



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB09/0112 - April 5, 2010

THE SITUATION

Witness #2 called 911 to report that he had just been the victim of a battery. Witness #2 named the Complainant as the suspect in the battery. Officer #1 responded, saw that Witness #2 was injured, and took a battery report from Witness #2. After taking the report from Witness #2, Officer #1 contacted the Complainant by phone. Following this, Officer #1 went to the Complainant's residence and made direct contact with him. Officer #2 also went to the Complainant's house to act as an assist officer. Officer #1 arrested the Complainant for misdemeanor battery and transported him to jail.

THE COMPLAINT

The Complainant alleged that Officer #1 used more force than was necessary when he was arrested. Specifically, the Complainant alleged that, as he reached to stop his cell phone from vibrating in his pocket, Officer #1 grabbed his arm and twisted it high behind his (the Complainant's) back, causing pain to the Complainant. The Complainant said that this twisting of his arm behind his back was unnecessary since he was not resisting Officer #1 and was no threat. This allegation, if proven true, could have been a violation of the Boise Police Department's Policy § 1.01.02 Authorization (for the use of force).

THE COMPLAINT INVESTIGATION

During the course of investigating this complaint, the following steps were taken.

1. The Complainant was interviewed
2. Officer #1 was interviewed
3. Officer #2 was interviewed
4. Witness #1 was interviewed
5. The police report of this arrest was reviewed
6. Related Dispatch records were reviewed
7. Audio recordings made by Officer #1 in connection with this incident were reviewed

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. Officer #1 responded to a report of a battery that had just occurred.
2. Officer #1 interviewed the reported victim of the battery (Witness #2) and observed physical evidence of an injury to Witness #2 that was reportedly the result of the Complainant striking Witness #2.
3. Officer #1 made contact with Witness #1 and the Complainant by phone, then arranged to meet the Complainant at his (the Complainant's) residence.

4. Officer #1 and Officer #2 drove to the Complainant's residence, met him outside, and spoke with him in person. Witness #1 was inside the house at the time.
5. Officer #1 interviewed the Complainant regarding his recent interaction with Witness #2 and observed physical evidence of injuries to the Complainant.
6. The Complainant began to place his hands in his pockets and Officer #1 told him to keep his hands out of his pockets.
7. Officer #1 asked the Complainant if he had any weapons on his person, to which the Complainant answered in the negative.
8. Officer #1 asked the Complainant for permission to check him for weapons. The Complainant refused to give such permission.
9. Officer #1 asked the Complainant why he did not want to have the police check for weapons. As the Complainant began answering, he started to reach for his pockets again.
10. Officer #1 told the Complainant to keep his hands away from his pockets and then ordered him to turn around and place his hands behind his back.
11. Officer #1 and Officer #2 each took hold of one of the Complainant's arms and pulled them behind the Complainant's back. Officer #1 then handcuffed the Complainant and told him that he was under arrest for battery.
12. During his contact with Officer #1 and Officer #2, the Complainant did not scream, cry out, or make any other audible sound that would be an expression of pain; nor did the Complainant allege, at that time, that excessive force had been used against him.

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, effect 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 effect 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.

The only force used by either Officer #1 or Officer #2 was soft empty-hand control. No O.C. spray, Taser, impact weapon, or other device was used. Neither officer struck any blows to the Complainant and no pain-compliance techniques were employed. They both used their hands to take hold of the Complainant's arms and handcuff them behind his back. Such force is widely seen to be the least amount of physical force an officer can use.

Officer #1 believed he had probable cause to arrest the Complainant for a battery that had just occurred. This gave him lawful authority to use reasonable and necessary force to control the Complainant's movements and take him into custody. In addition, the Complainant was moving his hands towards his pockets, something that Officer #1 had already told him not to do. Given that Officer #1 had not yet searched the Complainant for the presence of any weapons and that Witness #2 had reported that the Complainant was armed with a set of brass knuckles, it was reasonable for Officer #1 to take immediate action to prevent the Complainant from reaching into his pockets.

Between the accounts of the two officers and those of the Complainant and Witness #1, there is a factual dispute as to whether or not Officer #1 pulled the Complainant's arm high up behind the Complainant's back. However, the audio recording of the arrest made by Officer

#1 contains no sounds that support the Complainant's assertion that Officer #1 hurt him by twisting his arm high up behind his back. If Officer #1 did pull the Complainant's arm up behind his back, it cannot have been too high or caused much discomfort, otherwise some spontaneous expression of pain and/or tone of pain in the Complainant's voice would likely have been heard on the audio recording. However, nothing of the sort is there.

In summary, while it is not possible to say exactly what Officer #1 did with the Complainant's arm as he pulled it behind his back and put on the handcuffs, the preponderance of the evidence supports the conclusion that the force used was minor and fleeting. For all the reasons stated above, it is my finding that the force used by Officer #1 during this incident was well within the requirements and restrictions of § 1.01.02 of the BPD Policy and Procedures Manual. As a result, I have issued a finding of exonerated for the allegation of excessive force made against Officer #1 by the Complainant.

OMBUDSMAN'S POLICY FINDINGS

Officer #1

P.M. § 1.01.02 – Authorization (for the use of force) – Based on the preponderance of the evidence, a finding of exonerated has been issued.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org