



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0039 - October 30, 2006

THE SITUATION

On October 15, 2005, at approximately 11:50 p.m., a Boise Police Department (BPD) officer (Officer #1) observed a vehicle driving erratically in the area of 27th and Main. Officer #1 had a BPD Police Service Dog (PSD) with him at the time. Officer #1 initiated a traffic stop on the vehicle and it pulled into the parking lot of the Maverick Store at 27th and Main. The car was being driven by the Complainant and had one passenger. Upon contacting the Complainant at the driver's window, Officer #1 determined that the Complainant had been drinking. Officer #1 then went back to his patrol car and requested assistance from another officer.

Officer #2, an experienced Driving Under the Influence (DUI) investigator on duty at the time, responded to 27th and Main to assist. Once Officer #2 was in place to assist Officer #1, the Complainant was told to get out of his car. The Complainant refused and would not get out. Instead, he held onto the steering wheel. Officer #2 grabbed hold of the Complainant in an attempt to pull him from the car. After a few minutes and repeated attempts by the officers to remove him, the Complainant did get out of the car. Once he was out, the Complainant physically resisted the officers' attempt to place him against the car. He was taken to the ground by the officers where he continued to resist. In the process of getting the Complainant to the ground, Officer #2 used his Taser in drive stun mode and Officer #1 attempted to apply a Lateral Vascular Neck Restraint (LVNR). Both officers struggled with the Complainant in an attempt to get him onto his stomach and handcuffed. During this struggle, the rear door to Officer #1's police car opened and his PSD got out of the car. The dog went to the Complainant and bit his right lower leg. Officer #1 ordered the dog off the bite and secured him. The Complainant was then handcuffed, searched, hobbled, and placed

in the back of Officer #2's police car. He was taken to a local hospital where he was treated for dog bite wounds to his leg. After being medically cleared, the Complainant was taken to the Ada County jail and booked for DUI, Assault on an Officer, Resisting and Obstructing an Officer, and Driving on a Suspended License.

THE COMPLAINT

The Complainant alleged that both officers used excessive and unnecessary force on him in the course of the arrest. The following is a summary of the Complainant's statement at the time he filed the complaint.

On October 15, 2005, he was pulled over by (Officer #1) at 27th and Main. The Complainant had one passenger in the car with him. Officer #1 made contact with the Complainant at the driver's window, obtained his paperwork, and then walked back to the police car. Approximately 15 minutes later, three or four other police officers arrived. When the other officers got out of their cars, so did a police dog. The Complainant could see the dog out of the car and heard it barking. Officer #2 ordered the Complainant out of his car, but he refused to get out for fear of the dog. Officer #2 pulled the Complainant out of the car, threw him onto the ground, picked him off the ground, and put him against a police car. As the Complainant was being held against the car, the officer put a handcuff on the Complainant's left wrist. When the Complainant brought his right hand back to be cuffed, the officer used his knee or body weight to pressure the handcuff on the left wrist even tighter. This caused extreme pain and injury to the Complainant's left wrist. The Complainant reacted to the pain by trying to pull away his left hand. He was then thrown to the ground. As the Complainant was on the ground, the officer used a Taser on him and Officer #1 allowed his police service dog to bite the Complainant's leg.

Specifically, the Complainant alleged the following misconduct:

Officer #1

That Officer #1 intentionally ordered his police service dog to attack and bite the Complainant without cause or justification. If this were true, it would be a violation of § 1.01.02 (Authorization for the Use of Force) of the BPD Policy and Procedures Manual (P.M.).

That Officer #1 did not maintain proper control of his police service dog. If this were true, it would be a violation of P.M. § 11.03.02 (Performance of Duty).

Officer #2

That Officer #2 intentionally and without justification tightened the handcuff on the Complainant's left wrist which caused him pain and injury. If this were true, it would be a violation of P.M. § 1.01.02 (Authorization for the Use of Force).

THE COMPLAINT INVESTIGATION

The following steps were taken in the course of this investigation:

- Interviews were conducted with the Complainant, Officer #1, and Officer #2.
- A close reading and analysis was conducted of all available police reports related to the arrest of the Complainant and the officers' use of force against the Complainant.
- A copy of the video recording made by a camera in Officer #2's police car was obtained and carefully reviewed. This video showed the entire contact between the two officers and the Complainant from the arrival of Officer #2 until after the PSD

was removed from biting the Complainant's leg and the Complainant was handcuffed and walked to the rear of Officer #2's police car prior to being hobbled and placed in the back of the car. The services of a video expert were used to produce a lighter copy of the video to improve visibility. In response to an assertion made by the Complainant that Officer #2 handcuffed him prior to taking the Complainant to the ground and that the video obtained by the Office of the Community Ombudsman may have been altered or edited to remove a portion of the recording, the original video recording was examined by the same video expert. He could find no evidence of editing or tampering with the original recording. In addition, the video expert created digital images of selected video frames so they could be examined to determine whether or not the Complainant was handcuffed prior to being taken to the ground. These images clearly showed that, while the Complainant had an unidentifiable object in his left hand, it was not a handcuff. Based on the video evidence, it is clear that the Complainant was handcuffed after he was taken to the ground.

- Twenty-six separate digital audio recording files created by BPD officers and supervisors in connection with the arrest of the Complainant and the use of force by Officer #1 and Officer #2 were identified and analyzed for evidence. These recordings included conversations with the Complainant at the scene of his arrest, at the hospital, and at the jail. Also included was an interview at the scene between a police supervisor and the lone passenger in the Complainant's vehicle at the time that Officer #1 made the traffic stop.
- Digital photographs of the Complainant and his dog bite wounds taken by a BPD officer while the Complainant was at the hospital receiving treatment were examined.

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 made a lawful traffic stop of the Complainant on or about October 15, 2005, in the area of Main and 27th Street in Boise.
2. Based on his observations of the Complainant, Officer #1 asked for another officer to assist him with a DUI investigation.
3. Officer #2 arrived at the scene of the traffic stop in response to Officer #1's request.
4. Officer #2 was briefed by Officer #1 and then assumed the lead in the DUI investigation. Officer #1 remained with him as his assist officer.
5. Officer #1 ordered the Complainant to step out of his car and walk back towards him.
6. The Complainant verbally refused to comply with this order and did not immediately get out of his car.
7. Officer #1 repeated this order several times.
8. The Complainant did not get out of the car, but did open the driver's door.
9. After several orders and no compliance by the Complainant, Officer #1 reached into the car and tried to pull the Complainant out of the car. Officer #2 stood next to Officer #1 and assisted him in attempting to physically remove the Complainant from the car.

10. The Complainant resisted Officer #1's efforts to remove him from the car by holding onto the steering wheel.
11. Officer #1 removed a Taser from its holster and told the Complainant that he would be tased if he did not get out of the car.
12. The Complainant said he would get out and Officer #1 stepped away.
13. The Complainant got out of the car and stood up. As he did so, he was holding a small object in his left hand.
14. Officers #1 and #2 took hold of the Complainant's arms, Officer #1 on his left arm and Officer #2 on his right.
15. The Complainant used his right arm to push Officer #2 away from him.
16. Officer #2 pushed the Complainant over to the driver's side of the Complainant's car.
17. The Complainant struggled and physically resisted both officers' efforts to control him.
18. Officer #1 placed the Complainant into a lateral vascular neck restraint (LVNR).
19. Officer #2 used a Taser to apply a "drive stun" to the Complainant's side.
20. The Complainant slid to the ground and both officers followed.
21. Once on the ground, the Complainant continued his physical resistance by failing to roll onto his stomach as ordered and by flailing his arms and legs.

22. Officer #2 used his Taser to apply a second "drive stun" to the Complainant so he would roll over and stop resisting. The Complainant rolled over after this second application of the Taser.
23. At about the same time as the Complainant was sliding to the ground, the remote-control car door opener in Officer #1's pants' pocket was unintentionally activated and the rear door to his police car was opened, causing his Police Service Dog to get out of the car.
24. The PSD went to where Officer #1 was struggling with the Complainant. The dog bit the Complainant on the right leg and held on for approximately 24 seconds.
25. When Officer #1 saw that his PSD was out of the car and biting the Complainant, he immediately gave a command to the dog. Officer #1 also grabbed hold of the dog's collar and pulled him off the bite. Officer #1 then returned the PSD to the police car and put him inside.
26. Officer #2 handcuffed both of the Complainant's wrists while Officer #1 was taking the police service dog back to the car. The Complainant was still on the ground as he was being handcuffed.
27. Officer #2 did not double lock either handcuff or check for sufficient room between the handcuffs and the wrists before assisting the Complainant to his feet.
28. Once the Complainant was handcuffed and back on his feet next to the Complainant's car, Officer #1 returned from putting the dog in the car.
29. The Complainant began to move and struggle again with the officers.

30. Officer #2 pushed the Complainant up against the driver's side of the Complainant's car and held him there until he stopped struggling.
31. Once the Complainant stopped struggling, Officers #1 and #2 escorted him to the back of Officer #2's police car.
32. The Complainant continued his physical resistance and was hobbled.
33. Officer #1 double locked and checked the fit of both handcuffs before the Complainant was placed in the patrol car and taken to the hospital for treatment of the dog bites.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Boise Police Department's policy authorizing the use of force by its officers (§ 01.01.02) states:

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. 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 affect 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.

Officer #1: Use of Force – Police Service Dog

The use of a PSD to make physical contact with or bite a subject is considered a use of force. In this incident, there is no doubt that Officer #1's PSD bit the Complainant. The

evidence clearly shows that Officer #1 did not intentionally deploy the PSD or order it to bite the Complainant. The release of the PSD from Officer #1's police car was simply an accident caused by unintended and unavoidable pressure on the door release device in Officer #1's pocket as Officer #1 was struggling to gain control of the Complainant. At that time the Complainant was physically resisting Officer #1's lawful detention during a DUI investigation. Since Officer #1 took no conscious action intended to release the dog or cause the use of that particular force against the Complainant, I have issued a finding of **unfounded** for the allegation that Officer #1 used unreasonable and/or unnecessary force on the Complainant with respect to the deployment of the PSD.

Officer #2: Use of Force – Handcuffs

Officer #2 stated that he did not double lock the handcuffs while the Complainant was still on the ground. He double locked them later when the Complainant was no longer resisting and there were additional officers on scene to help control the Complainant and watch the passenger in the Complainant's vehicle. As required by BPD policy, the handcuffs were double locked and checked for tightness before the Complainant was put into the back of Officer #2's police car. BPD Policy § 2.05.05 (Use of Handcuffs) reads, in part, as follows:

When handcuffing a prisoner or detainee, the officer shall:

- *Handcuff the prisoner or detainee with hands behind the subject's back and in the appropriate position (if possible). No prisoner or detainee shall be handcuffed with hands in front unless an injury, deformity, or disability makes it necessary to do so.*
- ***Double lock the handcuffs prior to transporting.** (Emphasis added.)*
- *Ensure that the handcuffs are not too tight by inserting the little finger up to the first knuckle between the handcuff and the area on the underside of the wrist.*
- *Keep the handcuffs on until arrival at the place of destination. Handcuffs may be removed in the interview/interrogation rooms for the purpose of furthering the investigative process. Handcuff and hobble a prisoner who is violent and uncontrollable to prevent injury and/or property damage.*

Once Officer #2 had the handcuffs on the Complainant, he stood him up. The Complainant renewed his physical resistance. In order to control him, Officer #2 pushed the Complainant against his car. Given that the handcuffs were not double locked, it is possible that one of the handcuffs tightened as the Officer #2's body pressed the Complainant against the car. Even if it could be proven that this is what happened, Officer #2's use of force (his body weight) to push the Complainant against the car was reasonable given the continued physical resistance of the Complainant.

Because there is no evidence to support the allegation that Officer #2 intentionally used any force to tighten the handcuffs on the Complainant in such a way that they would cause injury and/or pain, I have issued a finding of **unfounded** for the allegation that Officer #2 used unreasonable and/or unnecessary force on the Complainant.

Part of the Complainant's claim with respect to the tightened handcuff was his assertion that he was taken to the ground *after* a handcuff was placed on his left wrist. This was clearly not the case as documented by both the in-car video and the testimony of both officers. While the Complainant has attempted to discredit the video evidence with the claim that it has been altered, a close examination of the original video recording by an outside video expert clearly proved that no alteration had been made.

Officer #1: Performance of Duty – Control of a Police Service Dog

The Boise Police Department's policy on duty performance (§ 11.03.02) states:

An employee shall perform his/her duties in a manner which will maintain the highest standards of efficiency in carrying out the Department's functions and objectives. Satisfactory performance and competence is demonstrated by:

- *Adequate knowledge of the application of laws required to be enforced*
- *Willingness and ability to perform assigned tasks properly*
- *Conformance to the work standards established for the employee's rank, grade, or position*

- *Taking appropriate and timely action when a crime, disorder, or other situation requiring police action occurs*

Officer #1 had a responsibility to maintain control over his PSD during his contact with the Complainant. Officer #1 had a BPD issued, remote-control door opening device in a cargo pocket of his uniform pants. This was a reasonable and approved place to carry the device.

Officer #1 did not take any action on his own initiative to cause the remote to be activated; nor did he intend the release of the PSD. In fact, it was the Complainant's own actions that resulted in the activation of the opener and the release of the PSD. The Complainant physically resisted both officers' attempts to remove him safely from the car and bring him under control. As a result, Officer #1 began to apply a LVNR and Officer #2 delivered a drive stun with a Taser. The Complainant went to the ground and, in the process, the remote door opener was unintentionally activated.

Once Officer #1 became aware that his PSD was out of the police car and biting the Complainant, he immediately took appropriate steps to control the PSD and take him off the bite.

In summary, I find no evidence to support the allegation that Officer #1 failed to perform his duty with respect to the control and handling of his PSD. Therefore, I have issued a finding of **unfounded** for the allegation that Officer #1 did not maintain proper control of his Police Service Dog.



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