



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB08/0099 - March 31, 2009*

#### ***THE SITUATION***

The Complainant's vehicle was stopped by two Boise Police Department (BPD) officers operating as a two-person team in one police car. The Complainant brought his vehicle to a complete stop in a parking lot and Officer #1 made contact with him at the driver's window. Officer #2 stood next to the passenger side of the Complainant's vehicle and observed. Two other officers, Officer #3 and Officer #4, who were also together in one police car, joined the traffic stop to assist.

Following the normal contact made during a traffic stop, the Complainant was asked to get out of his vehicle and was put through a series of field sobriety tests (FST). A search of the interior of his car was conducted by one or two officers, other than Officer #1. A small quantity of marijuana and a smoking pipe were found in the Complainant's vehicle during the search.

The Complainant was arrested for possession of marijuana and possession of drug paraphernalia (both misdemeanors) and booked into the Ada County jail.

#### ***THE COMPLAINT***

The Complainant contacted the Office of the Community Ombudsman by email about five weeks after his arrest and said he wished to report questionable police conduct. The next day, the Complainant was interviewed and made the following allegations:

### Officer #1

1. The Complainant alleged that Officer #1 operated a BPD police car in an unsafe manner by traveling over the posted speed limit (40 to 45 mph in a 30 mph zone) while transporting the Complainant to jail. If this were true, it would be a violation of BPD Policy § 7.02.00 – Employee-involved Vehicle Collisions.

### Officer #2

1. The Complainant alleged that Officer #2 conducted a search of the interior of the Complainant's vehicle without permission, a search warrant, or other lawful authority to do so. Furthermore, the Complainant alleged that, after this illegal search, Officer #1 asked him for permission to search, in an apparent effort to make it seem like the search was consensual. If it were true that the search of the vehicle took place before the Complainant was asked for his consent and that no search warrant or other lawful authorization existed, the search would be a violation of BPD Policy § 11.03.02 – Performance of Duty.
2. The Complainant also alleged that Officer #2 spoke to the Complainant in an uncivil and/or disrespectful manner by calling the Complainant a “stupid stoner”, or words to that effect. If this were true, it would be a violation of BPD Policy § 11.01.07 – Relationships with Others and Demeanor.

## ***THE COMPLAINT INVESTIGATION***

The following investigative steps were taken in the course of investigating the three allegations made by the Complainant:

1. The following persons were interviewed:
  - a. The Complainant.
  - b. Officer #1.
  - c. Officer #2.
  - d. Officer #3.
  - e. Officer #4.
  
2. The following records were reviewed:
  - a. Related Dispatch records and recordings.
  - b. The police report of the Complainant's arrest.
  - c. Audio recordings of the incident made by Officer #1 and Officer #3.
  - d. The Court record related to criminal charges against the Complainant.
  
3. The area where the traffic stop took place was inspected.

### ***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. Officers #1 and #2 were on duty and together in a marked BPD police car when they observed a vehicle driven by the Complainant fail to signal a turn as required by law.
  
2. Officer #1, who was operating the police vehicle, drove in pursuit of the vehicle and caught up with it a few blocks later.

3. Officer #1 initiated a traffic stop of the vehicle by signaling with the emergency lights on the police car.
4. The Complainant's vehicle turned right into a parking lot.
5. Upon entering the parking lot, the vehicle drove over a landscape bed surrounded by concrete curbing.
6. Officer #1 made contact with the driver of the vehicle, the Complainant, where he detected the faint odor of an alcoholic beverage coming from the inside of the vehicle.
7. After the Complainant admitted to consuming one beer that night, Officer #1 asked him to get out of the car.
8. Officer #1 asked the Complainant if he had any weapons on his person, to which the Complainant answered, "No."
9. Officer #1 asked the Complainant if he had any objection to Officer #1 checking to see if he had any weapons. The Complainant answered, "Go for it."
10. Officer #1 conducted a pat-down search of the Complainant, followed by a series of field sobriety tests.
11. After the tests, Officer #1 asked the Complainant if he had anything illegal in his car, to which the Complainant answered, "No."
12. Officer #1 then asked the Complainant, "You don't mind if my partner looks?"

13. The Complainant replied, "No, go ahead." The Complainant then offered to open the trunk of his car for the officer.
14. After the Complainant gave the police permission to search his vehicle, Officer #2 searched the Complainant's vehicle, where he found a small amount of marijuana and a smoking pipe.
15. Officer #1 arrested the Complainant for possession of marijuana and possession of paraphernalia and placed him into the back of the police car he (Officer #1) had been driving.
16. Officer #1 then drove the police car to the Ada County Jail with Officer #2 in the front passenger seat, and the Complainant, who was handcuffed, seated in the back seat.

## ***OMBUDSMAN'S ANALYSIS***

### Alleged Unsafe Vehicle Operation

The Boise Police Department's policy regarding the operation of department vehicles (§ 7.02.00) states, in part, "An employee shall operate Department vehicles, as well as personal vehicles while on-duty, in a safe and prudent manner."

The Complainant alleged that, while taking him to jail, Officer #1 exceeded the posted speed limit by 10 to 15 mph. Officer #1 considers it highly unlikely that he did so. While he has no specific recollection of the speed he drove that particular night as he took the Complainant to the jail, Officer #1 considers it highly unlikely that he would drive 10 mph, or more, over the speed limit. In his defense, Officer #1 argued that he is very conscious of

how fast he drives a marked police car, especially with a prisoner in the back whose safety is his (Officer #1's) responsibility. In addition, Officer #1 pointed out that he was still on probation and in the field training program at the time of this incident. Officer #2 was Officer #1's field training officer that night. Officer #1 told me that it would be very careless of him to speed with a prisoner when his training officer was with him in the same car.

Officer #2 did not recall specifically how fast Officer #1 was driving as they took the Complainant to jail. However, Officer #2 is confident that, if Officer #1 had been speeding, he would have brought it to the attention of Officer #1 and would likely recall it.

Given the fact that there is no means to verify the speed at which Officer #1 was driving the police car and that the Complainant and Officer #1 have different recollections regarding this, I find that there is no preponderance of the evidence to either prove or disprove the allegation. As a result, I have issued a finding of not sustained for the allegation that Officer #1 violated BPD policy § 7.02.00 in how he operated the police car.

#### Alleged Illegal Search of the Complainant's Vehicle

The Complainant alleged that Officer #2 and one other unknown officer searched his vehicle prior to his arrest and without his permission, a warrant, or other legal justification. The Complainant further alleges that, after his car had already been searched and as a possible ruse to make it look like the search had been consensual, Officer #1 asked him for permission to conduct the search.

BPD 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*

Officers are not allowed to search a person's vehicle without either a warrant or permission, except under limited circumstances that have been defined by governing State and Federal case law.

No warrant had been issued for a search of the Complainant's car; this is not in dispute. Also clear is the fact that the Complainant gave the police permission to search. However, the central factual dispute presented by the Complainant's allegation is whether the Complainant's permission was sought and given before or after the search took place. If Officer #2 searched the Complainant's vehicle before the Complainant gave his permission, it would be necessary to analyze the circumstances surrounding the search to determine whether any of the special conditions outlined by the courts were present. However, such an analysis is not necessary here because the preponderance of the evidence supports the conclusion that the one and only search of the vehicle took place after the Complainant gave the police permission to search his vehicle.

The following evidence supports this conclusion:

- Two of the involved officers state that no search took place prior to consent being given. One officer did not see the search, and the fourth did not recall when the search took place.
- No protestation by the Complainant, or reference to a non-consensual search can be heard on Officer #1's audio recording.
- Officer #1 asked the Complainant if he had any objection to a search of the car by Officer #2. In response, the Complainant said, "No, go ahead." The Complainant said nothing to indicate that he had just witnessed an unauthorized search of his car

by the officers. In fact, after the Complainant gave his consent for the search, he offered to help the officers by letting them into the car's trunk.

The results of this investigation also call into question the credibility of the Complainant. The recorded conversation between Officer #1 and the Complainant does not fully support what the Complainant told this office during our intake with him. During his ombudsman intake interview, the Complainant asserted that he responded sarcastically, "Knock yourself out," when Officer #1 asked him if he minded if Officer #2 searched his vehicle. However, the Complainant can be clearly heard on Officer #1's recording responding to Officer #1's inquiry, "No, go ahead." This was expressed in a tone of voice absent of any hint of sarcasm. Immediately after giving his consent to the search, the Complainant offered to open the trunk of his car for the police. Such an offer is inconsistent with the Complainant's assertion that he was angry that the police would ask for his permission after they had already searched the car.

For all the reasons stated above, it is my finding that no search of the Complainant's vehicle took place before he gave his consent for a search. There was only one search of the Complainant's vehicle and it took place after he gave the police his consent. Therefore, I have issued a finding of unfounded for the allegation that Officer #2 conducted an illegal search and violated BPD policy (§ 11.03.02) Performance of Duty.

#### Alleged Demeanor Violation

The Boise Police Department's policy (§ 11.01.07) Relationships with Others and Demeanor states:

*An employee shall treat all other persons in a civil and respectful manner. He/she shall not use profanity or uncomplimentary speech in the presence of members of the public, prisoners, or other persons he/she has contact with nor shall he/she intentionally antagonize any person.*

The Complainant alleged that Officer #2 referred to him as a, “stupid stoner.” Officer #2 denies saying this or anything like it. In addition, the other three officers report that nothing of the sort was said by any of the four officers present. Finally, no such statement can be heard on the recordings made by either Officer #1 or Officer #3.

For these reasons, I have issued a finding of unfounded for the allegation that Officer #1 violated BPD policy § 11.01.07 Relationships with Others and Demeanor.

### ***OMBUDSMAN’S POLICY FINDINGS***

#### **Officer #1:**

1. Alleged speeding while operating a BPD patrol car in violation of BPD Policy § 7.02.00 – Employee-involved Vehicle Collisions (operation of a department vehicle)

#### **NOT SUSTAINED**

#### **Officer #2:**

1. Alleged unlawful search of the Complainant’s vehicle in violation of BPD Policy § 11.03.02 – Performance of Duty

#### **UNFOUNDED**

2. Alleged rudeness in violation of BPD Policy § 11.01.07 – Relationships with Others and Demeanor

#### **UNFOUNDED**



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