



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0190 - June 8, 2007

THE SITUATION

Officer #1 and Officer #2 were patrolling the downtown area on foot on an early December morning in 2006. A young woman came up to them and told them that a fight was about to happen. The officers walked a short distance and noted that people were gathering around two men. Both officers positioned themselves behind the crowd and stopped to observe the situation. One of the men who had been arguing turned to leave. A third man came out of the crowd and started punching the man who had remained. As soon as punches were thrown, the officers went forward to intervene. Officer #1 told the suspect to stop. The suspect started to run. Officer #1 chased the suspect on foot and took him into custody. The victim, whose face had been bloodied, left the area and was never identified.

THE COMPLAINT

The Complainant contacted the Ombudsman's Office by phone shortly after the incident occurred. He reported that two Boise Police Department (BPD) officers stood by and waited to intervene in an argument that eventually became a physical fight. The Complainant alleged that the officers failed to prevent the fight. These allegations, if proven true, would be a violation of the BPD Policy § 11.03.02 (Performance of Duty). The case was opened as a Class II Complaint.

THE COMPLAINT INVESTIGATION

The investigation into the complaint included interviews of the following persons: the Complainant; three friends who were with him the night the incident occurred, Witness #1, Witness #2, and Witness #3; and both officers who responded to the scene, Officer #1 and Officer #2. The investigation also included the review of the following documents: the dispatch record; the police report; and digital audio recordings made by the two officers during the incident.

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. On an early December morning in 2006, after the bars had closed, Officer #1 and Officer #2 were on foot patrol in downtown Boise.
2. The officers were near the corner of 6th Street and Main Street when an unidentified female alerted them that a fight was about to break out on Main Street between 5th and 6th Streets.
3. The officers walked rapidly to the scene and saw two groups of people around two men who were arguing. A crowd was gathering.
4. The officers stopped less than 50 feet from the two groups and split from each other. Officer #1 took a position behind a vehicle that was parked on the street. Officer #2 took a position near the wall of a building, where he was distanced from the persons arguing but still visible to people on the street.

5. Someone near one of the men arguing saw Officer #2. That person indicated Officer #2's presence to the man with the loud voice. The man with the loud voice made one final comment and withdrew from the situation. The second man in the argument remained where he was.
6. As the man with the loud voice was turning to leave, the assailant came from the back of the crowd and began chest-bumping the second man (the victim) and punching him in the face.
7. The assailant had not been involved in the verbal argument.
8. Both officers ran forward and made contact with the assailant and the victim. Officer #2 left the victim in order to assist Officer #1 in apprehending the assailant, who attempted to run from the situation.
9. Following a struggle and a chase, the officers arrested the assailant. The victim, who was bleeding, disappeared into the crowd.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Complainant alleges that Officer #1 hid behind a SUV and that Officer #2 hid in a doorway, and watched two men argue until the argument became a fistfight. The Complainant contends that the officers should have intervened when they first saw the men arguing and stopped the situation before the punches began. The question these allegations raise is whether Officer #1 and Officer #2 violated Boise Police Department Policy by failing to take timely and appropriate action in the face of civil disorder.

The Boise Police Department's policy (§ 11.03.02) Performance of Duty 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*

The applicable subsection is contained in the fourth bulleted section. It requires police officers to take "appropriate and timely action when a crime, disorder, or other situation requiring police action occurs." In this case, it is undisputed that no crime had yet occurred when the officers arrived at the scene. There was a situation of "disorder;" and the facts pose a relevant question as to whether the situation required police action beyond the action taken.

It is undisputed that Officer #1 and Officer #2 were alerted to the fight and responded immediately. It is also undisputed that they were able to reach the scene in a matter of seconds and take positions from which they could observe the parties' actions. It is further undisputed that the officers had a short period of time, between ten seconds and two minutes, in which to assess the situation.

The Complainant contends that the officers should have taken immediate steps to prevent the physical fight from erupting rather than stopping to assess the situation. While walking immediately into a crowd surrounding persons who may be on the verge of a physical fight is one way of approaching the problem, it is not necessarily the only choice or the best choice.

The necessity of taking timely action is accompanied by the requirement of taking appropriate action. In their interviews, both officers articulated persuasive reasons to stop and assess the situation. One of the officers explained that they do not always know what

they are walking into, especially in a situation such as this, where they were downtown early on a Saturday morning just after the bars had closed. The officers did not know if the situation involved gang members; and they did not know if the persons had weapons. In addition, as one of the officers observed, no crime had occurred at that point. He further observed that when officers become involved, it can sometimes escalate a situation rather than de-escalate it.

Stopping for a period of between 10 and 120 seconds to gather information and assess the situation was an appropriate course of action under the circumstances. Assessing the situation before going in is important to preserve the safety of the officers. It is also important to protect the safety of the persons involved and the safety of bystanders. If the situation had begun to escalate, if someone had drawn a weapon, or if the crowd had turned on the officers, people could have been injured. Depending on what the situation was, it would have been important for the safety of the officers, for the safety of the persons involved, and for the safety of the bystanders, to stop and call for back-up before going into the situation.

Both Officer #1 and Officer #2 described how their actions were different in this situation than they would have been if there had been an emergency. Officer #2 explained that if the person had been physically threatened or was on the ground in the fetal position, they would not have waited to intervene. Where no crime had yet occurred and where no one appeared to be in imminent danger, the officers took a matter of seconds to stop and see what was happening. If the situation was resolving on its own, the officers appropriately refrained from intervening, because, as Officer #1 observed, the police cannot become involved in every argument that occurs on the streets of downtown Boise.

According to the Complainant's description of the events, he did not see the entire chain of events. The Complainant described a physical fight breaking out between the two men who had been involved in the argument. He did not see that the original aggressor turned to leave after one of his companion's pointed out Officer #2's presence. He also did not see that the

battery occurred when a third person came out of the crowd and began punching the victim in the face. While the Complainant did not see this, one of his companions, who was a very reliable witness, did see it.

While the Complainant has a valid point in expecting that officers be proactive in carrying out the essential police function of preventing crime, a close examination of the facts in this case indicates that the officers' mere presence prompted an end to the original confrontation. The argument started to resolve after one of the men saw Officer #2. The subsequent battery, which was committed by a third person, was an unexpected turn of events.

For the reasons stated above, I have issued findings of exonerated for the alleged violations of BPD Policy § 11.03.02 (Performance of Duty) with respect to the actions of Officer #1 and Officer #2 regarding the claim that they failed to act in a timely manner to prevent a fight.



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