents. Critical incidents include the 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. OPA is also authorized to make BPD policy, procedure, practice, and training recommendations to the Mayor, the City Council, and the Chief of Police.

## **BOISE POLICE DEPARTMENT POLICY<sup>2</sup>**

### **A. 1.001 USE OF FORCE/AUTHORIZATION**

The legal standard for use of force generally by officers.

### **B. 1.003 USE OF FIREARMS IN THE LINE OF DUTY**

Firearms may be used by officers to "protect themselves or others from what they reasonably believe to be an imminent danger of death or serious bodily injury."

### **C. 427 FOOT PURSUIT**

Guidelines to assist officers in making the decision to initiate or continue the pursuit of suspects on foot.

### **D. 17.020 AUDIO/VIDEO RECORDINGS**

Uniformed officers shall record all investigative enforcement contacts when it is anticipated to be confrontational in nature unless an articulated reason justifies otherwise. Officers are responsible for recording their own actions. The Department recognizes activation of a recording device, in some cases, may jeopardize the safety

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<sup>2</sup> This policy manual has been updated effective April 1, 2024, See <https://www.cityofboise.org/media/16346/bpd-policy-manual-4124.pdf>. The referenced policies in effect at the time of this incident are available by public record request to BPD.



of the officers or others. In those cases, failing to record will not be considered a violation of policy.

#### E. 11.008 Relationship with Others and Demeanor

An employee shall treat all other persons in a civil and respectful manner. They shall not use profanity or uncomplimentary speech in the presence of employees or the public, prisoners, or other persons they have contact with nor shall they intentionally antagonize any person.

## **INVESTIGATIVE FINDINGS**

### A. CRITICAL INCIDENT TASK FORCE FINDINGS:

After the shooting incident, the Ada County Critical Incident Task Force (CITF) was activated, led by the Ada County Sheriff's Department. The CITF conducted a forensic investigation of the scene, interviewed witnesses, interviewed the involved officers, collected dispatch records and audio/video evidence, and produced numerous reports. The investigation was detailed and thorough. The Gooding County Prosecuting Attorney reviewed the CITF investigation and determined that Ofc. Feldner's actions were justified under Idaho law.

### B. BOISE POLICE DEPARTMENT FINDINGS:

BPD conducted an administrative review of this critical incident, which included reviewing the CITF investigation in its entirety and administrative interviews with each involved officer. BPD's administrative review concluded that by refusing to comply with lawful commands to drop the gun, and by pointing the gun at Ofc. Feldner and a member of the public, Payton Wasson presented an immediate threat to the life of Ofc. Feldner as well as members of the public and, that Ofc. Feldner's use of lethal force in response to that immediate threat was reasonable and did not violate applicable law. BPD found that Ofc. Feldner's actions were compliant with existing BPD policies, including their policy concerning foot pursuits. BPD identified no additional training recommendations specific to the individual officers involved in this incident.

BPD found that by failing to turn on her on-body video until after the shooting incident, Ofc. Palic violated BPD policy 17.020 Audio/Video Recordings. The relevant portion of this policy requires uniformed officers to record all investigative enforcement contacts or when a contact is anticipated to be confrontational in nature.

BPD found this critical incident highlighted the ongoing need to emphasize certain key aspects of BPD's operational philosophy through training and supervisory oversight including:

## **De-escalation**

Officers had a legal basis to detain Mr. Garza and Mr. Wasson. However, officers made a conscious decision to allow the suspects to return to the car rather than detaining them beforehand. This decision had the consequence of allowing Mr. Wasson the opportunity to retrieve the firearm, which increased the risk of an armed encounter. The officers' desire to strengthen the evidence of a criminal offense does not outweigh the necessity to make sound tactical decisions. Officers' tactical decisions should seek to decrease the risk of a violent encounter whenever feasible. Officers should have de-escalated risk by contacting the suspects prior to their arrival at the car where officers knew they would have access to a firearm.

## **Supervision**

BPD supervisors responsible for these officers should have asserted operational oversight earlier in the chain of events. Supervisors should actively take control rather than passively monitoring events as they unfold. Future policy should include specific expectations of supervisors in managing high risk events.

## **Tactical Strategy**

Patrol Officers should use time and distance to their advantage and not rely on inherently risky dynamic techniques such as vehicle assaults. Future policy should prohibit the use of advanced tactics such as vehicle assaults outside of SOU (Special Operations Unit) operations.

## **Training and Philosophy**

Future training should include stress inoculation and realistic scenario-based simulations such as foot pursuits, vehicle pursuits, barricaded suspects, and other dynamic situations. Training should include assessing supervisory competence in overseeing such events.

Through training and field operations, BPD should continue to emphasize slow tactics, command and control, de-escalation, communication, and use of less lethal tools (where appropriate) during high-risk events.

BPD found that “de-escalation is the national standard and needs to be continually emphasized in training”.

## **C. OFFICE OF POLICE ACCOUNTABILITY FINDINGS:**

After the review of all available evidence in this incident and governing policies and law, OPA concurs that the use of force was justified and necessary to protect the public and the lives of officers.

OPA finds that officers had a legitimate law enforcement interest in contacting Mr. Garza. After observing the firearm in Mr. Garza's car, officers determined that Mr. Garza was a convicted felon and was on parole. It was a violation of Idaho law for Mr. Garza to possess a firearm. The on-duty parole officer requested that BPD stop and detain Mr. Garza pursuant to his court-ordered conditions of parole. In addition, the officers continued to observe Mr. Garza and Mr. Wasson as they walked to two bars and engaged in what officers suspected to be drug sales. Thus, officers had a duty to investigate a potential violation of Idaho law and to assist in the enforcement of his parole conditions.

OPA finds that the officers' decision to allow Mr. Garza and Mr. Wasson to return to the car rather than contacting them beforehand was flawed. During post-incident interviews, the officers said that their primary reason for allowing the men to return to the car prior to contacting them was to strengthen the evidence that Mr. Garza was in possession of the firearm. Officers observed the pistol on the front passenger side floorboard. Officers believed that if they saw Mr. Garza get into car near where the firearm was in plain sight, their observations would be strong evidence that he knew it was there and that he possessed it in violation of the law.

While it is likely that this would have been compelling evidence, their decision increased the risk of an armed encounter when safer options were feasible and more tactically sound. Officers should have prioritized public, officer, and suspect safety over gathering evidence. Deliberately allowing a violent felon access to a handgun during an enforcement action was a poor tactical decision that escalated rather than de-escalated the risk of a violent encounter. Officers should have recognized this risk and intercepted the suspects prior to their arrival at the car.

OPA finds that once Mr. Wasson obtained the firearm and fled, Ofc. Feldner's decision to pursue him on foot was appropriate and compliant with BPD's foot pursuit policy.

Officers had seen Mr. Wasson engaging in activity that appeared to be drug sales. Officers had probable cause to detain him for investigation of these offenses. Officers observed him in possession of the firearm. Officers had probable cause to detain him to investigate ownership of the gun, as they saw him remove it from Mr. Garza's (a convicted felon and parolee) car. When officers initially encountered Mr. Wasson, he refused to obey commands thereby committing the crime of resisting and obstructing officers. He then reached into his waistband toward the gun. When officers commanded him to put his hands up, he replied, "What if I don't?" By reaching into his waistband where the pistol was located, Mr. Wasson may have committed aggravated assault against the officers. Mr. Wasson then fled toward the downtown crowds. Officer

Feldner believed that because he was armed, Mr. Wasson presented an immediate threat to the public. During the first few seconds of the foot pursuit, Mr. Wasson pulled the gun from his waistband and pointed it at a bystander and Ofc. Feldner.

BPD's foot pursuit policy provides that officers may be justified in initiating a foot pursuit of anyone the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity. OPA finds that Ofc. Feldner's belief that Mr. Wasson was engaging in criminal activity was reasonable and the pursuit was justified under BPD's policy.

In analyzing Ofc. Feldner's decision to shoot Mr. Wasson, OPA notes certain relevant factors. When Mr. Wasson arrived back at the car it was after 2 a.m. He armed himself with a pistol and backpack and began walking back toward downtown where crowds of bar patrons were located. Logic follows that he may have armed himself and headed back toward downtown for some criminal purpose, such as illegal drug sales. Seconds later, officers contacted Mr. Wasson. He immediately reached into his waistband where the pistol was located. All four officers said they believed he was about to draw the gun and begin shooting at them.

When he fled, Mr. Wasson ran toward downtown. He would have reached the crowds leaving bars within a few seconds. Ofc. Feldner was concerned that Mr. Wasson may commit a carjacking, take a hostage, or randomly begin shooting people. In fact, he did point the pistol at a bystander and at Ofc. Feldner. Ofc. Feldner feared that at any second, Mr. Wasson would quickly turn and shoot him, and he would be unable to prevent it. Through training and experience, Ofc. Feldner correctly recognized that it takes longer to observe a suspect's action, assess it as a threat, and react appropriately than it takes for the suspect to complete the action. Thus, Ofc. Feldner believed that Mr. Wasson was about to shoot him and he would be unable to prevent it if he didn't shoot first. Ofc. Feldner also correctly assessed that if Mr. Wasson reached the corner of the building they were approaching, he could use the corner as cover, turn and ambush Ofc. Feldner.

Faced with the impossible choice of allowing Mr. Wasson to continue to rapidly close the distance toward the crowd, with all those inherent risks, or hesitate and risk being shot himself, Ofc. Feldner chose to shoot Mr. Wasson.

OPA finds that given the totality of the circumstances including arming himself, thrusting his hand into his waistband as officers confronted him, pointing a handgun at a bystander and at Ofc. Feldner, fleeing and ignoring multiple lawful commands to drop the gun, and running toward a crowd while armed with the handgun, Mr. Wasson



presented an immediate threat of death or serious injury to Ofc. Feldner and to members of the public who were nearby. Ofc. Feldner's use of deadly force against Mr. Wasson under these circumstances was reasonable, necessary, and consistent with BPD policy and the applicable legal standard for use of force by law enforcement officers.

Finally, OPA addresses the use of profanity by Ofc. Feldner during the foot pursuit of this incident. While profanity may be a stress response, the excessive use of profanity can escalate rather than de-escalate a situation. It can also adversely affect public perception of police actions, including use of force. The policy in place at the time of this incident prohibits the use profanity in the presence of the public. The current policy, 319.5.9(g), recognizing its potential for use as tactical language, prohibits the use of profane language *except* when the use is to provide emphasis during a rapidly evolving situation to gain compliance with an uncooperative subject. OPA recognizes Ofc. Feldner's use of profanity may have been a stress response or for the purpose of achieving compliance in what was clearly a rapidly evolving situation with an uncooperative subject. While this may not rise to the level of a policy violation given the totality of the circumstances, given the frequency with which Ofc. Feldner used profanity in less than a ten second period, OPA recommends to the BPD Chief that this be addressed with Ofc. Feldner.

## **POTENTIAL CONTRIBUTING FACTORS AND MITIGATION EFFORTS**

Several factors contributed to this critical incident.

First and foremost are Mr. Wasson's actions. Mr. Wasson was observed engaging in suspected illegal drug activity with a suspected gang member and returned to the car to retrieve a handgun and backpack. This elevated officers' suspicions of illegal activity and escalated the situation. When confronted by officers, he failed to comply with multiple commands to surrender. At any point during this incident, Mr. Wasson could have stopped, put his hands up, or tossed the gun. Instead, he fled from officers, pointed the handgun at a bystander and an officer, and continued to run toward a crowded area while armed. As a result of these and other actions by Mr. Wasson, deadly force was used against him.

Mr. Wasson also displayed behavior consistent with prior acts. Mr. Wasson had previously been convicted of felony eluding/fleeing from police officers and had recently fled from officers in an unrelated incident and was not apprehended. In this incident, rather than complying with officers' commands, Mr. Wasson again ran from officers, but this time he pulled a firearm out of his waistband and pointed it at an officer.

Autopsy results indicated that Mr. Wasson was under the influence of methamphetamine and fentanyl. It is unknown to what degree these substances influenced or contributed to this incident. There is no evidence any mental health related incidents or any previous violent encounters with law enforcement.

Officers' overall tactical strategy, supervision and communication in this incident were flawed in some respects. While certainly these decisions and actions influenced the incident, when faced with the immediate threat of death or serious injury to himself and others, and a split second to decide whether to use deadly force in a dangerous, rapidly evolving, and dynamic situation, Ofc. Feldner made a difficult but reasonable and necessary choice. OPA recognizes there were significant risks in both acting and in failing to act.

OPA will continue to track data on potential contributing factors for evaluation of community support and response, as well as aggravating or mitigating factors by officers to inform best policing practices.

## **RECOMMENDATIONS**

OPA concurs with BPD's findings and training and procedural recommendations concerning this incident. OPA recommends BPD balance its dynamic tactics and firearms training with robust and consistent training that prioritizes and emphasizes command and control, slow tactics, de-escalation, communication, and less-lethal tools during high-risk events.

OPA also recognizes the proactive policy development and ongoing training by BPD since this incident. BPD is training all sworn officers on the new policies, which emphasizes pre-planning, gathering appropriate resources, controlling the pace, constant communication between officers, supervisors and involved individuals, de-escalation, and report documentation.

With current updated policy and subsequent training aligned, OPA has no additional recommendations. OPA will review future use of force incidents occurring after the effective date of these policies and will be assessing this training's impact in the field.

## **LINK TO DOCUMENTS**

The Critical Incident Task Force report, the officer body-worn camera video, and BPD news releases of this critical incident may be viewed at: <https://www.cityofboise.org/departments/police/critical-incidents/> under "2023 Critical Incidents" and "June 24, 2023."

**REPORT PREPARED BY:**

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