



# OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

## CASE REVIEW – OPO21-0038

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Prepared by:

John Meyer  
Jesus Jara

### *THE SITUATION – Summer of 2021*

During the morning hours in the summer of 2021, Boise Police Department Officers (herein referred to as BPD) received an Attempt to Locate (ATL) notice regarding a known male adult subject who reportedly forcibly kidnapped his 13-year-old son from a residence in Boise. This was in violation of an active no-contact order, he fled in a known vehicle. The ATL notice included the subject's name, description, and vehicle description. An AMBER Alert was also in the process of being initiated regarding this reported kidnapping.

During the late afternoon hours on that same day, Sergeant #1 located the vehicle, the subject, and the kidnapping victim at a gas station in northwest Boise. Sergeant #1 notified BPD dispatch requesting emergency assistance from Officers and attempted to contact the subject. However, the subject fled in the vehicle with the victim inside sitting in the passenger seat. Sergeant #1 followed the subject and attempted a vehicle stop by activating his lights and siren on his marked BPD patrol vehicle. The subject did not yield and continued driving. Sergeant #1 continued to pursue the subject, who began waving a large knife outside the driver's window, still attempting to elude Sergeant #1 and not pull over.

Officers #1, #2, and #3 joined Sergeant #1 in the pursuit of the subject, who continued waving the large knife outside the driver's window as he fled. Sergeant #1 received authorization to initiate a Pursuit Intervention Technique maneuver (PIT) by using his vehicle to forcibly cause the subject's vehicle to rotate a half turn and come to a stop to end the pursuit. When there was enough clearance on the roadway and speeds were low, Sergeant #1 completed the PIT maneuver, and the subject's vehicle rotated as intended before coming to a stop in the street.

Sergeant #1 continued past the subject's vehicle, turned around, and stopped his patrol vehicle on the passenger side of the subject's vehicle blocking him from fleeing again. Officers #1, #2, and #3 stopped on the other side of the subject vehicle and drew their weapons, ordering the subject to put his hands up and drop the knife. Sergeant #1 approached the passenger side of the subject's vehicle and opened the door to rescue the kidnapped child in the front seat. At this time, the subject leaned toward the child holding the large knife and raised the weapon as if he was going to stab the child seated next to him. Officers #1, #2, and #3 immediately discharged their weapons at the subject through the windshield of the subject's vehicle, striking the subject multiple times. This hindered the subject and caused him to drop the large knife on his lap. Sergeant #1 was then able to successfully rescue the kidnapping victim from the passenger seat by removing him from the open passenger door. The child victim was not struck

by gunfire and was immediately placed in a safe location in another patrol vehicle. Officers #1, #2, #3, and other arriving officers immediately began comprehensive life-saving efforts on the subject, who ultimately survived his life-threatening injuries.

### **REASON FOR THE REVIEW**

Boise City Code defines the authority and duties of the Office of Police Accountability. 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**

This investigation had, as its primary focus, the deadly force used by officers, a vehicle pursuit, and the execution of a pursuit intervention technique (PIT maneuver) and the following 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 Use of Force / Authorization

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



PM § 1.006 Pursuit Intervention Technique (PIT)

PM § 4.001 Vehicle Pursuits

PM § 4.004 Vehicle Force Methods

PM § 17.020 Audio / Video Recordings (On Body Video)

### ***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. Ada County dispatch records and reports.
4. BPD Internal Affairs (herein after referred to as IA) investigative documents including statements, records, audio, reports, photographs, and diagrams.
5. Critical Incident Task Force (herein after referred to as CITF) investigations including reports, statements, medical records, photos, records, video, and audio.
6. OPA participation in the interviews of Officer #1, #2, #3, and Sergeant #1 taken by BPD IA.

### ***THE FACTS***

Based on the preponderance of the evidence obtained and reviewed during this investigation, I issued the following findings of fact:

- Sergeant #1, Officers #1, and #2 received “Attempt to Locate” information regarding the subject, his vehicle, and the victim before the critical incident.
- The information received by involved personnel indicated that the subject was wanted for a felony crime of kidnapping and the victim child was in danger while with the subject.
- Sergeant #1 observed the subject and his vehicle with the victim stopped at a gas station in northwest Boise.
- Sergeant #1 attempts to turn on body camera to record contact with subject. It was later learned that the power on button was not depressed long enough to activate.
- Sergeant #1 was in full BPD uniform and was driving a marked BPD patrol vehicle during his initial contact with the subject at the gas station.
- Sergeant #1 Requested emergency assistance from area Officers over the radio regarding his contact with the wanted kidnapping subject.
- Sergeant #1 attempted to detain the subject at the gas station by stopping his patrol vehicle in front of the subject’s vehicle and “mouthing” the word “stop” to prevent him from driving away with the victim seated in the vehicle.
- The subject made eye contact with Sergeant #1 at the gas station, ignored Sergeant #1’s order to stop, then abruptly backed up to allow himself a path of escape before driving out of the lot with the victim.
- Sergeant #1 followed the subject as he drove out of the gas station with the victim in the vehicle, activating his overhead lights and siren to get the subject to yield and stop his vehicle.



- Sergeant #1 notified dispatch and responding units of his actions initiating a pursuit and the actions of the subject driving the subject vehicle violating traffic laws as he failed to yield.
- Sergeant #1 pursued the subject, while continuing to give dispatch and responding officers information on the actions of the subject.
- Officers #1 and #2 believing they will become involved in the incident – turn on body camera to record the contact.
- Officer #1 joined the pursuit behind Sergeant #1 and took over radio transmissions to dispatch regarding the pursuit and actions of the subject.
- The subject began waving a large knife outside the driver’s window of the subject vehicle as he continued to evade pursuing officers with their lights and sirens activated on their marked patrol vehicles.
- Officers #2 and #3 also joined the pursuit behind Officer #1 and Sergeant #1.
- Officer #3 upon joining the pursuit, failed to activate his body camera.
- A BPD Lieutenant gave verbal approval over the radio authorizing the execution of a Pursuit Intervention Technique (PIT) when it was prudent.
- Sergeant #1 executed a PIT when the subject was driving at a slow speed on a clear / wide roadway, causing the subject’s vehicle to turn around and come to a stop.
- After completing the PIT, Sergeant #1 continued driving past the subject vehicle, turned around, and stopped his vehicle to block the subject from continuing in the direction he had been driving.
- Officers #1, #2 and #3 stopped their vehicles on the other side of the subject’s vehicle and drew their weapons, directing them at the subject who was still holding the large knife while seated in the driver’s seat of his vehicle next to the child victim.
- Officer #1 yelled for the child to exit the vehicle from the passenger door, instructing the child by waving his arm to the side to get the child to move in that direction to the passenger door to get out of the vehicle.
- Sergeant #1 observed that the passenger door of the subject’s vehicle was unlocked, and he opened the door to rescue the child.
- The subject turned toward the child, raising the knife in a threatening manner, and leaned toward the child who was seated next to the subject.
- Officers #1, #2, and #3 discharged their weapons at the subject, who was still seated in the driver’s seat of his vehicle.
- The subject was struck by several of the shots fired by officers and became incapacitated, dropping the knife in his lap.
- An additional officer who arrived just after the PIT maneuver was executed notified dispatch that shots were being fired.
- Sergeant #1 was able to rescue the child victim by removing him through the open passenger door.
- The child victim was assessed for injuries and placed in the back seat of a patrol vehicle on scene by officers.
- Officers #1, #2, and #3 approached the subject vehicle to assess the condition of the subject and the location of the knife.
- The knife was moved from the subject’s lap to the back seat area by an officer.
- The subject was pulled from the vehicle by officers through the open driver’s door and laid on the sidewalk directly adjacent to the subject vehicle.
- Officers #1, #2, and #3 and other responding officers began life-saving efforts on the subject and requested EMS (Paramedics).



- Officers applied pressure to the subject’s wounds to stop his bleeding, applied clotting bandages, and initiated CPR before the arrival of paramedics.
- The subject was transported by paramedics accompanied by BPD officers to St. Alphonsus Trauma Hospital in Boise for further emergency treatment and surgery.
- The child victim was transported to another hospital for treatment of minor cuts from glass and follow up investigation.
- The scene was documented with photographs (including drone photos), evidence was collected, and witnesses in the area were interviewed by the CITF regarding what they observed.
- A crime scene was established at the scene, cordoned off, and documented with logs showing all who were present.
- CITF personnel responded and initiated an investigation led by the Garden City Police Department.

### ***DIRECTOR’S ANALYSIS & FINDINGS***

#### **Pursuant to PM § 1.003**

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, #2 and #3 observed the subject turn toward the child while holding the large knife in a threatening manner and lean toward the child who was sitting directly next to the subject. Officers #1, #2, and #3 believed based on the totality of the subject’s actions that the child was going to be stabbed or cut by the subject and be seriously injured or killed. Officers #1, #2, and #3 discharged their weapons at the subject in defense of the child whom they reasonably believed was in imminent danger of being seriously injured or killed by the subject with the knife.

#### **Pursuant to PM § 1.001**

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 child including the subject forcibly kidnapping the child, the failure of the subject to yield to pursuing officers, the subject brandishing the large knife in a threatening manner outside the driver’s window while officers were pursuing him, and the subject raising the knife toward the child in a threatening manner after his vehicle was stopped by the PIT maneuver. Officers #1, #2, and #3 reasonably believed that it was necessary to use deadly force to prevent imminent danger of death or serious bodily harm to the child.

#### **Pursuant to PM § 1.006**

Only officers who are authorized will use the Pursuit Intervention Technique (PIT). Circumstances warranting the use of PIT or other forced stop methods are when continued movement of the suspect vehicle would place others in significant danger of serious bodily harm and is so great as to outweigh the risk of harm in making the forcible stop and other means of apprehension have been considered and rejected as impractical. Sergeant #1 (a field supervisor) received verbal authorization for the use of the PIT by a Lieutenant due to the totality of the situation including the imminent danger to the child in the subject’s vehicle. Sergeant #1 was driving a marked, fully equipped Sport Utility Vehicle (SUV), utilized sound judgement in considering potential harm or danger to others from the PIT and intentionally executed the PIT when vehicle speeds were low, and the roadway was wide and clear of other traffic or pedestrians. The use of a PIT is also referenced in **PM § 4.004** as an authorized forced stop method that



may be used if in the judgment of the officers, the fleeing vehicle must be stopped immediately to safeguard life and preserve public safety based on the totality of the circumstances.

Pursuant to **PM § 4.001**

A vehicle pursuit is recognized as a valid law enforcement activity to attempt to apprehend a fleeing subject, under limited circumstances which include a supervisor's command of the pursuit, and the crime (for apprehension) is a violent felony. Sergeant #1 (a field supervisor) initiated this pursuit based on prior information he received regarding a forcible kidnapping (felony crime) and was driving a marked vehicle that was properly equipped to initiate a PIT maneuver. It is the responsibility of the Sergeant to ensure that the danger posed by the continued pursuit outweighs the danger to the public of allowing the suspect to evade immediate capture. During this pursuit, Sergeant #1 continually monitored speeds of the pursued vehicle and the actions of the driver. Sergeant #1 and later Officer #1 kept dispatch and other officers continually appraised of traffic conditions and continued the pursuit due to the relatively low level of danger to the public which was outweighed by the danger posed to the child kidnapping victim who was a passenger in the pursued vehicle. According to BPD policy, typically no more than three units should be actively involved in a vehicle pursuit unless circumstances warrant the need for additional officers. This incident involved a kidnapping child victim (hostage) being held by a subject who displayed a deadly weapon to pursuing officers. These are examples of circumstances that would warrant an additional officer in the pursuit (Officer #3).

Pursuant to **PM § 17.020**

Uniformed officers will be responsible for ensuring they are equipped with a portable audio / video recorder issued by the Department and the recorder is in proper working order. Devices shall be worn in a prescribed manner and utilized per procedures. Uniformed officers shall record all investigative enforcement contacts, prisoner transports, persons complaining of officer conduct, or when a contact is anticipated to be confrontational

**Conclusions:**

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #1 use of deadly force in the matter in question.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #2 use of deadly force in the matter in question.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #3 use of deadly force in the matter in question.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Sergeant #1 use of the Pursuit Intervention in the matter in question.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Sergeant #1 initiating and participating in a vehicle pursuit.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #1 participating in a vehicle pursuit.

Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #2 participating in a vehicle pursuit.



Based on the preponderance of the evidence, a finding of EXONERATED has been issued with respect to Officer #3 participating in a vehicle pursuit.

Based on the preponderance of the evidence, a finding of SUSTAINED has been issued with respect to Sergeant #1 for failing to activate and record his body worn video camera / recorder to memorialize this incident. Sustained is defined as a specific act or omission of the police officer or police employee that is a violation of policy.

Based on the preponderance of the evidence, a finding of SUSTAINED has been issued with respect to Officer #3 for failing to activate and record his body worn video camera / recorder to memorialize this incident. Sustained is defined as a specific act or omission of the police officer or police employee that is a violation of policy.

The Director also 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.

**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)

