



# OFFICE OF POLICE ACCOUNTABILITY

DIRECTOR: Jesus Jara

## CASE REVIEW

OPO21-0036

OIA21-0259

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Prepared by:

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### *THE SITUATION – Summer of 2021*

During an evening in mid-July 2021., a citizen called the Boise Police Department (BPD) 911 dispatch to report a U-Haul van with an Arizona license plate driving recklessly on South Cole Road. The citizen advised that they had witnessed the van run a red light, swerve in the road, and run over a curb. They could see the license plate and reported the information to dispatch. The van turned into a (Home Improvement Store) parking lot, which shares a parking lot with a (Department Store) at West Overland Road. Once in the parking lot, the citizen reported, the van struck another curb and circled the lot between both the parking lots, finally stopping in the Home Improvement Store parking lot. They saw damage to the van and believed the driver was possibly intoxicated and a hazard, prompting them to call 911. They watched the van from inside their car and were able to see the driver was still inside the van. The citizen saw two marked Boise Police cars arrive, and an officer walk toward the van. As they approached the van, it drove off before the officers reached it.

Officers would engage in a pursuit to apprehend the subject, but due to the dangerous driving of the subject – officers discontinued the pursuit. A short time later, Officers located the van in a residential neighborhood, resulting in a series of dynamic events that ended when two officers fired their service weapons to incapacitate the subject.

### *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 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 footage from private business cameras available during the incident.
3. Review of available body-cam footage from officers #1, #2 and #3
4. Review of Ada County dispatch records and reports.
5. Review of BPD Internal Affairs (hereinafter referred to as IA) investigative documents, including statements, records, audio, reports, photographs, and diagrams.
6. Review of the Critical Incident Task Force (hereinafter referred to as CITF) investigation, including reports, statements, medical records, photos, records, and audio.
7. OPA Investigator participation in the interviews of Officers #1, and #3, in conjunction with BPD IA.

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	Use of Force – Authorization
PM § 4.001	Vehicle Pursuits
PM § 4.004	Vehicle Force Methods
PM § 4.005	Extreme Measures

Officers #1 and #2 were dispatched to the call for service, riding together. Officer #1 was driving the patrol car during this shift. Dispatch relayed the citizen's observations and ran the license plate reported by the citizen. Dispatch advised the van had been reported stolen. Officer #2 read the stolen vehicle report via the in-car computer. This report included the name and photograph of the subject. Officer #3, a K9 patrol, heard the call and responded after learning it involved a stolen vehicle. Officers #1, Officer #2, and Officer #3 all arrived at the Home Improvement Store parking lot at approximately the same time. They saw the U-Haul van parked in a stall near the east side of store. Officer #1 saw that the lone male subject was in the driver's seat and had his right arm resting on the van's steering wheel with his head



slumped over. Officer #1 knew from the reporting citizen that the driver might be intoxicated, and his observation of the subject also indicated the driver was impaired. Officers #1 and #2 planned to park their vehicle and approach the van on foot. They positioned their vehicle behind the van while Officer #3 parked approximately 10-15 feet in front of the van and engaged his overhead emergency lights. Officer #3 saw the subject slumped over in the driver's seat and believed he was asleep or unconscious. As Officer #1 and #2 walked toward the van, the subject looked up and at Officer #3, who was still seated in his patrol car. The subject immediately put the van in drive and slowly drove around Officer #3's patrol car heading westbound to the lumber entrance. Fearing the subject would drive into the Department Store parking lot and endanger people in the area, Officer #3 placed his vehicle in the connecting driveway area to prevent the subject from entering the parking lot.

Seeing the subject pulling around Officer #3's car, Officers #1 and #2 ran back to their car. Officer #1 drove in the path of the oncoming van with his emergency lights engaged for the subject to stop. As the van headed toward Officers #1 and #2, Officer #1 could see that the van's driver was the subject from the picture in the theft report. It was reported that the subject drove directly at both occupied patrol vehicles twice before avoiding them at the last second, once at Officers #1 and #2 and once at Officer #3, before the subject headed behind the Department Store. Officer #1 started his siren as the van drove under the loading area overhang at the Home Improvement Store and pursued the subject west behind the Department Store located next door to Home Improvement Store. He then attempted a PIT (Pursuit Intervention Technique) as the van continued to flee in the private alley behind the Department Store, but this attempt was unsuccessful, only causing the van's rear end to slide. The subject regained control, refusing to stop for the officers.

The van turned southbound onto South Vinnell Way before turning eastbound onto West Overland Road. Officer #1 pursued the van eastbound on West Overland Road at speeds more than 80 m.p.h. in the marked 40 m.p.h. zone. Officer #3 joined the pursuit and called the locations, speeds, and road conditions over the radio. As the van attempted to turn into the gas station located on West Overland Road, Officer #1 used the patrol car to intentionally strike the driver's side rear panel of the van in a PIT maneuver to disable it. This attempt turned the vehicle around but did not disable it. The subject headed westbound on West Overland Road. Officer #3 was approaching from the opposite direction and entered the westbound lanes of West Overland Road to try to block the subject's flight. The subject once again drove straight at Officer #3 and barely missed striking Officer #3's patrol car, then continued driving west on Overland Road. Officer #1 continued to pursue the subject at approximately 80 m.p.h. on Overland Road.

The subject started driving between vehicles, rocking his van from side to side, and swerving into opposing lanes to avoid slower cars. At this point, a BPD Sergeant gave an order over the radio to stop the pursuit. Both Officers #1 and #3 pulled their patrol cars off the public road and turned off their emergency equipment following this order. They remained in the parking lot for several minutes. While the officers were in the parking lot, Officers reviewed the stolen vehicle report regarding the van and the subject's name. Officer #3 recognized the name from a previous call he had responded to several weeks before this incident. A call had been received regarding a male subject acting oddly and possibly swinging a machete at plants. When Officer #3 contacted the subject, he described him as uncooperative and agitated. The subject was arrested for outstanding warrants, and a machete was found in the front passenger seat of his vehicle.



A BPD officer near Overland Road and Five Mile Road notified the officers involved in the pursuit on a side radio channel that the subject had not passed through Five Mile Road, meaning he may have pulled off into the surrounding residential areas. The officers started searching for the subject and any damage he possibly caused during his flight. After a short search, Officer #3 found the van stopped in front of a home on Riley Court and believed the van was unoccupied. Officer #3 approached in his car and was facing the front of the van when he saw the subject suddenly rise up in the driver's seat and then drive toward him, ramming his patrol vehicle. The subject then backed up and went around Officer #3's patrol car and fled east on West Riley Court. Officer #3 advised that the subject had just hit him and pursued the van over the radio. The van turned right onto Derring Place, which is a dead-end street. The van turned around at the dead-end and began driving toward Officer #3, now facing him. Officer #3 slowed his patrol car as the van approached him, fearing he would be seriously injured if the subject struck his vehicle at a high rate of speed. The subject accelerated and struck the front of Officer #3's car.

Officer #3, concerned the subject might be armed, drew his handgun, pointed through the windshield at the subject facing him, and attempted to push the van backward with his patrol car. Officer #3 gave commands from inside his vehicle to the subject to put his hands up and told the subject he would shoot him. Officer #3's gun was drawn and pointed at the subject several times during this encounter. The subject then drove around Officer #3 and attempted to turn onto West Riley Court where he encountered Officers #1 and #2, who had responded to Officer #3's radio traffic for assistance. As the van attempted to pass Officer #1, Officer #1 attempted an opposite direction PIT of the subject's van, hitting the rear driver's side quarter panel, causing it to spin around in the roadway. Officer #3 drove around Officers #1 and #2's and rammed his front bumper against the van's front bumper to stop the subject. He started to push the van backward and forced the van into the driveway of a residence on Riley Court. The rear of the van became pinned against a truck owned by the property resident.

After Officer #3 struck the van, Officers #1 and #2 left their patrol car and ran alongside Officer #3's patrol car as he continued to push the van backward. When the van became pinned, Officer #1 was standing in front of the van approximately ten feet from its front bumper and outside Officer #3's passenger side window. Officer #2 stood just outside of Officer #3's driver side window and could see the subject through the van's passenger side wing window. The subject was attempting to move the steering wheel and get the van back into gear. He was soon able to get the van into gear, and the van began moving forward as its rear tires spun on the driveway as the subject tried to push Officer #3's patrol car out of the way. Officer #3 remained in his patrol car's driver position and attempted to keep the van pinned. Both Officers #1 and #2 drew their service weapons, pointed them at the subject, and gave numerous commands to stop, but he continued to try to free the van.

As Officer #1 gave the subject commands to stop, he saw the subject turn his head from side to side and yell "no." The van appeared to move slightly forward, and the officers thought it was slipping off of Officer #3's front bumper that was keeping it pinned. As the van began sliding off Officer #3's patrol vehicle and headed toward his direction, Officer #1 fired six (6) rounds and Officer #2 fired four (4) rounds from their 9mm duty weapons. Officer #1's rounds went through the van's front windshield at the subject, while Officer #2's rounds went through the van's passenger side wing window. After the shots were fired, the subject stopped pulling the van forward. The officers continued to command the subject to exit the van and get on the ground. The subject complied and rolled on his back in the driveway outside the van's driver's door. Officer #1 approached and handcuffed the subject while Officer



#3 with his K9 partner, provided cover. The officers administered first aid until relieved by responding Ada County paramedics and Boise Fire personnel. The subject was transported by ambulance to the hospital, where he was treated for multiple gunshot wounds.

#### **PURSUANT TO PM § 4.001 PURSUITS**

The BPD policy manual states, *"Officers will not pursue for infractions, misdemeanors or non-violent felony crimes."* The officers stopped their patrol vehicles in front of the subject's stolen van, with emergency lights activated, to keep him from fleeing and investigate vehicle theft and possible driving while intoxicated. Instead of obeying the emergency lights of the marked police vehicles stopped in front of him, the subject drove the stolen van directly at the Officer's stopped patrol vehicles in the parking lot of the Home Improvement Store. The officers had not yet started to pursue the subject, merely trying to get him to stop. The subject's actions driving at the police officers constituted an aggravated assault, a violent felony. Per Idaho Code 18-905, an aggravated assault is defined as an assault with a deadly weapon or instrument without intent to kill or by any means or force likely to produce great bodily harm. The pursuit was undertaken as the result of a violent felony. After the pursuit started, the subject deliberately struck the officers' patrol vehicles several times, which was the violent felony of aggravated battery by committing a battery using a deadly instrument using the van he was driving.

A supervisor directed all three officers to stop the pursuit. They followed policy by stopping the pursuit. They pulled off the road and turned off their emergency equipment. They remained stopped for approximately three minutes, as shown by their vehicle's tracking equipment. There is no indication or evidence the officers attempted to follow the subject after discontinuing the pursuit. When notified by a nearby officer that the subject had not passed by his location, the officers realized the subject had possibly entered residential neighborhoods prior to the other Officer's location and started searching for the subject, the stolen van, or any damage he may have caused during his flight. When Officer #3 located the van with the subject behind the wheel, he immediately attempted to pull in front of the van to block it in and prevent the subject from once again fleeing the scene. Instead, the subject drove forward and struck Officer #3's vehicle, committing an aggravated battery against Officer #3.

#### **PURSUANT TO PM § 4.004 VEHICLE FORCE METHODS**

BPD policy states, *"...forced-stop methods may be used, in the judgment of the officers, the fleeing vehicle has to be stopped immediately to safeguard life and preserve public safety."* The PIT maneuver was attempted almost immediately at the start of the pursuit. The officers were given information from a concerned citizen that the subject was driving erratically and was a danger to the public. The officers saw indications from the subject's initial behavior that he may have been under the influence of a substance or otherwise impaired. When the officers attempted to keep the subject from driving away and prevent him from being a danger to others, he demonstrated erratic and dangerous driving that threatened the safety of the public and the officers by driving at the officers and eluding their attempts to stop him.



## PURSUANT TO PM § 4.005 EXTREME MEASURES

BPD policy manual states, *“The use of extreme measures will 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 shall be able to articulate the suspect’s/driver’s actions are life threatening to another person.”* The ramming of a vehicle is considered an extreme measure. The use of the word “will” in the policy manual is a controlling term meaning the officers should comply as the conditions permit. This incident was rapidly evolving, with the subject repeatedly driving at them, striking them, and giving no indication he was willing to stop fleeing and cease his assaultive and dangerous driving. The subject demonstrated a high level of danger to the public with his erratic and high-speed driving. The officers attempted lesser measures, such as trying to signal him to stop, placing their vehicles in front of him with emergency lights activated, and PIT maneuvers – all to no avail. They were left with trying to ram him, using force to disable his vehicle use and cease being a danger to the public and the officers.

## PURSUANT TO PM § 1.001 USE OF FORCE AUTHORIZATION

The officers attempted to stop the subject by signaling him to stop in the parking lot of the Home Improvement Store and then placing their vehicles across his path to stop him from driving away. The officers attempted a PIT maneuver behind the Department Store, a ramming attempt on the roadway, and also tried to block the subject’s path in the neighborhood. The subject responded by striking the patrol vehicles and continually looking to avoid capture.

When the subject was finally blocked in against another vehicle by Officer #3 and given multiple verbal commands by the officers to stop his actions and give up, he still would not cease his attempts to flee and shook his head in the negative and mouthed the word “no.” The subject posed an immediate threat to the safety of the officers and others and was attempting to evade arrest by flight.

Given the position of Officer #3’s vehicle against the subject’s van in the driveway and the constant attempt by the subject to push Officer #3’s vehicle out of the way, Officer #1 took the best position he had available, adjacent to Officer #3’s vehicle passenger side door. From there, he gave commands to the subject to stop the van, and the subject refused. Officer #2 was on the passenger sign of the van. Officer #3 tried to keep the van pinned against the pickup truck to keep the subject from driving away.

The subject had demonstrated he did not intend to give up. He had placed the public and the officers in danger by running red lights, erratic and high-speed driving, and driving on the wrong side of the road. There were signs he was likely under the influence of some substance. The officers had attempted every method available to stop the subject from continuing to put everyone in danger with his actions. In addition, the concerned citizen’s report of the subject’s erratic driving demonstrated he was already a danger to the public before the officers attempted to stop him.

In the U.S. Supreme Court case of *Plumhoff v Rickard*, 572 U.S. 765, 776 (2014), the conditions in that case, were nearly identical to this incident. After several collisions, a pursuit, and dangerous driving Rickard’s vehicle was finally pinned by a patrol vehicle, but he continued to accelerate and free his vehicle. Officers fired shots at him to stop his attempt to push free. The court ruled the officers acted reasonably because it was apparent Rickard intended to continue his flight and pose a grave danger to the public.



Officer #1 and Officer #2 had to make a split-second decision to stop the subject's actions. All attempts to stop the subject had not worked, and he posed a grave danger to the public. The officers made an objectively reasonable decision to use deadly force in the circumstances they faced at that moment. (*Graham v. Connor, 490 U.S. 386 (1989)*)

## COMMUNICATIONS

Approximately 30 seconds into this pursuit, a supervisor asked the officers what the charges were against the driver they were pursuing. The officers did not answer at that time but did answer and followed his instructions when he told them to discontinue the pursuit.

BPD should consider adding to their pursuit procedure and train their officers on advising on the radio what the criminal or traffic charges are against the driver as soon as they begin a pursuit. Though officers are responsible for understanding and following the pursuit policy as well as the supervisors, this information gives the supervisors immediate knowledge about the situation, and they can make an informed decision on whether the pursuit should continue. If the officers do not respond to questions from a supervisor about the charges or traffic conditions in a pursuit, the supervisor should consider continuing to ask these questions of the involved officers or canceling the pursuit due to a lack of knowledge of whether the pursuit meets the public safety and policy requirements.

## POLICY

Though the charges of aggravated assault and aggravated battery were the violent felony charges that led to this pursuit, during this investigation, the officers indicated they had been told in training and by some supervisors that pursuits of suspects likely driving under the influence would be allowed, given the danger to the public. BPD may want to consider directly addressing this issue in policy and training to ensure all officers and supervisors have the same understanding of the pursuit policy and the role of the incident commander. Though the policy allows for an incident commander to give permission for pursuits involving dangerous drivers, it does not seem clear that the officers understand they should immediately advise and seek approval from a supervisor to engage in such a pursuit.

Though Officer #3 did not fire any shots during this incident, it was a risky decision to draw his handgun during this pursuit and point it through his windshield. BPD policy does allow for officers to fire at or from a moving vehicle under certain circumstances. While it may be understandable an officer would want to be prepared for a confrontation with a potentially armed suspect during a critical incident such as this, the reasons this decision was risky are as follows:

- Both vehicles were moving, making it problematic any rounds fired would have struck the subject and could potentially have struck a person or property.
- Officer #3 was attempting to point a firearm, switching the firearm from hand to hand and steering his vehicle with one hand during a pursuit. This required him to attempt to pay attention to multiple critical tasks at the same time during a high-stress incident.
- There were violent collisions during this pursuit, and on occasion, Officer #3 was holding the handgun with one hand – which raised the risk of him losing his grip on the gun. If he had lost his grip on the weapon, it could have ended up somewhere in his vehicle, rendering it inaccessible or hard to locate if he needed to defend himself immediately.



BPD should consider examining the current policy allowing for firing at or from a moving vehicle. There are no descriptions of the type of circumstances an officer should consider before using it in such a situation. Examples could include that firing at a moving vehicle does not guarantee it will stop and is rarely effective\*. Consideration should be given to members of the general public, as rounds fired in these scenarios could strike nearby passengers or other people in the area. BPD should also consider additional training for officers on this subject.

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

1. The CITF investigation of this incident was thorough, objective, and complete.
2. I find no need to conduct any additional investigation of this incident.
3. As it relates to the allegations investigated in this critical incident: the use of force, vehicle pursuit, vehicle force methods, and extreme measures. A finding of exonerated has been issued for Officer #1, #2 and #3.

**Jesus Jara**



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\* Language from - Lexipol Law Enforcement Policy Manual (per link below)

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants *when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle*, or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

[Prohibition on Police Shooting at Moving Vehicles - Lexipol](#)

