



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB09/0116 - March 26, 2010*

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

The Complainant was arrested by a Boise Police Department (BPD) officer (Officer #1) for Disturbing the Peace. This took place in the Boise downtown area during the early morning hours one day in the summer of 2009. Shortly after the arrest, Officer #5 transported the Complainant to jail and booked him on the charges of Disturbing the Peace and Resisting and Obstructing an Officer.

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

The Complainant made three allegations:

Allegation #1: That Officer #1 used force on the Complainant that was not consistent with the requirements and limitations placed on the use of force by BPD policy. Specifically, the Complainant alleged that Officer #1 struck the Complainant on the left side of his face and knocked him to the ground, and that this happened despite the fact that the Complainant was not resisting Officer #1's efforts to handcuff him. If this allegation were proven to be true, Officer #1 may have violated § 1.01.02 Authorization (for the use of force) of the BPD Policy and Procedures Manual.

Allegation #2: That Officer #1's official report concerning the Complainant's alleged criminal behavior and arrest contained false and/or inaccurate information; furthermore, that Officer #1 knew or should have known at the time he filed the report that the report contained information that was false and/or inaccurate. Specifically, the Complainant

alleged that Officer #1's description of the force he used to take the Complainant into custody was false. If this allegation were proven to be true, Officer #1 may have violated § 11.03.16B False Reporting of the BPD Policy and Procedures Manual.

Allegation #3: That either Officer #1 or Officer #5 removed a cell phone and a roll of U.S. currency from the Complainant's person and that these items were not turned over to the jail staff when Officer #5 booked him into the Ada County Jail. If this allegation were proven to be true, Officer #1 or Officer #5 may have violated § 10.02.00 Damage or Loss of Property Belonging to Others of the BPD Policy and Procedures Manual.

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

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

1. Interviews were conducted with the following persons:
  - a. The Complainant
  - b. Witness #1 – a friend of the Complainant who was present during the incident
  - c. Witness #2 – a friend of the Complainant who was present during the incident and who used a cell phone to create a digital video recording of a portion of the incident
  - d. Officer #1
  - e. Officer #5
  - f. Four additional BPD officers who were present for some portion of the incident
  
2. A copy of the digital video recording created by Witness #2 was obtained and reviewed.

3. Digital audio recordings created by involved and witness officers were reviewed.
4. Computerized Dispatch records relating to the incident were reviewed.
5. The official report filed by Officer #1 and a supplemental report filed by an assisting officer were reviewed.
6. Records relating to property handed over to the jail by Officer #5 at the time the Complainant was booked were reviewed, along with records relating to any property returned by the jail to the Complainant at the time of his release.

#### ***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 saw the Complainant challenge another male to a fight on a public sidewalk in downtown Boise.
2. Officer #1 placed the Complainant up against a wall. Another BPD officer put a second subject up against the same wall, just a few feet to the right of the Complainant. Immediately to the right of the second subject, the wall jugged out approximately 4 to 6 inches.
3. Right after he placed the Complainant against the wall, Officer #1 got a handcuff onto the Complainant's right wrist. As Officer #1 attempted to put the other handcuff on the Complainant's left wrist, he (the Complainant) was moving and

twisting his upper body and head as he protested his arrest and asked questions of Officer #1.

4. Officer #1 used his left hand to grab the Complainant on the left side of his neck and jaw. Officer #1 then turned (twirled) the Complainant to the right and pulled him away from the wall.
5. Officer #1 then used a straight arm-bar takedown to get the Complainant on the ground.
6. After the Complainant was on the ground, Officer #1 handcuffed him.
7. Officer #1 did a pat-down search for weapons, found none, and walked the Complainant to Officer #5's police car. No cash or cell phone was taken from the Complainant by Officer #1.
8. Officer #5 did a second pat-down search for weapons, found none, and transported the Complainant to jail. No cash or cell phone was taken from the Complainant by Officer #5.
9. Officer #5 turned the Complainant and his personal property over to the jail staff.

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

Allegation #1: That Officer #1 used force on the Complainant that was not consistent with the requirements and limitations placed on the use of force by BPD policy.

The Boise Police Department Policy and Procedure Manual § 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 Officer #1 was soft empty-hand control. He pushed the Complainant against the wall and pulled both of the Complainant's hands behind his (the Complainant's) back. After trying unsuccessfully to get the Complainant's left arm close enough so that it could be handcuffed to the Complainant's right hand, Officer #1 used his left hand to grab the Complainant's neck, pull him back and away from the wall, twist him to the right, and apply a straight arm-bar takedown to bring the Complainant to the ground. Once the Complainant was on the ground, Officer #1 completed the task of handcuffing the Complainant. No strikes, O.C. spray, Taser, impact weapon, or other device was used.

The evidence from this investigation makes it clear that the Complainant was, at least to some extent, hostile to Officer #1's efforts to bring him under control. Furthermore, the Complainant moved and twisted his head as Officer #1 attempted to get handcuffs on both of the Complainant's wrists. In addition, the close proximity of a number of loud, intoxicated, and verbally hostile persons created for Officer #1 a reasonable sense of urgency to get the Complainant handcuffed and away from the crowd as soon as possible.

Given all of these factors, it was reasonable for Officer #1 to use a straight arm-bar takedown to gain control of the situation and to apply handcuffs to the Complainant. It was also

reasonable and tactically wise for Officer #1 to pull the Complainant away from the wall and twist him around before taking him to the ground, given that a brick outcropping and two people (a second officer and a subject he was attempting to control) were immediately to the right of the Complainant.

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 of § 1.01.02 of the BPD Policy and Procedures Manual. As a result, a finding of exonerated has been issued for this allegation.

Allegation #2: That Officer #1's official report concerning the Complainant's criminal behavior and arrest contained false and/or inaccurate information; furthermore, that Officer #1 knew or should have known at the time he filed the report that the information was false and/or inaccurate.

The Boise Police Department's Policy (§ 11.03.16B) False Reporting states:

*No employee shall enter or cause to be entered any inaccurate, false, or improper information, or misrepresent the facts, in the Department records or reports.*

Although the video recording of Officer #1's actions may appear to show that Officer #1 struck the Complainant and threw him to the ground, Officer #1's testimony during his interview concerning his actions was consistent with both the video recording and his police report. What, at first glance appeared to be a strike by Officer #1, was actually a grab by Officer #1 employed to pull the Complainant back a few feet so that he could be taken to the ground without endangering either the other officer or the subject who were located between the Complainant and the brick outcropping. The straight arm-bar takedown described in Officer #1's report took place immediately after this.

Officer #1 did not falsify his report, nor did he include inaccurate information in that report. He simply left out the fact that he had to pull the Complainant away from the wall before he was able to take him to the ground. This lack of completeness was not material to the charges against the Complainant. For this reason, I find that Officer #1 did not violate § 11.03.16B of the BPD Policy and Procedures Manual. I have issued a finding of unfounded with respect to this allegation.

Allegation #3: That, at the time of the Complainant's arrest, Officer #1 and/or Officer #5 failed to secure all of the personal property belonging to the Complainant, specifically a cell phone and cash.

The Boise Police Department's policy (§ 10.02.00) Damage or Loss of Property Belonging to Others states that:

*Each employee shall take reasonable precautions in protecting the property of another subject or entity, from damage or loss.*

Immediately following the arrest of the Complainant, Officer #1 did a pat-down search of the Complainant for weapons, and found none. A short time later, prior to transporting the Complainant to the Ada County Jail, Officer #5 conducted his own pat-down search of the Complainant for weapons. Neither officer recalled taking any cash or telephone from the Complainant. In addition, no reference to the discovery of such items can be heard on any of the related recordings reviewed in the course of this investigation. It is of note that the Complainant admitted that his telephone could have fallen off of his belt earlier in the evening and that he waited nearly 90 days following his arrest to claim that he was missing a cell phone and cash.

Given the preponderance of the evidence, I consider it more likely than not that neither Officer #1 nor Officer #5 took cash or a cell phone from the Complainant and failed to properly secure them. For this reason, I find that neither Officer #1 nor Officer #5 violated §

10.02.00 of the BPD Policy and Procedures Manual. As a result, I have issued a finding of unfounded with respect to these allegations.

***OMBUDSMAN'S POLICY FINDINGS***

Officer #1

P.M. § 1.01.02 – Authorization (for the use of force) **Exonerated**

P.M. § 11.03.16B – False Reporting **Unfounded**

P.M. § 10.02.00 – Damage or Loss of Property Belonging to Others **Unfounded**

Officer #5

P.M. § 10.02.00 – Damage or Loss of Property Belonging to Others **Unfounded**



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