



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0012 - August 17, 2006

THE SITUATION

The Complainant was arrested by Officer #1 on September 23, 2005. He was charged with two felonies, possession of methamphetamine and concealment of evidence.

Officers from the Boise Police Department (BPD) were called to the parking lot of the Albertson's Store at 36th and State on the report of a domestic violence situation between a man and a woman. As officers were interviewing the involved parties and witnesses, Officer #2 observed several butane lighters in the Complainant's vehicle and became aware of the Complainant's arrest record for drug violations. Officer #2 had his police service dog sniff the outside of the vehicle. This state-certified narcotics detection dog alerted on the vehicle's open window. The dog was then allowed to sniff the inside of the vehicle and alerted on a small black case. Drug paraphernalia and residue were found inside the case and in other parts of the vehicle.

The Complainant reported that he had fallen during the incident causing injuries to his abdomen and hand. He was transported by paramedics to the Emergency Department (ED) of a local hospital. While at the hospital, the Complainant was examined by medical personnel and released to Officer #1, who arrested the Complainant for possession of methamphetamine with intent to deliver. The Complainant was then taken to jail by Officer #1. After booking the Complainant into the jail, Officer #1 found a small baggie containing suspected narcotics in the back seat of the patrol car in which the Complainant had been transported to jail.

THE COMPLAINT

The Office of the Community Ombudsman received a written complaint in the form of a letter from the Complainant on January 30, 2006. Further correspondence with the Complainant clarified the nature of his allegations.

The Complainant asserted that he had not placed the baggie containing suspected narcotics in the back seat of the patrol car. He claimed that he was searched twice before he was taken to jail, once before he was taken to the hospital by the paramedics and again at the hospital before Officer #1 handcuffed him and took him to jail. According to the Complainant, either search should have found the baggie if he had it, which he claimed he did not. As a result, the Complainant alleged that Officer #1 either failed to thoroughly search him prior to placing him into the rear seat of the patrol car, or failed to thoroughly search the rear seat of the police vehicle prior to placing the Complainant in the vehicle for transport to the jail. An inadequate search incident to arrest, if true, would be a violation of § 2.04.01 of the BPD Policy and Procedures Manual. Failure to properly search the rear of a police car before placing a prisoner inside, if true, would be a violation of § 2.06.06 of that same manual.

The Complainant also alleged that, while he was being examined at the hospital, Officer #1 ordered a doctor to conduct a body cavity search of the Complainant. Absent any court order to perform such a search, this action, if true, would be a violation of § 2.04.05 of the BPD Policy and Procedures Manual.

Based on these allegations made by the Complainant, a Class I Complaint investigation was opened on February 6, 2006.

THE COMPLAINT INVESTIGATION

I took the following steps in the course of this investigation:

1. A review of all written police records associated with the reported incident and the arrest of the Complainant.
2. A review of all audio recordings made by Officer #1 and other involved officers during their contacts with the Complainant and other persons involved in this incident. One of these recordings contained a portion of the doctor's interaction with the Complainant at the hospital prior to the Complainant's arrest. During this interaction, the Complainant disclosed certain medical information which caused the doctor to indicate the necessity for him to perform a physical examination of one of the Complainant's body cavities.
3. Based on a release and waiver signed by the Complainant and given to the Office of the Community Ombudsman, a review of the Complainant's medical records of his treatment at the hospital on September 23, 2005. These records indicate that the doctor performed the body cavity examination mentioned during his conversation with the Complainant and the medical reason for this examination. No mention is made in these records of a request or order by the police for a body cavity search of the Complainant.
4. Based on a release and waiver signed by the Complainant and given to the Office of the Community Ombudsman, an interview of the doctor who examined the Complainant on September 23, 2005. The doctor recalled the Complainant. The doctor clearly remembered the specifics of the Complainant's self-reported medical history and how a specific part of that history required the doctor to conduct a physical examination of one of the Complainant's body cavities. The doctor stated

that this was a medically necessary and prudent step to take. The doctor was also certain that no police officer or other person asked, suggested, or in any other way influenced his medical decision to conduct this examination.

5. An interview with Officer #1. Officer #1 stated that he searched the Complainant thoroughly after he arrested him at the hospital and before he placed him in the back of the police car. Officer #1 explained how he thoroughly searches the rear passenger compartment of his assigned police car at the beginning of each shift before driving it out of the back lot of the police station. He then conducts a similarly thorough search of the same area of the car immediately after transporting any person in his police car. Officer #1 was certain that he did this on September 23, 2005, and that there was nothing in the rear of the police car when he put the handcuffed Complainant in it. As Officer #1 drove the Complainant to jail, he watched in his rearview mirror as the Complainant wriggled and moved his hands behind his back. After booking the Complainant into the jail, Officer #1 thoroughly searched the rear of his police car and found a baggie containing suspected drugs stuffed down behind the seat where the Complainant had been sitting. Officer #1 also stated that he never discussed a body cavity search of the Complainant with the doctor or any other person.

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 finding of fact.

1. The Complainant was transported by the Ada County Paramedics via ambulance from the scene of the incident at 36th and State to a local hospital.
2. Officer #1 made no attempt to search the Complainant prior to transportation of the Complainant to the hospital.

3. Prior to placing the Complainant inside the rear of his patrol car at the hospital, Officer #1 searched the rear seat area of that same patrol car. No other person was inside the rear of the patrol car in the time between this search and when Officer #1 put the Complainant inside the patrol car.
4. Officer #1 conducted an external clothing "pat search" of the Complainant for weapons and contraband prior to placing the Complainant in the rear seat of his police patrol car. This search took place at the hospital.
5. After Officer #1 transported the Complainant in the rear of his patrol car from the hospital to the Ada County jail, Officer #1 searched the rear seat area of his patrol car.
6. In the course of the search mentioned in finding #5, above, Officer #1 found a small plastic bag containing a white substance that tested presumptively positive for methamphetamine.
7. While the Complainant was being examined for injuries at the hospital, the examining physician conducted a body cavity examination of the Complainant for purely medical reasons.
8. Neither Officer #1, nor any other BPD officer, ordered, asked, or even suggested to Witness #1 or any other medical professional, that the Complainant's body cavity should be searched.

OMBUDSMAN'S ANALYSIS AND FINDINGS

Field Search Incident To Arrest

The Boise Police Department's policy (§ 2.04.01) Field Search Incident to Arrest states:

The arresting officer shall conduct a thorough field search of all arrested subjects at the time of arrest and prior to transporting. The search shall be conducted to remove all weapons from the subject and to recover any evidence of the crime or any contraband.

The preponderance of the evidence clearly shows that Officer #1 conducted such a search on the Complainant at the hospital immediately after his arrest and prior to placing him in the back of the patrol car for transport to the jail. The only point at issue is whether or not Officer #1's search met the policy's thoroughness standard.

As evidence that the search was not thorough, the Complainant offers the discovery of a baggie containing illicit drugs in the rear of the police car. The argument made by the Complainant is: if Officer #1 searched both the Complainant and the rear of the patrol car thoroughly before the Complainant was placed into the patrol car, no baggie could be left in the car by the Complainant; therefore, either Officer #1 placed the baggie of drugs behind the rear seat of the car himself, or one of the searches was not thorough.

This argument rests on the assumption that a "thorough" search of a person incident to arrest could not fail to discover a baggie of illicit drugs. This assumption is without merit. Officer #1 did not perform a "strip search" of the Complainant prior to putting him in the rear of the patrol car. Officer #1 conducted a standard external search of the Complainant by using his eyes and hands to carefully inspect and feel the Complainant's clothing. Such a search method is not capable of reliably discovering very small and pliable items tucked into the folds of clothing, hidden under a belt, or placed any number of other places, including in a person's clothing or between clothing and a person's body.

In this particular case, the item found by Officer #1 in the patrol car was a small plastic bag folded up and containing 0.5 ounces of presumed methamphetamine. Officer #1, who was wearing search gloves that have protective Kevlar pads on the palms and finger tips, could

easily have missed such a small item if it were carefully hidden by the Complainant. Failure to discover this item does not necessarily indicate a lack of thoroughness on the part of Officer #1. It merely points out the limitations of such a search and the wisdom of other search layers built into the booking process, such as the pre/post search of the vehicle used to transport a prisoner, and more thorough searches of clothing and bodies at the jail.

In summary, Officer #1's failure to discover the baggie during his field search of the Complainant was reasonable given the size of the baggie and the natural limitations of such searches. For this reason, I have issued a finding of exonerated in connection with the allegation that Officer #1 violated § 2.04.01 of the BPD Policy and Procedures Manual.

Search of the Police Vehicle

The Boise Police Department's policy (§ 2.06.06) Search of the Police Vehicle states:

The officer shall search the portions of his/her police vehicle in which a prisoner may be transported, both before and after transporting. The purposes of this requirement are to insure officer safety and to establish cause for criminal prosecution for any evidence, weapons, or contraband found.

The Complainant offers no evidence to support this allegation, other than his argument that the discovery of contraband behind the rear seat of the police car is proof in itself that either the field search of the Complainant or the pre-transport search of the patrol car lacked thoroughness. As stated above, this argument is based on a faulty assumption and is not reasonable.

In this case, and absent any evidence to the contrary, Officer #1's contention that he routinely searches the rear seat of his patrol car at the beginning of every shift and after every transport of a person in the portion of the vehicle must be presumed to be true. For this reason, I have issued a finding of exonerated for the allegation that Officer #1 violated § 2.06.06 of the BPD Policy and Procedures Manual.

Body Cavity Search

The Boise Police Department's policy (§ 2.04.05) Strip Searches states (in part):

Body cavity searches shall not be conducted, except by court order, in which case the suspect will be transported to the hospital for examination.

The preponderance of the evidence clearly shows that, while a doctor did conduct a physical examination of one of the Complainant's body cavities, Officer #1 was not involved in any way, shape, or form in the doctor's decision to proceed with the examination. It was conducted solely for a legitimate medical purpose. For this reason, I have issued a finding of unfounded for the allegation that Officer #1 violated § 2.04.05 of the BPD Policy and Procedures Manual.



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