



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB08/0089 (Revised) – December 19, 2008

THE SITUATION

On the afternoon of a spring day in 2008, the Complainant's former girlfriend, Subject #1, called a friend, Officer #1, who is an officer with the Boise Police Department (BPD). Subject #1 told Officer #1 that the Complainant had been harassing and stalking her for some time. She told Officer #1 that her sister, Subject #2, had gone to Subject #1's residence earlier that same evening and found the Complainant hiding in the bedroom closet. The Complainant did not have Subject #1's permission to be in the house. Subject #1 also told Officer #1 that the Complainant had engaged in a pattern of harassment and intimidation against her for several months. She told Officer #1 that the Complainant told her that there was nothing she could do about this harassment, since he was a police officer with another local jurisdiction, knew the "system," and, as a result, no one would believe her. Officer #1 told Subject #1 that he was going into work shortly and would discuss the situation with his supervisors.

Two hours later, after arriving at work, Officer #1 discussed the situation with two supervisors, one of whom was Officer #4. After this consultation, Officer #1 and Officer #5, another patrol officer, responded to Subject #1's residence and initiated a criminal investigation into the Complainant's actions. Two detectives from the BPD Criminal Investigation Division (CID), Officer #2 and Officer #3, eventually became involved in the case, as did a third detective, a crime scene investigator, and a victim witness coordinator.

Following the initial investigation, it was decided that Officer #2 would call the Complainant at home and ask him to voluntarily come to the CID building to be interviewed. Officer #2

telephoned the Complainant and he agreed to come in for an interview. At the same time, Officer #3 was watching the Complainant's residence. When the Complainant drove away from his residence, he did not go toward CID. Instead, he drove in the opposite direction and toward the area where Subject #1 was staying. Officer #3 then made a traffic stop on the vehicle. The Complainant was placed under arrest and transported to CID. A subsequent search of the Complainant's vehicle located two firearms and other evidentiary items. It was later determined that the Complainant had a reasonable explanation for why he initially drove away from CID, and that this did not involve an attempt to contact Subject #1.

Once the Complainant arrived at CID, Officer #2 advised him of his Miranda rights. The Complainant waived his right to remain silent and to consult with an attorney before being questioned by the police. Officer #2 then interviewed the Complainant. Following the interview, the police obtained and executed a search warrant for the Complainant's residence.

The Complainant was ultimately booked for burglary and stalking, both felony charges. The Complainant eventually pled guilty to two misdemeanor counts of unlawful entry.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman about two months after his arrest and following his two guilty pleas. He alleged that the officers who arrested him lacked probable cause for the arrest. He further alleged that Officer #1 violated BPD policy by not immediately reporting Subject #1's allegations to the police and that Officer #1's supervisor, Officer #4, should have removed Officer #1 from the case due to the conflict of interest created by Officer #1's friendship with Subject #1.

These allegations, if proven true, would be a violation of the Boise Police Department's

Policy § 11.03.14 Request for Service or Assistance and § 11.03.02 Performance of Duty.

The Complainant further alleged that Officer #2 and Officer #3 lacked either a warrant or probable cause to arrest him for stalking and burglary. If this were true, the detectives may have violated BPD Policy § 11.03.02 Performance of Duty.

THE COMPLAINT INVESTIGATION

The complaint investigation included interviews with the Complainant, a witness, and the five involved officers. Dispatch records, court records, the police report, witness statements, and related audio and video recordings were reviewed in the course of this investigation.

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. Subject #1 telephoned Officer #1 and discussed the concerns she had about the recent behavior of an ex-boyfriend, the Complainant.
2. Subject #1 specifically told Officer #1 that her sister, Subject #2, had found the Complainant hiding in Subject #1's residence that very day.
3. Officer #1 discussed the situation with Officer #4 when he arrived at work two hours later.

4. Officer #4 assigned Officer #5 to be the primary officer on the case, with Officer #1 assigned to assist Officer #5 and to support Subject #1.
5. Officer #5 completed a crime report and Officer #1 added a supplemental report.
6. Crime scene investigators photographed the scene and collected physical evidence.
7. A victim witness coordinator responded to assist.
8. Three detectives were summoned to take over the investigation, Officer #2, Officer #3, and another detective.
9. A discussion was held between various involved persons, including representatives of the Complainant's law enforcement agency, to discuss alternative actions. It was decided that Officer #2 would telephone the Complainant and ask that he come to CID for an interview. Officer #3 would watch the Complainant to make certain that he drove to CID.
10. Officer #3 stopped the Complainant's vehicle and arrested him when the Complainant did not head directly toward CID, but rather in an opposite direction that was toward Subject #1.
11. The Complainant was transported to CID where he was advised of his Miranda rights, which he waived. He was interviewed by Officer #2. This interview was recorded on DVD, but due to either a mechanical or an unintentional human error, the recording does not include sound.

12. The Complainant was booked into the jail and charged with felony stalking and burglary.
13. A Probable Cause Hearing was held and the court found probable cause for the charges of Burglary and Felony Stalking.
14. Following the court's finding of probable cause, the criminal complaint was amended to drop the two felony charges and add two misdemeanor counts of Unlawful Entry, to which the Complainant pled guilty.

OMBUDSMAN'S ANALYSIS

The Boise Police Department Policy and Procedure Manual § 11.03.14 Requests for Service or Assistance states:

When any subject requests service or assistance, all pertinent information will be obtained in an official and courteous manner and will be acted upon properly and judiciously. Each employee shall properly and expeditiously report or act on any information given to him/her in good faith by any person regarding matters that indicate the need for action by the Department.

Officer #1 was contacted by a friend (Subject #1) by telephone while he was off-duty. Subject #1 was seeking advice on how she should proceed with a problem ex-boyfriend, the Complainant. Officer #1 recognized that there could be a crime involved, but was not certain of the exact nature or severity of the crime. He knew that Subject #1 was at work and would not be available to meet the police at her residence for some time. Other witnesses, including Subject #2, were also not immediately available. Officer #1 also knew that Subject #1 was reluctant to take action because the Complainant had told her that people would not believe her and the police would take no action. Officer #1 told Subject #1 that she could call Dispatch right then and make a report. As an alternative, Officer #1 offered to discuss the

situation with his supervisor when he went to work later that evening. Subject #1 chose to have Officer #1 discuss the situation with his supervisor before taking any other action.

These facts show that Officer #1 did not unnecessary delay reporting the information given him by Subject #1. Officer #1 did not have all the facts and did not even know for certain what crime or crimes had been committed. Given the sensitive nature of conducting a criminal investigation where the suspect is a police officer, Officer #1 chose to notify his superiors as soon as he got to work. This was a reasonable alternative, given the information that Officer #1 had available to him at the time and did not unreasonably delay or hinder the subsequent criminal investigation.

For these reasons I have issued a finding of exonerated for the allegation that Officer #1 violated BPD Policy § 11.03.14 Requests for Service or Assistance.

The Boise Police Department Policy and Procedure Manual § 11.03.02 Performance of Duty states:

An employee shall perform his/her duties in a manner which will maintain the highest standards of efficiency in carrying out the Department's functions and objectives. 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 situation requiring police action occurs*

Officer #4 was aware of the relationship between Officer #1 and Subject #1. He saw this less as a conflict than as an opportunity for Officer #1 to support his friend (Subject #1) in a difficult situation. Officer #4 also felt that the presence of an officer known to the victim (Subject #1) would possibly enhance the investigation by helping her feel comfortable with the police. Officer #4 had Officer #5 take the lead in investigating the case, which removed

Officer #1 from any decision-making role. Officer #4 reported that his primary concern was that this case be investigated like any other and that no favor or disfavor be shown to any of the involved parties. Officer #4 directed that the investigation be given all necessary support (crime scene investigators, detectives, victim witness coordinator, etc.). He monitored the investigation as it proceeded.

There is no policy or procedural impediment to a police officer investigating a crime involving someone he or she knows. While BPD Policy requires that officers show no favoritism in the performance of their duties, there is no evidence to suggest that Officer #1 displayed any favoritism in how he performed his limited duties with respect to this case. In fact, the evidence shows that Officer #1 fulfilled his responsibilities in a professional and objective manner. Officer #4 was aware of the relationship between Officer #1 and Subject #1 and took reasonable steps to make certain that the investigation proceeded in an objective and proper manner. While the Complainant reports that there was a certain amount of animosity between himself and Officer #1, there is no evidence to support this claim. Officer #1's supplemental report appears to accurately reflect the information he was given by Subject #1 and the other involved parties. For these reasons, I have issued a finding of exonerated with respect to the allegation that Officer #4 violated Policy § 11.03.02 Performance of Duty, by allowing Officer #1 to be involved in the investigation.

The Complainant further alleged that Officer #2 and Officer #3 lacked either a warrant or probable cause to arrest him for stalking and burglary. If this were true, the detectives may have violated BPD Policy § 11.03.02 Performance of Duty.

To make an arrest for a felony crime not committed in an officer's presence, an officer must either have confirmed knowledge of a valid arrest warrant for that person or probable cause to believe that the person committed a felony. Probable cause is found when the totality of the circumstances known to the officer would lead a person (with the same training and experience as the officers) of ordinary care and prudence to entertain an honest and strong

suspicion that the person to be arrested is guilty of the crime. This standard to arrest is much lower than the standard to convict someone of a crime. Conviction requires proof beyond a reasonable doubt.

The Complainant was arrested for Felony Stalking and Felony Burglary. A person who knowingly and maliciously engages in a course of conduct that seriously alarms, annoys, or harasses the victim in such a manner as would cause a reasonable person substantial emotional distress is guilty of stalking. A person who possesses a deadly weapon at any time, while engaging in the course of conduct constituting stalking, is guilty of felony stalking. A person who enters a house with the intent of committing a theft or a felony is guilty of burglary.

In support of the allegation that the Complainant had committed the felony crime of Stalking, Subject #1 reported to the police that the Complainant, since their breakup, had been calling her, sending her text messages, visiting her residence uninvited, showing up at her workplace without legitimate business, claiming that he knew private and intimate details about her daily activities, and unlawfully entering her residence on at least two occasions. There was independent evidence to support these allegations by Subject #1, including statements by others who saw the Complainant near her residence or at her workplace. Most compelling was the fact that Subject #2 found the Complainant hiding in Subject #1's bedroom closet and physical evidence that pointed to the Complainant's entry and presence in the residence. The police were also told by Subject #1 that the Complainant always had a firearm on his person or in his vehicle. A co-worker of the Complainant's supported this assertion.

The charge of Burglary against the Complainant was supported by the evidence that he had entered Subject #1's residence to commit another felony, i.e., Felony Stalking.

Following the arrest of the Complainant, the court found probable cause for both felony counts. It appears that the judge relied on the same evidence upon which Officer #2 and Officer #3 relied when they arrested the Complainant.

Based on the preponderance of evidence, I find that Officer #2 and Officer #3 had probable cause to arrest the Complainant for the charges and performed their duties to the standard required of their position as police detectives. For this reason, I have issued a finding of unfounded with respect to the allegation that Officer #2 and Officer #3 violated BPD Policy § 11.03.02 Performance of Duty.

OMBUDSMAN'S POLICY FINDINGS

I have issued the following findings with respect to the allegations made by the Complainant.

Officer #1

It was alleged that Officer #1 violated BPD Policy § 11.03.14 Requests for Service or Assistance by delaying his report of the criminal allegations made to him while he was off-duty by Subject #1.

EXONERATED

Officer #2

It was alleged that Officer #2 violated BPD Policy § 11.03.02 Performance of Duty by arresting the Complainant for a felony not committed in the officer's presence without either a valid arrest warrant or probable cause.

UNFOUNDED

Officer #3

It was alleged that Officer #3 violated BPD Policy § 11.03.02 Performance of Duty by arresting the Complainant for a felony not committed in the officer's presence without either a valid arrest warrant or probable cause.

UNFOUNDED

Officer #4

It was alleged that Officer #4 violated BPD Policy § 11.03.02 Performance of Duty by allowing an officer with a conflict of interest to remain involved in the criminal investigation.

EXONERATED



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