



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB03/0032 - May 18, 2004

THE SITUATION

Two Boise Police officers were dispatched to the Complainant's home, as the result of two calls that had been placed to dispatch. The Complainant's girlfriend placed the first telephone call. She reported that the Complainant battered her. The Complainant, less than one-minute later, also telephoned dispatch. He reported that his girlfriend had battered him. Officer #1 and Officer #2 arrived at the Complainant's home to ascertain why the calls were made and evaluate what should be done.

THE COMPLAINT

The Complainant said that Officer #1 placed him in handcuffs and then walked him to a shelving unit and purposefully hit his (Complainant's) head against the shelving unit. The Complainant said that Officer #1 caused injury to him (Complainant). If this allegation was found to be true, it would be a violation of §1.0100 of the Boise Police Department's Policy and Procedure Manual. This section governs use of force.

THE COMPLAINT INVESTIGATION

The investigation included a reviewing the police report, a supervisory report, a memo documenting a review conducted by an investigator within BPD's Office of Internal Affairs, and photographs taken of the Complainant shortly after his arrest. Audio recordings of the arrest were reviewed, as well as a recording made by the Acting Field Commander (AFC) of his interview with the Complainant, and recordings of the investigative interviews conducted with the parties present during the arrest.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on a preponderance of the evidence obtained and reviewed in the course of this investigation, I issued the following findings of fact:

1. The Complainant's girlfriend called Ada County Dispatch and reported that the Complainant hit her on January 17, 2003 at 11:36:29 PM.
2. The Complainant called Ada County Dispatch and reported that his girlfriend hit him on January 17, 2003 at 11:37:10 PM.
3. Officer #1 and Officer #2 were dispatched at 11:37:45 PM to the Complainant's residence based on the calls made to Ada County Dispatch.
4. Officer #1 arrived at the Complainant's residence at 11:42:18 PM.
5. Officer #2 arrived at the Complainant's residence at 11:45:43 PM.
6. The Complainant's girlfriend warned Officer #2 that she (Officer #2) would need assistance if she was going to confront the Complainant.

7. Officer #3 was dispatched at 11:52:59 PM.
8. Officer #3 arrived at the Complainant's residence at 11:54:19 PM.
9. Paramedics were dispatched at 11:54:27 PM.
10. The AFC was dispatched at 11:54:38 PM.
11. The AFC arrived at the Complainant's residence at 12:03:46 AM (January 18, 2003).
12. Officer #1 repeatedly asked the Complainant to explain what occurred to prompt the call to Ada County Dispatch.
13. The Complainant refused to tell Officer #1 what occurred prior to the arrival of the police.
14. The Complainant became angry and confrontational with Officer #1.
15. Officer #1 asked the Complainant, several times, to calm down and to sit down.
16. The Complainant refused to follow the directives provided by Officer #1.
17. Officer #1 and Officer #2 each took an arm of the Complainant and moved to a cabinet area in the Complainant's garage, in order to stabilize him so that he could be handcuffed.
18. The Complainant sustained an injury to his left eye-brow (a cut) and an injury to his bottom lip (a cut from his teeth) during the time officers were attempting to stabilize him in the cabinet area of the Complainant's garage.
19. Officer #1 requested that Officer #2 contact paramedics and a supervisor to respond to the residence, due to the Complainant's injuries.
20. Paramedics arrived to the Complainant's residence; the Complainant refused their assistance.
21. The AFC arrived and offered to take a complaint from the Complainant.
22. The AFC's and Complainant's conversation about a complaint became argumentative.
23. The Complainant told the AFC he did not want to file a Complaint.
24. Officer #1 was present during the conversation between the AFC and the Complainant.

25. The AFC spoke with the Complainant's girlfriend. The Complainant's girlfriend told the AFC she did not see anything between the police and the Complainant.
26. The Complainant's girlfriend did not make a report that she saw the Complainant sitting at the picnic table in handcuffs and then hearing the police yell at the Complainant to stop resisting.
27. Officer #1 transported the Complainant to the Ada County Jail.
28. The AFC arranged for photographs to be taken of the Complainant after he was booked into jail.
29. A sergeant reviewed the situation and made an attempt to contact the Complainant while documenting the incident in an AIR on January 21, 2003.
30. An investigator for the Office of Internal Affairs was assigned to review the incident. The investigator reviewed the police reports, the audio recordings, and the report completed by the sergeant, but made no recommendations or conclusions.
31. On May 24, 2003, Officer #1 was dispatched to the Complainant's residence in reference to a call that there was disturbance. The Officer evaluated the situation and departed.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Police and Procedure Manual (PM) for the Boise Police Department (§ 1.0100) governing the use of force states:

Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when

necessary to effect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. Officers may also use any other reasonable force to gain control of the situation provided authorized techniques are not available or practical.

The policy goes to explain the criteria for use of force under §1.0102:

1. *The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident.*
2. *The criteria for determining use of force shall include but not be limited to:*
 1. *The severity of the crime.*
 2. *The nature and extent of the threat posed by the suspect.*
 3. *The degree to which the suspect resists arrest or detention.*
 4. *Attempts by the suspect to evade arrest by flight.*
 5. *Other factors, including:*
 1. *Nature and quality of intrusion upon the individual.*
 2. *Duration of that intrusion.*
 3. *Severity of injuries inflicted, if any.*

4. *Officer/Subject size and other physical attributes.*
5. *Environmental considerations.*
6. *Reaction time.*
7. *Totality of circumstances.*

The Complainant, upon the arrival of Officer #1, refused to explain what happened and why he phoned dispatch. As Officer #1 attempted to question the Complainant, the Complainant became angry. The Complainant began yelling, cursing and posturing in a manner that suggested that he may become violent. The Complainant was also, to some degree, under the influence of alcohol. Officer #1 made several attempts to diffuse the situation by calmly talking to the Complainant. Officer #1 determined that the Complainant was not going to calm down. For the purposes of officer safety and in order to gain control of the situation, Officer #1 alerted the Complainant that he was going to be placed in handcuffs. As Officer #1 attempted to handcuff the Complainant, the Complainant resisted. Officer #2 stepped in to assist Officer #1 and they walked the Complainant to a shelving unit to gain better control over the Complainant's body movements. It was during that time the Complainant sustained an injury to his eyebrow and lower-lip.

While it is not clear how the injuries occurred, it is clear that they occurred in the process of handcuffing the Complainant and were accidental. Officer #1 immediately upon realizing the Complainant sustained an injury, had Officer #2 request the assistance of paramedics and a supervisor. Based on the evidence in this case, it is clear that the injuries sustained by the

Complainant were accidental. The injuries occurred at the time that Officer #1 and Officer #2 were handcuffing the Complainant and were not caused by an intentional action on the part of either officer. The statement provided by Officer #1 was consistent with his audio recording of the event. His audio recording time was consistent with the amount of time he was at the residence of the Complainant.

Therefore, I have issued a finding of unfounded in this matter.

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