



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB06/0049 - November 6, 2006

THE SITUATION

On April 18, 2006, Officer #1 was advised by dispatch of a vehicle being driven recklessly by a possible drunken driver. He observed the suspect vehicle and attempted to overtake it while southbound on Five Mile Road. At the intersection of Fairview Avenue, Officer #1 drove to the left of the center of the roadway into northbound lanes to avoid traffic stopped at the traffic light. A small white vehicle turning left from eastbound Fairview onto northbound Five Mile stopped and yielded to his emergency vehicle. Witness #1, who was behind the small white vehicle, also stopped. The Complainant was unable to stop and collided with the rear of Witness #1's vehicle. Officer #2 investigated the collision and filed a report.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman by phone on April 19, 2006. She alleged that a Boise police officer caused a motor vehicle collision by his unsafe driving while responding to an emergency call.

THE COMPLAINT INVESTIGATION

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

- Interviews were conducted with the Complainant, Witness #1, Witness #2, Officer #1, and Officer #2.

- The police report filed by Officer #2 was reviewed.
- Audio recordings made by officers at the scene during the collision investigation were reviewed.

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 was legally authorized to operate his vehicle with emergency equipment operating in pursuit of a suspected violator of the law (Idaho Code § 49-623).
2. Officer #1 was operating his emergency equipment prior to the collision.
3. Officer #1 drove left of the center of the roadway into the northbound lanes as he drove south on Five Mile near Fairview.
4. A small white car stopped for Officer #1 as the driver turned onto Five Mile. A second vehicle, driven by Witness #2, also stopped.
5. A third vehicle, driven the Complainant, was unable to stop in time and collided with the rear of Witness #2's vehicle.
6. Officer #1 did not see or hear the collision between the two vehicles, but did see the vehicles stop suddenly.

OMBUDSMAN'S ANALYSIS AND FINDINGS

Officer #1 was attempting to locate a suspected impaired driver when he found the vehicle and driver that matched the description he had been given, including the license plate number. He attempted to catch up and stop the vehicle. In the course of doing this, he turned on his patrol car's emergency lights and siren and drove southbound in the northbound lane of Five Mile Road to pass traffic stopped for the signal light at Fairview.

Idaho Code § 49-623 grants emergency vehicles specified exemptions to the rules of the road when using an audible signal and/or a flashing light. Both siren and lights must meet certain required specifications. The Code specifically notes that the section does not relieve the driver from driving with due regard for the safety of other persons. BPD policy § 3.02.02C, requires an officer operating with emergency equipment to exercise due regard for the safety of life and property.

Officer #1 drove to the left of the stopped traffic as he was trained to do. He stayed as far to the right (west) side of the northbound lane as practical, which left room for the opposing traffic to pull over to their right as required by law. When he reached the intersection, a vehicle stopped in a position such that Officer #1 had to drive around the front of the vehicle to get past it. Another vehicle stopped behind the first one as Officer #1 drove around the front of the first vehicle. The Complainant heard the siren, but did not immediately see the source. She looked in her rearview mirror to see if the emergency vehicle was behind her. A split second later, she looked back and saw the vehicle operated by Witness #2 stopping suddenly in front of her. The Complainant was unable to stop in time and ran into the rear of the vehicle.

The Complainant alleges that Officer #1 was not operating his lights and siren for as long of a time as he maintained. By her own statement, she admits that she heard the siren prior to the collision. The Complainant and witnesses report that they did not hear the siren at all or

until just before the collision. They assumed that it was not operating, but there is no evidence that the siren was not on. It is likely that, while the siren was operating, they did not hear it.

There have been studies and practical demonstrations that indicate that the average driver may not hear a siren until it is almost on top of them. We clearly hear a siren in the distance when we are standing on the sidewalk. However, inside a vehicle designed to deaden outside noise we are much less likely to hear a siren until it is much closer.

Based on the preponderance of evidence, the fact that someone doesn't see the lights or hear the siren, does not establish that they weren't on. It establishes that they didn't see or hear them earlier. Officer #1 reported that his lights and siren were operating when he crossed into the northbound lane. Both the Complainant and Witness #2 report hearing the siren before the collision, if only by a few seconds or even less. For this reason, I issued a finding of unfounded in connection with the allegation that Officer #1 violated § 03.02.02C of the BPD Policy and Procedures Manual.



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