



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMBOS/0002 - June 30, 2005

EXECUTIVE OVERVIEW

The Complainant alleged that Officer #2 used excessive force when she was arrested for fighting near the corner of 6th and Main on January 1, 2005. As evidence of the unnecessary force, the Complainant said she needed to seek medical treatment for soft tissue damage to her wrist immediately following her release from police custody.

An investigation found that Officer #2 used very little force to bring the Complainant's arms behind her back so she could be handcuffed. While the Complainant's wrist may have been hurt when Officer #2 pulled her arms back, it is just as likely it occurred when she was fighting. As a result, the ombudsman issued a finding of "exonerated" in this case.

THE SITUATION

On January 1, 2005, at about 1:20 a.m., Officer #1 was on routine foot patrol on 6th Street, just south of Main. Officer #1 saw the Complainant punch another woman in the face. The officer grabbed hold of the Complainant's arm, placed her under arrest, and began to pull her away from the other woman. The Complainant struggled with Officer #1 as he continued to walk backwards, pulling her along with him. Officer #1 tripped and lost his grip on the Complainant.

Officer #2 was nearby and saw the Complainant struggling and Officer #1 falling to the ground. In order to protect Officer #1 and regain control of the Complainant, Officer #2 grabbed both her arms and pulled them behind her back. Officer #1 regained his footing and handcuffed the Complainant as Officer #2 held her arms firmly behind her back.

The Complainant was taken to a nearby mobile police substation where she was cited and released.

THE COMPLAINT

The Complainant filed a complaint with the Office of the Community Ombudsman on January 3, 2005. The Complainant said she was at 6th and Main on New Year's Eve and told a police officer she was having problems with another female. The Complainant said that, about five minutes after telling the police officer she was having a problem, the female walked up to her with a drink in her hand and she (the Complainant) punched the female. The Complainant said she knew she was going to get in trouble for it. She said Officer #1 walked up to her and told her she was under arrest for fighting. The Complainant said that, as Officer #1 pulled her arms behind her, one of her arms came out of her coat sleeve. She said that, as she was trying to put her arm back into her sleeve, Officer #1 was still pulling on her arms and backing up at the same time. The Complainant said Officer #1 tripped on something and fell down. She said another officer (Officer #2) grabbed her, yanked her wrist, and told her to stop resisting. The Complainant said she wasn't resisting, but the officer would not pay attention to her or let her get her words out.

The Complainant said Officer #1 stood up and asked her if she was okay. He took control of her again and asked her several times if she was okay. She said she got the impression that Officer #1 saw how rough the other officer had been with her. She also said Officer #1 looked at her hand and apologized to her profusely. The Complainant said she was cited for fighting in public and released.

The Complainant said she went to the hospital emergency room (on her way home) because her hand and wrist began to hurt and swell. She said the doctor told her she had torn tendons and would need to see a specialist. The Complainant was asked to provide a list of

witnesses. The Complainant agreed to gather that information and mail it to the ombudsman's office.

The Complainant was interviewed a second time on January 13, 2005. Photographs were taken of her hand, though no injuries were visible. The Complainant described how she was handled by both Officer #1 and Officer #2. The Complainant explained that, after Officer #1 told her she was under arrest for fighting, he took hold of her arms to handcuff her. As he took hold of her left arm, her arm got caught up inside her sleeve, causing her arm to be stuck similar to a "chicken wing." The Complainant said Officer #1 was at her left side, moving backwards and pulling her arms at the same time. She said she was trying to tell him that her arm was caught, but was unable to do so, given all the noise and confusion. Officer #1, in his backwards movement, tripped on something and fell to the ground. She said he fell "pretty hard."

The Complainant said that, after Officer #1 fell, Officer #2 rushed to her, grabbed her left hand, which was no longer caught inside her sleeve and pulled her arm behind her, at the same time twisting her wrist and hand. The Complainant felt her wrist "pop." The Complainant felt there was no reason for Officer #2 to handle her in such a rough manner. Officer #1 took control of her again, after she was handcuffed, and asked her several times if her hand was okay. The Complainant said she believed Officer #1 witnessed the way Officer #2 grabbed her.

THE COMPLAINT INVESTIGATION

In the course of this investigation, I read the police report of the arrest written by Officer #1. I also reviewed the dispatch records of the incident.

I found that Officer #1 made an audio recording of his contact with the Complainant. I

listened to this recording and found nothing in it to indicate that anything unusual took place during his arrest of the Complainant. It is clear that her wrist hurt, since she stated this several times to Officer #1. However, the audio recording was not helpful in determining how the Complainant's wrist may have been injured.

The Complainant provided a release for me to review the medical records of her visit to the emergency room shortly after her arrest on January 1, 2005. The Complainant was diagnosed as having a sprained hand and wrist and prescribed medication to relieve the associated swelling and pain. She was referred to a physician for follow-up care as necessary.

I interviewed both Officer #1 and Officer #2. Their memories of the arrest were similar to the account provided by the Complainant, though neither officer could recall anything specific that would explain the Complainant's injury. Both officers admitted to grabbing the Complainant's arms, but denied using any other force on her. Officer #1 recalled the Complainant claiming that her wrist hurt, but did not necessarily associate it with her arrest. He saw the Complainant hitting another woman and assumed her wrist may have been injured in that altercation.

Although the Complainant was asked several times to provide the ombudsman's office with the names and phone numbers of people who witnessed her arrest, the Complainant never followed up with this information.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence available in this investigation, the following findings of fact regarding the events of January 1, 2005, were made.

1. Officer #1 grabbed the Complainant by the arm and attempted to pull her away from a fight.
2. Officer #1 lost his balance and fell, letting go of the Complainant in the process.
3. Officer #2 came up behind the Complainant and pulled her arms behind her back.
4. Officer #1 placed handcuffs on the Complainant and took her to the mobile substation parked on 6th Street south of Grove.
5. The Complainant complained to Officer #1 about pain in her wrist.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The BPD Policy and Procedures Manual in effect at the time of this incident (§ 1.0101) provides the following restrictions and guidance to officers regarding their use of force:

An officer 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 affect the capture or prevent the escape of a subject, 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.

Officer #1 saw the Complainant commit a misdemeanor in his presence (fighting in public). Thus, he had the lawful authority to arrest the Complainant and use reasonable and necessary force to bring her into custody.

It is clear that the only force used on the Complainant by either officer was grabbing her arms and forcing them behind her back. While it is possible that the Complainant's wrist was injured when Officer #2 grabbed her, it is equally possible the injury happened sometime before her arrest. In any case, it is clear that only minimal, restraining force was used on the Complainant and that this force was reasonable and necessary to arrest her and bring her under control.

For these reasons, I have issued a finding of "exonerated" for the allegation that Officer #2 violated § 1.0101 of the BPD Policy and Procedures Manual.

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