



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB04/0209 - April 15, 2005*

#### ***SUMMARY***

The Complainant alleged that three Boise Police officers used excessive and unnecessary force on him. A thorough and independent ombudsman's investigation was conducted to determine the facts. As a result of this investigation, findings were issued that exonerated the involved officers.

#### ***THE SITUATION***

On October 31, 2004, at approximately 6:12 p.m., the Ada County Dispatch Center received a call from a motorist reporting a possible drunk driver in the area of 32<sup>nd</sup> and State. The caller stayed on the phone with dispatch and followed the vehicle (a pickup truck) east on State Street, south on Americana, east on River, and south on 9<sup>th</sup> Street. At this point, a BPD patrol car pulled in behind the pickup. The BPD car was being driven by a field trainee officer (Officer #1). Also in the police car was Officer #1's field trainer (Officer #2).

Officer #1 followed the pickup as it turned left onto Boise Avenue from Capitol. He then initiated a traffic stop of the truck and it pulled over on Boise Avenue near Martha. Officer #1 made contact with the driver of the pickup (the Complainant), obtained the required paperwork after some discussion and delay, and returned to the area of his patrol car.

While Officer #1 was making his initial contact with the Complainant at the driver's window of the pickup, Officer #2 was observing from outside the patrol car. At the same time, Officer #3 arrived to assist.

As the pickup truck was pulled over, a passenger car driven by a female pulled up and parked in front of the truck. The officers established that the female was the Complainant's daughter and they directed her to remain in her car while they handled the situation with her father.

When Officer #1 came back to the area of his patrol car, after making his initial contact with the Complainant, he consulted with Officer #3 while Officer #2 watched the pickup and its driver. At this point, the Complainant started the engine of the pickup and began to move it. Officer #1 and Officer #2 ran to the driver's side of the truck. Officer #3 ran to the passenger side initially and then over to the driver's side to assist the other two officers. The Complainant was physically removed from the truck, taken to the ground, handcuffed and placed in the back of the patrol car driven by Officer #1.

While the Complainant was being removed from the truck, Officer #3's holster containing his firearm was ripped from the leather loop that held it on Officer #3's duty belt. The holster with the weapon inside of it fell to the ground.

The Complainant was arrested and taken to jail. He submitted to a Breathalyzer test which registered at .00/.00, indicating the absence of any alcohol in his system. He was booked into jail and charged with reckless driving, resisting and obstructing, and attempting to remove a firearm from a law enforcement officer.

### ***THE COMPLAINT***

The Complainant contacted the Ombudsman's Office on November 4, 2004, to file a complaint regarding his arrest on October 31, 2004. Specifically, the Complainant alleged he was dragged out of his vehicle for no reason, thrown to the ground, roughly handled,

handcuffed too tightly, slammed face-down onto the trunk of a police car, and struck on the leg by the back door of a police car.

### ***THE COMPLAINT INVESTIGATION***

I interviewed all witnesses who were known to me, with one exception. Shortly after this incident, Officer #1 left the Boise Police Department for unrelated reasons. As a result, he was not available for an interview. However, I did interview the other two officers, the Complainant, the Complainant's daughter, and the motorist who originally called 911 to report the reckless driving.

The Complainant provided me with photographs which, according to him, show injuries he sustained to his knees during the incident. When I interviewed the Complainant on November 24, 2004, I examined his knees, wrists, head, and face. I observed some scabs and light scars on the Complainant's knees. These were consistent with the injuries depicted in the photographs provided by the Complainant. I observed no visible injuries to the Complainant's wrists, head, or face. The Complainant gave me access to his medical records. I reviewed these as they related to any treatment he received following his arrest.

I also located and listened to the audio recordings made during the incident by the three officers. Finally, I read and reviewed the police reports associated with this incident.

### ***WHAT THE COMPLAINT INVESTIGATION FOUND***

1. Officer #1 and Officer #2 had probable cause to stop and detain the Complainant for investigation of traffic violations and possible DUI.

2. The Complainant was ordered by Officer #1 to turn off the truck's engine and to wait in his truck while Officer #1 returned to his police car.
3. The Complainant turned off the truck's engine in response to this order.
4. After Officer #1 left the driver's door of the truck and walked back to the police car, the Complainant re-started the truck's engine and drove the truck forward and to the left towards the traffic lane.
5. Officer #2 ordered the Complainant out of the truck.
6. The Complainant did not comply with this order and actively, physically resisted being removed from the truck. The Complainant continued this resistance as he was removed from the truck, taken to the ground, handcuffed, taken to the police car, searched, and placed in the back of the police car.
7. Officer #1 used no force on the Complainant.
8. Officer #2 used the following force on the Complainant:
  - a. Soft, empty hand controls.
9. Officer #3 used the following force on the Complainant:
  - a. Elbow strikes to the Complainant's hands as the Complainant was holding onto Officer #3's handgun and holster.
  - b. Soft, empty hand controls.

10. The Complainant's head was pushed and held down against the trunk of the police car by both Officer #2 and Officer #3.

11. The Complainant's leg was not slammed into the police car's door.

### **OMBUDSMAN'S ANALYSIS AND FINDINGS**

The BPD Policy and Procedures Manual § 1.0100 (sub§ 1.0101 and sub§ 1.0102) imposes the following restrictions on officers regarding the use of force by officers:

*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. When authorized techniques are not available or practical, officers may also use any other reasonable force to gain control of the situation. (§ 1.0101)*

*The criteria for determining use of force shall include, but not be limited to:*

- *The severity of the crime*
- *The nature and extent of the threat posed by the suspect*
- *The degree to which the suspect resists arrest or detention*
- *Attempts by the suspect to evade arrest by flight*
- *Other factors, including:*
  - ✓ *Nature and quality of intrusion upon the individual*
  - ✓ *Duration of that intrusion*
  - ✓ *Severity of injuries inflicted, if any*
  - ✓ *Officer/subject size and other physical attributes*
  - ✓ *Environmental considerations*
  - ✓ *Reaction time*
  - ✓ *Totality of circumstances (§ 1.0102)*

All three officers heard the Complainant start the truck's engine and saw the truck moving forward and to the left (towards the street). The Complainant had been told to wait where he was while Officer #1 continued his investigation into the Complainant's driving. Upon

hearing the engine start and seeing the truck move, Officer #2 and Officer #3 both concluded that the Complainant was attempting to flee. Such a conclusion was reasonable given the circumstances. Both officers feared for the safety of the community, given the Complainant's driving behavior as reported by Witness #1 and the officers' suspicions that the Complainant might be under the influence of alcohol and/or drugs. For these reasons, all three officers were justified in ordering the Complainant to stop and get out of the truck. The officers were also authorized, given the circumstances, to use force (reasonable and necessary) to prevent the escape of the Complainant and keep him from driving the truck.

It is clear that Officer #1 used no force on the Complainant. Therefore a finding of UNFOUNDED has been issued for the allegation that he violated § 1.0100 of the BPD Policy and Procedures Manual.

The evidence shows that Officer #2 used only his hands to grab and control the Complainant. Officer #2 leveraged the Complainant to the ground and used his body weight to hold him down, both on the ground and later on the trunk of the police car. Given the circumstances, the resistance of the Complainant, and the clear need to prevent the escape of the Complainant, I find that Officer #2 complied with the requirements of § 1.0100 of the BPD Policy and Procedures Manual. Therefore, a finding of EXONERATED has been issued for the allegation that Officer #2 violated policy § 1.0100.

The evidence in this case proves that Officer #3 used one or more elbow strikes in an attempt to prevent the Complainant from gaining control of Officer #3's handgun. Given that Officer #3 was facing an immediate threat to his life from the Complainant's attempt to gain control of his (Officer #3) handgun, I find Officer #3's use of elbow strikes to be both reasonable and necessary, and that he complied with the requirements of § 1.0100.

In addition, Officer #3 used his hands to grab and control the Complainant. Officer #3 also pushed the Complainant down on the trunk of the police car to maintain control. Given the

totality of the circumstances (most notably the active resistance of the Complainant), I find Officer #3's use of his hands and arms to grab and control the Complainant to be both reasonable and necessary, and that he conformed with the requirements of § 1.0100.

For all of the above reasons, I have issued a finding of EXONERATED for the allegation that Officer #3 violated policy § 1.0100.

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