



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB09/0066 – November 3, 2009

THE SITUATION

In the middle of a summer day in 2009, Officer #1 conducted a traffic stop on a vehicle driven by the Complainant. After making contact with the Complainant at the driver's door, Officer #1 was informed by Dispatch that there was a valid arrest warrant outstanding for the Complainant. Once Officer #2 arrived to assist, Officer #1 informed the Complainant about the warrant and told her that she was under arrest. In the course of the arrest, empty-hand (no strikes) force was used by both Officer #1 and Officer #2, and the Complainant was taken to the ground and handcuffed. Additional empty-hand force was used by the officers to stabilize the Complainant against the police car while she was being searched for weapons, as well as to get her properly seated in the rear seat of Officer #1's police car for transport to the jail. The Complainant was booked into jail on the warrant, as well as for Resisting and Obstructing an Officer and Carrying a Concealed Weapon. A citation for not having valid proof of insurance was also issued to the Complainant.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman by phone and alleged that both Officer #1 and Officer #2 had used an unreasonable and unnecessary amount of force during her arrest. The Complainant was later interviewed as part of the investigation into her complaint. During this interview, the Complainant specified that the following alleged uses of force were unnecessary and unreasonable.

1. That both Officer #1 and Officer #2 grabbed her upper arms and pulled her from the car, causing bruising on her arms.
2. That both Officer #1 and Officer #2 threw her face-down onto the ground. No injuries were reported.
3. That one of the officers handcuffed her arms behind her back, even though she has a medical condition that caused her pain when the officer pulled her arms back.
4. That both Officer #1 and Officer #2 roughly yanked the Complainant to her feet by pulling on her arms.
5. That both Officer #1 and Officer #2 slammed her against a police car and pushed her face down almost to the trunk of the car while they were searching her.
6. That Officer #1 pushed her down into a seated position in the rear of the police car.
7. That Officer #2 pulled her arms from behind in order to slide her on the rear seat of the police car.

If the preponderance of the evidence proves that any of the force used was not reasonable and necessary given the totality of the circumstances, than Officer #1 and/or Officer #2 may have violated BPD policy § 1.01.02 Authorization (for the use of force).

THE COMPLAINT INVESTIGATION

The following investigative steps were taken in the course of investigating this complaint.

1. The Complainant was interviewed.
2. Medical records provided by the Complainant were reviewed.
3. Photographs provided by the Complainant were examined.
4. Photographs of the Complainant that were taken at the time of her interview were reviewed.
5. Officer #1 was interviewed.
6. Officer #2 was interviewed.
7. All related police reports and dispatch records were reviewed.
8. All related digital audio recordings made by both Officer #1 and Officer #2 during the incident 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 made a traffic stop on a vehicle being driven by the Complainant. The stated reason for the stop was for violation of I.C. § 49-428 (2), improperly secured and partially obstructed vehicle license plate.

2. Officer #1 made contact with the driver of the vehicle, the Complainant, and verified her identity through her Idaho driver's license.
3. Officer #1 learned via the Dispatch system that there was a confirmed arrest warrant for the Complainant.
4. Officer #1 asked for an assist officer and Officer #2 was assigned. Officer #2 arrived on scene shortly thereafter.
5. Officer #1 approached the Complainant's vehicle on the driver's side, while Officer #2 approached on the passenger side.
6. Officer #1 told the Complainant that there was a warrant for her arrest and that he was arresting her on the warrant. Officer #1 directed her to get out of the car.
7. The Complainant did not immediately get out of the car and verbally protested that she wished to first make a phone call.
8. The driver's door of the Complainant's car was opened and Officer #1 used his hand to take hold of the Complainant's arm. Officer #1 began to pull the Complainant out of the car, all the time repeating his command that she should get out.
9. The Complainant braced herself inside the car and physically resisted Officer #1's attempts to pull her out.
10. Officer #2 came around the front of the Complainant's car and joined Officer #1 at the open driver's door.

11. Officer #2 informed the Complainant that she was under arrest, ordered her out of the car, and used his hand to grab hold of the Complainant's arm that was not already being held by Officer #1.
12. Together, Officer #1 and Officer #2 pulled the Complainant out of the car and placed her, face-down, onto the ground.
13. The Complainant was not injured from being placed on the ground.
14. Once on the ground, the Complainant resisted the officers' efforts to bring her arms out from underneath her body and behind her back.
15. The two officers pulled the Complainant's arms out from underneath her body, forced them behind her back, and handcuffed her.
16. Officer #1 and Officer #2 used their hands to get the Complainant to her feet by lifting her by her upper arms.
17. The officers walked the Complainant to the rear of a police car and held her against the car. One of the two officers pushed the Complainant's upper body forward in order to bend her over the trunk of the car. A cursory search of the outside of her clothing was conducted.
18. The Complainant attempted more than once to straighten and push herself away from the car. Each time she tried to straighten up, she was pushed forward and made to bend at the waist. Officer #1 verbally directed her to spread her feet and to stay against the car.

19. Throughout the incident the Complainant yelled at the officers, first protesting that there was no warrant for her arrest and then accusing the officers of hurting her.
20. After the search was conducted, the Complainant said that the handcuffs were too tight.
21. Officer #1 checked the handcuffs and verified that they were double-locked and adjusted properly.
22. Officer #1 opened the rear door of his police car and told the Complainant to sit down on the back seat.
23. The Complainant did not immediately comply with this command and Officer #1 told her three more times to sit down.
24. After the Complainant sat down, Officer #1 told her to "keep going" and Officer #2 told her to get into the car.
25. The Complainant did not immediately pull her legs and her upper body inside the car.
26. Officer #2 used his hands to grab the Complainant's upper arms from behind and pull her further into the back seat of the police car.
27. The Complainant was taken to jail and booked by Officer #1.

OMBUDSMAN'S ANALYSIS

The Boise Police Department's policy § 1.01.02 Authorization (for the use of force) states:

An officer shall use only the amount of force that is reasonable and necessary to protect life, effect a lawful arrest, and/or gain control in any lawful circumstance. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use deadly force when necessary to effect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized techniques are not available or practical, an officer may also use any other reasonable force to gain control of the situation.

The only force used by either Officer #1 or Officer #2 was empty hand control. No O.C. spray, Taser, impact weapon, or other device was used. Neither officer struck any blows to the Complainant or used any pain-compliance techniques. They both used their hands to hold, pull, and/or push the Complainant. Such force is widely seen to be the least amount of physical force an officer can use. I will now examine, in order, each of the instances during this incident when one or both of the officers used force.

Pulling the Complainant From the Car

The first use of such force was when the officers grabbed the Complainant's arms and pulled her from the car. Officer #1 had been told by Dispatch that a valid and confirmed arrest warrant existed for the Complainant. Based on this, Officer #1 had the lawful authority to use reasonable force to arrest her and take her into custody.

As a first step in arresting the Complainant, Officer #1 directed her to put down her cell phone and to get out of the car. Rather than complying with this command, the Complainant vocally insisted that she be allowed to remain in the car and make a phone call. Given that the Complainant was displaying an oppositional response to Officer #1's lawful command, that she was seated behind the wheel of a vehicle that could be driven away, and that she had immediate access to areas inside the car where weapons could be stored, it was reasonable for Officer #1 to take hold of the Complainant's arm and control her movements.

Officer #2 heard and saw the interaction between the Complainant and Officer #1. Since Officer #2's role was to assist Officer #1 and he saw that the Complainant was showing both verbal and physical resistance to Officer #1's attempt to arrest her, it was reasonable for him to walk over to the driver's door and take hold of the Complainant's other arm.

By the time that the two officers had a hold of the Complainant's arms, she was under arrest and had been told this by Officer #1. At this point, both officers had the authority to control the Complainant's movements and take her into custody. Since the Complainant verbally refused to exit the car and failed to comply with Officer #1's command to do so, it was reasonable for the officers to pull the Complainant out of the car. By removing the Complainant from the vehicle, the officers were better able to control her movements, to block her access to anything dangerous that might be inside the car, and to prevent her from driving the car away and escaping.

Putting the Complainant on the Ground

By the Complainant's own admission, she struggled with the officers as they pulled her from the car. She braced herself and pulled her body away from them. At the same time, the Complainant was screaming at the officers to let her go. BPD officers are trained that the ground is a safe place on which to gain control of a person who is physically struggling. Once a person is face-down on the ground, officers are more safely able to use their body weight and other techniques to get the person into handcuffs and control his or her movements.

Given the verbal and physically active resistance exhibited by the Complainant, it was reasonable for both Officer #1 and Officer #2 to put her down on the ground as they finished pulling her from the car. By all accounts, the Complainant was able to break her fall with her hands and was put on the ground in such a way that she was not injured. Therefore, the force

used by the officers was both reasonable and minimal to accomplish the task of getting her onto the ground.

Handcuffing the Complainant's Hands Behind Her Back

Once down on the ground, the Complainant's resistance continued. She attempted to keep her hands underneath her as the two officers tried to pull her hands behind her back and told her to stop resisting. BPD officers are trained and expected to handcuff persons who are under arrest and to do so behind the back. Given the Complainant's previous and on-going physical resistance, behind the back handcuffing was clearly necessary in order to prevent the Complainant from escaping and/or becoming aggressive towards the officers.

Lifting the Complainant from the Ground

There is no evidence to suggest that either officer did anything to hurt the Complainant as they helped her to her feet. She did not cry out in pain and made no verbal complaint that her shoulders had been hurt when the officers pulled on her upper arms.

Placing the Complainant Against the Police Car

The two officers had an obligation to search the Complainant and make certain she had no weapons or other dangerous objects. It is standard police practice and consistent with BPD training for officers to place a person's hips against the side of a police car's trunk, bend that person forward at the waist, and then conduct a pat-down search. This places the subject slightly off-balance and gives the officer time to react should the subject attempt to escape or assault the officer.

In this incident, the Complainant kept trying to straighten up and push her hips away from the side of the police car. Officer #1 used minimal force to push her back into a leaning position against the car. Such force was reasonable under the circumstances.

Pushing the Complainant Down into a Seated Position

Officer #1 had to get the Complainant seated in the back seat of his police car so that he could safely transport her to jail. He opened the back door of the car and directed her to sit down. The Complainant did not immediately comply and Officer #1 told her three more times to be seated. He then used his hand to push down on her shoulder so that she would sit.

The Complainant had ample opportunity to sit down on her own. Given her previous physical resistance, it was reasonable for Officer #1 to use his hand to push her down onto the seat.

Pulling the Complainant All the Way into the Police Car

Although the Complainant was seated after Officer #1 pushed her down onto the seat, her legs and feet were still sticking out of the car. She needed to get fully inside the car and was told to do so by Officer #1. Once again, the Complainant did not immediately comply with a lawful command given to her by a police officer. Given that the Complainant could easily kick Officer #1 if he tried to place her feet inside the car, it was a reasonable and safe alternative for Officer #2 to pull the Complainant from behind by her upper arms. This quickly brought the Complainant fully inside the police car without injury to anyone involved.

Summary

The Complainant failed to immediately comply with each lawful command given to her by the officers after she was placed under arrest. She argued with them and physically resisted their efforts to take her into physical custody, control her movements, and search her subsequent to arrest. In response, both Officer #1 and Officer #2 used minimal force by holding, grabbing, pulling, and pushing the Complainant. Although it does appear possible that the Complainant may have received bruises to her upper arms as a result of being grabbed by the officers, such injuries would not, in and of themselves indicate that the force used to create them was excessive or unreasonable. The Complainant could easily have avoided receiving any bruises to her arms by complying with the lawful commands of Officer #1 and avoiding any physical resistance to the officers' efforts to take her into custody.

For all the reasons stated above, it is my finding that the force used by both Officer #1 and Officer #2 during this incident was well within the requirements of § 1.01.02 of the BPD Policy and Procedures Manual.

OMBUDSMAN'S POLICY FINDINGS

Officer #1:

P.M. § 1.01.02 – Authorization (for the use of force) – Based on the preponderance of the evidence, a finding of exonerated has been issued.

Officer #2:

P.M. § 1.01.02 – Authorization (for the use of force) – Based on the preponderance of the evidence, a finding of exonerated has been issued.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org