



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB07/0110 - June 16, 2008*

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

In the late summer of 2007, at about 10:00 p.m., the clerk at a Boise area convenience store called the Ada County Dispatch and reported a possible narcotics sale taking place near the store. Boise Police Department (BPD) officers were dispatched and given the vehicle description that had been provided by the clerk. Officers contacted several individuals in front of the store, some sitting at a table near the gas pumps and others inside a vehicle that matched the description given by the clerk. Further investigation led to the detention of several individuals, including the Complainant, and a search of the vehicle. Marijuana, paraphernalia, and a large amount of cash were found inside the car and on the Complainant. The Complainant, a juvenile, was removed from the vehicle and handcuffed. A few moments later, the Complainant tried to get away by running from the scene. However, he was re-apprehended nearby and placed into hobbles. The Complainant and three other persons were taken to the Public Safety Building (PSB) at 7200 Barrister. While there, the Complainant was held in a locked interview room and contacted by a BPD detective (Officer #1). After some time, the Complainant was taken to the Ada County Juvenile Detention Facility where he was booked.

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

The Complainant alleged that, without cause or justification, Officer #1 grabbed him by the hair twice; the first time lifting him from a seated to a standing position and the second time merely lifting up his head. The Complainant reported that this caused him pain. This allegedly took place while the Complainant was being held in the interview room at the PSB.

If this were true, it would be a violation of § 01.01.02 Authorization (for the use of force) of the BPD Policy and Procedures Manual (PM).

The Complainant also alleged that, shortly after he ran from the police in front of the convenience store, two unidentified officers (Officer #2 and Officer #3) used profanity and referred to him (the Complainant) in derogatory terms. If these allegations were true, they would constitute a violation of PM § 11.01.07.

Finally, the Complainant alleged that, after the Complainant was hobbled and placed lying down on the rear seat of a police car, an unidentified officer (Officer #4) closed one of the car doors on the Complainant's head, which was protruding slightly off the seat. If this allegation were true and the act was intentional or careless, it would be a violation of PM § 01.01.02 Authorization (for the use of force).

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

The following steps were taken in the course of investigating these allegations.

1. An attempt was made to locate any video or audio recordings made during the time that the Complainant was being held in the interview room at the PSB. None were found. Furthermore, no evidence was located to indicate that any recordings had been made.
2. Audio recordings made by six different officers who were, at some point, involved in the incident at the convenience store were located and reviewed.
3. Dispatch records and police reports related to this incident were examined.

4. The Complainant was interviewed on two different occasions.
5. Officer #1 was interviewed, as were four other officers who may have witnessed some or all of this incident, especially the alleged contact in the interview room between the Complainant and Officer #1.
6. The interview room itself in the basement of the PSB was examined.

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

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

1. At about 10:00 p.m. during the late summer of 2007, BPD officers were dispatched to a Boise area convenience store regarding possible narcotics activity involving a particular vehicle.
2. The Complainant was a passenger in a car matching the description given by the store clerk.
3. The Complainant was arrested for Possession of Marijuana with Intent to Deliver, Possession of Drug Paraphernalia, and Resisting and Obstructing Officers.
4. The Complainant was handcuffed and seated on the curb nearby.
5. While still handcuffed, the Complainant ran from the officers. He was recaptured following a brief foot pursuit, hobbled, and put into the back seat of a patrol car.

6. The Complainant was taken to the PSB and placed inside an interview room.
7. The Complainant initially refused to identify himself to officers.
8. Officer #1 was able to confirm the Complainant's identity without the assistance of the Complainant. Once his identity was known to Officer #1, the Complainant became more cooperative and answered Officer #1's questions.
9. The Complainant was later taken to a juvenile detention facility.

## ***OMBUDSMAN'S ANALYSIS***

### The Use of Force

The Boise Police Department's policy (§ 1.01.02) Authorization (for the use of force) states:

#### 1.01.02 Authorization

*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. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer 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, an officer may also use any other reasonable force to gain control of the situation.*

There is no evidence, other than the statement of the Complainant, to support the Complainant's allegation that Officer #1 pulled the Complainant's hair. At the same time, the only evidence supporting Officer #1's assertion that he did not pull the Complainant's

hair is Officer #1's own statement. Even though equipment was available to record (both video and audio) inside the interview room, Officer #1 chose not to record his interactions with the Complainant. While Officer #1 was with the Complainant, other officers were outside the interview room and could have seen what was taking place inside via closed circuit video. These other officers were not assigned to watch the video monitor and they were engaged in other activities at the time. None of them recalled paying attention to the monitor, they only glanced at it from time to time. None of them recall seeing Officer #1 pull the Complainant's hair. In summary, no preponderance of evidence exists to either prove or disprove the Complainant's allegation of unnecessary force against Officer #1. For this reason, I have issued a finding of not sustained in connection with this allegation.

The Complainant also alleged that an unknown officer hit him on the head with a police car's rear door handle after the Complainant had been put in the back of the patrol car. There is no evidence to suggest that any officer deliberately caused the door handle to hit the Complainant. If the Complainant was struck on the head by the door, it is more likely than not that it was accidental. For this reason I have issued a finding of exonerated for this allegation.

#### Profanity and Derogatory Language

The Boise Police Department's policy (§ 11.01.07) Relationships with Others and Demeanor states:

*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 persons he/she has contact with nor shall he/she intentionally antagonize any person.*

The Complainant attributes two profane and/or rude comments to unknown BPD officers. A careful review of the audio made at the time the Complainant was arrested did not corroborate this claim. None of the words described by the Complainant were discernable.

Given the number of recordings available and the close proximity of the recording officers to the Complainant, it is very likely that anything an officer said that the Complainant could have heard would have been picked up by one of the recorders. Therefore, I have issued a finding of unfounded for these two demeanor allegations.

While the specific profanity and derogatory terms alleged by the Complainant were not recorded, one officer can be heard saying, "What a dumb ass." This officer claims that the comment was made to another officer as they walked away from the Complainant after his recapture and that it was said out of the Complainant's hearing. This comment can be faintly heard on the recorder of an officer who was still with the Complainant. Officers should use caution in their comments, even when not directed toward a specific party. When in public, an officer should assume that his or her speech and actions are subject to observation and recording by other officers, the media, and the public.

### ***OMBUDSMAN'S FINDINGS***

#### Officer #1

Alleged use of excessive force (PM § 1.01.02)                      **NOT SUSTAINED**

#### Officer #2

Alleged use of excessive force (PM § 1.01.02)                      **EXONERATED**

#### Officer #3

Alleged profanity and derogatory speech (PM § 11.01.07)   **UNFOUNDED**

Officer #4

Alleged profanity and derogatory speech (PM § 11.01.07) **UNFOUNDED**



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