



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB06/0011 - March 17, 2006

THE SITUATION

The Complainant picked up her boyfriend, Witness #1, at the Boise Airport rental car parking lot despite a No Contact Order existing between them. She drove him from the parking lot to the main terminal to drop off the keys. Officer #2 ran a registration check on her vehicle as she was parked at the curb on the lower level. When he learned that the registration was canceled, he made a traffic stop on the vehicle. The Complainant told Officer #2 that Witness #1 was inside the terminal and gave him his name.

Officer #2 learned that there was a No Contact Order in effect between the Complainant and Witness #1 who had returned to the vehicle. Officer #1 arrived at the scene to assist Officer #2. As they confirmed the No Contact Order and attempted to find out whether or not any of the listed exceptions applied, they saw the Complainant lean over onto Witness #1. Witness #1's arm was around her shoulders and neck. Unsure what was happening, but concerned that there may be a physical altercation taking place, both officers rushed up to the car. Officer #1 opened the passenger door and grabbed Witness #1 by the back of his sweatshirt. At that point, Witness #1 yelled that the Complainant was suffering a seizure. Officer #1 quickly saw that there was no altercation, but that she was suffering a seizure. Officer #1 then released his hold on Witness #1's sweatshirt. Paramedics were summoned.

Witness #1 stayed with the Complainant until she was transported to a medical facility. He was then arrested for violating the No Contact Order.

THE COMPLAINT

The Complainant and her boyfriend, Witness #1, came to the Office of the Community Ombudsman on January 24, 2006. She alleged that on January 7, 2006, shortly before 1:00 a.m. an officer used excessive force in pulling Witness #1 out of her car while she was suffering a seizure. As a result of that excessive force, she suffered a dislocated shoulder. She believed that while she was leaned over onto Witness #1, the officer pulled him from the car. This caused her arm, which was trapped between Witness #1's legs, to be pulled, dislocating her shoulder. She provided medical records documenting her treatment for a dislocated right shoulder that evening.

THE COMPLAINT INVESTIGATION

The investigation included a review of the police report and dispatch records. The only audio recording of the incident, that of Officer #2, was reviewed. There was no video of the incident. The Complainant and three witnesses were interviewed along with the two officers who were present. The medical records associated with the Complainant's treatment were also reviewed.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of evidence available as a result of this investigation, I came to the following findings of fact:

1. The Complainant was stopped for a traffic violation at the lower curb of the Boise Air Terminal.
2. During the traffic stop officers learned of a No Contact Order between the driver and passenger (Complainant and Witness #1).
3. The Complainant suffered an epileptic seizure.
4. The officers saw the Complainant slump toward Witness #1 and that Witness #1's arm was around her shoulders or neck in a manner consistent with a possible

physical altercation.

5. Officer #1 immediately moved to physically separate the two persons to prevent any injury to the Complainant by grabbing Witness #1 by the sweatshirt.
6. Witness #1 immediately told the officers about the seizure and medical aid was summoned for her.
7. The Complainant was transported by paramedic ambulance to the hospital and Witness #1 was arrested for violating the No Contact Order.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The preponderance of evidence in this case supports the conclusion that the minimal force used by Officer #1, when he grabbed the sweatshirt of Witness #1, was reasonable under the circumstances. He knew that a No Contact Order existed between the two parties. The action of Witness #1 holding the Complainant around the neck and shoulders was consistent with many possible activities, including a physical altercation. Officer #1 acted to separate the two and prevent any physical injury to the Complainant. It is not known how the Complainant's shoulder was dislocated. Even if it happened during Officer #1's actions, it was the accidental, unintended consequence of his reasonable efforts to protect the Complainant by separating the two parties.

The Boise Airport Police Department Policy and Procedures Manual (§1.101) authorizes officers to use force in the following manner:

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.

Officer #1 used minimal force in his attempt to gain control of the situation. He grabbed the male by the back of his sweatshirt. It may never be known how the Complainant suffered her injury, whether it was the result of her seizure or of Officer #1's attempt to separate the two parties. Even if he had started to pull Witness #1 from the car, his actions would have been reasonable in the totality of the circumstances.

For these reasons, Officer #1's actions were reasonable to gain control of the situation and met the requirements of §1.101 of the BAPD Policy and Procedures Manual. Therefore, I have issued a finding of exonerated in connection with the Complainant's allegation.

Officer #2 did not use any force in this incident. Therefore, I have issued a finding of unfounded in connection with the Complainant's allegation.



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