



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB07/0060 - September 6, 2007

THE SITUATION

Late one March evening in 2007, a Boise Police Department (BPD) officer (Officer #1) conducted a traffic stop on Main Street between 6th and 5th Streets in downtown Boise. The vehicle was stopped for spinning its tires and making a wide turn. This vehicle was being driven at the time by the Complainant. Following the administration of a series of field sobriety tests by Officer #1, the Complainant was placed under arrest for suspicion of Driving Under the Influence (DUI). Officer #1 transported the Complainant to the Ada County Jail.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman in person and alleged that Officer #1 failed in the performance of his duty by demanding that the Complainant submit to a blood test and did not allow the Complainant to have a Breathalyzer test instead. The Complainant also claimed that Officer #1 intentionally took a long time performing the various tasks associated with the initial traffic stop and subsequent arrest of the Complainant.

THE COMPLAINT INVESTIGATION

In the course of this investigation, I reviewed all documents provided by the Complainant. I also read all related police reports and Dispatch records. Finally, I listened to the digital audio recording that Officer #1 made of his entire contact with the Complainant. This

recording included the interactions between Officer #1 and the Complainant at the scene of the traffic stop and at the jail.

I also consulted with legal counsel for the Office of the Community Ombudsman and determined that, when a person is arrested for DUI, Idaho Statutes (§§ 18-8002 & 18-8002A) require the arresting officer to offer one of three evidentiary tests to determine the arrestee's blood alcohol content. The three tests are blood, breath, or urine. The officer can choose which one of the three tests to offer. The arresting officer is not required to offer the arrestee a breath test.

I also determined that BPD policy does not require its officers to offer a DUI arrestee a breath test instead of one of the other two tests.

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 traffic stop on a vehicle driven by the Complainant on Main Street between 6th Street and 5th Street in downtown Boise.
2. Officer #1 contacted the Complainant, interviewed him, and conducted a series of Field Sobriety Tests on the Complainant.
3. Officer #1 placed the Complainant under arrest for suspicion of DUI and transported him to the Ada County Jail.

4. At the Ada County Jail, Officer #1 offered the Complainant two separate opportunities to take a Breathalyzer test. In both cases the Complainant's loud talking and failure to follow instructions prevented the administration of the Breathalyzer test.

5. At the Ada County Jail, Officer #1 offered the Complainant two separate opportunities to submit to a blood test. The Complainant refused the blood test both times.

OMBUDSMAN'S ANALYSIS

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 Complainant alleged that Officer #1 intentionally slowed down the arrest and booking process after the Complainant asked him to hurry up. The Complainant further alleged that Officer #1 would not allow him to take a Breathalyzer test and, instead, attempted to force him to have his blood drawn.

With regard to the first aspect of this allegation, that Officer #1 was intentionally and unreasonably slow in performing his duties, the evidence clearly and convincingly shows that the opposite is true. Officer #1's audio recording undeniably shows that the

Complainant's persistent, loud vocalizations made it difficult for Officer #1 to do his job. As part of any DUI investigation and arrest, officers have a variety of tasks to perform that require the subject to listen to what the officer is saying and to follow directions. One important aspect of this is the administration of the evidentiary test for blood alcohol content. In this case, the Complainant shouted loudly and repeatedly during the investigation at the traffic stop and in the jail while Officer #1 attempted to begin the Breathalyzer process. It was the Complainant's behavior, not anything that Officer #1 did or failed to do that added time to the entire incident.

Concerning the second part of the Complainant's allegation, that Officer #1 did not allow the Complainant to take a Breathalyzer test, this is simply not true. Officer #1's audio recording speaks for itself in this regard. Officer #1 tried twice to begin the Breathalyzer process. Both times the Complainant blocked progress by shouting and refusing to follow Officer #1's simple directions. Each time the Complainant's disruptive behavior interrupted the implementation of the Breathalyzer testing process, Officer #1 offered the Complainant the opportunity to have a blood test.

Finally, even if it were true that Officer #1 did not offer the Complainant the chance to submit to a Breathalyzer test and instead only offered a blood test, no policy violation would have taken place. Idaho peace officers are only required to offer one of three evidentiary tests: blood, urine, or breath. The decision of which test to offer is up to the individual officer and his or her law enforcement agency. In this case, Officer #1 offered the Complainant a choice of either a breath or a blood test; and he offered each of them twice.

Based on all of the above, I find that Officer #1 performed his duties in connection with this incident in a competent and satisfactory manner. I have issued a finding of unfounded with regard to the allegation made by the Complainant.

OMBUDSMAN'S FINDINGS

Officer #1:

P.M. § 11.03.02 – Performance of Duty

Unfounded



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