



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB07/0034 - July 30, 2007

THE SITUATION

In the late winter of 2007, on a weekend night, the Complainant and two friends were socializing and having drinks at downtown bars. The Complainant became involved in an altercation that drew the attention of two police officers. Officer #1 and Officer #2 were the first officers to arrive at the scene. Eight other officers arrived to assist and help keep the crowd under control. After a struggle that took the Complainant and Officer #2 to the ground, Officer #1 and Officer #2 were able to handcuff the Complainant. As the officers helped him to stand up, the Complainant started kicking his legs. Officer #2 forced the Complainant back to a prone position in order to hobble him.¹ The Complainant stiffened his legs and did not comply with the officers' commands to release his legs. Officer #2 delivered knee strikes to the Complainant's left leg. After the knee strikes, the officers were able to flex the left leg back. The Complainant then refused to bend his right knee. Officer #1 tased him one time on his upper right leg, after which the officers were able to bend back the Complainant's right knee and place him in hobbles. The Complainant was transported first to the jail and then to the emergency room at a local hospital, where he was examined and released to return to the jail.

¹ A hobble is a rope or strap that is used on a combative suspect who has already been handcuffed but is still fighting. Hobbles are used to restrict suspects from kicking out, injuring themselves, injuring officers, or damaging police cars. Hobbles are attached around a person's ankles and then secured to the person's handcuffs.

THE COMPLAINT

Witness #1, who is related to the Complainant, contacted the Office of the Community Ombudsman on the Monday morning following the incident. She reported that the Complainant had suffered a knee injury while being arrested. The Complainant was unable to make a statement at that time, either by phone or by e-mail, because he was on pain medication. The Complainant came in person into the office three days later. He alleged that, while he was on the ground, one officer hit him around his face and head and another officer bent his leg so far back that his knee was damaged. The matter was opened as a Class I Complaint. The Complainant's allegations that the officers used more force than was necessary, if proven true, would be a violation of the Boise Police Department's Policy § 1.01.02 Use of Force – Authorization.

THE COMPLAINT INVESTIGATION

The investigation into the complaint included interviews of the following persons: the Complainant, a relative of the Complainant (Witness #1), a friend of the Complainant who was with him on the night the incident occurred (Witness #2), an employee of one of the bars downtown (Witness #4), Officer #1, Officer #2, an officer who assisted in the hobbling process (Officer #3), three officers who were at the scene (Officer #4, Officer #5, and Officer #6), and an officer who is involved in the Boise Police Department's (BPD's) training program (Officer #7). The investigation further included a review of the handwritten drawings and diagrams by Witness #2, Officer #1, Officer #4, and Officer #5, as well as a visit to the scene with Witness #2. In addition to the interviews, the investigation included the review of the following documents: the dispatch records; the police report; the Administrative Review of Performance, the Use of Force Report, the Taser Information and Recorded Firing Data Report for the taser used by Officer #1, and the employee training histories for Officer #1, Officer #2, and Officer #3.

The investigation further included reviews of the digital audio recordings made by the officers during the incident; a review of a digital photographs taken by Officer #6, a review of digital photographs taken by Witness #1, a review of digital photographs taken on Witness #2's camera phone, and photographs of the Complainant's injuries taken during the course of the investigation. Finally, the investigation included a review of the Complainant's medical records from the local emergency medical services provider, two local hospitals, and a physician specializing in orthopedics.

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. On a late winter evening in 2007, the Complainant went downtown around 10:30 p.m. with two of his friends.
2. Between 10:30 p.m. and 12:45 a.m. the following morning, the Complainant drank seven mixed drinks that contained one shot each of the following liquors: rum, vodka, gin, and triple sec. The drink is then topped with a flavored alcohol called a "pucker." The Complainant also drank a Guinness beer with a shot of Bailey's Irish Cream Liquor.
3. At approximately 12:45 a.m., Officer #2 was standing on the southeast corner of the intersection of 6th Street and Main Street.
4. Officer #2 saw the Complainant in the roadway on Sixth Street south of Main Street. The Complainant was talking in a loud voice and was in the roadway

wrestling with a man who was smaller than him. The Complainant threw the man he was wrestling with to one side.

5. Officer #2 began walking toward the Complainant to tell him to calm down.
6. Officer #1 was in his patrol car on the northwest corner of Sixth and Main when he saw the Complainant and drove his patrol car across the intersection.
7. The Complainant started walking toward Officer #1 at a rapid pace. The Complainant made hand gestures to Officer #1. The Complainant had his palms up and was curling and uncurling his fingers in a beckoning motion.
8. The Complainant is approximately six inches taller than Officer #1 and weighs approximately 140 pounds more than him. The Complainant is approximately the same height as Officer #2 and weighs approximately fifty pounds more.
9. Officer #1 got out of the car with the Complainant still coming toward him. As the Complainant came very close to him, Officer #1 used both hands to push him backward and create some distance.
10. After the Complainant had taken a few steps back, Officer #1 told the Complainant to sit down on the curb. The Complainant followed Officer #1's directions.
11. Once the Complainant was sitting down, Officer #1 and Officer #2 told the Complainant that he was under arrest.
12. Officer #2 started to handcuff the Complainant. The Complainant pulled his arm forward and away from Officer #2.

13. Officer #2 used the Complainant's forward momentum to place him in a prone position on the ground. Officer #2 attempted to put the Complainant in a Lateral Vascular Neck Restraint (LVNR).
14. The Complainant tucked his head toward his chest and prevented Officer #2 from completing the LVNR. Officer #2 was able to bring his arm around the Complainant's face and lock his head in place.
15. The officers were then able to place the Complainant in handcuffs. After the Complainant was handcuffed, Officer #1 and Officer #2 tried to help the Complainant stand up. As the officers were helping him, the Complainant began to kick his legs.
16. Officer #1 and Officer #2 returned the Complainant to a prone position. The Complainant was rolling his body from side to side. The officers decided to place the Complainant in hobbles.
17. Once the Complainant was lying on his stomach, he held his legs stiff. When the officers told him to release his legs, he would not bend them.
18. After the officers gave the Complainant commands to release his legs, Officer #2 delivered three knee strikes to the common peroneal in the Complainant's left leg. After each strike, Officer #2 gave a command to the Complainant to release his leg. After the third knee strike, the Complainant bent his left leg back.
19. The Complainant then failed to comply with the officers' commands to release his right leg. Officer #1 applied and activated a taser to the Complainant's right leg. The Complainant then bent his right leg back.

20. Officer #1 and Officer #2 placed the Complainant in hobbles. Officer #3 assisted them.
21. After the Complainant was hobbled, four officers lifted the Complainant into the patrol car. The officers did not drop the Complainant.
22. Officer #1 transported the Complainant to the Ada County Jail. Officer #5 accompanied them in the car in order to watch the Complainant, who was hobbled in the back seat of the car.
23. During the transport, Officer #1 requested that EMS meet them at the jail. At the jail, the paramedics determined that the Complainant had a possible right knee injury. They recommended that he be seen at the hospital for a knee x-ray and an evaluation by a physician.
24. An emergency room (ER) physician at the first local hospital examined the Complainant. The ER physician gave a medical clearance to the Complainant who was then released to return to the jail.

OMBUDSMAN'S ANALYSIS AND FINDINGS

At the outset, it should be noted that the fact that the Complainant suffered injuries does not, by itself, prove that the officers used excessive force. The question presented in this case is whether the officers who arrested the Complainant used unnecessary or unreasonable force. It is clear that the Complainant had been injured.

For the purpose of analysis, it will be assumed that the injuries occurred while the officers were hobbling the Complainant. However, the fact that the Complainant sustained a knee injury close to the time he had a physical struggle with the police does not necessarily prove a causal relationship between the two. It was not within the scope of this investigation to either prove or disprove the source of the Complainant's injuries, if any.

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.

This policy does not prohibit the use of force. It places limitations on the use of force: the force used must be reasonable and it must be necessary. BPD Policy § 1.01.03 defines the criteria for the use of force. It states:

The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident. The criteria for determining use of force shall include, but not be limited to, (sic)

- *The severity of the crime*
- *The nature and extent of the threat posed by the suspect*
- *The degree to which the subject resists arrest or detention*
- *Attempts by the subject to evade arrest by flight*
- *Other factors, including*
 - *Nature and quality of intrusion upon the individual*
 - *Duration of that intrusion*
 - *Severity of injuries inflicted, if any*
 - *Officer/subject size and other physical attributes*
 - *Environmental considerations*
 - *Reaction time*
 - *Totality of circumstances*

These policy sections reflect the case law articulated by the United States Supreme Court and the Idaho appellate courts with respect to the use of force: when making an arrest, a police officer must not subject the person being arrested to any more force or restraint than is necessary. The relevant standards for analyzing this issue are summarized in a number of Idaho cases, with reference being made to the controlling decisions of the United States Supreme Court. As is stated in both the case law and the policy, the determination whether an officer used excessive force must be made from the point of view of a reasonable officer looking at the event at the time it happened. This determination must be made without the benefit of hindsight. The factors to be taken into consideration are: 1) the severity of the crime; 2) the immediacy of the threat to the officers; and 3) the level of resistance offered by the suspect.

In this case, it is assumed for the sake of argument that the Complainant's injuries resulted from his struggle with the officers. The Complainant suffered bruises to his nose and inner lip. He also suffered a knee strain with possible soft tissue damage. Balanced against the Complainant's physical injuries is the necessity of protecting the welfare of the person with whom the Complainant was initially fighting, the safety of bystanders, and the safety of the officers who were attempting to arrest him. The officers were placed in a position of having to control the Complainant's movements in order to effect a lawful arrest. In this case, protecting the safety of the officers and the safety of the other persons in the vicinity justified the amount of force used against the Complainant.

At the outset, it should be noted that the decision in this case is based on the officers' statements, the statement of Witness #4, and the supporting documents and audio recordings. The Complainant cannot remember anything from the time he sat down on the curb until the time he was tased. Based on the fact that he had consumed approximately thirty ounces of alcohol in slightly more than two hours, it is inferred that his intoxication level may have impaired his memory. The Complainant's friend, Witness #2, also experienced a memory failure concerning the events presumably due to the effects of the alcohol he had been

drinking. The Complainant's second friend, the designated driver, failed to respond to numerous attempts to contact him. Thus, the only evidence regarding the intervening events are the statements of the officers involved, the audio recordings, and the corroborating statement of an employee of one of the bars, who witnessed most of what occurred. This evidence is uncontroverted and is deemed reliable.

Having determined that the need to protect the safety of the officers and the public justified some use of force against the Complainant, the next phase of the analysis is to consider each of the individual factors to determine whether the level of force used was necessary. The first factor to be considered is the severity of the crimes the Complainant committed. The Complainant was ultimately charged with public intoxication and resisting and obstructing an officer. Public intoxication is not a particularly severe crime; however, the Complainant also engaged in acts that placed the safety of other people at risk. Officer #2 observed the Complainant engaged in a physical altercation with a bystander. Based on this act, the Complainant could have been charged with a battery.

In addition to public intoxication and battery, the Complainant started physically fighting with the officers. The crime of resisting an officer is a more serious offense than public intoxication. In this case, the resistance was not insignificant. The incident began with the Complainant engaging in a physical altercation with an unknown person. As Officer #1 approached, the Complainant indicated that he was interested in fighting with him. Due to the Complainant's intoxication, his desire to fight, and his apparent physical ability, he presented a threat of harm before the officers even began the process of arresting him. This is particularly true because the Complainant weighs nearly twice as much as Officer #1 and is approximately six inches taller.

Officer #2 first saw the Complainant in the roadway wrestling with a man who was smaller than him. Officer #2 saw the Complainant throw the man to the side and begin walking rapidly toward Officer #1 who was getting out of his patrol car. The Complainant had

already been in a physical altercation with one man, and was heading toward an officer who weighed slightly more than half as much as the Complainant. The Complainant's hand gestures indicated that he was inviting Officer #1 to engage in a physical altercation. Officer #2 sensed an urgency to get to the situation in order to help protect his fellow officer from being hurt.

The initial level of force used by Officer #1 is not in question. He gave the Complainant a two-handed push in the torso, which caused the Complainant to take a few steps back. This helped Officer #1 create a safe distance between the Complainant and him.

After being pushed back, the Complainant complied with Officer #1's directive to sit down on the curb. The officers told the Complainant he was under arrest. As the officers attempted to place the Complainant in handcuffs, the Complainant pulled his arm forward to avoid being handcuffed. Officer #2 had to take the Complainant to the ground and wrestle with him in order to get him in handcuffs.

The Complainant stopped struggling after he was handcuffed. When the officers tried to help him to a standing position, the Complainant started kicking. Officer #2 had to struggle with the Complainant again to get him back into a prone position. When the officers tried to hobble him, the Complainant flailed his body and held his legs stiff, refusing the officers directives to release his legs. There is no question that the Complainant was resisting and obstructing the officers who were attempting to place him under arrest.

The facts raise two questions: whether Officer #2 used unnecessary force in controlling the Complainant's head when trying to handcuff the Complainant; and whether Officer #1, Officer #2, and Officer #3 used unnecessary force in hobbling the Complainant. The analysis requires that the facts be examined from the point of view of the officers at the time the incident occurred. From the point of view of Officer #2 at the time of the incident, he noted that the Complainant was a very large man in terms of both height and weight and that

he was a young man. Officer #2 also noted to himself that the Complainant had been wrestling with an apparent friend or bystander and that this fact made it more likely that the Complainant would go "hands on" with the officers. Though the Complainant initially complied with Officer #1's directive to sit down on the curb, he offered physical resistance to being arrested by pulling his arm forward to prevent himself from being handcuffed.

This brings us to the first question: whether Officer #2 used excessive force when locking the Complainant's head in his arm. When the Complainant resisted arrest by throwing his arm forward, Officer #2 attempted an LVNR, which he had to abandon due to the risk of injuring the Complainant. When the Complainant tucked his head, a move that Officer #2 recognized to be a defensive wrestling move, Officer #2 moved his arm up to the Complainant's face to lock his head in position. Officer #2 did this in order to control the Complainant's head and prevent him from using his head as a means to injure Officer #2. Officer #2 described his upward arm movement from the Complainant's neck area to his face as a violent action. He said that the Complainant could have interpreted it as someone hitting him in the face.

Though the Complainant alleged that an officer hit him around the face causing a bruise to his nose and a bruise to the inside of his mouth, it is concluded that the bruises were caused when Officer #2 was forced to abort the LVNR and move his arm up to the Complainant's face in order to lock his head in place. This action was necessary due to the Complainant's strenuous resistance and Officer #2's need to protect himself. Officer #2's action in placing the Complainant in a headlock did not constitute an unnecessary or unreasonable use of force.

The next question is whether it was necessary and reasonable for the officers to place the Complainant in hobbles. The decision to place the Complainant in hobbles was made because the Complainant started to kick the officers when they were trying to help him stand up. As was noted earlier, the Complainant is a large man who could presumably inflict

painful or debilitating injury just with the force of his body. It would be unreasonable to expect the officers to attempt to place a 300-pound man in a patrol car when he was trying to kick them.

After Officer #2 took the Complainant back down to a prone position, the Complainant continued to resist by refusing to bend his leg and rolling around. Officer #2, who was physically the largest officer involved in hobbling the Complainant, was able to get the Complainant's left leg under control after he delivered three knee strikes, two of which made contact with the Complainant. It is noted that the Complainant's left leg was not injured.

After Officer #2 got the Complainant's left leg under control, the Complainant continued to resist. Officer #1 was on the Complainant's right leg. Officer #1 is significantly smaller than the Complainant. Officer #1 chose not to deliver knee strikes. Instead, he applied the taser, causing the Complainant to bend his right leg back. Officer #3 was assisting in this process; however, he could not remember exactly what he was doing and neither could the other officers. With the Complainant still resisting, the officers were finally able to place the Complainant's legs in the hobbles. Officer #2 said that the angle at which the Complainant's legs were bent varied during the struggle. Officer #1 said that he was probably up and down the Complainant's back during the struggle as he tried to get the hobbles on. Even assuming that, at some point during the course of the struggle, the Complainant's right leg was bent back far enough to cause a knee sprain or soft tissue injury, there is no evidence that the officers used excessive force in hobbling the Complainant.

In summary, as noted above, in making the determination on the necessity of using force and the reasonableness of the force used, one must look at the situation from the point of a view of a reasonable officer in the circumstances that confronted Officer #1, Officer #2, and Officer #3. The Complainant is a large and physically powerful man. He was at least fifty pounds heavier than the largest officer there. He appeared to have been in a physical altercation with a friend or bystander immediately before his confrontation with the police.

He apparently had the intent to charge Officer #1. He resisted being handcuffed. He tried to kick the officers. He used the motion of his body to resist the officers. The officers were in danger of being injured.

It was critical that the Complainant's legs, once flexed to the point that the hobbles could be applied, not be released. This would have given the Complainant the opportunity to kick the officers, throw them off, or otherwise hurt or incapacitate them. If, during the course of the struggle, the officers bent the Complainant's right leg back far enough to cause a soft tissue injury, their use of force was reasonable and necessary in order to get the Complainant hobbled and to protect themselves from injury.

For these reasons I have issued findings of exonerated for § 1.01.02 Use of Force – Authorization with respect to the actions of Officer #1, Officer #2, and Officer #3.



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