



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB10/0001 – April 9, 2010

THE SITUATION

Early one winter morning in 2010, the Complainant was involved in a dispute with two neighbors. Multiple officers from the Boise Police Department (BPD) were sent by the Ada County Emergency Dispatch after calls were placed to 911 reporting the disturbance, as well as the fact that the Complainant had boasted that he was armed with a handgun. Officers spoke to the involved individuals and a couple of witnesses. The Complainant was ultimately arrested for Battery on one of his neighbors.

THE COMPLAINT

The Complainant made two allegations.

Allegation #1

That a BPD officer (Officer #1) used excessive force, without necessity or cause, by twice slamming the Complainant against a car while the officer conducted a pat-down search of the Complainant for weapons. If, based on the preponderance of the evidence, the force used by Officer #1 was found to have been unreasonable or unnecessary under the circumstances, this would have been a violation of PM § 1.01.02 – Authorization (for the use of force).

Allegation #2

That several BPD officers, including Officer #4, used excessive force by punching the Complainant in the back and taking him to the ground without necessity or cause. If, based

on the preponderance of the evidence, the force used by Officer #4 and/or any other involved officers, was found to have been unreasonable or unnecessary under the circumstances, such an action would be a violation of PM § 1.01.02 – Authorization (for the use of force).

THE COMPLAINT INVESTIGATION

The following steps were taken during the investigation of this complaint.

1. The Complainant was interviewed.
2. The Complainant's girlfriend, who was present during portions of the incident, was interviewed.
3. Photographs provided by the Complainant and his girlfriend were reviewed. These photos show bruising to the Complainant's arm, back and hip.
4. Dispatch records relating to the incident were reviewed.
5. The official BPD report of the Complainant's arrest was reviewed.
6. The following BPD officers who were present at the scene of this incident were interviewed: Officer #1, Officer #2, Officer #3, Officer #4, Officer #5, Officer #6, and Officer #7.
7. All known audio recordings made during the incident by BPD officers were reviewed and analyzed.

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. The Complainant was involved in a dispute with two neighbors. One of the neighbors called the police, and told Dispatch that the Complainant had boasted that he had a handgun and was not afraid to use it.
2. BPD officers were dispatched to this disturbance call and were informed of the Complainant's reported boast that he was armed.
3. A total of seven BPD officers arrived at the scene of the incident.
4. The Complainant had consumed an unknown quantity of alcoholic beverages prior to the arrival of the officers.
5. The Complainant was speaking on his cell phone when Officer #1 contacted him.
6. Officer #1 used soft, empty-hand control to conduct a pat-down search of the Complainant. This force included putting and holding the Complainant against a car.
7. Officer #1 found no weapons on the Complainant.
8. The Complainant yelled at the officers and used profanity during the incident.
9. The Complainant put his cell phone very close to Officer #4's face.

10. Officer #4 moved his face away from the phone and used his hand to bat the phone away.
11. The Complainant was taken to the ground by Officer #1, Officer #2, and Officer #5, and then handcuffed.
12. Before the Complainant went to the ground, there was a “tug of war” between several BPD officers in which the Complainant was pulled in different directions.
13. The Complainant was arrested for battery on one of his neighbors.

OMBUDSMAN’S ANALYSIS

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.

Allegation #1

The Complainant alleged that Officer #1 used excessive force, without necessity or cause, by twice slamming the Complainant against a car while conducting a pat-down search of the Complainant for weapons.

The police were dispatched to an apartment complex on a report of a fight situation involving the Complainant. As the officers were responding, they were told by Dispatch that a caller had reported that the Complainant had boasted that he had a gun and was not afraid to use it.

The preponderance of the evidence in this case clearly established that Officer #1 conducted a pat-down search of the Complainant with the assistance of Officer #2. Given the report of possible criminal activity and a boast of being armed, this limited search of the Complainant's outer clothing for the presence of a weapon was lawful and consistent with the legal guidance provided BPD officers through their training. Therefore, since the pat-down search of the Complainant was lawful, Officer #1 was authorized under BPD policy to use reasonable and necessary force to control the Complainant's movements during the search.

It is clear from the evidence that the extent of the force used by Officer #1 was soft, empty-hand control. Officer #1 spun the Complainant around 180 degrees so that the Complainant was facing away from him. Officer #1 also held the Complainant against a nearby car in order to facilitate the search and control the Complainant's movements.

There are two factual disputes concerning Officer #1's use of force during the search. One has to do with the extent to which the Complainant complied with or resisted Officer #1's commands and efforts to search the Complainant. The other disputed fact has to do with how strongly Officer #1 pushed or pinned the Complainant against the car.

The Complainant asserts that he was behaviorally compliant with Officer #1, but "verbally in compliant [*sic*]." The Complainant admits to turning his head, but not his body, to speak with Officer #1 as the search was being conducted. On the other hand, Officer #1 and Officer #2 assert that the Complainant tried to turn his body so that he would be facing Officer #1. The officers also say that the Complainant tensed up his body as Officer #1 was positioning him against the car for the search. Taking all the evidence into consideration, it

seems more likely than not that the Complainant was moving and not holding still as Officer #1 commenced his pat-down search of the Complainant.

The other factual dispute involves the strength of the force used by Officer #1 to pin the Complainant against the car. The Complainant says that he was “slammed”, while Officer #1 reports that he “pinned” the Complainant against the car with his (Officer #1’s) leg and body. The conclusion of whether one has been slammed or merely pinned calls for a subjective response and is likely influenced by one’s own perspective. The evidence clearly supports the conclusion that, however strongly Officer #1 pushed and/or held that Complainant against the car, it was enough to counteract his (the Complainant’s) movement. The force used by Officer #1 was enough to keep the Complainant from turning, but not enough to injure him.

Given that Officer #1 had lawful authority to search the Complainant for weapons and that the Complainant was less than completely passive during the search, I find that Officer #1’s use of soft, empty-hand control to place and hold the Complainant against the car was reasonable and necessary to safely complete the search. For this reason, I have issued a finding of exonerated in connection with the Complainant’s allegation that Officer #1 violated § 1.01.02 Authorization (for the use of force) of the BPD Policy and Procedures Manual.

Allegation #2

The Complainant alleged that Officer #4, along with other unknown officers, used excessive force by punching him in the back and taking him to the ground without necessity or cause. The Complainant claimed that he was merely holding up his cell phone in order to play an audio recording for Officer #4 when an officer punched him in the back and several officers threw him to the ground, intentionally placing him in a puddle of slush.

Other than the Complainant's own statement, no evidence could be found to support the Complainant's allegation that an officer punched him in the back immediately before he was taken to the ground.

The preponderance of the evidence in this case clearly established that Officer #4 used no force on the Complainant, other than to swat away the Complainant's hand and cell phone to avoid being struck by the phone. For this reason, I have issued a finding of unfounded in connection with the Complainant's allegation that Officer #4 violated § 1.01.02 Authorization (for the use of force) of the BPD Policy and Procedures Manual.

In the course of investigating this complaint, it was determined that, based on the preponderance of the evidence, Officers #1, #2, and #5 used some degree of force to take the Complainant to the ground. Immediately before they did this, the Complainant used his hand to thrust his cell phone in the direction of Officer #4's face. Whether or not the Complainant intended to strike Officer #4 with the phone, the evidence from this investigation leaves little doubt that the officers who saw what happened thought that the Complainant was about to hit Officer #4. Officer #4 defensively pulled his head back and swatted away the Complainant's hand.

In the face of this perceived assault on Officer #4, Officers #1, #2, and #5 had the authority to use reasonable and necessary force to control the Complainant's movements and prevent him from striking anyone. Officers are taught that one viable option under such circumstances is to take a person to the ground when that individual poses an actual or potential threat to their safety. This prevents the person from using his legs to kick or trip the officers. It also allows the officers to quickly control the person's hands and arms. Taking a person to the ground through the use of leverage and body weight, as was the case in this instance, is considered soft, empty-hand control. No strikes or intermediate weapons (e.g., O.C. spray, Taser, baton strike, etc.) were used. Given the totality of the circumstances, it

was reasonable for Officers #1, #2, and #3 to use soft, empty-hand control to take the Complainant to the ground and put him in handcuffs.

For the reasons stated above, I have issued a finding of exonerated for each of these three officers in connection with the Complainant's allegation that § 1.01.02 Authorization (for the use of force) of the BPD Policy and Procedures Manual was violated when he was taken to the ground.

OMBUDSMAN'S POLICY FINDINGS

Officer #1:

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 in connection with the allegation that Officer #1 used excessive force during the pat-down search of the Complainant.
2. 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 in connection with the allegation that Officer #1 used excessive force during the time that the Complainant was taken to the ground.

Officer #2:

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 in connection with the allegation that Officer #2 used excessive force during the time that the Complainant was taken to the ground.

Officer #4:

1. P.M. § 1.01.02 – Authorization (for the use of force) – Based on the preponderance of the evidence, a finding of unfounded has been issued in connection with the allegation that Officer #4 used excessive force during the time that the Complainant was taken to the ground.

Officer #5:

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 in connection with the allegation that Officer #5 used excessive force during the time that the Complainant was taken to the ground.



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