



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB07/0132 - March 19, 2008

THE SITUATION

On a fall afternoon in 2007, Officer #1 and Officer #2 were dispatched to a Boise residence regarding a subject (Witness #1) wanted for two felony warrants. The officers were initially denied entrance into the residence by the Complainant who told them that Witness #1 was not there. Having seen a subject inside who the officers believed to be the wanted subject, the officers entered the residence after conferring with their supervisor.

The Complainant and her husband, Witness #2, were pushed out of the house by Officer #1. The Complainant was concerned that Witness #2, who has Parkinson's disease, could have fallen and injured himself. Officer #1 and Officer #2 discovered Witness #1 hiding behind a shower curtain in the bathroom. Witness #1 reportedly resisted efforts to take him into custody and was Tased by Officer #1. Witness #1 was examined by paramedics and transported to a local hospital where he was hospitalized for treatment of injuries sustained during his contact with the police. As a result of this hospitalization, a separate Critical Incident investigation was opened by the ombudsman (OMB07/0130).

After the Complainant was outside for a few minutes and following the arrest of Witness #1, Officer #1 came back outside and told the Complainant that she was under arrest. In the course of the arrest of the Complainant, she was pushed against a nearby fence, handcuffed, and seated on the ground.

THE COMPLAINT

The Complainant telephoned the Office of the Community Ombudsman two days after the incident. She alleged that Boise Police officers used excessive force during her son's arrest and during her subsequent arrest. She alleged that an unknown Boise officer unnecessarily pushed her against a fence and then pushed her to the ground. These allegations, if proven true, would be a violation of the Boise Police Department's Policy § 1.01.02 – Authorization (for the use of force). The allegations regarding the use of excessive force against her son are considered in the separate Critical Incident investigation (OMB07/0130).

THE COMPLAINT INVESTIGATION

The investigation into this complaint included interviews of the Complainant, Witness #1, and Witness #2. In addition, interviews were conducted with Officer #1 and Officer #2 (the primary officers who arrested Witness #1), Officer #3, Officer #4, Officer #5, Officer #6, Officer #7, and Officer #8, all of whom responded to assist at the scene. The investigation included the review of the following: the dispatch record; three police reports; an internal BPD Administrative Incident Report; the digital audio recordings made by the officers during the incident; photographs taken by police personnel immediately following the incident; and fourteen photographs taken by the Community Ombudsman the day the complaint was filed.

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 finding of fact.

1. On a fall afternoon in 2007, Officers #1 and #2 were dispatched on a reported wanted subject check at a Boise residence. There were two felony warrants for the subject.
2. As the officers walked to the door, they saw a subject matching the description of the wanted subject through a window into the residence.
3. The Complainant, who answered the door, told Officer #1 and Officer #2 that the person they were seeking (Witness #1) was not there. The Complainant told them that the person they had seen through the window was her husband, Witness #2.
4. Witness #2 joined her at the door and the officers could tell that the subject they had seen was not her husband.
5. Officer #1 telephoned her supervisor who informed her, based on the scenario she outlined, that they had cause to enter the residence to serve the arrest warrants.
6. Officer #1 and Officer #2 entered the residence and Officer #1 locked the door with the Complainant and Witness #2 outside.
7. Officer #2 located Witness #1 hiding in the bathtub. When Witness #1 resisted their efforts to arrest him, he was Tased by Officer #1 and taken into custody.
8. Paramedics and police assist units were requested Code 3.
9. Several officers arrived in response to Officer #1's request for assistance.
10. Officer #1 returned to the front of the residence and the Complainant was arrested for Resisting and Obstructing an Officer and for Harboring a Fugitive.

11. The Complainant resisted attempts to handcuff her, both verbally and by pulling away from Officer #1, who was behind her and holding her arms. The Complainant was pulling away from Officer #1 and toward a fence a few feet away.
12. Officer #1 pushed the Complainant against the fence, and held her there until Officer #1 could handcuff her with the assistance of Officer #7.
13. In order to control the Complainant's movements, Officer #7 directed her to sit on the ground. The Complainant did not follow his repeated instructions and verbally resisted by telling him she could not. Officer #7 then forcibly guided her to the ground.
14. Officer #5 later assisted the Complainant to her feet and assisted her into the patrol car for transport to the Ada County Jail.

OMBUDSMAN'S ANALYSIS

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

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.

Under Boise Police Department Policy § 1.01.02, “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.” Boise Police Department Policy § 1.01.01 defines “control” as, “Techniques including physical force that are used to subdue a subject’s resistant actions.” The term, “resistance,” is defined in the same policy section as, “Actions which seek to evade an officer’s attempts to control, directed from a subject towards an officer.” Defensive physical resistance is defined in this section as, “Direct overt physical actions where the subject attempts to overcome control by fleeing, pushing or pulling away, tensing of arms and legs, or grasping of stationary objects during an officer’s attempts at physical control and is refusing to comply with the officer’s instructions.”

In this case, there are two uses of force that are claimed by the Complainant to be excessive. The first is the use of force by an unknown male officer who pushed her against the fence before she was handcuffed. The second is the use of force by the same unknown officer who pushed her to the ground after she was handcuffed and told to sit down.

The Complainant’s recollection of the events is not completely accurate. This is not surprising in situations which are tense, emotional, and in the case of the Complainant, upsetting. The Complainant reports that Officer #1 pushed her out of her residence and locked her and Witness #2 out of the residence after Witness #1 had been Tased and arrested. The statement of Officer #1 and the audio recording made by Officer #2 clearly show that the Complainant and Witness #2 were outside the residence at the time of Witness #1’s Tasing and arrest in the bathroom.

The Complainant reported that it was an unknown male officer who spun her around and “slammed” her against the fence. Officer #1 was the only female officer at the scene. The

Complainant knew Officer #1's name and regularly referred to her by name during her interview. Officer #1 reports that it was she who pushed the Complainant against the fence when the Complainant attempted to pull away from Officer #1 while she was attempting to handcuff the Complainant. None of the audio recordings of the many officers present reveals anything which would substantiate the Complainant's version of her arrest. Officer #7 reported that the Complainant, while she was being handcuffed, turned toward her left and looked over her shoulder as she explained that she shouldn't be arrested. It is probable that when the Complainant looked to the left and saw Officer #7 that she came to believe that it was he who had pushed her into the fence.

Regardless of which officer pushed the Complainant against the fence, there is no evidence to suggest that the force used was unreasonable or unnecessary. Officer #1 reports that she grabbed the Complainant's arms in an attempt to handcuff her as the Complainant faced away from Officer #1. The Complainant resisted these attempts by attempting to pull forward, away from Officer #1. The verbal resistance of the Complainant is clear on the officer's audio recordings:

The Complainant: You're hurting me. Let me go.
Officer #1: Put your hands behind your back.
Officer #7: Would you stop resisting. Because.
The Complainant: I'm not resisting.
Officer #7: She can't even get the cuffs on you because you're.
The Complainant: I'm not resisting... You just slammed my chest against this pole.
Officer #7: Stay there.
The Complainant: I'm not resisting.
Unknown: Got her?
The Complainant: I let them in. I'll lose my job.

There are several seconds while the Complainant is handcuffed. The Complainant repeats that she'll lose her job and that she let the officers into the residence.

The conversation continues:

Officer #7: Sit down.

The Complainant: I can't get up. If I sit down I can't get up. I've got arthritis.

Officer #7: Sit down. We're gonna help you get up.

The Complainant: Oh my God. (grunt) My leg.

The Complainant continues to yell and Officer #7 repeats his command to sit down. There is a sound consistent with the Complainant sitting down heavily. The Complainant makes no complaint about the manner in which she is seated. She says, "I can't get up now." She repeats, "If I go to jail I'll lose my job," and "I'll lose my job." Later she reports that she is going to call the "Boise Statesman" about her and her husband being pushed out of their house. She makes no complaint about her being pushed into the fence or about being pushed to the ground.

Officer #1 reports that, rather than fight the Complainant's attempts to pull away from her and move towards the fence, she pushed the Complainant toward the fence. Officer #1 knew that once the Complainant reached the fence the Complainant would be able to pull no further in that direction. As a result, Officer #1 would be able to better control the Complainant. In fact, once Officer #1 was able to hold the Complainant against the fence, the Complainant was successfully handcuffed.

The Complainant also alleged that, after she was handcuffed, the same male officer who pushed her into the fence also pushed her onto the ground. The evidence clearly shows that it was Officer #1 who pushed the Complainant into the fence.

The preponderance of evidence supports the conclusion that the force used to push the Complainant into the fence was reasonable and necessary to overcome her resistance and take her into custody. While it is possible that this action caused bruising to Complainant's left shoulder, an injury does not, in and of itself, prove unreasonable or unnecessary force. Even reasonable and necessary force can cause an injury. In this particular case, Officer #1's use of force to push the Complainant against the fence was both reasonable and necessary, given the totality of the circumstances. For this reason I have issued a finding of exonerated for the alleged violation of BPD policy § 1.01.02 – Authorization (Use of Force) by Officer #1.

The preponderance of evidence also supports the conclusion that the Complainant was not violently pushed to the ground as she described in her allegation. It is clear that, after the Complainant refused to cooperate with Officer #7's attempts to get her to sit down, Officer #7 used downward pressure on the Complainant as a means to getting her on the ground. At the same time, Officer #7 held on to the Complainant's upper arm and assisted her. The Complainant may have sat down more quickly or heavily than either Officer #7 or the Complainant anticipated, but there is no corroborating evidence to suggest that she was knocked to the ground in the manner described by the Complainant. For this reason I have issued a finding of exonerated for the alleged violation of BPD policy § 1.01.02 – Authorization (Use of Force) by Officer #7.

Since the evidence clearly shows that Officer #2 was not involved in any use of force against the Complainant, I have issued a finding of unfounded for the alleged violation of BPD policy § 1.01.02 – Authorization (Use of Force) by Officer #2.

OMBUDSMAN'S FINDINGS

Officer #1

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

Officer #7

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

Officer #2

Alleged excessive use of force (§ 1.01.02) **UNFOUNDED**



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