



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB04/0235 - August 18, 2005

THE SITUATION

Officer #1, Officer #2, and Officer #3 responded to an apartment complex to investigate the report of a battery. The victim, the Complainant, and the Complainant's friend were interviewed. Officer #3 directed the Complainant to step from his friend's patio so that the victim could look at him in order to determine whether or not the Complainant was a suspect in the battery. The Complainant refused. The Complainant was arrested for Resisting and Obstructing on December 18, 2004.

THE COMPLAINT

The Complainant filed a complaint with the Office of the Community Ombudsman on December 20, 2004. The Complainant alleged that Officer #1 and Officer #2 violated his rights and falsely arrested him. The Complainant alleged that Officer #1 and Officer #2 pulled him from his friend's apartment without proper authority, after he declined to step out from the patio area of the apartment.

The following allegations were made:

Officer #1

P.M. § 21.0102 – Alleged unprofessional performance of duty.

Officer #2

P.M. § 21.0102 – Alleged unprofessional performance of duty.

THE COMPLAINT INVESTIGATION

The following people were interviewed during the course of this investigation:

1. The Complainant.
2. Officer #1.
3. Officer #2.
4. Officer #3.

The audio recordings made by the officers were reviewed, the police and dispatch reports that pertained to this incident were read, and photographs of the area of arrest were taken and analyzed.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence, the following findings of fact were issued:

1. Officer #1, Officer #2, and Officer #3 were dispatched to a call regarding a battery that had just occurred. The dispatch information included that the person assaulted was bleeding from the head and nose.
2. Officer #1 and Officer #3 asked the Complainant's friend if they could enter her apartment to discuss the battery they were investigating. The Complainant's friend allowed the officers to enter her apartment.
3. Upon entry into the Complainant's friend's apartment, Officer #1 asked her if anyone else was present in her apartment. The Complainant's friend told Officer #1 that she was the only one in the apartment. She then admitted that the Complainant was also in her apartment.

4. The Complainant told Officer #1 and Officer #3 that he saw the whole fight.
5. The Complainant and his friend told Officer #1 and Officer #3 that they did not know the people attending the Complainant's birthday party.
6. Officer #1 asked the Complainant for his name.
7. The Complainant refused to give his name and said it was because he did not want to "incriminate" himself further.
8. Officer #1 reminded the Complainant that he was a witness to a crime.
9. The Complainant disagreed with Officer #1 and told him that he was not a witness.
10. Officer #1 departed the Complainant's friend's apartment and returned to the victim's apartment.
11. Officer #1 conducted a follow-up interview with the victim. Officer #1 asked the victim if he would be able to recognize the people that battered him.
12. The victim told Officer #1 that he thought he could recognize the primary person, but was not sure he would be able to recognize the other people that jumped him.
13. The Complainant stood on the apartment patio.
14. Officer #2 and Officer #3 were on the grassy area adjacent to the patio.
15. The Complainant was a potential suspect in a battery.
16. Officer #3 ordered the Complainant to step away from the patio so the victim could look at him.
17. The Complainant refused and began to enter his friend's apartment.

18. Officer #2 grabbed the Complainant, pulled him from doorway area of the apartment, and arrested him for resisting and obstructing.

OMBUDSMAN'S ANALYSIS AND FINDINGS

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

Employees 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:

- *Adequate knowledge of the application of laws required to be enforced*
- *Willingness and ability to perform assigned tasks properly*
- *Conformance to the work standards established for the employee's rank, grade, or position*
- *Taking appropriate and timely action when a crime, disorder, or other condition requiring police action occurs*

Officer #1, Officer #2, and Officer #3 knew that a crime had been committed. Officer #1, Officer #2, and Officer #3 took appropriate and timely action to investigate the crime in an attempt to identify the suspect. Officer #1, Officer #2, and Officer #3 showed an adequate knowledge of the application of the laws required to be enforced and a willingness and ability to perform their tasks properly, by determining a reasonable articulable suspicion that the Complainant, based on his behavior (uncooperative, evasive) and comments (did not wish to "incriminate" himself further), could be a suspect in the battery.

For these reasons, I have issued the following findings:

Officer #1

P.M. § 21.0102 Performance of Duty – Unfounded.

Officer #1 did not arrest the Complainant.

Officer #2

P.M. § 21.0102 Performance of Duty – Exonerated.

Officer #2 had a reasonable articulable suspicion to believe that the Complainant was involved in the battery and thereby had authority to detain him for questioning or a field show up. Based on that suspicion and the Complainant's attempt to flee the detention, Officer #2 had probable cause to arrest the Complainant for resisting and obstructing.

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