



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB03/0266 - January 20, 2004

THE SITUATION

A motorist (the Complainant) was stopped on Broadway near BSU by a Boise police officer (the Officer) for rapid acceleration. The stop took place on December 20, 2003, at about 1:00 a.m. In the course of the traffic stop the Officer detected signs of intoxication and arrested the Complainant for DUI. The Complainant was taken to the Ada County Jail where a breath test was administered. The results of the test showed that the Complainant's blood alcohol content was below the legal limit for presumption of impairment. The Officer released the Complainant from custody and issued him a citation for the rapid acceleration.

THE COMPLAINT

The Complainant alleged that the Officer used profanity when he released the Complainant. It was alleged that the Officer said to the Complainant, "No, I'm not giving you a ride back to your f—ing car."

THE COMPLAINT INVESTIGATION

I reviewed the police report filed by the Officer, as well as the dispatch system's incident history for this traffic stop. I listened to an audio recording made by the Officer during his contact with the Complainant.

The report and audio are consistent with the Complainant's explanation of the incident, with the exception of his assertion that the Officer used profanity in telling him that he was not going to take the Complainant back to his car. The audio appears to have been paused only once during the Officer's entire contact with the Complainant. This pause takes place as the Complainant is being transported from the scene of his arrest to the jail. At no time could I hear the Officer say the word "f—ing" or any other swear word or profanity. In fact, the Officer was cordial and pleasant the whole time. The Officer did make it clear that he was not going to take the Complainant back to the Complainant's car because he (the Officer) was concerned that the Complainant might be too impaired to drive. The Officer can be heard laughing slightly at the notion that he would take the Complainant back to his car, given the Complainant's impaired state. However, the Officer never uttered a foul or profane word that was captured on the digital recorder the Officer was carrying on his belt. In fact, the entire contact between the Officer and the Complainant sounded as pleasant as such a situation might be.

I interviewed the Officer who provided the same information that was on his recording and in his report.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, the following factual findings are made:

1. The Officer arrested the Complainant on December 20, 2003, for suspicion of driving under the influence.
2. The Officer had probable cause to make this arrest.

3. The Officer took the Complainant into physical custody and transported him to the Ada County Jail.
4. At the Ada County Jail, the Complainant provided two breath samples, neither of which showed a blood alcohol level at or above the legal limit.
5. Within a few minutes after the completion of the last breath test, the Officer released the Complainant from custody at the Ada County Jail.
6. The Officer used no profanity in conversation with the Complainant or within the hearing of the Complainant.
7. The Officer treated the Complainant with respect and courtesy during and throughout the entire time of their contact on December 20, 2003.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Boise Police Department's Policy and Procedures Manual (PM), § 21.0307 – Relationships With Others, requires the following behavior from its employees during their contacts with members of the public:

An employee shall treat all other persons in a civil and respectful manner. He/she shall not use profanity or uncomplimentary speech in the presence of members of the public, prisoners, or other people he/she has contact with nor shall he/she intentionally antagonize any person.

The evidence is clear. The Officer did not use profanity in conversation with, or within earshot of the Complainant. To the contrary: the Officer comported himself in a manner

that was a model for the requirements of this policy.

Therefore, the following policy finding is issued in connection with the Complainant's allegation that the Officer used profanity in communicating with the Complainant:

PM 21.0307

Alleged use of profanity

UNFOUNDED

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