



OMBUDSMAN'S REPORT
Complaint Investigation & Findings

OMB03/0051 – December 17, 2003

EXECUTIVE OVERVIEW

The Ombudsman investigated a complaint of false arrest. The investigation found that, while the officer made a mistake in his application of the law to the specific facts of the Complainant's situation, the officer acted in good faith, made reasonable efforts to consult with others before making the arrest, and acted immediately to release the Complainant once it was discovered that the arrest had been in error

THE SITUATION

On March 3, 2003 at approximately 10:50 PM, the Complainant was arrested by Boise Police Department (BPD) Officer #1 for "harboring a fugitive," Idaho Code § 18-205. An Ada County Deputy and another BPD officer, (Officer #2) were also involved. Earlier that same day, Officer #1 and Officer #2 had assisted the Ada County Sheriff's Office with a felony aggravated assault investigation. While searching for the Suspect in the aggravated assault, Officer #1 and Officer #2 had stopped the Complainant and questioned him about his relationship with the Suspect and his knowledge of the Suspect's whereabouts. The Complainant said that he was a friend of the Suspect, was looking for him, and wanted to help his friend in any way he could. The Complainant was told that the Suspect was wanted for a felony (aggravated assault). The Complainant was also warned by Officer #1 that he (the Complainant) would be subject to arrest for "harboring a fugitive" if he was found helping the Suspect in any way.

Later that same day, March 3, 2003, an Ada County Sheriff's deputy stopped a vehicle in which both the Complainant and the Suspect were traveling. The Suspect was arrested by the deputy for the felony assault. Officer #1 was called to the scene by the deputy and he arrested the Complainant for harboring a fugitive. The Complainant was then booked into the Ada County jail by Officer #1.

The BPD acting field commander (AFC), upon learning of Officer #1's arrest of the Complainant, consulted the department's legal advisor. The legal advisor informed the AFC that Idaho Code § 18-205 only makes it a crime to harbor a person who has been formally charged with a felony, not someone subject to probable cause arrest by the police against whom formal charges have not been filed. The AFC then ordered Officer #1 to release the Complainant from arrest. The Complainant was immediately released from custody.

THE COMPLAINT

The Complainant alleged that he had been the victim of a false arrest by Officer #1. The Complainant alleged that Officer #1 either knew, or should have known, that it was not a violation of the law (Idaho Code § 18-205) for the Complainant to give a ride to the Suspect before formal charges had been file against the Suspect.

BPD Policy and Procedures Manual (PM) § 21.0102: Alleged failure by Officer #1 to perform his duties.

THE COMPLAINT INVESTIGATION

A complete investigation into this allegation was conducted by the Office of the Community Ombudsman.

WHAT THE COMPLAINT INVESTIGATION FOUND

The preponderance of the evidence reviewed and gathered in this investigation supports the following findings:

1. Officer #1 responded to a felony domestic battery call in an effort to aid another agency on March 3, 2003.
2. Officer #1 made contact with the Complainant during an investigation to find the suspect in the felony domestic battery.
3. Officer #1 made the Complainant aware that he (Complainant) would be arrested if found in the presence of the suspect.
4. Officer #1 arrested the Complainant during a second contact, later in the day on March 3, 2003 for “harboring a fugitive.”
5. Prior to arresting the Complainant, Officer #1 consulted his criminal law manual and other more senior officers to ensure the arrest of the Complainant was proper.
6. Officer #1, after consultation with his AFC, released the Complainant from jail.
7. Officer #1 explained to the Complainant that he was releasing him from the custody of the jail as after consulting with the legal department it was determined that the Complainant had not harbored a fugitive, as the Suspect had not formally been charged with a crime.
8. The AFC also explained to the Complainant the reason for his arrest and the reason for his release.
9. Officer #1 apologized to the Complainant.

10. The Complainant was released from jail.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The crime that Officer #1 initially responded to was severe in nature. Officer #1 and his fellow officers searched extensively for the Suspect of the crime. Upon identifying the Complainant as a person who knew the Suspect as a friend, Officer #1 made it clear to the Complainant that his friend had committed a serious crime. Officer #1 explained to the Complainant that providing any aid to his friend would be illegal and ill-advised, as his friend was to be arrested for a felony. The Complainant told Officer #1 that he understood.

In Officer #1's second contact with the Complainant, the Suspect had been found in the Complainant's company (the Complainant was transporting the Suspect). Officer #1 discussed the Complainant's involvement in the situation with fellow officers who had more experience than did he. Officer #1 also consulted his code book. He determined that, because the Suspect was wanted by the police for a felony, and because the Complainant knew about this, the Complainant had violated Idaho Code §18-205 by aiding the Suspect.

The Boise Police Department's Performance of Duty policy, § 21.0102, states (in part):

a. Officers shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Satisfactory performance and competence is demonstrated by:

- (1) Adequate knowledge of the application of laws required to be enforced.*
- (2) Willingness and ability to perform assigned tasks properly.*
- (3) Conformance to the work standards established for the officer's rank, grade,*

or position.

(4) Taking appropriate and timely action when a crime, disorder, or other condition requiring police action occurs.

Officer #1 made an arrest based on an incorrect application of the term “charged.” He believed that, since there was probable cause to arrest the Suspect and the Complainant was fully aware that an active search was being conducted in order to arrest the Suspect, he (Officer #1) had the authority to arrest the Complainant for harboring the Suspect. Officer #1 consulted both his code book and more senior officers in his decision-making. While officers are required to have adequate knowledge of the law, occasionally situations occur that do not fall within the norm. In such cases, it is expected that officers will seek and obtain guidance before making a decision. Officer #1 consulted both his code book and other officers. Based on his own training and the consultations he conducted in this case, Officer #1 believed that the Complainant had violated Idaho Code §18-205 and that his arrest of the Complainant was lawful.

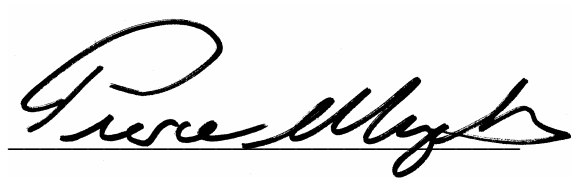
Upon learning of the arrest from Officer #1, the AFC contacted his lieutenant, who, in turn, consulted with the department’s legal advisor. Based on the fact that the Suspect had not been formally charged and no warrant had been issued, it was determined that the Complainant should not have been arrested for harboring a fugitive. The AFC directed Officer #1 to immediately release the Complainant from custody. The AFC also attended that release and continued to advise and counsel Officer #1. Upon the release of the Complainant, the AFC conducted a timely, thorough and objective Administrative Review of Performance of Officer #1.

In summary, the facts of this case show that Officer #1 made an honest mistake, acted in good faith, and took appropriate and timely action to correct his mistake once the error

was brought to his attention.

Therefore, I have issued the following finding regarding the allegation made in this complaint:

BPD Policy and Procedures Manual (PM) § 21.0102: Alleged failure by Officer #1 to perform his duties – **EXONERATED**.

A handwritten signature in black ink, reading "Pierce Murphy", written over a horizontal line.

Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org