



USE OF FORCE INVESTIGATIVE REPORT

DATE OF INCIDENT: 01/03/2023

INVOLVED PERSON: Harry Chester Andrews

INVOLVED BPD OFFICER: Sgt. Kirk Rush

INVOLVED BPD OFFICER/WITNESS: Ofc. Andrew Morlock

INVOLVED BPD OFFICER/WITNESS: Ofc. Justin Bromgard

OPA: 23-0002

OIA: 23-0001

DATE OF REPORT: 04/10/2024

CASE SYNOPSIS

On January 3, 2023, BPD Sgt. Rush responded to a dispatched call of a man walking in the westbound traffic lanes of I-184 east of the "Flying Wye." A second dispatched call reported the man walking on the right shoulder of the "Flying Wye." Sgt. Rush located and contacted the man walking on the shoulder.

The man, later identified as Harry Chester Andrews, immediately drew a knife and charged towards Sgt. Rush. Sgt. Rush used his duty handgun to fire at Mr. Andrews, striking him twice. Upon being shot, Mr. Andrews dropped his knife and fell to the ground.

This occurred as BPD Officers Morlock and Bromgard were arriving at the scene. Both officers observed the incident. Officers Morlock and Bromgard took Mr. Andrews into custody and provided him with medical aid. Mr. Andrews survived his injuries.

DETAILED DESCRIPTION OF INCIDENT

On January 3, 2023, at approximately 9:45 am, BPD Sgt. Rush responded to a dispatched call reporting a man walking in the westbound traffic lanes of I-184 east of the "Flying Wye." A second 911 call reported the man walking on the shoulder of the "Flying Wye."

Sgt. Rush located the man in the shoulder of I-184, later identified as Harry Chester Andrews. Sgt. Rush activated his emergency lights, blocked the third (outside) traffic lane and exited his patrol vehicle. Sgt. Rush was wearing full police uniform and was equipped with an on-body video camera. The camera was operating and captured the incident.

As Sgt. Rush exited his patrol vehicle to approach Mr. Andrews, he called out to Mr. Andrews in a friendly manner: "Hey brother." Mr. Andrews, who was facing away from

the officer, looked over his shoulder towards Sgt. Rush and then reached into the pocket of his hoodie with his left hand. This gesture is visible in the on-body video footage. Because Sgt. Rush believed that Mr. Andrews might be reaching for a handgun, Sgt. Rush drew his handgun but kept it down out of Mr. Andrews' sight. Sgt. Rush then stated: "Hands up."

Mr. Andrews turned towards Sgt. Rush and put both hands in the air above his head. The on-body video shows that, upon turning, Mr. Andrews had a knife in his left hand, blade pointed up. Sgt. Rush evidently did not see the knife at this point, because Sgt. Rush said, "You're alright. Come here." Mr. Andrews then put both hands in front of his chest and switched the knife to his right hand. While holding the knife in an ice pick style grip above his shoulder, with the blade oriented towards the officer, Mr. Andrews advanced towards Sgt. Rush.

Sgt. Rush then saw the knife, moved backwards several steps, pointed his handgun towards Mr. Andrews and said: "Whoa, whoa, whoa, whoa, drop it now." Mr. Andrews then squatted down and rolled backward onto his buttocks and back before immediately beginning to stand up. Sgt. Rush commanded, "on the ground now, on the ground." As Mr. Andrews came to a standing position, he was still holding the knife in an icepick grip raised above shoulder level. The knife blade was oriented towards Sgt. Rush who was approximately 15-20 feet away. Sgt. Rush then told Mr. Andrews, "On the ground or I will shoot you." Mr. Andrews then took approximately two steps forward towards Sgt. Rush. Sgt. Rush then fired two shots at Mr. Andrews, striking him in the wrist and shoulder. Mr. Andrews dropped the knife and fell backwards to the ground.

BPD Officers Morlock and Bromgard arrived at the scene as the incident unfolded. Both officers observed Mr. Andrews' actions and were moving up to assist Sgt. Rush as the shooting occurred. After the shooting, Officers Morlock and Bromgard took Mr. Andrews into custody and provided him with medical aid. As they were taking him into custody, Ofc. Bromgard asked Mr. Andrews his name. Mr. Andrews answered, "Kill you. I wanted to kill you."

BPD Cpl. Kane arrived after the incident and assisted the emergency medical personnel treating Mr. Andrews. Cpl. Kane asked Mr. Andrews his name. Mr. Andrews said, "My name's kill you." Cpl. Kane asked, "What is it?" Mr. Andrews answered, "My name's wanting to kill you."

Mr. Andrews survived his injuries. He was later convicted of Assault and Battery on Certain Personnel (Police Officer).



The entire incident, from Sgt. Rush's initial contact with Mr. Andrews until the shooting occurred, took place within approximately 16 seconds.

The ensuing Critical Incident Task Force (CITF) investigation determined that Mr. Andrews had been released from the custody of the Idaho Department of Correction (IDOC) approximately 4 months prior to the shooting incident. Mr. Andrews had served an 11-year sentence after being convicted of Assault with Intent to Murder for attacking a family member with an axe in Custer County, Idaho. It was reported to law enforcement in the Custer County case that Mr. Andrews had a history of aggressive behavior towards others and mental illness. While incarcerated, Mr. Andrews was convicted of 2 separate felony assaults on Idaho Department of Correction Officers, which added 7 years to his original 11-year sentence. Because Mr. Andrews completed the full term of his sentences (18 years), he was not released on parole or probation.

When Mr. Andrews was released from custody, the Idaho Department of Health and Welfare Mobile Crisis Unit and the Boise Police Department Crisis Intervention Team attempted to locate Mr. Andrews to offer him services. After these teams were unable to locate him, the Ada County Sheriff's Department Crime Analysis Unit issued an Officer Awareness bulletin to advise area law enforcement agencies that Mr. Andrews had been released from custody. The bulletin also advised of Mr. Andrews' criminal history, history of mental illness, and that Mr. Andrews had refused pre-release planning, services, and housing assistance from IDOC.

When Sgt. Rush initially contacted Mr. Andrews, he did not know Mr. Andrews' identity or that he was the subject of the previously issued Officer Awareness bulletin.

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 POLICY¹

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.”

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 Gem County Prosecuting Attorney reviewed the CITF investigation and determined that Sgt. Rush'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 Sgt. Rush was faced with an immediate threat to his life and that his use of lethal force in response to that immediate threat did not violate applicable law or BPD policy. BPD noted positive performance by each officer present and had no additional training recommendations for the individual officers involved based upon this incident.

BPD recommended that department wide in-service training continue to emphasize:

- Contact and cover principles when contacting suspects.
- Pre-planning and designating roles when contacting suspects.
- Incident management training for supervisors.

C. OFFICE OF POLICE ACCOUNTABILITY FINDINGS:

OPA agrees that Sgt. Rush was justified in using deadly force against Mr. Andrews. OPA also concurs with BPD's training recommendations.

¹ This policy manual has been updated effective April 1, 2024, See www.cityofboise.org/media/16346/bpd-policy-manual-4124.pdf. The referenced policies in effect at the time of this incident are attached to this report.



When Sgt. Rush initially contacted Mr. Andrews, Andrews immediately reached into his pocket and drew a knife. He advanced towards Sgt. Rush holding the knife in an ice pick style grip, raised above his shoulders, with the blade oriented towards Sgt. Rush.

Upon seeing the knife, Sgt. Rush backed up several steps towards the rear of his patrol vehicle. Sgt. Rush gave numerous commands instructing Mr. Andrews to stop advancing and drop the knife.

Mr. Andrews then sat down and rolled onto his back just in front of the patrol car, facing Sgt. Rush at approximately 15-20 feet away. He did not comply with Sgt. Rush's command to drop the knife. He continued to hold the knife with the blade oriented towards Sgt. Rush. Mr. Andrews then immediately stood up, ignoring Sgt. Rush's commands to get "on the ground or I will shoot you." Sgt. Rush fired his weapon when Mr. Andrews took approximately 2 steps additional steps towards him, still holding the knife above shoulder height with the blade pointed towards Sgt. Rush.

When interacting with Mr. Andrews, Sgt. Rush knew that his patrol car was parked blocking the third (outside) traffic lane. Sgt. Rush's back was towards oncoming freeway traffic traveling in the first and second lanes. Sgt. Rush was aware that if he continued to move backwards, he could be struck by oncoming traffic. Sgt. Rush was aware that Mr. Andrews could easily move into freeway traffic lanes causing a crash and potentially injuring or killing members of the public.

Sgt. Rush was aware that his patrol car was unlocked and had a patrol rifle inside. He knew that if he backed away any further and Mr. Andrews advanced only a few feet, he may not be able to prevent Mr. Andrews from getting into the patrol car, stealing it, and/or accessing the rifle.

Given these circumstances and his proximity to the imminent and lethal threat of being stabbed with a knife, it was reasonable for Sgt. Rush to conclude that it was necessary to use deadly force against Mr. Andrews in self-defense and defense of others.

Immediately after the shooting, officers rendered medical aid to Mr. Andrews at the scene. He was quickly transported to the hospital by medical personnel. During this process, Mr. Andrews made statements evidencing his intent to kill the officers.

Given the speed at which the incident developed, the officers had no time to consider using less lethal force options, such as a taser or pepper spray.

OPA notes that in on-body video footage, events typically appear further away than they are due to the camera perspective. In this case, the distance between Sgt. Rush and Mr. Andrews when Sgt. Rush fired his weapon is approximately 15-20 feet based on the length of the patrol car and other indications from scene photography.

Based on the OPA review and analysis of the facts and circumstances of this case, OPA concurs with the CITF and BPD investigations that Sgt. Rush's actions were reasonable and necessary when faced with an imminent threat of being stabbed with the knife by Mr. Andrews. Sgt. Rush's actions were consistent with BPD policy and complied with the applicable legal standard for use of force by law enforcement officers.

POTENTIAL CONTRIBUTING FACTORS AND MITIGATION EFFORTS

Several factors contributed to this critical incident.

Mr. Andrews immediately pulled a knife on a police officer during a routine contact. Mr. Andrews failed to obey multiple commands to drop his knife and continued to move aggressively towards the officer while holding the knife in a threatening manner. He refused numerous opportunities to comply with the officer before deadly force was used against him.

Mr. Andrews repeatedly stated his intent to kill the officers immediately following the incident. His criminal history indicates a long-standing pattern of violent assaults directed towards others, including a member of his family and Idaho Department of Correction officers.

The CITF investigation revealed that Mr. Andrews has a history of violent and aggressive behavior and mental illness. While Mr. Andrews had access to programs and services while incarcerated and upon release, there is no indication that he accepted any assistance. It is unknown whether Mr. Andrews was experiencing a mental health crisis at the time of this incident. There was no indication at the time of the incident or information revealed during the investigation of substance abuse.

OPA recognizes the mitigation efforts used by BPD officers in the response to this incident. Officers quickly responded to a call of a person walking in the traffic lanes of a busy freeway. Sgt. Rush contacted Mr. Andrews in a courteous manner and attempted

to engage him in conversation. When threatened with a knife, Sgt. Rush attempted to move away. When Mr. Andrews ignored commands to drop the knife and continued to advance, Sgt. Rush used the amount of force necessary to mitigate the risk posed by Mr. Andrews. The officers then rendered medical aid at the scene and enabled a prompt response by emergency medical personnel.

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

RECOMMENDATIONS

OPA concurs with BPD's training recommendations and makes no additional recommendations.

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 www.cityofboise.org/departments/police/critical-incidents/ under "2023 Critical Incidents" and "January 3, 2023."

REPORT PREPARED BY:

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BOISE POLICE DEPARTMENT REFERENCED POLICIES

1.000 Use of Force

1.001 Use of Force/Authorization

Force is a deliberate and intentional application of effort by a police officer on another person.

A police officer shall never employ unnecessary force or violence and shall use only such force in the discharge of duty as is objectively reasonable in all circumstances. 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 suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. While the use of force is occasionally unavoidable, every police officer shall refrain from unnecessary infliction of pain or suffering and shall never engage in cruel, degrading, or inhumane treatment of any person.

Under *Graham v. Connor*, 490 U.S. 386 (1989), Officers will only apply force reasonably believed to be necessary under the circumstances. When determining when to apply force, consider the totality of the circumstances including the following.

- Immediate threat of the suspect to the officer/(s) or public
- Level of resistance offered
- The severity of the crime.

Force intentionally applied in excess of what is reasonably necessary, or in circumstances where there is no justification for its use, is an excessive application of force.

Officers will use de-escalation techniques to prevent or reduce the need for force when safe and feasible to do so based on the totality of the circumstances. This includes continually assessing the situation and modifying the use of force as circumstances change, consistent with officer safety.

Examples of de-escalation techniques include but are not limited to:

- Utilizing verbal skills and providing a warning prior to the use of force.
- Determining whether the officer may be able to stabilize the situation through the:
 - o use of time, distance, or positioning to isolate and contain a subject,
 - o request of additional personnel to respond or make use of specialized units or equipment and alternate resources including crisis-intervention team trained officers.

In the discharge of their duties an officer may encounter a dynamic situation requiring immediate action where time does not allow for the de-escalation techniques listed above.

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1.003 Use of Firearms in the Line of Duty

An officer shall be authorized to discharge firearms in the line of duty under the following conditions:

- To use their firearm to protect themselves or others from what they reasonably believes to be an imminent danger of death or serious bodily injury.
- To use their firearm to affect the capture or prevent the escape of a felony suspect whose freedom is reasonably believed to represent a significant threat of serious bodily injury or death to the officer or other persons.
- During firearms training sessions as directed by the firearms instructors.
- To shoot an animal as outlined in Treatment of Animals.

An officer shall not discharge firearms:

- As a warning
- When the discharge of the weapon may unreasonably endanger the lives of persons not involved in the commission of the crime in progress.