



OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

CASE REVIEW

OPO20-0044

OIA20-0325

APRIL 2022

Prepared by:

Diane Loos

Jesus Jara

THE SITUATION – Fall of 2020

On an evening in October of 2020, a stolen vehicle, a white Subaru BRZ out of Caldwell, was located by its owner on West Overland Road in Boise, Idaho. The victim attempted to follow the vehicle but lost track of it. A short time later, the victim found the car parked in a residential garage north of interstate (84) and west of the Flying Wye connector. The victim saw a possible suspect with wounds on his forehead and right arm.

The Boise Police Department (BPD) responded to the address to investigate the stolen vehicle. Officers confirmed that the car had been reported stolen, and soon the Officers had the name of the subject connected to the car theft.

After arriving at the residence, Officers received an updated report that a male subject was attempting to leave in a taxi nearby. As the taxi began to leave the area, the subject pushed the taxi driver out of the vehicle and drove away. The taxi-cab driver told the Officers that the subject had verbally told them he had a gun.

Officers engaged in a pursuit of the vehicle. While dangerously eluding police, the subject showed little regard for the general public and the Officers trying to apprehend him. Soon, the subject would find himself in a residential neighborhood, and a BPD Officer used deadly force by ramming the vehicle head-on with his patrol unit – ending the pursuit. The subject escaped via foot but was taken into custody by other officers.

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.*

DIRECTOR'S ANALYSIS & CONCLUSION

The Office of Police Accountability has reviewed this incident that took place several years ago. 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 Officer #7 and Officer #2.
3. BPD Internal Affairs (herein after referred to as IA) investigative documents including statements, records, audio, reports, photographs, and diagrams.
4. Critical Incident Task Force (herein after referred to as CITF) investigations including reports, statements, medical records, photos, records, and audio.
5. Review of OPA interview with Officer #7.

As its primary focus, this review had the use of force by the Officer, a vehicle pursuit, and the use of a BPD vehicle in the ramming of a suspect vehicle. The following are the related sections of the BPD Policy and Procedures Manual (Herein referred to as PM) in force during this incident.

PM § 1.001 Use of Force / Authorization

PM § 4.001 Vehicle Pursuits

PM § 4.005 Extreme Measures



At approximately 9:30 p.m., Boise Police Department (BPD) Officer #1 arrived to investigate the stolen vehicle report. During the investigation, BPD learned that the stolen vehicle was located at the home occupied by a family member, who would go on to identify the subject. The family member said the car was brought there by their brother, and police were able to put a name and description together of the subject. BPD Officer #2 also responded to the residence. Officer #1 and Officer #2 obtained consent to search the home for the subject, but he was not found at the location.

Dispatch notified the Officers of a call from a nearby residence regarding an adult male with a possible wound on his forehead who wanted to use the phone. The caller advised they refused to allow the subject the use of their phone. Officer #2 responded to the location and remained in the area, believing the subject was still nearby. Officer #2 saw a red Kia Taxi enter the neighborhood and park. He saw a male walk from the rear of the residence and get into the front passenger seat of the taxi. Officer #2 went to a side channel and requested Officer #7 to respond to the area to assist. Officer #3 heard the request on the side channel and saw that Officer #7 was ten minutes away from Officer #2. Officer #3 knew he was closer than Officer #7 and contacted Officer #2, who explained he was looking for a male subject about a stolen vehicle and thought he saw the subject enter a taxi. As the taxi left the location, Officer #2 initiated a traffic stop with Officer #3 behind him.

Officer #2 watched the taxi come to a stop and saw the front passenger believed to be the male subject, push and force the cab driver out of the taxi. The driver stepped out with both his hands up in the air, facing the subject that had pushed him from the vehicle. Officer #2's observations of the male pushing the taxi driver out of the taxi by force and the driver's hands held up in the air led him to believe the male subject had carjacked the taxi. Officer #2 broadcasted this information over the primary radio channel. He drew his duty handgun and started to point it at the subject while ordering him to put his hands up. Instead of complying, the subject rapidly drove away from the scene in the taxi. Officer #2 requested an additional officer to meet with the taxi driver as Officer #3 began a pursuit of the taxi with Officer #2 as the second unit.

During the pursuit, the subject was seen by several officers driving into oncoming lanes, turning off his headlights, driving at a very high rate of speed, driving erratically, and driving directly at civilian and law enforcement vehicles.

Officer #4 became the lead pursuit vehicle as the subject turned west on Fairview Road. Officer #4 saw the subject's vehicle travel in the opposite traffic lanes, turn his headlights off and on several times, and barely missed striking two vehicles head-on while at speeds of 85 miles per hour and above. Ada County Deputy #1 responded to assist and attempted to deploy spike strips near Cloverdale Road and Victory Road. The subject drove toward Deputy Ada Deputy #1 and his patrol vehicle, narrowly missing striking him. The subject also steered toward both Ada Deputy #2 and a nearby citizen. Both had to swerve off the roadway to avoid a collision.

As the pursuit continued, the subject vehicle attempted to hit an oncoming patrol vehicle that was traveling west on Victory Road. The subject vehicle got as close as it could to the patrol vehicle and forced it toward a ditch and a small tree line. The subject vehicle went through Overland Road and turned west into the last entrance of a neighborhood before going over the overpass. Before entering the neighborhood, Officer #4 heard a radio transmission from an officer referencing ramming or pitting the subject vehicle. Officer #4 heard received supervisor permission to use a Pursuit Intervention Technique (PIT), if safe to do so. Officer #4 saw the subject vehicle was driving back and forth across all the lanes. Officer #4 was not able to PIT the subject vehicle due to the subject weaving back and forth.



Officer #4 believed if they could not get the subject vehicle to stop, the subject vehicle would attempt to hit another patrol vehicle. Officer #4 told Officer #3 that if he could get close enough, he would ram the subject vehicle or do a PIT maneuver.

Officer #7 was eastbound on Franklin Road near Five Mile Road when Officer #2 attempted the traffic stop on the taxi. Officer #7 elevated his response when Officer #2 advised the driver of the taxi had committed an armed robbery and that the subject had a gun. Officer #3 continued to provide the pursuit location and said they were going southbound through a neighborhood. Officer #7 closed to approximately a hundred yards behind the pursuit, and the subject turned onto Five Mile Road. When Officer #7 was on Five Mile, he could see the pursuit had picked up to a high rate of speed. He saw the vehicles make a left turn onto westbound Fairview Avenue. He paralleled the pursuit by turning onto Emerald Street in case the pursuit turned southbound, where he could deploy stop sticks. He heard radio traffic advising the subject was going into oncoming traffic.

From his previous patrol of the area, he knew there was a 24-hour restaurant that was always busy, and he was concerned that the subject would cause an accident. Officer #7 witnessed an attempt by an ACSO deputy to deploy stop sticks to end the pursuit, only to see the subject drive toward the deputy. Officer #7 believed that the subject was traveling at high speed, and that any contact with the deputy would have resulted in his death. He saw the subject swerving into oncoming traffic and turning westbound into a neighborhood. Officer #7 was familiar with the area and turned into the same neighborhood on a different street. From his knowledge of the area, he knew the subject would have to slow down because of the number of turns in the neighborhood. Officer #7 continued to drive through the neighborhood but did not see the pursuit.

Suddenly he saw headlights turning toward him, and Officer #7 decided to stop the vehicle. Earlier during the pursuit, he asked on the radio if "ramming" was authorized, and the watch commander authorized a PIT. Officer #7 believes ramming was authorized under the same protocol in the BPD policy. Given the subject's speeds, Officer #7 thought that the PIT was not authorized and would have fallen under deadly force due to his training.

Now driving towards Officer #7, the subject swerved the vehicle from side to side, covering the whole roadway, as witnessed by Officer #2. Officer #7 was concerned that the subject would not stop voluntarily and would continue to endanger the public and other officers if he wasn't stopped. All prior attempts to get the subject to stop, including the use of spike strips, had failed.

The subject swerved to the left (Officer #7's right), trying to enter a gap between Officer #7's vehicle and a parked vehicle in front of a residence. Officer #7 believed that the subject was going to try to go through the gap. He blocked the gap and struck the subject head-on. The airbags were deployed in the patrol vehicle, but the Officer #7 could still see that the subject was trying to get out.

After a short foot pursuit, the subject was taken into custody by other Officers on the scene.



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 to the public and other officers including the subject forcibly stealing the taxi from the driver, the claiming he had a gun, the failure of the subject to yield to pursuing officers, and the subject's dangerous high speeds on the roadways. Officer #7 reasonably believed that it was necessary to use force to prevent imminent danger of death or serious bodily harm to the public or other officers.

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. Officer #2 and Officer #3 initiated this pursuit based on Officer #2's directly witnessing what appeared to be an armed carjacking, a felony crime. During this pursuit, Officer #3 and other involved officers kept dispatch and other active officers continually appraised of traffic conditions. They continued the pursuit due to the extreme danger the subject posed due to his violent crime, his disregard for the citizens and the officers on the road with his extremely high speed and steering toward oncoming vehicles, and his failure to stop for the officers.

Pursuant to PM § 4.005

Deliberately ramming a vehicle is considered an extreme measure. "The use of extreme measures *will* (emphasis mine) have prior authorization by the Incident Commander, and is warranted only when other means of termination have failed or are impractical. The danger shall be clearly imminent and the Officer shall be able to articulate the subject's/driver's actions are life threatening to another person." Officer #7 asked if he could ram the subject's vehicle and was told by the lieutenant to PIT the subject if he had the opportunity.

Though Officer #7 used an extreme measure compared to a PIT maneuver, the conditions he faced with the failure of other methods to stop the subject, plus the subject's refusal to stop, left him with ramming as the best-forced stop option at that moment to end the pursuit. Given the dynamic situation, the need to rapidly decide how to stop the pursuit, and the dangerous driving of the subject, Officer #7 articulated the need for ramming the subject's vehicle and bringing an end to this pursuit. The choice of ending the pursuit in a neighborhood, at slower speeds, resulted in a forced stop that was less likely to cause injury to the public, the officers, and the subject.

Conclusions:

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 the use of deadly force.



Jesus Jara



Director – Office of Police Accountability

Email – jjara@cityofboise.org

Office: (208) 972-8380

www.cityofboise.org/opa

