



USE OF FORCE INVESTIGATIVE REPORT

DATE OF INCIDENT: 01/23/2023
INVOLVED PERSON: Eli Robert Nash
INVOLVED BPD OFFICER: Cpl. Kip Paporello
WITNESS BPD OFFICER: Cpl. Tim Beaudoin
WITNESS BPD OFFICER: Ofc. Adam Crist
WITNESS BPD OFFICER: Ofc. Patrick Ellison
WITNESS BPD OFFICER: Ofc. Trevor Stokes
OPA: 23-0013
OIA: 23-0023
DATE OF REPORT: 07/29/2024

CASE SYNOPSIS

On January 23, 2023, Boise Police Department (BPD) officers were seeking to arrest Eli Nash on a felony warrant for absconding parole and for failing to register as a sex offender.

BPD and Idaho Parole and Probation officers working in plain clothes located Mr. Nash in a restaurant parking lot sitting in his car. Officers approached Mr. Nash's car, identified themselves as police officers, and ordered Mr. Nash to surrender. Mr. Nash quickly jumped into the backseat of his car. The car doors were locked. The backseat driver's side and passenger side windows were covered with a dark fabric preventing the officers from seeing what Mr. Nash was doing. BPD Cpl. Paporello moved to the rear windshield and looked down into the backseat passenger area of the car. Cpl. Paporello observed Mr. Nash crouching down and pointing a handgun toward other officers who were standing outside the driver's side of the car.

Cpl. Paporello then fired his duty handgun four times through the back windshield at Mr. Nash. Mr. Nash was struck by the officer's gunfire. Officers were able to break a side window, open the door and remove Mr. Nash. Officers attempted live-saving measures. Mr. Nash died at the scene.

DETAILED DESCRIPTION OF INCIDENT

In 2018, Mr. Nash was convicted in Idaho of two felony counts of Sexual Exploitation of a Child by Electronic Means. In that case, Mr. Nash was found in possession of child pornography involving digital images of very young children being sexually assaulted. Mr. Nash had served a prison sentence and was on parole in the Boise area.

In the fall of 2022, Idaho Probation and Parole officers conducted a home visit at Mr. Nash's residence. They seized two electronic devices from him, which violated

conditions of his parole. Officers submitted the devices for digital forensic processing to determine if they contained child pornography. Shortly afterward, Mr. Nash fled parole supervision. Parole officers were unable to locate or contact him. Mr. Nash was charged with Absconding Parole, a felony, and a warrant for his arrest was issued. On November 23, 2022, Idaho Parole and Probation officers assigned to fugitive apprehension began searching for Mr. Nash in the Boise area.

In January of 2023, BPD Cpl. Beaudoin began investigating Mr. Nash for failing to register as a sex offender, a felony offense. BPD and Idaho Parole and Probation officers coordinated their investigations to locate and arrest Mr. Nash.

Officers learned that Mr. Nash may be frequenting an apartment complex near Fairview Avenue in Meridian. Officers believed that Mr. Nash may have had an unidentified girlfriend in the apartment complex who had a young child. Officers also knew that Mr. Nash was suspected of sexually assaulting a 13-year-old girl in a previous incident. Because of the nature of Mr. Nash's previous offenses, officers were concerned that any child to whom he had access was potentially in danger and may already be a victim of sexual assault. Officers believed it was important to determine where he had been living, identify children he had contact with since absconding parole, and investigate any additional offenses. Officers recognized that any electronic devices in his possession or at his residence could contain photographic or other evidence of unknown victims and crimes. Officers were concerned that potentially valuable evidence on Mr. Nash's phone might be deleted if they were unable to seize his phone immediately upon contacting him.

On January 23, 2023, BPD Neighborhood Contact Officers (NCOs) and Parole Officers all working in plain clothes began a joint surveillance near the apartment complex. The purpose of the surveillance was to locate Mr. Nash, determine where and with whom he had been residing, and arrest him. During the surveillance, officers located Mr. Nash's car, a 2012 four-door Toyota Camry sedan. They positively identified Mr. Nash as the driver and sole occupant of the car.

Officers surveilled Mr. Nash for several hours waiting for him to lead them to where he had been residing. They observed him move to several different business parking lots before finally parking near the Texas Roadhouse restaurant. He appeared to be using free wi-fi from the businesses and viewing his phone while sitting in his car. Mr. Nash did not get out of his car at any point during the surveillance.

At approximately 4 pm, Cpl. Beaudoin decided to arrest Mr. Nash before he moved his car again. Cpl. Beaudoin understood the difficulty of conducting surveillance in rush



hour traffic and after dark. He was concerned that Mr. Nash would enter traffic flow and evade them if they didn't act soon.

Using police radios, the officers formed a plan to arrest Mr. Nash while he was seated in his car near the Texas Roadhouse. The plan called for Cpl. Beaudoin to pull into an open parking space directly in front of Mr. Nash's car, thereby preventing him from escaping by driving forward. Four officers riding in a single unmarked police car would block Mr. Nash's car from the rear. The four officers would then dismount and approach Mr. Nash's car from the rear with two officers on the drivers' side and two officers on passenger's side of the car. The officers would give commands for Mr. Nash to surrender, remove him from the car, take him into custody, and seize his phone. Cpl. Paporello would follow in his unmarked car to provide support if needed.

At approximately 4:28 pm, officers initiated their plan to arrest Mr. Nash. Officers were wearing external body armor/equipment carriers with "Police" markings clearly displayed on the front and back. Officers were equipped with on-body video cameras which functioned properly and captured the entire incident. The unmarked police car that blocked Mr. Nash's car from the rear was equipped with emergency police lights that were activated during the incident.

Officers blocked Mr. Nash's car from the front and rear according to their plan. BPD Officers Stokes and Ellison approached along the drivers' side of Mr. Nash's car. BPD Ofc. Crist and an Idaho Parole and Probation Officer approached along the passenger side of Nash's car. When officers approached, they could see Mr. Nash looking down at his phone. Officers identified themselves as Boise Police Officers, called Mr. Nash by name, stated he was under arrest, and ordered him to put his hands up. Mr. Nash looked left and right and observed the officers' locations. He did not comply with officers' commands to put his hands up. He appeared frantic as he tossed his phone into the front passenger seat and briefly grabbed the steering wheel and gear shift as if he wanted to drive away. Officers tried to open the car doors but discovered that they were locked. BPD Ofc Stokes used a punch tool to break the drivers' window as Mr. Nash quickly jumped from the drivers' seat over the console and into the backseat where he was out of view. Officers were unable to see into the backseat area because the rear drivers' side and passenger side windows were covered with what appeared to be dark colored fabric, which they had not previously noticed.

Cpl. Paporello moved to the rear of Mr. Nash's car and leaned over the trunk so that he could peer through the rear windshield down into the backseat area. He then saw Mr. Nash in the backseat with his back against the passenger side door, his legs on the seat, facing the rear driver's side door and window. He was crouching down so that his

head was below the top of the rear seat. Cpl. Paporello observed Mr. Nash pointing a handgun toward the rear driver's side window and door where Officers Stokes and Ellison were positioned. Cpl. Paporello then fired his duty handgun four times through the back windshield into the backseat at Mr. Nash. Officers then broke away some of the rear windshield glass and saw that Mr. Nash had dropped the handgun into his lap. His right hand was next to the gun. Mr. Nash appeared unresponsive. Officers then used the punch tool to break the passenger side rear window and unlocked the door. Officers then removed the fabric from the window and the handgun from Mr. Nash's lap. Officers then placed Mr. Nash on the ground where they attempted life saving measures until emergency medical personnel arrived. Mr. Nash died at the scene.

The Critical Incident Task Force (CITF) investigation determined that the pistol Mr. Nash had been pointing toward officers was a 9 mm CZ handgun with 14 rounds loaded in the magazine and a round in the chamber. The pistol had an exposed hammer, which was cocked and ready to fire.

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."

¹ 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 attached to this report.



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 Garden City Police 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 Blaine County Prosecuting Attorney reviewed the CITF investigation and determined that Cpl. Paporello'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 pointing a handgun at officers, Mr. Nash presented an immediate threat to their lives and that Cpl. Paporello's use of lethal force in response to that immediate threat was reasonable and did not violate applicable law. BPD found that Cpl. Paporello's actions were compliant with existing BPD policies. BPD identified no additional training recommendations specific to the individual officers involved in this incident.

BPD found that additional department-wide training and a review of procedures was warranted as a result of this incident.

BPD found there were deficiencies in procedures utilized during this incident including:

Supervision and Planning

- No supervisor was present during the incident. BPD noted that supervisors are specifically trained to consider the totality of the circumstances, slow down the pace, mitigate risk, ensure thorough planning, and obtain proper resources.
- The officers were all very experienced, but there was no designated leader for the operation.
- Planning was conducted hastily and over the radio.
- There was no plan for logical contingencies such as a barricaded suspect. Officers did not plan to back away, contain the suspect, and attempt to de-escalate in the event of a barricaded suspect.
- Marked police vehicles and uniformed officers were not used. BPD noted that they should be incorporated into planned operations to ensure that suspects and the general public are certain about the presence of police.

Communications

- Officers used a radio side channel not monitored by dispatch to conduct the operation.
- Officers did not advise Meridian Police Department (jurisdiction where the operation was taking place) or Ada County Dispatch that they were conducting a planned operation.

De-escalation

- From the outset, officers should have considered a plan to block the suspect vehicle and then attempt to call the suspect out of his car while officers utilized positions of cover. Additional time and distance would enhance officer safety, suspect safety, and maximize the opportunity to de-escalate.
- Securing evidence should not be prioritized higher than officer and suspect safety.

Training

- Officers should not conduct operations with personnel from outside agencies unless they have trained with those personnel in the specific types of operations being conducted.
- Except for the Special Operations Unit (SOU), BPD officers have not had specific training for conducting vehicle assaults. If BPD leadership determines that NCOs should be capable of conducting vehicle assaults, they should be provided specific training for this purpose.

BPD's findings noted that protocols are now in place to ensure that a supervisor will oversee any such operations in the future.

BPD recommended additional training to mitigate the issues noted above.

C. OFFICE OF POLICE ACCOUNTABILITY FINDINGS:

In addressing the arrest of Mr. Nash, OPA finds officers had a legitimate public safety interest in arresting Mr. Nash in the parking lot rather than attempting to continue the surveillance any further. BPD recognized that Mr. Nash was likely a danger to the community, especially to children. By conducting surveillance of Mr. Nash, they hoped to learn where he resided and if he had access to any children since absconding parole. During the surveillance, Mr. Nash did not lead officers to any residence. Officers recognized the difficulty of conducting surveillance in heavy rush-hour traffic and after dark. They did not want him to evade their surveillance and then return to his girlfriends' home where he might victimize a child.

Given these circumstances, officers reasonably decided to arrest Mr. Nash on his outstanding warrant. While there was a legitimate urgency to arrest Mr. Nash before he left the parking lot, and the officer's plan to block Mr. Nash's car in place was effective at preventing his escape, there was no exigent circumstance that required officers to utilize a vehicle assault type arrest plan. By approaching Mr. Nash's car on foot, officers were forced to respond to his actions and permitted him to drive the tempo of the operation. Officers were at greater risk than necessary when they left positions of cover and concealment and walked alongside Mr. Nash's car where he had a concealed a firearm, which he pointed at and could have readily fired at them.

OPA recognizes and appreciates that officers approached the arrest with the intent to secure evidence (Mr. Nash's phone). However, this decision increased the risk of an armed confrontation when safer options were feasible and more tactically sound. Officers should have pre-planned to contain Mr. Nash and attempted to call him back to them in a controlled manner from positions of cover and tactical advantage. This would have provided the officers with a greater degree of safety, distance, time to assess, and opportunity to de-escalate the situation. While Mr. Nash may have been able to delete any evidence on his phone, officer safety and safety of the suspect outweighs the potential loss of evidence. If Mr. Nash had chosen not to comply and barricaded himself in the car, officers, with time and tactical advantage in their favor, may have had opportunities to negotiate, consider less lethal options, and possibly resolve the situation without the necessity to use deadly force.

Addressing the use of force by Cpl. Paporello, OPA finds that by pointing a handgun towards the officers, Mr. Nash presented an imminent threat of death or serious injury to the officers standing outside the car. Because the rear windows were covered, the officers were unable to see that they were in Mr. Nash's potential line of fire. It was reasonable and necessary for Cpl. Paporello to use deadly force against Mr. Nash in these circumstances. OPA concurs with BPD and the CITF that Cpl. Paporello's actions were consistent with BPD policy and complied with the applicable legal standard for use of force by law enforcement officers.

It should be noted that since this incident, BPD has updated its Policy Manual, effective April 1, 2024. Policy 300 "Use of Force" and its subparts prescribe a detailed and robust set of standards for safeguarding the sanctity of life, use of force, duty to intervene, and employment of de-escalation tactics. An analysis of this critical incident under these updated policies would have required a demonstration of tactics to thoroughly preplan, obtain appropriate resources, designate roles and tactics to allow time, distance, and flexibility for the situation to resolve, and if unfeasible, documentation of the justification.

POTENTIAL CONTRIBUTING FACTORS AND MITIGATION EFFORTS

Several factors contributed to this critical incident.

Mr. Nash failed to cooperate with law enforcement. When confronted by officers, Mr. Nash refused to comply with multiple commands to surrender. Instead, he quickly jumped into the backseat of his car and armed himself with a pistol. He then pointed the pistol at officers resulting in deadly force being used against him.

Mr. Nash continued to engage in criminal conduct. Mr. Nash could have complied with his parole conditions and not fled from parole supervision. Mr. Nash acquired a handgun while on parole. As a convicted felon, he was not legally able to possess a firearm. This act violated his parole and constituted an additional felony offense. Mr. Nash could have turned himself in at any point while he was a fugitive.

There is no indication of any presence of illegal substances nor history of substance abuse, mental health related incidents or interactions with law enforcement involving a weapon.

OPA recognizes BPD's diligent efforts to locate and arrest Mr. Nash, a convicted sex offender and parole violator who presented a substantial threat to the community, especially to children. Officers accurately assessed the added risk to the community if he was not arrested on the day of this incident, creating a sense of urgency to take him into custody.

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 findings and training and procedural recommendations concerning this incident.

OPA recognizes the proactive policy development and training by BPD since this incident. BPD is training all sworn officers on the new polices, which emphasizes pre-planning, gathering appropriate resources, controlling the pace, constant communication between officers, supervisors and involved individuals, de-escalation, and report documentation. This training is conducted through classroom instruction and participation in live-action scenarios with role players.

With policy updates 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 accordingly and specifically looking to 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 "January 23, 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 believe 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.