

DEPARTMENT OF POLICE
INTEROFFICE CORRESPONDENCE

TO: Michael S. Harrison
Superintendent of Police

DATE: May 23, 2018

FROM: Police Sergeant Omar M. Diaz,
Public Integrity Bureau
Criminal Investigations Section

SUBJECT: DI-1 Investigation under Complaint Tracking Number 2017-0630-R

- **Police Lieutenant John O'Brien**; Employee ID# 41633;
Field Operations Bureau – First Police District
- **Police Sergeant Stephanie Taillon**; Employee ID# 12967;
Field Operation Bureau – First Police District

INTRODUCTION

Sergeant Omar Diaz submits this Formal Disciplinary Investigation (hereinafter also referred to as FDI) under Public Integrity Bureau Complaint Tracking Number 2017-0630-R. On Friday, December 1, 2017, Lieutenant Darryl Watson, Supervisor for the Criminal Investigations Section, assigned Sergeant Diaz (hereinafter also referred to as the Investigator) the task of conducting a follow-up investigation into the below-listed investigation.

Brief Synopsis

The Public Integrity Bureau Command Staff became aware of police misconduct allegations, which were brought forth by members of the Office of the Consent Decree Monitor/Department of Justice. The complaint referenced, among other concerns, that Police Lieutenant John O'Brien conducted an unjustifiable strip search, which may have been a cavity search, of an individual during an investigation for illegal narcotics. That search ended up with the discovery of illegal drugs hidden upon the individual that was subjected to the search. Due to the findings, Lieutenant O'Brien arrested and charged the subject accordingly.

The Public Integrity Bureau Command Staff assigned the allegations to the Intake Section of Public Integrity Bureau to conduct an inquiry into the matter. Based on the initial inquiry, Public Integrity Bureau Investigator Arlen Barnes concluded Lieutenant O'Brien might have violated the Louisiana Statutory Criminal Law relative to False Imprisonment and numerous violations of the rules, policies and/or procedures of the New Orleans Police Department.

During the preliminary inquiry, the PIB Intake Investigator also determined that Police Sergeant Stephanie Taillon approved the incident report authored by Lieutenant O'Brien regarding the above-mentioned actions. Said approval indicated Sergeant Taillon concur Lieutenant O'Brien had probable cause in the police actions taken by him as document incident report and attached documents. However, the preliminary inquiry conducted Investigator Barnes indicated probable cause might not have existed. Thereby, the PI investigator concluded Sergeant Taillon might have been in Neglect of Duty when she approved the incident report authored by Lieutenant O'Brien. Thus, she failed to recognize that the actions taken by Lieutenant O'Brien might have lacked the existence of probable cause.

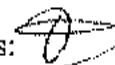
Allegation

If the allegations are substantiated, the PIB Intake Investigator concluded the accused members might be in violation of the following departmental rule.

A-1 Police Lieutenant John O'Brien:

- **V-1... Rule 2: Moral Conduct; Paragraph 1, Adherence to Law to wit: Louisiana Revised Statute 14 Section 46, False Imprisonment - False imprisonment is the intentional confinement or detention of another, without his consent and without proper legal authority.**
- **V-2... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty to wit: Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Policy 344.1.1 Report Preparation - Employees should ensure that their reports are sufficiently detailed for their purpose and reasonably free of errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty unless permission to delay submission of the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads or arrest reports where he suspect remains in custody should not be delayed. All reports shall accurately reflect the identity of the persons involved, witnesses, all pertinent information seen, heard or assimilated by any other sense and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such (Item # I-30056-17).**
- **V-3... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty to wit: Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Chapter 1.2.4 Search and Seizure, Paragraph 47, Strip Searches – Strip Searches shall be conducted in a Secure Area of a NOPD Facility unless exigent circumstances exist. The following requirements apply to all strip searches: (a) The officer shall obtain written authorization from his or her supervisor prior to the strip search, and the supervisor shall be on-scene at all times during the search. (k) Strip searches shall not be video recorded or photographed unless required for evidentiary reasons and specifically authorized in writing, in advance, by a supervisor.**
- **V-4... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty to wit: Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Chapter 1.2.4 Search and Seizure, Paragraph 51, Body Cavity Search. No person may be subject to a body cavity search without a search warrant.**

Investigating Officer's Initials:



- **V-5... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.9 Arrests – Paragraph 12 Supervisor’s Responsibilities – The Supervisor shall approve the officer’s arrest recommendation based on the existence of probable cause and consistency with NOPD regulations (Traffic Affidavit #J869655).**

- **V-6... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.2.4 Search and Seizure, Paragraph 5, Search & Seizures - The U.S. Constitution generally requires law enforcement to obtain a warrant prior to conducting a search. There are, however, limited exceptions to the warrant requirement, such as valid consent, incident to a lawful arrest, and exigent circumstances. (Instructed Officer Anita McKay to search minor child for illicit narcotics).**

A-2 Police Sergeant Stephanie Taillon:

- **V-1... Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.9 Arrests – Paragraph 12 Supervisor’s Responsibilities – The Supervisor shall approve the officer’s arrest recommendation based on the existence of probable cause and consistency with NOPD regulations.**

INVESTIGATION

A Transmittal Form (**Exhibit A**), which indicated the date the complaint was received, processed, assigned, etc., based on information gathered from the initial Formal Disciplinary Investigation (FDI) is attached to this report.

On Friday, December 1, 2017, the investigator began this investigation by reviewing all enclosed documents associated with this file. The investigator noted this review to be a recapitulation of the events as previously described in the introductory section of this report. More specifically, the investigator reviewed the initial FDI and its attachments (**Exhibit B**), which indicated the date, time, and location of the alleged violations of the Louisiana Criminal Statutory Law and Departmental policy. The FDI also reflected the principals involved in this case. A gist of the initial FDI is as follows.

Investigating Officer’s Initials 

Synopsis of the Initial Formal Disciplinary Investigation

On Tuesday, October 31, 2017, at or about 12:26 P.M., Public Integrity Bureau Commander Gwendolyn Nolan was notified via E-mail regarding concerns raised by members of the Office of the Consent Decree Monitor/Department of Justice (OCDM/DOJ), about possible police misconduct under N.O.P.D. item # I-30045-17 & I-30056-17. The e-mail was carbon copied to Arlinda Westbrook; Simon Hargrove; Otha Sandifer; Matthew Segraves; and Paul Noel. Compliance Bureau Chief Daniel Murphy authored the aforesaid e-mail, dated October 31, 2017.

On Tuesday, October 31, 2017, Commander Nolan forwarded the abovementioned e-mail to the PIB Intake Unit, more specifically PIB Investigator Arlen Barnes and Lieutenant Precious Banks. The e-mail was forwarded to have the PIB Intake Unit conduct a preliminary investigation to determine if any police misconduct appeared probable. A gist of the e-mail in question is as follows.


Mr. Murphy advised Commander Nolan that OCDM was planning to initiate an immediate action request on the previously mentioned item numbers due to multiple concerns held by OCDM. The concerns centered upon police officers' actions; mainly, Lieutenant O'Brien authorizing a possible cavity search absent of probable cause. Mr. Murphy concluded the e-mail by asking can PIB review and propose a course of action. Mr. Murphy attached a chain of e-mails documenting that OCDM had concerns. A gist of the attached e-mails is as follows.

In an e-mail from Matthew Segraves to Daniel Murphy, carbon copied Otha Sandifer and Paul Noel, Mr. Seagraves documented that members of the OCDM/DOJ were concerned about police action taken by members of the First Police District, more specifically Lieutenant John O'Brien. Mr. Seagraves documented members of OCDM/DOJ believed police officers involved in a warrantless search of an individual (Mr. William Bailey) did not have probable cause to conduct a strip search. Furthermore, OCDM/DOJ believed that strip search conducted by Lieutenant O'Brien amounted to a cavity search and not a strip search as classified by Lieutenant O'Brien. If Lieutenant O'Brien's strip search of Mr. Bailey was instead a cavity search, then Lieutenant O'Brien would have needed a search warrant, which according to the documents reviewed by OCDM/DOJ Lieutenant O'Brien did not have.

While members of OCDM/DOJ reviewed the aforesaid case, they learned that Lieutenant O'Brien authorized the strip search upon Mr. Bailey's person; however, because Lieutenant O'Brien conducted the search himself, he incorrectly approved the search, which needed to be pre-approved by his supervisor.

Members of OCDM/DOJ also believe police officers at the scene of the traffic stop involving Mr. Bailey did not have probable cause to search a child that was a passenger inside the vehicle with Mr. Bailey at the time of the stop.

Members of OCDM/DOJ also appeared to have some concerns, as interpreted by Investigator Barnes, that the administrative sergeant (Sergeant Stephanie Taillon) approved the incident report written by Lieutenant O'Brien, which may have lacked probable cause. End of e-mail gist.

Investigating Officer's Initials: 

Investigator Barnes reviewed the attachments to the initial formal investigation. One of the attachments (**see Exhibit B-Attachments**) was a copy of a Traffic Affidavit (Citation) #J869655, which documented the arrest of Mr. William Bailey, 25 Gravier Street, New Orleans, Louisiana. 70119, for violations of the State of Louisiana Traffic Statutes, Revised Statute 32 Section 295 (Child Seatbelt Required Usage) and Revised Statute 32 Section 295.1, (Seatbelt Required Usage) under N.O.P.D. Item I-30045-17. The traffic affidavit indicated the arrest took place on Saturday, September 23, 2017, at 11:53 AM. The violation occurred at the intersection of Orleans Avenue & North Rocheblave Street. First District Officer Frank Vitrano was listed as the affiant of the citation. Lieutenant John O'Brien was listed as the supervisor who approved the arrest of Mr. William Bailey.

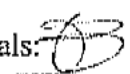
To ensure the officers followed the policy regarding NOPD Field Interview Cards, Investigator Barnes obtained a copy of the NOPD Field Interview document authored by Officer Vitrano regarding the detention of William Bailey, under the traffic stop listed in item number I-30045-17 (**see Exhibit B-Attachments**). Officer Vitrano documented, per instructions of Lieutenant O'Brien, he was on standby within a geographical area of the First Police District awaiting orders from Lieutenant O'Brien to conduct a takedown of a target subject (Mr. Bailey) regarding an illegal narcotics investigation.

Investigator Barnes obtained a copy of the N.O.P.D. incident report recorded under N.O.P.D. item I-30056-17 (**Exhibit B-Attachments**). The report was classified as a signal 966 - Drug Law Violation that occurred on Saturday, September 23, 2017, at 11:53 AM. The arrest location was listed as the 2200 block of Orleans Avenue. The offender section indicated Lieutenant O'Brien arrested Mr. William Bailey and charged him with violating the Louisiana Statutory Criminal Laws relative to Control Dangerous Substances as listed below.

The report indicated Lieutenant O'Brien charged Mr. Bailey with the violation of Louisiana Revised Statute 40 Section 967, Prohibited Acts - Possession with Intent to Distribute a Schedule II Controlled Dangerous Substance to wit: Crack Cocaine (Approx. 5.1 Grams). Mr. Bailey was also charged with violating Louisiana Revised Statute 14 Section 91.13 - Illegal use of controlled dangerous substances in the presence of persons under seventeen years of age (6-year-old male child).

The narrative of the report indicated Lieutenant O'Brien was the case investigator and Police Officers Frank Vitrano, Anita McKay, and Brianne Verrett assisted him. Lieutenant O'Brien indicated that on the date in question he wore plain clothes and operated an unmarked vehicle used for surveillance. The assisting officers were attired in N.O.P.D. uniforms with Body Worn Cameras, and each operated marked police vehicles.

Lieutenant O'Brien documented that on Friday, September 22, 2017, he applied for and obtained a Search Warrant from a Criminal District Court Judge to search a 2016 Nissan Maxima, white in color, bearing Louisiana license plate 511 AUT. This investigator noted that the search warrant did not list the owner of the vehicle, driver of the vehicle, passengers inside the vehicle, or any other entity. Lieutenant O'Brien indicated that on the morning of Saturday, September 23, 2017, he relocated to the area of Orleans Avenue & South Galvez Street to conduct pre-search warrant surveillance of the Nissan Maxima.

Investigating Officer's Initials: 

OR
OWNER

Lieutenant O'Brien wrote he had previous information and knowledge that the target vehicle and operator (William Bailey) frequented a geographical area of the First Police District where he sold illicit narcotics and used the target vehicle to store illicit narcotics. Lieutenant O'Brien conducted surveillance and subsequently applied for, and a judge issued a search warrant for the vehicle described in the warrant. On the date of the execution of the search warrant for the vehicle, Lieutenant O'Brien informed Officer Vitrano he intended to observe Mr. Bailey in or near the vehicle; then direct Officer Vitrano to conduct a takedown stop to accomplish the execution of the search warrant upon the target vehicle.

Lieutenant O'Brien documented in his incident report that on the date in question at 11:00 A.M. he set up surveillance on the target vehicle, which was unoccupied. At approximately ten minutes into the surveillance of the vehicle, Lieutenant O'Brien said he saw a black male walking in the area that was under surveillance. Lieutenant O'Brien documented he did not get a good look at the subject, but believed the subject may have been Mr. Bailey. Lieutenant O'Brien said he instructed the take down vehicle, Officer Vitrano, who was stationary nearby the surveillance area to stop the black male and identify the subject. Lieutenant O'Brien said Officer Vitrano stopped the subject and learned that the male was not Mr. Bailey. Lieutenant O'Brien documented that after Officer Vitrano identified the subject, he released the male without incident and completed an NOPD Field Interview Card (Exhibit C) in order to document the stop.

The investigator examined the pedestrian stop. Lieutenant O'Brien employed Officer Vitrano as the takedown vehicle. When this investigator interviewed Officer Vitrano, the investigator questioned the officer regarding the order to stop the black male Lieutenant O'Brien believed to be Mr. Bailey. Officer Vitrano stated Lieutenant O'Brien ordered him to stop the subject in order to identify him because based on his interpretation Lieutenant O'Brien believed the black male subject might have been Mr. Bailey.

Officer Vitrano said Lieutenant O'Brien told him to tell the subject that the police received a call of a black male wearing a red shirt and armed with a firearm versus telling the male subject the truth that the stop was for the purposes of obtaining an identification. Officer Vitrano stated he conducted the pedestrian stop and executed the instructions as ordered. Officer Vitrano said that upon verifying the black male was not Mr. Bailey, he apologized for the inconvenience of stopping the subject and released him as instructed by Lieutenant O'Brien.

The investigator asked Officer Vitrano if the black male resembled Mr. Bailey. Officer Vitrano said that at the time of the aforementioned stop he had not met Mr. Bailey; however, when he later encountered Mr. Bailey, he believed the black male resembled Mr. Bailey. Officer Vitrano said it was plausible to, mistaken the black male for that of Mr. Bailey.

Due to Lieutenant O'Brien's rank, he was not equipped with a BWC; therefore, the investigator was unable to verify if the black male Lieutenant O'Brien believed to be Mr. Bailey was by himself in the area that was under surveillance or other people were also nearby.

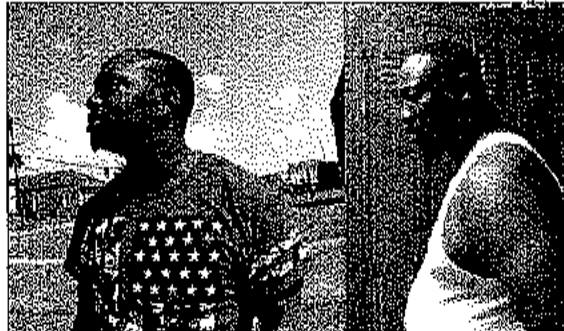
Investigating Officer's Initials: 

The investigator reviewed Officer Vitrano's BWC, which is attached to this report as Exhibit DD. At the time of the stop, the subject appeared to be the only person in the area. The BWC audio/video recorded the interaction between Officer Vitrano and the black male subject along with capturing Lieutenant O'Brien's voice giving Officer Vitrano instructions via the police radio. The BWC audio captured Lieutenant O'Brien's voice instructing Officer Vitrano to do a nonchalant stop of the subject. Lieutenant O'Brien told Officer Vitrano to get the subject's name and if it was Mr. Bailey to detain him and if not to apologize to him for the inconvenience.

The investigator observed the subject that was stopped and compared him to the depiction of Mr. Bailey memorialized in Officer Vitrano's BWC. The investigator concluded that it was plausible that the subject stopped resembled that of Mr. Bailey with the exception that Mr. Bailey had a protruding abdomen versus what appeared to be a flatter-abdomen on the subject stop. That comparison by this investigator was done with the luxury of comparing the subjects frontal and profile view using video footage captured by Officer Vitrano's BWC. Therefore, said observation by this investigator regarding the abdomen feature is unfair when compared to Lieutenant O'Brien observation at the scene. Therefore, this investigator compared the subject stopped and Mr. Bailey with the analogy that Lieutenant O'Brien was positioned some distance away when he noticed the subject in the area under surveillance. In doing so, it was highly plausible that the subjects' hair, facial hair, complexion, and build appeared to match.

stop

The below-listed photographs are still pictures from Officer Vitrano's BWC. The male wearing the red shirt was the subject stopped by Officer Vitrano that Officer O'Brien said might have been Mr. Bailey. The photograph of the male wearing the white tank top is that of Mr. Bailey.



The stop in itself raised questions relative to profiling due to Lieutenant O'Brien's failure to articulate specificities, such as the description, characteristics, or reason other than he thought the black male was Mr. Bailey. The investigator conferred with Lieutenant Watson regarding the possibility of racial profiling by Lieutenant O'Brien. Using the burden of proof relative to the preponderance of the evidence, both Lieutenant Watson and the investigator concluded that they were unable to establish a nexus between the stop of the black male ordered by Lieutenant O'Brien and racial profiling due to the similarities of the two subjects. Instead, Lieutenant O'Brien failed to properly document the similarity in appearances of the two subjects supporting the reason for the pedestrian stop.

Investigating Officer's Initials: *AB*

After conducting the above-mentioned pedestrian stop, Lieutenant O'Brien returned to the surveillance position and Officer Vitrano returned to his position awaiting Mr. Bailey's arrival at his vehicle. Lieutenant O'Brien documented that at 11:50 AM, he observed a subject fitting the description of Mr. Bailey enter the vehicle and drive away. He noted the driver was not wearing a seatbelt. Lieutenant O'Brien radioed the vehicle's path of travel to Officer Vitrano, who located the vehicle and conducted a traffic stop for what appeared to be a failure of the driver to wear a seatbelt.

The report indicated Officer Vitrano encountered the driver of the vehicle, (Mr. Bailey) and a male child [6-year-old] who was standing unrestrained in the front passenger seat of the vehicle. Officer Vitrano handcuffed Bailey, conducted a pat down and then placed him in the rear of his police vehicle. Officer Vitrano advised Mr. Bailey of his Miranda rights and told him Lieutenant O'Brien would apprise him of the investigation. The investigator verified the aforesaid via Officer Vitrano's BWC.


Lieutenant O'Brien stated, while on the scene of the traffic stop, he instructed Officer Anita McKay, who showed up at the traffic stop scene to assist because the traffic stop was aired over police radio, to search the child passenger before turning the child over to a relative. The report indicated the reason for the search was as follows.

Due to Lieutenant O'Brien's prior experience in narcotic investigations where drug dealers would conceal contraband on small children in the belief that police officers won't search small children.

Officer McKay searched the child, which yielded no contraband. After that, the report indicated Officer McKay released the child to an unidentified family member. Based on BWC footage, this investigator believed the unidentified family member was the child's mother, who arrived on the scene after being notified of the stop by a passerby.

Lieutenant O'Brien instructed Officer Verrett to relocate Mr. Bailey's vehicle, the Nissan Maxima, to the First District Police Station's sally port located at conduct at 501 N. Rampart St. Lieutenant O'Brien instructed Officer Vitrano to transport Mr. Bailey to the First District Station. Once at the station, Officer Vitrano requested Mr. Bailey's driver's license. Mr. Bailey, who was handcuffed behind his back, indicated that his license was inside his rear right pants pocket. Officer Vitrano unzipped Mr. Bailey's pocket and removed his driver's license simultaneously removing a bundle of loose currency. Officer Vitrano did not question Mr. Bailey regarding the money, took possession of the license, and returned Mr. Bailey's currency by placing it back in his pocket without counting the money. According to the BWC, this investigator did not see Officer Vitrano inform Lieutenant O'Brien that Mr. Bailey was in possession of money.

The BWC showed Lieutenant O'Brien talking to Mr. Bailey and explained that the investigation was that of illegal narcotics and that he was in possession of a search warrant for Mr. Bailey's vehicle. Lieutenant O'Brien informed Mr. Bailey that he would provide him with a copy of the search warrant and a handwritten inventory on the rear of the warrant for any confiscated items. Officer Vitrano remained in the lobby area of the station with Mr. Bailey and Lieutenant O'Brien walked away.

Investigating Officer's Initials: 

Lieutenant O'Brien documented in his report that he and Officer Verrett searched the Nissan Maxima. After some time elapsed, the officers did not find illegal narcotics within the vehicle. Lieutenant O'Brien documented the following in the incident report.

Based on Lieutenant O'Brien's previous information on Bailey, in addition to his experience in street-level illegal drug activity, Lieutenant O'Brien had a strong reason to believe that Bailey was concealing contraband within his inner clothing garments. Based on that Lieutenant O'Brien decided to perform a strip search on Bailey per N.O.P.D. Policy 1.2.4... An N.O.P.D. Interoffice Correspondence was later completed.

The report indicated Lieutenant O'Brien explained to Mr. Bailey that he was going to conduct a strip search of his person. Lieutenant O'Brien ordered Officer Vitrano and Officer Arthur Cleveland to escort Mr. Bailey to the men's locker room located inside of the police station. Lieutenant O'Brien followed. Officer Vitrano's Body Worn Camera was activated and memorialized the event. Officer Cleveland utilized a Departmental digital still camera equipped with video recording capabilities, and audio/video recorded the escort and search of Mr. Bailey.


During the search of Mr. Bailey's clothing and before the removal of any article of clothing, while inside of the locker room of the First District, Lieutenant O'Brien and Officer Vitrano located \$612.00 in various denominations in Mr. Bailey's right rear pants pocket. That money was the same money Officer Vitrano had simultaneously pulled out of Mr. Bailey pocket when he retrieve^(L) Mr. Bailey's driver's license. The report indicated the following.

Lieutenant O'Brien continued to search Bailey while using a handheld flashlight, all the while being recorded on Officer Vitrano's Body Worn Camera and the Digital Recorder held by Officer Cleveland. As Lieutenant O'Brien held back the rear portion of the inner boxer shorts worn by Bailey, he (O'Brien) could clearly see in plain view a piece of clear plastic paper sticking out between Bailey's buttocks. The paper was sticking out approximately a half-inch. Upon observing the plastic paper, Lieutenant O'Brien instructed Bailey to spread his legs further and not to clinch his buttocks. Lieutenant O'Brien removed the plastic with his right hand and immediately observed it was a small clear wrapped bag containing what appeared to be several small pieces of crack cocaine. Lieutenant O'Brien dropped the bag on the locker room floor and instructed Officer Cleveland to record the bag. V J D 0

Lieutenant O'Brien continued in his report as follows.

Lieutenant O'Brien asked Mr. Bailey if he had anything else on his person, in which Bailey did not answer. Lieutenant O'Brien believed that Bailey might have had additional contraband hidden on his person. At that point, Lieutenant O'Brien and Officer Vitrano removed Bailey's boxer shorts completely. Lieutenant O'Brien, with the aid of the handheld flashlight, visually checked under Bailey's genitals for any additional contraband in which no further contraband was found.

Lieutenant O'Brien indicated that he and Officer Vitrano field-tested the contraband, which showed a positive test result for cocaine. Lieutenant O'Brien also indicated he conducted a handwritten inventory of the confiscated items on the rear of the search warrant and later provided Mr. Bailey with a copy.

Investigating Officer's Initials: 

Lieutenant O'Brien documented Officer Vitrano completed a traffic affidavit charging Mr. Bailey with traffic violations relative to no seatbelt and no child restraint. Lieutenant O'Brien instructed Officer Vitrano to physically arrested Mr. Bailey for said violations (**see Exhibit B-Attachments**). The affidavit was reviewed and approved by Lieutenant O'Brien.

The report indicated Sergeant Taillon assisted Lieutenant O'Brien in preparing the Interoffice Correspondence for the strip search as per policy (**see Exhibit B- Attachments**). Officer Frank Vitrano transported Mr. Bailey to the Orleans Parish Sheriff's Intake and Processing to be booked accordingly. The report listed Sergeant Stephanie Taillon as the approving supervisor.

The report indicated Lieutenant O'Brien completed a handwritten arrest gist (**see Exhibit B-Attachments**), which was reviewed and signed [indicating probable cause] by Sergeant Stephanie Taillon. Investigator Barnes reviewed the handwritten gist authored by Lieutenant O'Brien that was approved by Sergeant Taillon. The gist indicated Lieutenant O'Brien arrested Mr. Bailey for traffic violations following a traffic stop of a vehicle, which was the target of a search warrant. Investigator Barnes stated the gist did not explain the justification for the "strip search" or the reason Lieutenant O'Brien charged Mr. Bailey with Illegal Use of a Controlled Dangerous Substance in the Presence of a Minor.

Investigator Barnes documented in his initial FDI that based on the information he reviewed, a Formal Disciplinary Investigation was initiated to determine if Lieutenant John O'Brien and Sergeant Stephanie Taillon violated the Louisiana Statutory Criminal Law and NOPD Rules, Regulations, and Policies listed under the allegations section of this report. End of FDI gist.

One of the allegations levied against Lieutenant John O'Brien, in this case, involved a violation of the Louisiana Statutory Criminal Law. However, the allegations against the second accused member, in this case, Sergeant Stephanie Taillon, was administrative. Therefore, on Wednesday, November 29, 2017, Investigator Barnes requested an extension of time to investigate this matter in accordance with the rules of the Department of Civil Service for the City of New Orleans, Civil Service Rule IX, Section 1:4. On December 19, 2017, the extension of time request was granted (**Exhibit D & E respectively**).

In Lieutenant O'Brien's incident report (**see Exhibit B-Attachments**), he documented Police Officers Frank Vitrano, Anita McKay, and Brienne Verrette assisted him with the illegal narcotics investigation. Therefore, the investigator reviewed the BWC's assigned to those officers. The investigator began by reviewing Officer Vitrano's BWC (**Exhibit F**). A gist of the BWC footage is as follows.

Synopsis of Officer Frank Vitrano's Body Worn Camera

The video footage began with Officer Vitrano making contact with the suspected vehicle as he signaled the vehicle to stop by using his overhead emergency lights and siren. The voice of Lieutenant O'Brien is heard over the police radio directing Officer Vitrano to get the driver out of the vehicle and handcuff him. As Officer Vitrano exited his vehicle and walked up to the suspected vehicle, the driver came into view of the BWC. The driver did not appear to be wearing his seatbelt, and Officer Vitrano's voice was captured on BWC audio telling the driver that the kid cannot be on the front seat unrestrained (no seatbelt).

Investigating Officer's Initials: 

Officer Vitrano ordered the driver out of the vehicle and handcuffed him as previously instructed to do so by Lieutenant O'Brien. Officer Vitrano then conducted a pat down on the driver's outer clothing and then escorted him to his police vehicle, where Officer Vitrano placed the driver inside the rear passenger compartment. That driver was identified as Mr. William Bailey. Lieutenant O'Brien instructed Officer Vitrano to advise Mr. Bailey of his rights according to Miranda and advise him that he was under investigation for a drug law violation and that a search warrant had been issued to search his vehicle. Officer Vitrano followed orders and relayed the information to Mr. Bailey. Officer Vitrano also told Mr. Bailey that Lieutenant O'Brien would later show the search warrant and explain everything to him. Officer Vitrano, under orders from Lieutenant O'Brien, transported Mr. Bailey to the First District Station. Lieutenant O'Brien is heard over the police radio telling Officer Vitrano to escort Mr. Bailey upstairs [First District Station lobby], sign the prisoner logbook, and have him sit on a chair.


The BWC footage depicted Officer Vitrano transporting Mr. Bailey from the traffic stop scene to the First District Station. In order to maintain chronological order, the investigator stopped reviewing the BWC at that point since Officer Vitrano relocated to the First District Station with Mr. Bailey. The investigator will continue with Officer Vitrano's BWC synopsis after reviewing the other BWC's of the officers at the location of the traffic stop. The investigator then reviewed Officer Anita McKay's BWC (**Exhibit G**).

Synopsis of Police Officer Anita McKay's Body Worn Camera

The investigator observed Officer McKay at the scene of the traffic stop walking with a child past Lieutenant O'Brien. The BWC audio captured Lieutenant O'Brien instructing Officer McKay to check the child's front and rear pockets and to remove the child's shoes and socks. Officer McKay's BWC depicted the search of the child. The child appeared to be sitting in the rear passenger compartment of a police vehicle with the rear door open and the child's body facing the open door as Officer McKay stood in front of the open door.

Officer McKay interacted with the child making the process of the search appear almost like a game. The child did not appear stressed and appeared to be responding well to Officer McKay's interaction with him as he laughed with Officer McKay. Officer McKay casually conducted a pat down of the child's pockets and playfully removed the child's shoes and socks. After not discovering any illegal narcotics upon the child's person, Officer McKay assisted the child with replacing his socks and shoes. Officer McKay then carried the child to the front passenger side of the police vehicle. An unknown female appeared shortly after that and stated she was the mother of the child. Officer McKay requested permission from Lieutenant O'Brien to release the child, to which permission was granted.

The investigator reviewed the Body Worn Camera of Police Officer Dwight Sallier who was at the scene of the traffic stop (**Exhibit H**).

Investigating Officer's Initials 

Synopsis of Police Officer Dwight Sallier's Body Worn Camera

The video footage depicted Sergeant Stephanie Taillon at the scene of the traffic stop talking with Lieutenant O'Brien. The BWC audio captured Officer O'Brien telling Sergeant Taillon that Mr. Baily took three or four blocks to stop his vehicle after Officer Vitrano initiated his emergency lights signaling Mr. Baily to stop the vehicle. Lieutenant O'Brien stated Mr. Baily might have stuffed the 966 [police signal code for drug law violation] in a "certain area" as he gestured with his hands, in what appeared to this investigator to be, as someone placing something underneath the driver's car seat. Lieutenant O'Brien followed the gesture by telling Sergeant Taillon that Mr. Baily may have placed the illegal narcotics in the pockets of the kid inside the car, "... they go as far as stuffing things in kid's diapers."

Lieutenant O'Brien asked Sergeant Taillon to assist him with having an officer relocate Mr. Bailey's vehicle to the First District Station so that he can execute the search warrant on the vehicle and have an officer watch the child at the scene. Sergeant Taillon instructed Officer Brianne Verrett to relocate Mr. Bailey's vehicle to the First District Station and Officer McKay to watch the child. Sergeant Taillon then departed the scene.

Lieutenant O'Brien is depicted on BWC talking to Officers Sallier and Jeffery Carradine that he would not doubt if Mr. Bailey put it on his person or the kid because it took Mr. Bailey almost four blocks to stop once Officer Vitrano signal Mr. Bailey to stop the vehicle. Lieutenant O'Brien said he would not put it past Mr. Bailey because he has been through the system and had a record as long as "Claiborne [Avenue]."

The investigator reviewed the Body Worn Camera of Police Sergeant Stephanie Taillon who was at the scene of the traffic stop (Exhibit I).

Synopsis of Police Sergeant Stephanie Taillon's Body Worn Camera

Upon arrival, Sergeant Taillon was informed by Lieutenant O'Brien of the following.


It took him a good three or four blocks to stop. I think what he what he did was he either stuffed in a certain area or the kid in the car he might have fuckin' stuff it down the kid...a pocket or something and you know what they always do if they, if they go so far a putting shit in a kids, diapers they going to do something like that.

Sergeant Taillon departed the scene shortly after that.

The investigator reviewed the Body Worn Camera of Police Officer Brianne Verrett, who was at the scene of the traffic stop (Exhibit J).

Synopsis of Police Officer Brianne Verrett's Body Worn Camera

The BWC depicted Sergeant Taillon instructing Officer Verrett to relocate the target vehicle to the first district station. Lieutenant O'Brien instructed Officer Verrett to keep the vehicle's windows in the up position, do not turn on the vehicle's air condition, and to drive the vehicle straight to the First District's sally port. Upon arrival, Lieutenant O'Brien instructed Officer Verrett to get out and shut the door. The BWC footage depicted Officer Verrett followed orders as instructed.

Investigating Officer's Initials: 

After completing the viewing of BWC footage at the scene of the traffic stop, the investigator picked up where he left off at on Officer Vitrano's BWC footage.

Synopsis of Officer Frank Vitrano's Body Worn Camera (Continued)

Lieutenant O'Brien's voice was captured on BWC instructing Officer Vitrano to escort Mr. Bailey upstairs, sign prisoner logbook, and have him sit on the chair. Based on the BWC, before executing the search warrant on Mr. Bailey's vehicle, Lieutenant O'Brien told Officer Vitrano the following.

"... 32:295 [State of LA. Traffic code for violation of seatbelt law] child not restraint on seat. He [Mr. Bailey] going "10-15" [Police Arrest Code] no matter what regardless of anything that happens..."

According to the BWC, Officer Vitrano remained inside the station with Mr. Bailey, who was handcuffed, and Lieutenant O'Brien walked off. At that point, this investigator surmised Lieutenant O'Brien relocated from the lobby of the station to the parking area to search Mr. Bailey's vehicle. After over an hour elapsed, Lieutenant O'Brien returned to the station's lobby and met with Officers Vitrano and Arthur Cleveland. Lieutenant O'Brien instructed Officer Cleveland to record the search of Mr. Bailey's person with a digital camera assigned to the First District Station. Lieutenant O'Brien and Officers Vitrano and Cleveland escorted a handcuffed Mr. Bailey to the men's locker room of the First District Station. Once inside the locker room, Lieutenant O'Brien told Mr. Bailey, who remained handcuffed, that they were going to search him. Lieutenant O'Brien then instructed Mr. Bailey to remove his shoes and socks by kicking them off.

Officer Vitrano began assisting Lieutenant O'Brien with the search by conducting a search of Mr. Bailey's outer clothing. A search by Officer Vitrano's of Mr. Bailey's outer clothing revealed \$622 in cash inside his rear pants pocket. As Officer Vitrano counted the currency, Lieutenant O'Brien continued with the search of Mr. Bailey's person.

As Lieutenant O'Brien continued the search, Lieutenant O'Brien advised Mr. Bailey that they were not going to do a body cavity search; but they were going to manipulate certain parts of his clothes. Lieutenant O'Brien assisted Mr. Bailey in dropping his pants down to his ankles. Lieutenant O'Brien began manipulating Mr. Bailey's boxer-style underwear. Lieutenant O'Brien stood behind Mr. Bailey as Officer Vitrano held Mr. Bailey, who was handcuffed, by the wrist/arms. Lieutenant O'Brien manipulated Mr. Bailey's underwear by what appeared to be pulling the waistband area back towards him, which exposed Mr. Bailey's top portion of his buttocks. As Officer O'Brien conducted said act, Mr. Bailey appeared to tense up. Lieutenant O'Brien ordered Mr. Bailey to stop clinching and kicked his legs apart by using the inside of his foot to spread Mr. Bailey's feet apart in opposite directions. Shortly after that, in what appeared to be a rapid motion, Lieutenant O'Brien grabbed and discarded to the floor what seemed to be a small clear plastic-type material bag. The below listed picture is a still shot from the station's hand held digital camera operated by Officer Cleveland.

Investigating Officer's Initials 




The plastic material appeared to contain multiple white rock-like substances, wrapped tightly, in what appeared to be the shape and size of a racquetball. Excess plastic material extended past the tied portion of the material [Assessment of size/shape made based on video footage. Please see the still picture from video footage above]. Lieutenant O'Brien stated that the object discovered was located in-between Mr. Bailey's buttocks, but not inside his cavity (Anus). The video recording footage of the search did not depict the exact resting location of the object upon Mr. Bailey's person.

Lieutenant O'Brien asked Mr. Bailey if he had anything else, but Mr. Bailey remained silent. Lieutenant O'Brien told Mr. Bailey because he was hesitant when asked if he had anything else, Lieutenant O'Brien removed Mr. Bailey's boxer-style underwear and used a flashlight to visually inspect Mr. Bailey's groin and buttocks as Mr. Bailey remained standing straight. The observation was done without the lieutenant spreading Mr. Bailey's buttocks apart or instructing him to spread his buttocks. The lieutenant did not manipulate the genitalia or touched the groin or buttocks areas. Lieutenant O'Brien told Mr. Bailey that he was not stupid; he knew he had it either in his car or on him.

After completing the search, Lieutenant O'Brien and Officer Vitrano helped Mr. Bailey dress. Lieutenant O'Brien explained to Mr. Bailey that he was the target of a warrant. His vehicle had a warrant. In addition to being arrested for not having the child restrained in the seat because he (child) could have gone through the windshield, they had every right to search him. Lieutenant O'Brien then told Mr. Bailey the following. *"I know you upset now because you thought you were going to beat us, but we beat you."* The officers completed paperwork in the District Station while Mr. Bailey remained handcuffed. Officer Vitrano transported Mr. Bailey to the Orleans Parish Sheriff's Office Intake and Processing to be booked accordingly. ★

The investigator then reviewed the video/audio recording of the search upon Mr. Bailey's person that was memorialized by the station's digital handheld camera. Officer Cleveland operated that camera. The audio/video footage mirrored Officer Vitrano's BWC of the search of Mr. Bailey's person inside the men's locker room, but from a different angle; however, that footage also failed to document the exact resting place of the illegal narcotics Mr. Bailey had in his possession (**Exhibit K**).

On Wednesday, February 8, 2018, the investigator interviewed the following Police Officers as witnesses in this matter. Police Officer Vitrano (**Exhibit L**); Police Officer McKay (**Exhibit M**); and Police Officer Cleveland (**Exhibit N**). On Thursday, February 9, 2018, the investigator interviewed Police Officer Verrette (**Exhibit O**) as a witness. The officers' statements corroborated their BWC audio/video footage. The investigator did not interview Police Officers Dwight Sallier and Jeffrey Caradine, who were at the scene, but according to a review of their BWC, the footage did not depict relevant information other than they were at the scene and interacted briefly with other officers.

Investigating Officer's Initials: 

Sergeant Taillon was listed as an accused, in addition to Lieutenant O'Brien, in this matter because Investigator Barnes interpreted the complainant's concerns as that Sergeant Taillon approved Lieutenant O'Brien's incident report without probable cause. On Friday, February 9, 2018, the investigator interviewed Sergeant Taillon. The investigator provided Sergeant Taillon with a notice to render statement (**Exhibit P**). Sergeant Taillon signed the noticed acknowledging her rights as outlined in the form. Sergeant Taillon was interviewed as an accused member in this matter. (**Exhibit Q**).

Based on Sergeant Taillon's statements in that when she reviewed the gist, incident report, and search warrant authored by Lieutenant O'Brien, the totality of the circumstance led her to believe probable cause existed for the arrest of Mr. Bailey. However, during the interview with this investigator, Sergeant Taillon had server difficulties providing the definitions of both probable cause and reasonable suspicion. Sergeant Taillon also disclosed that she did not review the BWC showing the search of Mr. Bailey's person because she did not think it was appropriate for her to review because Mr. Bailey's private parts might have been exposed at some point. For those reasons, this investigator is recommending that the sergeant receive additional training.

This investigator concluded that although Lieutenant O'Brien's incident report raised concerns as to accuracy to wit probable cause, and constitutional policing and should have raised questions on the part of Sergeant Taillon before approving the report, she did not have the luxury of dissecting the information in the time span provided; therefore, she came to a conclusion based on her ability to understand and process the information at that time concluding probable cause existed. When factored together, the actions conducted by Lieutenant O'Brien was that of a multidimensional examination that took this investigator several months to dismember each action to accurately conclude whether the actions taken by Lieutenant O'Brien were within the scope of his lawful duties and within the rules, policies, and procedures of the Department. Sergeant Taillon's act of approving the gist and incident reports did not rise to the level of criminality. As for administrative purposes, using the preponderance of evidence as the burden of proof, the investigator could not conclude, with a degree of over 50% certainty that Sergeant Taillon knew when she approved the gist and later the incident report written by Lieutenant O'Brien that his actions lacked probable cause. Thereby, this investigator is recommending that the allegation that Sergeant Taillon knew when she approved the gist and incident report authored by Lieutenant O'Brien in that it lacked probable cause as not sustained.

The investigator summoned Lieutenant O'Brien to the PIB Office to request a statement from him relative to his knowledge of the pending criminal law allegations of false imprisonment and Departmental administrative violations. Lieutenant O'Brien said he was aware of the allegations and his rights as an accused, in agreement with his attorney, Lieutenant O'Brien said he agreed to be served with a Notice to Render Statement (**Exhibit R**) upon his arrival at the PIB Office.

On Thursday, February 22, 2018, Lieutenant O'Brien and his attorney, Mr. Donovan Livaccari, arrived at the PIB Office. The investigator served Lieutenant O'Brien with the aforesaid notice to render a statement. Lieutenant O'Brien reviewed and signed the notice acknowledging his rights. The investigator advised Lieutenant O'Brien of his Police Officer Bill of Rights, which included the allegations pending against him and his Constitutional Rights according to the United States Constitution and that of the State of Louisiana.

Investigating Officer's Initials: 

TA ACCUSED
TAILLON

W/ID
CONSONE

Under advisement from his attorney, Lieutenant O'Brien refused to waive his rights and make a statement. Therefore, because the investigation was still an active criminal investigation into a violation of the State of Louisiana Statutory Criminal Law, which also possibly ventured into constitutional policing violations, the investigator terminated the interview and continued with the criminal investigation into the matter without obtaining a statement from Lieutenant O'Brien.

On Friday, December 15, 2017, upon learning of the allegations against him, Lieutenant O'Brien voluntarily provided the investigator with e-mail correspondences, which he believed would benefit the investigation (**Exhibit S**). A gist of the e-mails is as follows.

Synopsis of Documentation Provided to the Investigator by Lieutenant O'Brien

• **09/23/2017 - EMAIL FROM JOHN O'BRIEN TO HANS GANTHIER; OCTAVIO J BALDASSARO JR; ELIF B. KREIDER. Cc: STEPHANIE L. TAILLON; WILLIE JENKINS; ANITA T. MCKAY; BRIANNE L. VERRETT; JEFFREY M. CARRADINE; DWIGHT D. SALLIER; AUTHUR CLEVELAND; VRANK VITRANO; COLETTE M. BOOTH**

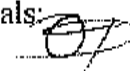
1. O'Brien wrote that on 09/23/17, he obtained a search warrant relative to narcotics violations.
2. The search warrant was a result of surveillance based on a tip that a male subject was selling narcotics out of a vehicle.
3. O'Brien eventually arranged a takedown. The driver and 6-year-old passenger were not wearing their safety belts.
4. The driver and vehicle were relocated to the 1st District where a search of the vehicle was conducted, but no contraband was found.
5. **Based on the traffic arrest and suspicion of concealment of contraband, O'Brien executed a strip search, not cavity search, in the men's locker room of the 1st District.**
6. The search was audio/video recorded by two officers. One officer used his BWC, and the other officer used the station's handheld digital camera.
7. The search revealed \$612 in the male subject's right rear pocket. O'Brien checked the inside the rear portion of the subject's boxer shorts and observed a clear bag sticking out from between the subject's buttocks. O'Brien removed the bag and placed the bag on the floor. The bag was that of several pieces of rock-like substance believed to be crack cocaine. Because the vehicle in question was leased, the car was not seized.
8. The male subject was arrested for seatbelt violations and possession with intent to distribute crack cocaine and possession of control dangerous substance in the presence of a minor.

• **10/30/17-EMAIL FROM MATTHEW H. SEGRAVES TO DANIEL MURPHY. Cc: Otha Sandifer**

Mr. Sergraves wrote that OCDM and DOJ are concerned:

1. Police Officer John O'Brien did not have probable cause to conduct a strip search.
2. O'Brien was involved in the case and approved the search
3. OCDM/DOJ believed the strip search was a cavity search; thus, a search warrant needed.

Investigating Officer's Initials:



4. No probable cause to search child passenger that was inside the target vehicle.

• **10/30/17- EMAIL FROM DANIEL P. MURPHY TO MATTHEW H. SEGRAVES; OTHA SANDIFER. Cc: PAUL N. NOEL**

Mr. Murphy wrote to Segraves that he was with Noel and requested that Segraves pointed to the relevant documentation on strip search.

• **10/30/17- EMAIL FROM MATTHEW H. SEGRAVES TO DANIEL MURPHY; OTHA SANDIFER. Cc: PAUL M. NOEL**

1. Segraves attached EPR report/attachments
2. Segraves said monitors thought O'Brien should have applied for an arrest warrant
3. Segraves said he had not watched any video
4. Segraves said strip search was video recorded, which OCDM/DOJ said was a policy violation.

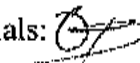
• **11/1/17 (Email obtained by PIB Investigator 12/15/17)- EMAIL FROM DANIEL MURPHY TO CHET EPPERSON**

Mr. Murphy requested Epperson to resend an immediate action form.

• **11/1/17 (Email obtained by PIB Investigator 12/15/17) - EMAIL FROM CHET EPPERSON TO DANIEL MURPHY; Cc: OTHA SANDIFER; PAUL NOEL**

Mr. Epperson responded the following regarding the action form:

1. During a Stop Search & Arrest Audit, Epperson reviewed an incident from 9/23/17. The incident involved O'Brien actions in a search of a vehicle, which stemmed from drug activity while armed with a search warrant. The driver was not the focus of the incident nor was there any warrants. The actions consisted of Consent Decree policy violations 132, 133, 134, regarding strip and body cavity searches. The email described the actions of the stop.
2. The email described O'Brien conducted surveillance in the area for the owner, even though there was no arrest warrant.
3. Police waited for the owner of the auto to enter the auto, even though the owner was not wanted on a warrant but suspected in drug activity. The suspect drove off. Officers observed the driver not wearing a seatbelt and conducted a traffic stop.
4. The driver was accompanied by a 6-year-old male. O'Brien said he had prior knowledge of how drug dealers' hid drugs on children. As a result, the 6-year-old was searched. The report indicated the child was released to a female, but the name was not obtained.

Investigating Officer's Initials: 

5. The driver was brought to the 1st District Station handcuffed and placed in the lobby area. Over an hour and half went by as officers conducted a search of the vehicle for narcotics but were met with negative results. The driver was provided with a copy of the warrant and issued traffic tickets for seatbelt violations.

6. O'Brien felt the driver was hiding drugs within his inner clothing based on his experience in street-level illegal drug activity; thus, he conducted a strip search.

7. The strip search was conducted in the men's locker room of the 1st District. During the search, O'Brien located a plastic bag between the buttocks area. O'Brien instructed the driver to spread his legs and stop moving his butt and then pulled out the bag out of the body cavity of his rear end. Officers recorded the search of BWC and a digital camera.

8. The strip search fell out of the NOPD Policy as O'Brien did not follow protocol. The removal of the bag fell into a body cavity search, which is not allowed per NOPD Policy. The removal of the driver at the beginning of the incident and search of the child is troubling. The report lacked proper justification for the detention of an individual handcuffed in a police station for over 1.5 hours for a traffic violation.

11/1/17- (Email obtained by PIB Investigator 12/15/17) EMAIL FROM DANIEL MURPHY TO HANS GANTHIER; Cc: OTHA SANDIFER; PAUL M. NOEL

Mr. Murphy wrote to Ganthier- Here's the write up on the body cavity search that the Monitors need a response on. Please reach out to Commander Sandifer if you would like to discuss how to respond.

11/7/2017- (Email obtained by PIB Investigator 12/15/17) EMAIL FROM HANS GANTHIER TO DANIEL MURPHY; OTHA SANDIFER; Cc: PAUL NOEL

Commander Gauthier responded to Murphy by addressing the concerns Murphy asked about.

1. Ganthier said the individual searched was the target of the investigation. The subject was mentioned by name and D.O.B.

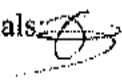
2. Ganthier said O'Brien did not need the warrant to conduct surveillance and reference policy 625.2.

3. Ganthier said O'Brien conducted a legal stop based on a traffic violation. The subject was the target of the investigation. Detention of subject was legal, not some random person who was detained while the search of the vehicle was conducted. Detention was also for the safety of officers. Ganthier referenced Chapter 1.3.1.1- Restraint of Suspects being Detained. The detention was justified because the officers had to complete multiple actions such as relocate vehicle to a safe area; search; gist; return of search warrant; FIC, CE&P forms; money receipt, etc.

4. Ganthier believed the search of the child was justifiable based upon O'Brien's experience.

5. Ganthier believed the O'Brien had probable cause to search Bailey

6. Ganthier believed O'Brien was within policy when he video recorded the search. It appeared to this investigator that because O'Brien is a supervisor, the policy was not violated.

Investigating Officer's Initials 



7. Ganthier did not believe the search was that of a body cavity because the evidence was not inside the cavity. Ganthier believed the search and body cavity were at odds with each other.

8. Ganthier concluded by saying that anyone in law enforcement knew it took time to conduct such investigation. He believed that O'Brien's investigation was one of the more expedient search warrants that have been done. Ganthier said the investigation was a narcotics investigation and not traffic. Ganthier said the traffic violations were used as a reason for the stop and the ensuing investigation lead to further discovery of evidence.

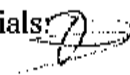
On Tuesday, March 6, 2018, Lieutenant O'Brien arrived at the PIB Office with his attorney at the request of this investigator. However, the investigator postponed the meeting due to an unrelated meeting involving this investigator that ran into the period set up with Mr. Livaccari. The meeting was two folds. As noted above, Lieutenant O'Brien's counsel advised him in February 2018 not to provide a criminal statement in this investigation. The investigator contacted Mr. Livaccari and requested that he and Lieutenant O'Brien meet to determine if Lieutenant O'Brien had any additional documentation he would have liked to voluntarily provide relative to this investigation and to determine if Lieutenant O'Brien still stood firm on not providing a statement regarding the criminal allegations in this matter.

In the absence of Lieutenant O'Brien statement regarding his knowledge in this investigation, the investigator used Lieutenant O'Brien's gist, incident report, search warrant, body worn camera video from the incident, and witness interview to examine the facts and circumstances relative to the allegations against the accused officers. The investigator first examined the individual acts and then assessed the acts in the totality of the circumstances throughout this investigation. The investigator first reviewed the facts gathered in this investigation relative to the traffic stop, which according to Lieutenant O'Brien's gist lead to the arrest of Mr. Bailey for a violation of the seatbelt law. The investigator examined whether probable cause existed to stop and arrest.

Traffic Stop:

Lieutenant O'Brien documented he set up surveillance and observed that Mr. Bailey quickly entered his vehicle and drove off. Lieutenant O'Brien documented that he noticed Mr. Bailey failed to wear his seatbelt as he drove the vehicle. Lieutenant O'Brien's voice was recorded on Officer Vitrano's BWC advising Officer Vitrano that Mr. Bailey was operating the target vehicle without wearing his seatbelt. Lieutenant O'Brien instructed Officer Vitrano to execute a traffic stop. Officer Vitrano, under orders from Lieutenant O'Brien, stopped Mr. Bailey's vehicle. Upon coming into contact with Mr. Bailey, Officer Vitrano's BWC depicted Mr. Bailey not wearing a seatbelt. Although not visible in the BWC, Officer Vitrano voice was recorded telling Mr. Bailey that 6-year-old front passenger could not be on the front seat of the vehicle unrestrained.

The investigator examined the reason Lieutenant O'Brien did not seize the vehicle and executed the search warrant when he first noticed the vehicle parked and unoccupied versus waiting for Mr. Bailey to arrive at his vehicle before attempting to execute the search warrant on his vehicle. The investigator concluded based that it was plausible to wait for the owner to arrive in order to take possession of the keys to unlock the vehicle versus breaking into or taking the risk of damaging the locks while picking the locks.

Investigating Officer's Initials: 

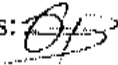
Officer Vitrano ordered Mr. Bailey out of the vehicle and conducted a pat down. Officer Vitrano handcuffed Mr. Bailey and placed inside the rear passenger compartment of his police vehicle. Officer Vitrano advised Mr. Bailey that he was under investigation for illegal narcotics and transported Mr. Bailey to the First District Station. All acts performed by Officer Vitrano were based on instructions from Lieutenant O'Brien. While at the station, Lieutenant O'Brien instructed Officer Vitrano to arrest Mr. Bailey for failure to wear a seatbelt and failure to ensure Mr. Bailey's 6-year-old front seat passenger was seat belted (Louisiana Revised Statute 32 Sections 295 and 295.1, respectively).

If the detention was committed in malice and without probable cause, the detention of Mr. Bailey may have constituted an unreasonable seizure under the Fourth Amendment to the Constitution of the United States. Moreover, such violation may have converted to a violation of the Louisiana Statutory Criminal Law relative to Revised Statute 14 section 46, False Imprisonment. Louisiana Revised Statute 14 section 46 - False Imprisonment prescribes the following in relevant part. False imprisonment is the intentional confinement or detention of another, without his consent and without proper legal authority.

Louisiana Code of Criminal Procedure Article 213(3) stated that a peace officer might arrest without a warrant when "[t]he peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer." Probable Cause exists when the facts and circumstances within the arresting officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to justify an average man of caution in believing the person to be arrested has committed an offense. *State v. Noto*, 596 So.2d 416, 419 (La.App. 4 Cir.1992). The arresting officer does not need to be convinced beyond a reasonable doubt of the guilt of the arrested person. *State v. Weinberg*, 364 So.2d 964, 969 (La.1978). The determination of probable cause requires more than suspicion but does not require evidence sufficient to support a conviction. As the name implies, probable cause deals with probabilities. *State v. Johnson*, 94-1170, p. 4 (La.App. 4 Cir. 8/23/95), 660 So.2d 942, 946 writs denied, 95-2331, 95-3044 (La.2/2/96), 666 So.2d 1092, 1105.

In addition to the aforesaid guidance, the investigator analyzed whether the physical arrest of Mr. Bailey for a violation of Louisiana Revised Statute 32 Sections 295 and 295.1, relative to violations of seatbelts were arrestable offenses. First, the investigator explored Section 295.1 of State of Louisiana Traffic Codes. Section 295.1 combined the acts of safety belt usage and tags indicating exemptions. For purposes of this investigation, 295.1 safety belts prescribe the following in relevant part:

A.(1) Each driver of a passenger car, van, sports utility vehicle, or truck having a gross weight of ten thousand pounds or less, commonly referred to as a pickup truck, in this state shall have a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion. The provisions of this Section shall not apply to those cars, vans, sports utility vehicles, or pickups manufactured before January 1, 1981...F. Probable cause for violation of this Section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person not restrained as required by this Section. A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

Investigating Officer's Initials: 

Louisiana Revised Statute 32 Section 295, Child passenger restraint system prescribed the following in relevant part.

A. Except as provided in Subsections C, D, and E of this Section, every driver in this state who transports a child or children under the age of thirteen years in a motor vehicle which is equipped with safety belts shall have the child properly secured as follows:

(2) A child who is at least six years of age or weighs more than sixty pounds shall be restrained with the motor vehicle's safety belt adjusted and fastened around the child's body or in an appropriately fitting child booster seat in accordance with the instructions of the manufacturer of the safety belt or child booster seat.

The investigator reviewed Officer Vitrano's BWC. Officer Vitrano was the first officer to make contact with Mr. Bailey. The BWC depicted Officer Vitrano initiating the traffic stop as ordered by Lieutenant O'Brien. The footage depicted Officer Vitrano's approach to Mr. Bailey's vehicle. As Mr. Bailey appeared in the view of the camera, Mr. Bailey did not appear to be wearing a seatbelt.

During the interaction between Officer Vitrano and Mr. Bailey at the traffic stop, Officer Vitrano talked to Mr. Bailey about a six-year-old child that was on the front seat of the vehicle and appeared not to be restrained by a seatbelt. Due to the camera angle, the child was not captured on video footage; however, the audio portion of the BWC captured the interaction between the officer and Mr. Bailey. Officer Vitrano's BWC, which was active from the initial stop until Officer Vitrano dropped off Mr. Baily at the Orleans Parish Sheriff's Office Prisoner Intake, Mr. Bailey at no time during the duration of the investigation disagreed that he and/or the passenger were not properly restrained.

Using the preponderance of the evidence, that is more likely than not, Mr. Bailey committed the violations of Louisiana Revised Statute 32 Section 295.1 and 295; thereby, the traffic stop was justifiable as probable cause existed.

The investigator explored the section of the definition of the seatbelt law that stated the following.

...A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

Police Officers did not search the vehicle at the traffic scene; however, officers relocated the vehicle to the First District Station and searched the vehicle. Lieutenant O'Brien was in possession of a search warrant for that vehicle. That search warrant countered the restriction of the vehicle search.

As for the restriction relative to the search of the driver, Officer Vitrano's BWC footage depicted the officer telling Mr. Bailey that he was detained due to a search warrant. Officer Vitrano appeared to conduct a pat down of Mr. Bailey's outer clothing and then escorted Mr. Bailey, as ordered by Lieutenant O'Brien, to and sat him inside the rear passenger compartment of the police vehicle to await additional instructions from Lieutenant O'Brien.

Investigating Officer's Initials: 

The investigator is aware that a pat-down constitutes a search under the Fourth Amendment. Pat-down searches, incident to an investigatory stop also known as Terry Stops, are usually made without a warrant and justified if the officer has reasonable suspicion that the person being searched is armed or dangerous.

The investigator reviewed the reasonableness of suspicion based on the totality of circumstances and both the subjective individual experience of the officer and the objective factors at the time. In this matter, the investigator later learned via an interview with Officer Vitrano that he was aware that a search warrant in connection with illegal narcotics had been issued for the vehicle in question. Officer Vitrano stated he believed firearms are normally associated with illegal narcotics; therefore, he pat-down Mr. Bailey before escorting him to the police vehicle. Based on the aforesaid reasons, this investigator concluded the pat down of Mr. Bailey by Officer Vitrano appeared reasonable and an exception to the restriction placed by the statute to search the driver.

The Search of Mr. Bailey's 6-Year-Old Passenger at the Scene of the Traffic Stop


While at the traffic stop scene, Lieutenant O'Brien ordered Officer McKay to search Mr. Bailey's 6-year-old front passenger. Officer McKay removed the shoes and socks of the child and conducted a pat down of the child's outer clothing. Officer McKay searched while the child sat on the back seat of a police vehicle. In this investigator's interview with Officer McKay, Officer McKay stated although she knew very little about the stop, she believed her platoon commander, Lieutenant O'Brien, gave her a lawful order to search; therefore, she did not question his authority.

The investigator then examined whether or not the search of Mr. Bailey's six-year-old passenger was permissible under Louisiana Revised Statute 32 Section 295.1, Safety belt use; tags indication exemption. Subsection F prescribed the following.

...A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

Also, this investigator is also aware when conducting a search warrant; police may only search the places and people listed on the search warrant. The 6-year-old passenger was not listed on the search warrant that Lieutenant O'Brien had in his possession. Lieutenant O'Brien lacked probable cause to believe that any person found in Mr. Bailey's vehicle would be violating the law. The surveillance conducted by Lieutenant O'Brien on the date of the execution of the search warrant failed to show any activity that would have indicated illegal activity.

This investigator finds it commendable that Lieutenant O'Brien would document in the gist section of his report that to ensure the safety of the child, the child's person was searched for illegal narcotics. That may have been one of Lieutenant O'Brien's reasons, but this investigator believed that reason was secondary to his intentions for the search. According to BWC video/audio footage, the investigator concluded that Lieutenant O'Brien's intention for ordering the search of the 6-year-old male was for the sole purpose of discovering illegal narcotic to use as evidence against Mr. Bailey. The investigator reached that conclusion based on Lieutenant O'Brien's comments that were captured on BWC when he said Mr. Bailey took several blocks to stop his vehicle when signaled to pull over by Officer Vitrano; therefore, Mr. Bailey may have to hide the illegal narcotics on himself or the person of the 6-year-old child.

Investigating Officer's Initials: 

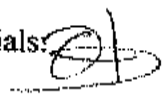
To determine further whether Lieutenant O'Brien had just cause to order the search of the 6-year-old passenger in Mr. Bailey's vehicle, the investigator reviewed Lieutenant O'Brien's incident report, application and search warrant, and BWC's of the officers at the scene of the traffic stop.

Documents authored by Lieutenant O'Brien did not indicate that the child in question was present during the trade of illegal narcotics while Lieutenant O'Brien had Mr. Bailey under surveillance. Neither Lieutenant O'Brien nor Officer Vitmao alluded that upon Officer Vitrano's contact with Mr. Bailey, Officer Vitrano observed anything that would have to lead him to believe that Mr. Bailey or the child committed any gesture indicative to the concealment of illegal narcotics on their person. The investigator concluded that a persons' mere proximity to others independently suspected of criminal activity did not, without more, give rise to probable cause to search that person (*Sibron v. New York*, 392 U.S. 40, 62-63). Therefore, Lieutenant O'Brien had no authority to invade the constitutional protection possessed by the 6-year-old male passenger. Therefore, not only was probable because to search the 6-year-old male absent at the time the warrant was issued, it was still absent when Officer O'Brien ordered the search at the traffic scene. For those reasons, Lieutenant O'Brien's actions of ordering the search of the child at the scene amounted to a mere hunch; thereby not justified.

Also, the investigator reviewed Louisiana Code of Criminal Procedures Article 215.1- Temporary questioning of persons in public places; frisk and search for weapons prescribed the following in relevant part:

- A. A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.
- B. When a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person.
- C. If the law enforcement officer finds a dangerous weapon, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

It was clear to the investigator that if the law enforcement officer reasonably suspected the person possessed a dangerous weapon, he may search the person. However, it was difficult for this investigator to conclude that the six-year-old showed any signs that he might have been armed and/or a danger that would have affected officer safety. Moreover, the removal of the child's shoes and socks indicated the officer was not looking for a weapon inside the shoes or socks of the child. Coupled the search with Lieutenant O'Brien's statement in the BWC that he suspected Mr. Bailey might have hidden the illegal narcotics on himself or the child gave this investigator reason to believe that the search was solely for the discovery of evidence and not officer safety or the safety of the child.

Investigating Officer's Initials: 

Police Officer McKay conducted the search of the child at the scene of the traffic stop under orders from Lieutenant O'Brien. That order was clear in the BWCs reviewed by this investigator and in the investigator's interview with Officer McKay. This investigator concluded the vicarious liability for the erroneous search of the six-year-old passenger should lie with the supervisor in this case, Lieutenant O'Brien, and not the police officer who was simply following what she believed to be a lawful order.


The investigator's decision to hold Lieutenant O'Brien accountable for the erroneous order was based on NOPD Rule 4: Performance of Duty; paragraph 2: Instructions from an authoritative Source. The rule stated in relative part, "...The issuing authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of the law." Officer McKay stated she responded to the scene and with limited information as she was never briefed on the particulars of the illegal narcotics operation and followed orders believing that her platoon commander, Lieutenant O'Brien, had just cause to order her to search the 6-year-old child and said the order was lawful.

The Release of the Child after Search

According to BWC, shortly after completing the search of the child and while at the scene of the traffic stop, an unknown adult female walked up to Officer McKay's police vehicle and identified herself as the mother of the 6-year-old child. Officer McKay requested permission from Lieutenant O'Brien to release the child. Lieutenant O'Brien granted permission, and the child was released to the unknown adult female. Lieutenant O'Brien failed to ensure identification information was obtained from the alleged parent before releasing the child. Lieutenant O'Brien charged Mr. Bailey with possession of illegal narcotics in the presence of a minor but neglected to obtain that minor's identification information.

Based on the information gathered thus far, the investigator concluded the following regarding the traffic stop, pat-down of Mr. Bailey, a search of the child passenger, and release of the child passenger at the scene.

- Probable cause for the traffic stop existed (operator not wearing a seatbelt).
- Although Section 295.1 placed restrictions on a search of the vehicle solely based on the violation of the seatbelt law, the lieutenant was in possession of what appeared to be a valid search warrant for vehicle in question, which trumped the exception noted in the definition of Section 295.1.
- The search of Mr. Bailey at the traffic scene consisted of a pat-down by Officer Vitrano. The pat-down appeared to be reasonable as it, more likely than not, was conducted for officer safety relative to the detention of Mr. Bailey due to a search warrant for illegal narcotics. Firearms are notoriously associated with illegal narcotics; therefore, a valid exception to the restrictions placed in Section LA. R.S. 32:295.1.

Investigating Officer's Initials 

- The order by Lieutenant O'Brien to Officer McKay to search the 6-year-old passenger neither meet the standards of Louisiana Revised Statute 32:295.1 nor the Louisiana Criminal Code of Procedure Article 215.1-Temporary questioning of persons in public places; frisk and search for weapons. Also, the search warrant in place for the search of Mr. Bailey's vehicle did not extend to the 6-year-old passenger. For those reasons, the warrantless search of the child was conducted without probable cause.
- Also, the investigator believed Lieutenant O'Brien's order to search the 6-year-old passenger violated section Louisiana Revised Statute 32 Section 295.1. This investigator concluded the vicarious liability for the erroneous search of the 6-year-old passenger should lie with the supervisor, in this case, Lieutenant O'Brien, and not the police officer who was simply followed what she believed to be a lawful order from her platoon commander.
- Lieutenant O'Brien failed to ensure identification information was obtained from the alleged parent before releasing the child. Lieutenant O'Brien charged Mr. Bailey with possession of illegal narcotics in the presence of a minor but neglected to obtain that minor's identification information.

Relocation of Mr. Bailey and his Vehicle to the First District Station

Members of the First Police District under orders from Lieutenant O'Brien transported Mr. Bailey and his vehicle separately to the First District Station. The purpose of the transportation of Mr. Bailey's vehicle appeared to be for the purpose executing a search warrant upon the said vehicle. The transportation of Mr. Bailey appeared to be for the detention while the vehicle was searched. The vehicle was searched in the parking garage of the station, and Mr. Bailey was handcuffed and detained in the lobby of the First District Station during the entire duration of the search. The investigator later learned after reviewing Officer Vitrano's BWC that Lieutenant O'Brien instructed Officer Vitrano that Mr. Bailey was arrested for the violations of the seatbelt laws regardless of the outcome of the execution of the search warrant. Said statement was made in the lobby of the station before the search of Mr. Bailey's vehicle.

The investigator first examined whether the act of transporting Mr. Bailey to the First District Station and detaining him in restraints while Lieutenant O'Brien searched Mr. Bailey's vehicle for an amount of time may have risen to a violation of the U.S. Constitution relative to unreasonable search and seizures; thus resulting in false imprisonment.

Based on the review of BWC, Lieutenant O'Brien gave the impression that although he was in possession of a search warrant for the vehicle operated by Mr. Bailey, he ordered Officer Vitrano to conduct a traffic stop for failure to wear a seatbelt.

Investigating Officer's Initials: 

Aside from the first statement in the gist written by Lieutenant O'Brien that stated Mr. Bailey was stopped in a vehicle that was a target of a narcotics search warrant, the rest of the information written in the gist overshadowed the initial statement. That statement was that Lieutenant O'Brien arrested Mr. Bailey for a traffic violation and relocated him to the station where a full search was conducted that produced the illegal narcotics. Said combination of the traffic stop, arrest, and search reinforced the impression that O'Brien used the pretext of a traffic arrest to allow a search incident to arrest, which is an exception to a warrantless search of Mr. Bailey's person.


However, the investigator was unable to ignore the following that made the investigator conclude that Mr. Bailey was initially detained due to the search warrant issued for the vehicle he operated. The reasons are as follows.

- The first statement in the gist in where Lieutenant O'Brien stated that Mr. Bailey was stopped in a vehicle that was a target of a narcotics search warrant.
- The statement made at the traffic stop scene by Officer Vitrano that Mr. Bailey was under investigation for a narcotics violation.
- Lieutenant O'Brien did not tell Officer Vitrano that Mr. Bailey would be arrested for traffic violations regardless of the outcome of the search of the vehicle until they were all in the lobby of the police station.

The driver of a vehicle has been detained when he or she submits to a police stop (U.S. v. Cortez). Such detention requires reasonable suspicion of criminal activity, or a traffic violation or equipment defect (U.S. v. Sharpe). The Supreme Court of the United States held that all occupants of a car are seized for purposes of the Fourth Amendment during a traffic stop, not just the driver (Brendlin v. California). It is this investigator's opinion that many officers have been taught that an arrest occurs whenever law enforcement creates a situation in which a subject is not free to leave. The investigator concluded that if that were the only correct definition, every investigative detention, i.e., Terry Stop, would be an arrest.

However, a seizure of a person occurs whenever force is used, or a person submits to a show of authority by police. This investigator understands seizures of persons come in two forms: investigative detentions (Terry stops), which require reasonable suspicion, and arrests, which require probable cause. This investigator is also aware that the investigatory detention is justifiable, but ends when tasks tied to that investigation reasonably or should have been completed. If the detention extends past that, then that person has been arrested. Even if an officer did not intend to arrest the subject.

Using the previously mentioned investigator's understanding, this investigator held the initial detention of Mr. Bailey at the traffic scene was justifiable because although not mentioned in the order of search itself, Lieutenant O'Brien mentioned Mr. Bailey as the target of the narcotics investigation in the application for a search warrant. Lieutenant O'Brien provided Mr. Bailey's name, date of birth, physical description and last known address. Lieutenant O'Brien facts described Mr. Bailey as the seller and facilitator of the narcotics from the vehicle in question to the buyers; therefore, reasonable suspicion existed in detaining Mr. Bailey while Lieutenant O'Brien conducted the search of the vehicle.

Investigating Officer's Initials 

Had Lieutenant O'Brien detained Mr. Bailey at the traffic scene while executing the search warrant, the investigator would have concluded the detention justifiable without further questions. However, because Lieutenant O'Brien involuntarily transported Mr. Bailey to the police station and the length Mr. Bailey spent handcuffed during the duration of the search of the vehicle may have amounted to an unreasonable seizure; thus, false imprisonment. For that reason the investigator further reviewed the matter.

Police stopped Mr. Bailey inside his vehicle at an intersection that was heavily populated located within the first police district. For officer safety and to streamline the personnel needed to secure the area by providing traffic and crowd control, this investigator concluded it was plausible to relocate the vehicle to a safer environment. In this case, Lieutenant O'Brien elected to relocate the vehicle to the First District Police Station, which is within the same geographical location of the stop.


Because the vehicle was relocated to execute the search warrant in a more conducive environment, the investigator held that the involuntary relocation of Mr. Bailey to the station was also justifiable for the following reasons. If evidence that a driver of a motor vehicle was harboring illegal narcotics is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is reasonable to this investigator to believe that a peace officer can require that the citizen remain while officers execute a warrant to search for his car. It is also plausible to detain Mr. Bailey to preventing fight of the driver who was targeted in the sale of illegal narcotics. Minimizing the risk to officer safety and facilitating the orderly completion of the search (for example, if the driver remains he can open locked containers and items and prevent damage from forcible opening). Also, the suspect should remain with his property until either evidence was found or not inside the target vehicle, that would either establish probable cause or lack thereof to arrest.

Length of Detention

The clock on the detention began running upon the initiation of the traffic stop. As the investigator previously stated a seizure of a person occurs at the submission to police authority. The subsequent involuntary relocation of Mr. Bailey was also justifiable. Therefore, the investigator then examined the length of detention and whether that act amounted to false imprisonment.

The investigator's research did not disclose that the courts have established an exact period that because it exceeded that amount of time, the detention will be unjustifiable or convert into false imprisonment. However, as stated previously, the investigatory detention is justifiable but ends when tasks tied to that investigation reasonably or should have been completed. If the detention extends past that, then that person has been arrested.

Lieutenant O'Brien documented Mr. Bailey in the application for search. Based on that, the investigator concluded Lieutenant O'Brien, at the very least, had reasonable suspicion that Mr. Bailey was involved in the illegal sale and possession of dangerous controlled substances. Therefore, at the very least, reasonable suspicion that Mr. Bailey had committed or was about to commit a crime was present.

Investigating Officer's Initials: 

Furthermore, had the evidence that the officer sought for search had been large items such as a rifle, suitcase, etc., then the amount of time Mr. Bailey was detained in this investigation would have been unjustifiable because it would not have taken that long to discover the items. However, the items sought in the order of search was for evidence that was easy to hide such as illegal narcotics, currency, and documents. Thereby, the amount of time Mr. Bailey was detained that began with the traffic stop continued with the involuntary transportation to the station and concluded when Lieutenant O'Brien completed the search of the target vehicle was over an hour and a half. The investigator determined that it was plausible that the events described above could have taken said time. Especially to conduct a methodical search of the vehicle; thus, the detention of Mr. Bailey, even while handcuffed, appeared justifiable.

The Arrest of Mr. Bailey for Traffic Violations

As this investigator reviewed Officer Vitrano's BWC, shortly after arriving at the police station and prior to executing the search warrant on the target vehicle, Lieutenant O'Brien told Officer Vitrano that Mr. Bailey was being arrested for the traffic violations relative to seatbelts regardless of the outcome of the search warrant. The investigator dissected the arrest of Mr. Bailey by examining whether a physical arrest for violations of the seatbelt laws was reasonable versus allowing Mr. Bailey to sign the citation in exchange for a promise to appear in court later instead of a physical arrest.


To determine whether a traffic violation of a seatbelt is a misdemeanor, the investigator reviewed the definition of misdemeanor according to the Louisiana Criminal Code. The Louisiana Criminal Code defined a misdemeanor as any crime other than a felony. Misdemeanor offenses are usually punished by a fine and/or up to a year of incarceration.

The investigator also reviewed arrest by an officer without a warrant.

- Louisiana Code of Criminal Procedure Article 213, Arrest by officer without a warrant; when lawful - The article prescribed that a peace officer may arrest without a warrant when an offense in his presence and if the arrest is for a misdemeanor it must be made immediately or on close pursuit.

Based on the misdemeanor definition and Article 213, the violation of the law regarding seatbelts appeared to fit within the scope of a misdemeanor; thus, arrestable under Article 213. Notwithstanding the aforementioned, the investigator discerned whether a peace officer SHALL issue a summons/citation (in lieu of a physical arrest) when a misdemeanor is committed instead of a physical arrest. The investigator reviewed the following for guidance.

- Louisiana Code of Criminal Procedure Article 208, Summons; defined - A summons is an order in writing, issued and signed by a magistrate or a peace officer in the name of the state, stating the offense charged and the name of the alleged offender, and commanding him to appear before the court designated in the summons at the time and place stated in the summons.

Investigating Officer's Initials: 

- Louisiana Code of Criminal Procedure Articles 211 Summons by officers instead of arrest and booking - The arresting officer may issue a summons instead of a physical arrest if certain criteria's were present. The investigator interpreted the word **MAY** as giving the peace officer the ability to use his/her discretion to either summon or physically arrest an individual for a misdemeanor.

To further determine whether the arrest of Mr. Bailey was justifiable in this matter for seatbelt violations, the investigator also reviewed Louisiana Revised Statute 32 Section 57, Penalties; alternatives to the citation. Louisiana Revised Statute 32 Section 57, Penalties; alternatives to citation prescribes the following in relative part:

C.(1) Each governing authority on whose behalf citations are issued for alleged violations of the provisions of this Chapter shall establish a procedure by which alleged offenders may promise, in writing, to appear in court to answer the charge or charges. The written promise to appear shall be accepted in lieu of posting a bond or depositing a driver's license.


E. The provisions of Subsections C and D of this Section shall not apply to citations alleging that the operator of the motor vehicle was:

- (1) Operating the motor vehicle under the influence of alcohol or controlled substances.
- (2) Exceeding the speed limit by fifteen miles per hour or more.
- (3) Exceeding the speed limit in a school zone.
- (4) Driving with a suspended license.
- (5) Drag racing.
- (6) Cited for failure to maintain compulsory security.

The statute appeared clear in that the violations in Section E are arrest offenses without benefit of the offender to promise, in writing, to appear in court to answer charges in lieu of a physical arrest. After that, the interpretation of the statute by this investigator is as follows. The governing authority, meaning the City of New Orleans/New Orleans Police Department, **SHALL** establish a procedure by which alleged offenders **MAY** promise in writing, in other words, sign a citation instead of a physical arrest, to appear in court to answer the charge or charges.

The New Orleans Police Department complied with said statute by enacting NOPD Operations Manual Chapter: 61.3; title: Traffic Citations, which specifically mentioned which traffic charges are subject to arrest without the benefit of a promise in writing to appear at a later time to answer the charges. The NOPD Chapter mostly mirrored the aforesaid statute and it did not appear to prevent a police officer's ability to use his/her discretion to arrest, with probable cause, for a traffic violation(s) of any of the statutory laws set forth in the Municipal or State statutory traffic laws.

Finally, the investigator researched court cases in order to use as guidance as it applied to the lawfulness of traffic arrest for seatbelt violations. The investigator located and examined *Lockett v. New Orleans City*, 607 F. 3d 992 - Court of Appeals, 5th Circuit 2010. A gist of the case is as follows.

Investigating Officer's Initials: 

Synopsis of Lockett v. New Orleans City in Relevant Part

The plaintiff (Mr. Lockett) seeks the reversal of a district court's grant of summary judgment for Defendants (Appellees) in a civil rights action, which stemmed on his arrest based on a traffic violation.


Mr. Lockett was driving in his vehicle when two military police officers from the Louisiana National Guard were conducting a patrol in the area as members of the National Guard Task Force assisting the NOPD with law enforcement duties. The military police officers observed Mr. Lockett's vehicle and believed it to be traveling over the speed limit. Based on this observation, the military officers affected a traffic stop of Mr. Lockett. Mr. Lockett complied and pulled over.

The military officers walked to Mr. Lockett's vehicle and asked him if he knew how fast he was driving. Mr. Lockett responded that he did not know his speed but stated that he was driving with the flow of traffic. The military police officers ordered Mr. Lockett to exit the vehicle and produce his license, registration, and proof of car insurance.

NOPD officers were eventually dispatched to the location. Officers Lynn Fletcher, Reginald Gains, and Tocka Clark arrived at the scene, and NOPD Officers Gains and Clark eventually took custody of Mr. Lockett, arrested him for reckless operation, and delivered him to jail. Ultimately, Mr. Lockett pleaded guilty to a non-moving violation and paid a fine.

Mr. Lockett filed suit asserting claims arising out of Lockett's arrest. The complaint alleged claims under 42 U.S.C. 1981, 1983, 1985(3), 1986, and 1988, as well as numerous state law, claims including assault and battery, false arrest, **false imprisonment**, malicious abuse of power, intentional infliction of emotional distress. A District Court eventually granted the defendants motion to dismiss, and motion for summary judgment and the district court denied the plaintiffs motion for new trial; thus, Mr. Lockett appealed to the Court of Appeals, 5th Circuit.

Mr. Lockett contended that the district court erred in finding that the defendants were entitled to qualified immunity concerning his claim of false arrest. Mr. Lockett contended that because the officers had admitted that they **did not believe** that careless driving was an "**arrestable offense**," there was **no probable cause to arrest him**. Mr. Lockett relied on the following language in *Resendiz v. Miller*: "Probable cause exists when the totality of the facts and circumstances *within a police officer's knowledge* at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense." 203 F.3d 902, 903 (5th Cir.2000). The applet court ruled Mr. Lockett misconstrued this precedent. That quoted language referred to facts within the officer's knowledge, not whether the officer was aware of the legal consequences of the facts.


Investigating Officer's Initials: 

Mr. Lockett's claim argued, "probable cause for a traffic stop is separate and distinct from the probable cause necessary to effect an arrest when the initial probable cause for the traffic stop is insufficient for the arrest." The appellate court stated Mr. Lockett was mistaken. The appellate court stated, **"If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."** *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001). *In Atwater, the minor criminal offense was the plaintiff's failure to fasten a seatbelt.* *Id.* at 349, 121 S.Ct. 1536. Significantly, in its opinion, the Supreme Court *rejected* Atwater's contention that "it would not be reasonable to arrest a driver for speeding unless the speeding rose to the level of reckless driving." *Id.* at 349-50, 121 S.Ct. 1536. Therefore, in the instant case, because the defendants had probable cause to believe that Lockett had been driving in violation of the speed limit, the arrest did not violate a clearly established constitutional right. Thus, the Court of Appeals, 5th Circuit found that the district court properly ruled that the defendants were entitled to qualified immunity with respect to the claim of false arrest.

Therefore, using the aforesaid Departmental Chapters, Louisiana Criminal Code, Statutory Laws, and court case as guidance in deciding whether Mr. Bailey's arrest for a simple seatbelt violation was lawful, this investigator concluded that Lieutenant O'Brien had probable cause to order Officer Vitrano to arrest Mr. Bailey for the seatbelt violations; thereby, negating the allegation of False Imprisonment as it related to the traffic arrest.

Notwithstanding the previously mentioned, the physical arrest of Mr. Bailey appeared to have violated Louisiana Revised Statute 32 Section 391-Appearance upon Arrest (**Exhibit ****). Louisiana Revised Statute 32 Section 391-Appearance upon Arrest prescribed the following- **"Whenever any person is arrested for a violation of any provision of this Chapter [traffic chapter in which seatbelt violation is governed under] or any regulation of the department or of the secretary of the Department of Public Safety and Corrections adopted pursuant thereto, except as otherwise provided in this Section, the arresting officer shall take his name, address, the license number of his motor vehicle, and the number of his operator's license, and SHALL issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons and notice. The arresting officer's original or electronic signature shall be affixed to the summons..."**

While the arrest of Mr. Bailey appeared lawful, once justification for an arrest had been establishing for a specific violation under Title 32 of the Louisiana Traffic Code, which is what the violation for the seatbelt law Mr. Bailey was arrested fell under, the law enforcement officer shall follow the definition in Louisiana Revised Statute 32 Section 391-Appearance upon Arrest as previously stated. Based on the investigator review of the BWC footage listed as exhibits in this investigation, Lieutenant O'Brien orders to Officer Vitrano to arrest Mr. Bailey failed to allow Mr. Baily the opportunity to sign the traffic citation as stated in Section 391; thus, a violation of state law.

Investigating Officer's Initials: 

Officer Vitrano effected the traffic arrest of Mr. Bailey under orders from his Platoon Commander, Lieutenant O'Brien. That order was clear in the BWCs reviewed by this investigator and in the investigator's interview with Officer Vitrano. As this investigator reviewed Officer Vitrano's BWC, Lieutenant O'Brien told Officer Vitrano that Mr. Bailey was being arrested for the traffic violations regardless of the outcome of the search warrant for narcotics. Officer Vitrano appeared to follow orders believing that his platoon commander, Lieutenant O'Brien, had just cause to order the arrest of Mr. Bailey and said actions were lawful.

This investigator concluded that the responsibility for giving such erroneous order or the vicarious liability should lie with the manager in this case, Lieutenant O'Brien, and not the police officer. As stated above in Officer McKay's action, the investigator's decision to hold Lieutenant O'Brien accountable for the erroneous order was based on NOPD Rule 4: Performance of Duty; paragraph 2: Instructions from an authoritative Source. The rule stated in relative part, "...The issuing authority shall be held responsible should any conflict materialize; however, no instructions shall be issued or executed which are in violation of the law."


After conceding that illegal narcotics were not found inside of the vehicle, Lieutenant O'Brien moved on from the vehicle search to conducting a warrantless search for illegal narcotics of Mr. Bailey's person. The investigator examined the following.

- Was probable cause present for the search of Mr. Bailey's person
- Any justification for the type of search performed upon Mr. Bailey.
- Did the search of Mr. Bailey amount to a cavity search
- The search of Mr. Bailey's person yielded a number of illegal narcotics for which Lieutenant O'Brien arrested and charged Mr. Bailey accordingly. Therefore, if the evidence found was a result of an unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution, then did the seizure of Mr. Bailey rise to the level of the criminal offense, false imprisonment.

Not in dispute in this investigation is that Lieutenant O'Brien was in possession of what appeared to be a valid search warrant that named Mr. Bailey's vehicle as the target for concealing illegal narcotics. Upon executing the search warrant, the search of the vehicle did not yield illegal narcotics. The investigator examined the application for a search warrant (see **Exhibit B- Attachments**) authored by Lieutenant O'Brien and issued by a judge to search Mr. Bailey's vehicle.

Synopsis of the Application for Search Warrant Authored by Lieutenant O'Brien for Mr. Bailey's Vehicle

Lieutenant O'Brien provided his facts and reasons as follows. Lieutenant O'Brien stated he received information from NOPD law enforcement officers that an anonymous source provided them with information that Mr. Bailey was selling controlled dangerous substances from a white Nissan Maximum in a geographical location of the Lafitte Greenway near Rocheblave Street in the City of New Orleans. Lieutenant O'Brien researched Mr. Bailey's name and learned that at one time he was on probation for control dangerous substances and had an extensive history related to arrest for violations of illegal narcotics.

Investigating Officer's Initials: 


Lieutenant O'Brien mentioned Mr. Bailey's first and last name; date of birth; physical description; and last known home address. Lieutenant O'Brien documented he followed up on the information by conducting surveillance. Lieutenant O'Brien conducted two days of surveillance. On one of those days, Lieutenant O'Brien observed Mr. Bailey exit the driver's side of the vehicle and engaged another male. Lieutenant O'Brien said the unknown male gave Mr. Bailey currency and Mr. Bailey returned to the white vehicle and removed an unknown object from the center console, returned to the unknown male's location, and exchange the object. The unknown male and Mr. Bailey departed in separate directions. Lieutenant O'Brien was unable to verify the contents, as he was unable to stop the unknown male subject due to interference from vehicular traffic in the area. In the application, Lieutenant O'Brien stated he believed Mr. Bailey retrieved the narcotics from the vehicle.

On a separate day while on surveillance, Lieutenant O'Brien observed the target vehicle parked in the area of Orleans Avenue and South Galvez Street. As the surveillance progressed, Lieutenant O'Brien observed an unknown male subject and Mr. Bailey inside of the target vehicle engage in unknown conversation. Shortly thereafter, the male subject departed, and Mr. Bailey remained at the scene. Lieutenant O'Brien elected to have officers stop the unknown male and eventually discovered he was in possession of illegal narcotics, but the subject did not disclose where he had obtained the illegal narcotics. After the aforesaid stop was completed, Lieutenant O'Brien returned to the original location but was unable to locate Mr. Bailey.

Synopsis of Order of Search Issued by a Judge for Mr. Bailey's Vehicle

Lieutenant O'Brien mentioned Mr. Bailey in the application for the search warrant by name, identifying information, and the facilitator who used the vehicle in question as a stash location and transported the illegal narcotics from the vehicle to the buyer. However, in the order of search itself, Lieutenant O'Brien failed to list Mr. Bailey. Due to the abovementioned, this investigator considered the Good Faith Exception (U.S. v. Leon). In making the determination, this investigator took into account the information Lieutenant O'Brien included in the application for the search warrant. Looking at the totality of the circumstances surrounding the issuance and execution of the search warrant. While reviewing the application, it was clear that Mr. Bailey used the target vehicle as a hoard location. However, Lieutenant O'Brien failed to establish a nexus, other than Mr. Bailey facilitated the transportation of illegal narcotics from the vehicle to the buyer, that Mr. Bailey hid drugs on his person.

Furthermore, on the date, Lieutenant O'Brien executed the order of search, he set up surveillance upon the target vehicle before the execution of the search. During surveillance, Lieutenant O'Brien did not document in his incident report that he saw Mr. Bailey involved in any activity that day, which would have indicated he was engaged in illegal narcotics activity. In fact, during the interrogation of Lieutenant O'Brien by this investigator, Lieutenant O'Brien stated he did not see Mr. Bailey involved in any activity that would have led him to believe Mr. Bailey was involved in the possession or selling of narcotics on the date he executed the order of search. During the traffic stop involving Mr. Bailey, neither Lieutenant O'Brien nor Officer Vitrano documented they observed Mr. Bailey's actions alluded that he hid narcotics on his person or on the child that accompanied him. Lieutenant O'Brien stated he believed that Mr. Bailey hid the illegal narcotics on himself or the child simply based that Mr. Bailey took several blocks to stop his vehicle when signal by police to stop.

Investigating Officer's Initials: 


Lieutenant O'Brien specifically applied for the search of the vehicle to seize controlled dangerous substances, contraband, paraphernalia, financial proceeds, currency, valuables, weapons, and/or documents related to the occupancy/ownership of the said vehicle. Lieutenant O'Brien failed to mention Mr. Bailey or any other persons therein. The text of the Fourth Amendment requires that search warrants "particularly describe" the places to be searched and the property to be seized. This means that a warrant must authorize officers to search only in the specific places described in detail and to seize only the specific items of enumerated property for which probable cause is outlined in the supporting affidavit. The U.S. Supreme Court describes this rule as follows:

General warrants, of course, are prohibited by the Fourth Amendment. The problem posed by the general warrant is of a general, exploratory rummaging in a person's belongings. The Fourth Amendment addresses the problem by requiring a 'particular description' of the things to be seized...As to what is to be taken, nothing is left to the discretion of the officer executing the warrant (Andresen v. Maryland).

Therefore, this investigator understands that law enforcement officers may only search and seize the specific items, places, or persons called for in the search warrant. Law enforcement may search outside the scope of the warrant only if they are protecting their safety or the safety of others, or if they are acting to prevent the destruction of evidence. Moreover, law enforcement may seize objects not specified in the warrant only if they are in plain view during the course of the search. The investigator drew his conclusion based on guidance from *Ybarra v. Illinois*, 444 U.S. 85 (1979).

The Supreme Court has stressed the importance of warrants and has repeatedly referred to searches without warrants as "exceptional." *Johnson v. the United States*, 333 U.S. 10, 14 (1948); *McDonald v. the United States*, 335 U.S. 451, 453 (1948); *Camara v. Municipal Court*, 387 U.S. 523, 528 -29 (1967); *G.M. Leasing Corp. v. The United States*, 429 U.S. 338, 352 -53, 355 (1977). And the Court frequently asserted that "the most basic Constitutional rule in this area is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specially established and well-delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 454 -55 (1971) (quoting *Katz v. the United States*, 389 U.S. 347, 357 (1967)); *G.M. Leasing Corp. v. The United States*, 429 U.S. 338, 352 -53, 358 (1977). Exceptions to the warrant requirement are said to be "jealously and carefully drawn," *Jones v. the United States*, 357 U.S. 493, 499 (1958), and there must be "a showing by those who seek an exemption . . . that the exigencies of the situation made that course imperative." *McDonald v. the United States*, 335 U.S. 451, 456 (1948).

Mr. Bailey was restrained in the station; thus, the safety and destruction of evidence clause were eliminated. Because the U.S. Supreme Court frequently asserted that "the most basic constitutional rule in this area is that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment, Lieutenant O'Brien had ample time to obtain a search warrant for Mr. Bailey.

Investigating Officer's Initials: 

However, a warrantless search is not unconstitutional when probable cause exists to some articulable facts related to exigent circumstances to include but not limited to officers reasonably believe that contraband or other evidence may be destroyed or removed before a search warrant could be obtained. In this matter, Lieutenant O'Brien documented in both the search warrant and in his incident report that based on previous information on Mr. Bailey and his experience in street-level illegal drug activity, he had a strong reason to believe that Mr. Bailey was concealing contraband within his inner clothing garments. Therefore, Lieutenant O'Brien conducted a warrantless searched of Mr. Bailey's person.


It was clear to the investigator that a judge found probable cause to search Mr. Bailey's vehicle based on the probable cause statement written by Lieutenants O'Brien in the application for search. Lieutenant O'Brien failed to articulate how Mr. Bailey would have narcotics concealed upon his person; thus, Lieutenant O'Brien failed to articulate probable cause to conduct a strip search of Mr. Bailey. Lieutenant O'Brien's probable cause statement was that based on previous information on Mr. Bailey and his experience in street-level illegal drug activity, he had a strong reason to believe that Mr. Bailey was concealing contraband within his inner clothing garments. Also, the fact Mr. Bailey took several blocks to stop his vehicle or that the search of the vehicle resulted in negative results for narcotics, all were insufficient to establish probable cause that Mr. Bailey was concealing narcotics on his person.

Exigent circumstances did not appear to be a factor for the following reasons. Mr. Bailey was restrained with handcuffs in the lobby of the police station; therefore, Mr. Bailey was not a threat to the destruction of evidence or safety of the officers. Without question, the illegal narcotics that Lieutenant O'Brien found on Mr. Bailey was not in plain view. For those reasons, this investigator believed Lieutenant O'Brien had ample time to apply for a search warrant to search Mr. Bailey's person if he believed the probable cause was present.

The investigator concluded, more likely than not, the reason for the search of Mr. Bailey was as follows. What was noted by this investigator was the statements made by Lieutenant O'Brien on BWC footage that Mr. Bailey took a long time to stop his vehicle once signaled by police; therefore, Mr. Bailey may have concealed the narcotics on himself or the six-year-old passenger. Thereby, more likely than not, the aforesaid reason was why Lieutenant O'Brien searched both the six-year-old passenger and later Mr. Bailey after failing to discover illegal narcotics in Mr. Bailey's vehicle.

For the reasons stated above, the search of Mr. Bailey's person was an unreasonable search under the Fourth Amendment to the U.S. Constitution. The penalty for such act is that of the Exclusionary Rule, which mandated that evidence obtained from an illegal arrest, unreasonable search, or coercive interrogation must be excluded from the trial.

Conversely, this investigator could not overlook that although the search, as conducted by Lieutenant O'Brien, was unconstitutional, he was fortunate because in reviewing the entire facts and circumstances of this investigation, the investigator recognised Lieutenant O'Brien's order given to his subordinate to physically arrest Mr. Bailey for the minor law violation was constitutional and given prior to the execution of the search warrant upon the vehicle. Therefore, the search of Mr. Bailey amounted to a search incident to arrest (SITA).

Investigating Officer's Initials: 

The investigator referenced the NOPD Operations Manual Chapter: 1.2.4, Titled: Arrest. The Chapter addressed the SITA. The Chapter indicated that a SITA is permissible after a lawful arrest. That warrantless search is an exception to the Fourth Amendment search warrant requirement. A SITA took precedence thereby superseding Lieutenant O'Brien's mistake of conducting the previously explained unconstitutional search as it related to the criminality of Lieutenant O'Brien's actions; thus, Lieutenant O'Brien's actions fell short of rising to a criminal level.

Strip Search or Body Cavity Search of Mr. Bailey

The investigator further examined the search Lieutenant O'Brien conducted upon Mr. Bailey at the First District Station. The OCDM/DOJ were concerned that Lieutenant O'Brien labeled the search of Mr. Bailey's person as a strip search, but the search may have amounted to a cavity search instead.

For guidance, the investigator reviewed the New Orleans Police Department Operations Manual Chapter: 1.2.4 Title: Search and Seizure, effective 07/10/2016. That Chapter was in effect at the time of occurrence. The Chapter defined body cavity and strip searches as follows:


- Body cavity search - Any visual or physical inspection of a person's genital or anal region with or without physical contact or intrusion into a body cavity.
- Strip search - Any search of an individual that includes the removal or rearrangement of some or all clothing to permit visual inspection of the suspect's groin/genital area, **buttocks**, female breasts, or undergarments covering these areas.

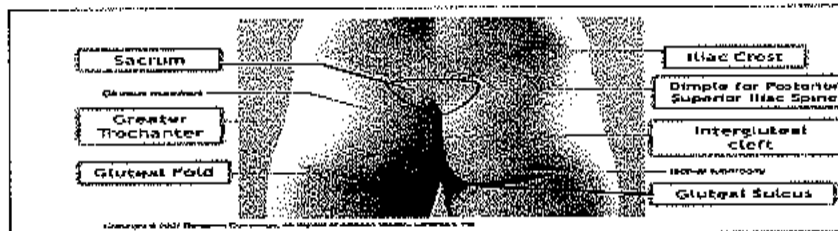
Chapter 1.2.4 did not define a "body cavity," but the investigator interpreted a body cavity to mean any of the body orifices such as the mouth, nostrils, ears, etc. However, the definition in this chapter referring to body cavity did not reference other body cavities and was specific to the person's genitalia, anus, and anal region.

The chapter did not define genitalia. This investigator knows the genitalia to be the sexual organs. That is the penis for males and the vulva for females and does not include the buttocks.

The investigator also interpreted that intrusion into the body cavity is not necessary and with or without physical inspection or contact.

The chapter did not define what consisted of the anal region. This investigator interpreted the anal region to be that of the human body, that comprises the anus and the surrounding area to include the intergluteal cleft (in-between the buttocks), which is the groove between the buttocks that runs below the sacrum, as pictured beneath, to the perineum (Area between the anus and the scrotum in the male <https://www.medicinenet.com>).

Investigating Officer's Initials: 



The definitions of the body cavity and strip search appeared similar in that both listed the visual inspection of the genitals. The chapter did explain how a visual inspection of the genitals constituted a cavity search, but this investigator is aware that a cavity search consist of both visual and/or physical inspection. The visual body cavity search may consist of the of several instructions by an officer to a nude individual. Those instructions include, but not limited to the individual following orders handling their own body parts in the following manner. Pulling back the foreskin on the penis, spreading the labia to expose the opening of the vagina, squatting and coughing while standing over a mirror with the aim of dislodging an object inside the anus or vagina, or asking the individual to bend over at the waist and spreading the buttocks exposing the anal region.

The chapter did not provide guidance as to what part of the body consisted of the groin in the strip search definition, but this investigator understood the groin to be the part of the human anatomy between the lower abdomen and the thighs on either side of the pubic bone.

The investigator reviewed the audio/video footage labeled as exhibits in this FDI, more specifically, the BWC worn by Officer Vitrano and the audio/video footage taken by Officer Cleveland. At the time of the search, Officer Vitrano BWC actively recorded the search and Officer Author Cleveland audio/video recorded the search with a hand-held digital still/video camera. However, during the discovery of the illegal narcotics by Lieutenant O'Brien upon Mr. Bailey's buttocks area, Officer Vitrano's BWC did not have a clear view of the location of the evidence. The field of view from the camera used by Officer Cleveland to record the events was partially blocked by Lieutenant O'Brien's body because Officer Cleveland stood behind Lieutenant O'Brien while recording the event.

Despite the aforementioned obscured camera field of view, the investigator was able to see Lieutenant O'Brien's movement as he discovered the illegal narcotics. Mr. Bailey pants were down to his ankles. Mr. Bailey's tank top and boxer-style underwear were still on his body. Lieutenant O'Brien tugged on Mr. Bailey's underwear back towards him as he visually inspected. Apparently, as Lieutenant O'Brien appeared to be getting near the illegal narcotics position, Mr. Bailey appeared to tense his buttocks area based on Lieutenant O'Brien's statement and action. Lieutenant O'Brien excitedly told Mr. Bailey not to clench and kicked Mr. Bailey's leg apart as he stood behind Mr. Bailey using a sweeping motion upon the inner area of Mr. Bailey's feet. Officer Vitrano held Mr. Bailey by the wrist/hands area while Mr. Bailey was handcuffed behind his back.

Lieutenant O'Brien pulled Mr. Bailey's underwear, by the waistband, back towards him. Lieutenant O'Brien in what looked to be a quick motion with his hand, reached to what appeared, more likely than not, the upper portion of the buttocks near the sacrum area. Lieutenant O'Brien grabbed and immediately threw to the floor what appeared to be a small round plastic bag, which contained white rock-like substance.

Investigating Officer's Initials: *OP*


This investigator concluded due to the swift action by Lieutenant O'Brien's hand/arm motion, said action negated the plausibility of Lieutenant O'Brien's hand burrowing into the intergluteal cleft area in search of the contraband and inconsistent with the time and effort it would have taken Lieutenant O'Brien to reach inside of Mr. Bailey's anus or lower portion of the buttocks intergluteal cleft near the perinum in order to recover the illegal narcotics. The interpretation of the location by this investigator coincided with Lieutenant O'Brien's explanation of where the illegal narcotics were located on Mr. Bailey's person as he dictated on the film footage and in his report. It was plausible that the round plastic bag containing the illegal narcotics rested in-between Mr. Bailey's intergluteal cleft (anal region) and not inside the anal cavity.

The investigator further dissected the act of the search. The investigator obtained guidance from Retired NOPD Captain Michael Pfeiffer, who is currently the Department's compliance manager. Mr. Pfeiffer identified his position of compliance manager as assisting the Department with the implementation of the Federal Consent Decree. The investigator requested assistance in the clarity of the definitions of a strip search and cavity search due to the similarities in both. The investigator also requested assistance in the definition's meaning of anal region and whether Lieutenant O'Brien's act of removing the illegal narcotics baggie from within the intergluteal cleft of Mr. Bailey met the definition of cavity search because one of the definition's criteria is contact.

Mr. Pfeiffer said in reviewing the definition of body cavity search and taking the facts and circumstances of this case into consideration, the definition appeared inadequate and he will talk to DOJ to overhaul the definition to give better guidance in the future. Mr. Pfeiffer said there is a lot of "fuzziness" between the definitions of strip search and body cavity search because there is also a visual body cavity search. However, the one clear item that makes search of a person a body cavity search is "touch." Mr. Pfeiffer said that the reaching and pulling out of the object from in-between Mr. Bailey's buttocks was problematic. However, the touch was not specifically defined in the definition of cavity search, the touch was aimed at the actual physical touching or manipulating, in this case of Mr. Bailey's penis, scrotum, or anus. Mr. Pfeiffer that the definition of the anal region, also not clarified in the definition of body cavity search, was meant to be the area surrounding the anus.

Based on Lieutenant O'Brien's documentation in his incident report and the statement to this investigator, Lieutenant O'Brien said the majority of the contraband was concealed inside, in-between the buttocks, and only a small portion of the bag was visible protruding from within the buttocks near the tail bone. At that point, Lieutenant O'Brien's actions was that of a strip search. Lieutenant O'Brien did not conduct a manual examination, probed the anus cavity, or visually inspected the anal region. The fact that Lieutenant O'Brien's search of Mr. Bailey included the removal or rearrangement of some or all clothing to permit visual inspection of his groin/genital area and buttocks still constituted a strip search.

When Lieutenant O'Brien noticed the small portion of plastic protruding out of Mr. Bailey's intergluteal cleft, Lieutenant O'Brien should have ceased the search and applied for a search warrant and transported the subject to a medical facility. Lieutenant O'Brien should have transported Mr. Bailey to a medical facility not only because the chapter dictated that only a medical staff person should remove the contraband, but if the contraband was located inside the anus cavity it could have posed a medical emergency should the container rupture. In addition, Mr. Bailey was handcuffed and three police officers were present; therefore, the chances of Mr. Bailey destroying the evidence was minimal at best.

Investigating Officer's Initials: 


The fact Lieutenant O'Brien stated he was aware that the majority of the contraband was concealed within the buttocks a portion of the contraband might have been inserted inside the anus. Nevertheless, regardless of whether or not a portion of the contraband could have been located within the cavity of the anus, the simple position of the contraband violated the chapter. The contraband was concealed inside the intergluteal cleft, which is a body cavity, that encompassed the anal region. That in itself constituted a violation of the chapter. Complicated with Lieutenant O'Brien's act of removing the item, established the act of contact; thus also a violation of the chapter.

Although Lieutenant O'Brien clearly violated the chapter regarding cavity search, the investigator had to address whether the strip search, which Lieutenant O'Brien thought he conducted was warranted. The investigator determined Lieutenant O'Brien's warrantless cavity search, or as he called it strip search, was not justified. However, the investigator could not ignore that Mr. Bailey was also arrested for traffic violations and therefore a search incident to arrest was possible. For that, the investigator continued to research *Lockett v. New Orleans City*, 607 F. 3d 992 - Court of Appeals, 5th Circuit 2010. The 5th Circuit justices referenced the Supreme Court held that "in the case of a lawful custodial arrest a FULL search of the person is not only an exception to the warrant requirement of the Fourth Amendment but is also a 'reasonable' search under that Amendment." *United States v. Robinson*, 414 U.S. 218, 235, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973). The investigator concluded that the "full" as indicated above, allowed for a thorough search of a person, to include a strip search. The indignity suffered after a lawful arrest is enormous, but lawful because the Fourth Amendment to the U.S. Constitution allows a FULL search once probable cause has been established and that person has been arrested.

Again, Lieutenant O'Brien's warrantless search of Mr. Baily was unjustified because Lieutenant O'Brien said he search Mr. Bailey because solely his experience lead him to believe that Mr. Bailey was concealing narcotics on his person. Lieutenant O'Brien's warrantless search amounted to a cavity search; thus a violation of the chapter. However, because Lieutenant O'Brien stated he conducted a strip search, the investigator had a duty to examine whether Lieutenant O'Brien violated any State of Louisiana Criminal Laws or Departmental rules and polices and followed the protocol to obtain permission to conduct a strip search under NOPD guidelines.

The NOPD established a Chapter as guidelines to follow in the event of a strip search. After conducting extensive research, the investigator determined Lieutenant O'Brien violated the chapter, but not any Louisiana Statutory Criminal Laws. The Chapter dictated that strip searches shall be conducted in the secure area of an NOPD facility unless exigent circumstances exist. Lieutenant O'Brien complied with that portion of the Chapter requirement by conducting the search in a secluded area of the District Station. However, The Chapter further stated that the following requirements also applied to all strip searches:

- (a) **The officer shall obtain written authorization from his or her supervisor prior to the strip search, and the supervisor shall be on-scene at all times during the search.**
- (b) **Only officers trained on how to conduct a proper strip search may participate in a strip search.**
- (c) Officers shall use appropriate methods and personal protective equipment when conducting strip searches.

Investigating Officer's Initials: 

- (d) All officers involved in a strip search shall take reasonable steps to minimize the potential embarrassment or discomfort to the party being searched.
- (e) All officers involved with the strip search shall be of the same gender as the identified gender of the person being searched.
- (f) All strip searches shall be conducted in a professional manner and include the least number of personnel necessary.
- (g) Whenever possible, a second officer of the same gender should assist in conducting the search.
- (h) Officers conducting a strip search shall not touch the genital area, buttocks, or female breasts of the person being searched.
- (i) No employee should view an arrestee's private underclothing, genital area, buttocks, or female breasts while that person is changing clothes, unless the arrestee otherwise qualifies for a strip search.
- (k) Strip searches shall not be video recorded or photographed unless required for evidentiary reasons and specifically authorized in writing, in advance, by a supervisor.**


Upon comparing Lieutenant O'Brien's strip search of Mr. Bailey and the NOPD Chapter, the investigator concluded Lieutenant O'Brien failed to properly execute subsection A, B, and K as listed above.

According to an Interoffice Correspondence (see **Exhibit B-Attachments**), Lieutenant O'Brien provided the authorization for the search. Lieutenant O'Brien authorized Officer Vitrano to search and documented that he, Lieutenant O'Brien, was present during the search and supervised. The investigator concluded Lieutenant O'Brien erred in authorizing the search for the following reasons.

- Lieutenant O'Brien identified himself as the case investigator; therefore, he cannot also supervise his actions.
- Lieutenant O'Brien conducted surveillance and applied for a search warrant. According to BWC footage attached to this FDI, it was Lieutenant O'Brien's decision to search Mr. Bailey and provided directions to platoon members who provided minimal assistance. Lieutenant O'Brien conducted the majority of the strip search of Mr. Bailey with the exception of Officer Vitrano assisting in locating U.S. Currency in the rear pant pocket of Mr. Bailey. All lead to the fact that Lieutenant O'Brien was acting in the capacity of a lead investigator and not a supervisor.

Lieutenant O'Brien admitted in his statement to this investigator that he did not notify his supervisor of the search; therefore, Lieutenant O'Brien violated Section A of the Chapter by failing to obtain written authorization from his supervisor before the strip search and having that supervisor on-scene at all times during the search.

Section B prescribed the following. Only officers trained on how to conduct a proper strip search may participate in a strip search. Lieutenant O'Brien said he was not trained or sent to training by the NOPD on how to conduct proper strip searches. Lieutenant O'Brien ordered Officer Vitrano to assist with the search. According to Rule 4 of the NOPD Operations Manual, the supervisor issuing the order is held accountable if any conflict arises because of the order. Therefore, Lieutenant O'Brien is held liable.

Investigating Officer's Initials: 

However, Officer Vitrano should have questioned the order because he also is not trained in strip searches leading this investigator to believe Officer Vitrano, who had approximately a year and several months as a commissioned officer at the time of the search was not aware of the chapter; thus, this investigator recommends that Officer Vitrano receive training.

Section K, Lieutenant O'Brien failed to obtain authorization in writing, in advance, by a supervisor before video recording the strip search. Lieutenant O'Brien admitted in his statement to the investigator he did not receive authorization from his supervisor; thus, he violated Section K.


The investigator reviewed Mr. Bailey's criminal court appearances related to the arrest by Lieutenant O'Brien. The results are as follows.

- 10/20/2017 -- DA filed Bill of Information. Capias issued. Bond set at \$28,500
- 11/06/2017 -- Bailey appeared for arraignment. Bailey entered a plea of not guilty
- 11/27/2017 -- Discovery. The state will e-mail body camera video
- 01/03/2018 -- Motion to suppress. Hearing set for 01/12/18
- 01/09/2018 -- Clerk's Office received a motion to continue hearing from the defense. Pre-trial conference set for 01/12/18. Discovery hearing set for 01/25/18. Hearing on motions set for 02/26/18
- 01/25/2018 -- State tendered discover defense counsel as well as three different body camera videos. There is additional body camera video to tender. Discovery hearing set for 02/08/18. Hearing on motions set for 02/26/18
- 02/08/2018- State tendered the Crime Lab report and additional body camera video to defense counsel. Hearing on motions set for 02/26/2018
- 02/26/2018- Defense waived motions. Trial set 04/16/2018

On Friday, February 23, 2017, the investigator spoke with Graymond Martin, First Assistant for the Orleans Parish District Attorney. The investigator informed Mr. Martin that PIB was investigating a criminal complaint against the officer who arrest the criminal defendant, Mr. Bailey. The investigator informed Mr. Martin that the complaint included an allegation of false imprisonment and a warrantless search that may have been done without probable cause. The investigator and Mr. Martin agreed to meet later when his scheduled allowed discussing the facts and circumstances surrounding the complaint to determine if the District Attorney will pursue criminal charges against the officer.

The investigator reviewed Mr. Bailey's criminal court case status related to the arrest by Lieutenant O'Brien. The results are as follows.

- 04/16/2018 -- Trial continued on joint motions. Pre-trial conference set for 04/26/18
- 04/26/2018 - A trial date had been set for 05/16/2018

Investigating Officer's Initials: 

While continuing to examine Officer Vitrano's BWC and the video taken by Officer Cleveland relative to the strip search conducted on Mr. Bailey by Lieutenant O'Brien, the investigator noticed Officer Vitrano had a bird's eye view of when Lieutenant O'Brien discovered the illegal narcotics upon Mr. Bailey's person. Therefore, on Thursday, May 3, 2018, the investigator met with and conducted a supplemental interview with Officer Vitrano (**Exhibit T**). The investigator interviewed Officer Vitrano as a witness. A gist of the interview is as follow.

Synopsis of the Supplemental Interview with Officer Frank Vitrano


Officer Vitrano stated he was nearby when Lieutenant O'Brien discovered the narcotics upon Mr. Bailey's person. Officer Vitrano said he saw a small tip of plastic near the top of Mr. Bailey's buttocks near his tailbone. Officer Vitrano stated the best way to describe what he saw was to run your finger to the tip of the tailbone. At that location, he saw a small portion of plastic. Officer Vitrano said he believed that the rest of the bag was located between the buttocks because it was not visible.

Either Mr. Bailey appeared to have stiffened or tensed up when Lieutenant O'Brien pulled Mr. Bailey's underwear back exposing the aforesaid area. Lieutenant O'Brien told Mr. Bailey not to tense up and almost immediately after he saw the portion of plastic, Lieutenant O'Brien pulled the tip and threw the item to the ground.

The investigator showed Officer Vitrano a still picture from the video (**Exhibit U**) of the plastic bag. Officer Vitrano identified the bag as the item Lieutenant O'Brien discovered. Officer Vitrano circled the tip of the plastic bag that he said was exposed. The investigator showed Officer Vitrano a drawing of a human buttock (**Exhibit V**) and asked Officer Vitrano to circle the area where he saw the tip of the plastic bag exposed. Officer Vitrano circled the area of the buttocks near the tailbone.

On Tuesday, May 8, 2018, the investigator met with Mr. Graymond Martin, First Assistant, for the Orleans Parish District Attorney. The meeting took place at the Office of the District Attorney, 619 S. White Street, New Orleans, Louisiana and lasted over an hour and forty-five minutes. The investigator consulted with Mr. Martin regarding Lieutenant O'Brien's acts and whether said acts amounted to the level of criminality as it related to the Louisiana Statutory Criminal Laws. The review included but was not limited to the following.

- Traffic stop
- Traffic arrest
- A warrantless search of the child
- A warrantless search of Mr. Bailey
- Constitutionality of the officer's actions
- The criminality of the officer's actions
- Reviewed gist and incident report
- Reviewed application of search and order of search
- Reviewed criminal statutes of false imprisonment
- Reviewed criminal traffic statute regarding issuing a summons instead of physical arrest
- Reviewed the length of detention of Mr. Bailey

Investigating Officer's Initials: 

Upon completion, Mr. Martin said he did not believe Lieutenant O'Brien's actions ^{risen} to the level of criminality. The investigator requested correspondence that documented the consultation and that the District Attorney's Office declined criminal prosecution, but Mr. Martin told the investigator his officer no longer provided refusal of charge letters for consultations.

The investigator contacted Mr. Donovan Livaccari, Lieutenant O'Brien's attorney, to set up an interview with Lieutenant O'Brien. Mr. Livaccari said his client was willing to meet as soon as possible. The parties agreed to meet on Wednesday, May 9, 2018, at PIB, after Mr. Livaccari conferred with his client. As previously agreed in their initial meeting, Mr. Livaccari said his client was aware of the allegations and his rights as an accused. Mr. Livaccari agreed to have Lieutenant O'Brien served with a Notice to Render Statement upon his arrival at the PIB Office.


On Wednesday, May 9, 2018, the investigator met with Lieutenant O'Brien and his counsel, Mr. Livaccari at the PIB Office. The investigator served Lieutenant O'Brien with the aforementioned notice to render statement (**Exhibit W**).

The investigator advised Lieutenant O'Brien of his Constitutional Rights according to the United States Constitution and that of the State of Louisiana. Under advisement from his attorney, Lieutenant O'Brien refused to waive his rights and make a statement in this criminal investigation. At that point, the investigator exhausted all avenues regarding the criminal investigation. Therefore, the investigator compelled Lieutenant O'Brien to provide a statement in an administrative capacity relative to his knowledge and actions in this investigation.

The investigator advised Lieutenant O'Brien of the following per the provisions of the Chapter 2531, Title 40 of the Louisiana Revised Statutes "Rights of Law Enforcement Officers While under Investigation." The nature of this investigation, the name and position of the investigator, and the names of those present during the taking of this statement. The investigator advised Lieutenant O'Brien he may take notes during or audio record the interview. The investigator advised Lieutenant O'Brien he may have counsel or other representatives, or both, present during any questioning, and he will be allowed a reasonable time to summon either or both to be present if he desired and his counsel may call witnesses to testify on his behalf.

The investigator informed Lieutenant O'Brien that the NOPD required all Civil Service employees to answer questions in official inquiries and refusal to comply may result in termination. The investigator further advised Lieutenant O'Brien that employees are required to be truthful at all times, in their spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of their employment and operations of the Department. Lieutenant O'Brien acknowledged that he was aware of his rights and elected to enact his right to have an attorney present (Mr. Livaccari) and to have his attorney audio record the interview.

The investigator interviewed Lieutenant O'Brien as the accused member in this case, and his statement (**Exhibit X**) was audio recorded.

Investigating Officer's Initials: 

Synopsis of Police Lieutenant John O'Brien's Statement

Lieutenant O'Brien identified himself as a 16 year commissioned member of the NOPD. Lieutenant O'Brien stated he is assigned to the First District as a platoon commander and his current supervisor is Commander Hans Ganthier. Lieutenant said he spent five years in the civil service classification of sergeant and currently has held the civil service position of Lieutenant for approximately a year. Lieutenant O'Brien said he spent a tour of duties in the Second District in various assignment including narcotics detective and later as a supervisor in the narcotics unit. Lieutenant O'Brien also said he spent a tour of duty in the Eighth District in various units.


Lieutenant O'Brien said in addition to his regular duties as a platoon commander; Commander Ganthier tasked him with the responsibilities of following up on anonymous tips, tips from Crimestoppers or other sources brought up to his commander. Lieutenant O'Brien said Commander Ganthier tasked him with the duties of following up on illegal narcotics tips due to his background in narcotics investigations.

Lieutenant O'Brien said he followed up on a tip from members of the District Investigative Unit that Mr. Bailey was selling illegal narcotics within the First Police District. Lieutenant O'Brien said he set up surveillance and eventually applied for a search warrant to search Mr. Bailey's vehicle. Lieutenant O'Brien said during the days he conducted surveillance, and on the date, he executed the search warrant, his sergeants ran the platoon in his absence.

The investigator asked Lieutenant O'Brien if he has written seatbelt violation citations in the past. Lieutenant O'Brien responded he had written several hundred seatbelt violations in his career. The investigator asked Lieutenant O'Brien what procedure he used when issuing seatbelt violation citations. Lieutenant O'Brien said that he usually would advise the driver of the infraction, issue the driver a citation, and release the driver upon completion.

The investigator asked Lieutenant O'Brien if it was normal procedure to issue a citation for the violation of the seatbelt laws then why did he arrest Mr. Bailey. Lieutenant O'Brien said the only time he would arrest for a seatbelt violation was when the driver was violated other laws that were subject to arrests such as suspended driver's license, reckless operation, traffic warrants, or the person refusing to sign the citation. Lieutenant O'Brien said in this case, Mr. Bailey was arrested first for felony narcotics violation and the traffic arrest for seatbelt violations was secondary.

The investigator asked Lieutenant O'Brien at what point doing surveillance, on the date he executed the search warrant, did he believe he had enough probable cause to stop Mr. Bailey. Lieutenant O'Brien replied during his surveillance, as soon as he observed Mr. Bailey getting into his vehicle. The investigator then asked Lieutenant O'Brien why he allowed Mr. Bailey to drive off if he had probable cause to stop him. Lieutenant O'Brien said when he set up surveillance upon the vehicle in question the vehicle was unoccupied. After some time elapsed and as he began to change position, Mr. Bailey quickly approached his vehicle, entered the vehicle, and drove off. Lieutenant O'Brien said he observed Mr. Bailey not wearing his seatbelt and Officer Vitrano observed the child not properly restrained. Nevertheless, regardless of the minor traffic violations, Lieutenant O'Brien said his probable cause to stop Mr. Bailey was the search warrant that he had in his possession; therefore, he was going to stop the vehicle using the search warrant. The violation of the seatbelt was an add-on.

Investigating Officer's Initials: 

The investigator confronted Lieutenant O'Brien with the instructions he gave Officer Vitrano, which was captured on Officer Vitrano's BWC that Mr. Bailey was going to jail regardless of the outcome of the search for the seatbelt violations. Therefore, if the traffic violation was secondary, why would he make such statement before he executed the order of search. Lieutenant O'Brien stated that he might have mentioned that statement to Officer Vitrano, but if he would not have found contraband on Mr. Bailey and he had no warrants, the outcome would have been to allow Mr. Bailey to sign the citation and leave the scene.

The investigator then asked Lieutenant O'Brien why he wrote on his gist that Mr. Bailey was stopped for traffic violations, arrested, and a subsequent search produced the illegal narcotics. Lieutenant O'Brien said the verbiage on the gist might have been a little off, but in actuality, Mr. Bailey was detained due to the search warrant for the vehicle and because Mr. Bailey was the target of the investigation. Lieutenant O'Brien stated he elected to arrest Mr. Bailey for the traffic violations, after discovering the illegal narcotics, to prevent a traffic attachment issued for Mr. Bailey had he missed traffic court due to the incarceration related to the narcotics arrest.

The investigator asked Lieutenant O'Brien if during his career he had arrested anyone solely on a seatbelt violation. Lieutenant O'Brien said no. The investigator asked Lieutenant O'Brien if at any time during his career if he heard of any NOPD officer arrest anyone solely for a violation of the seatbelt law. Lieutenant O'Brien said no, not for the NOPD, but he was aware of a U.S. Supreme Court case out of the State of Texas. In that case, which he could not recall the name, the court said it was okay to arrest a violator for a seatbelt violation.

This investigator was aware of the said case and briefly mentioned when he discussed the traffic arrest portion of this investigation. That case was *Atwater v. Lago Vista*, 99-1408. The Supreme Court held that officers could arrest and handcuff people even for minor offenses punishable by a fine. The justices ruled against a driver who was arrested and handcuffed for failing to wear a seatbelt. The court said police generally could arrest anyone they see breaking the law as it barred a Texas woman from suing the officer who handcuffed her and took her to jail. The high court majority rejected the argument that police should not have arrested the woman for a crime that would carry no jail time.

The investigator asked Lieutenant O'Brien that if at any time during his surveillance of Mr. Bailey, other than the traffic stop, had he seen the 6-year-old male in his company. Lieutenant O'Brien said the first time he became aware of the child was during the stop. The investigator asked Lieutenant O'Brien why he searched the child. Lieutenant O'Brien said based on his experience due to being involved in several hundred, if not several thousand narcotics investigations. Lieutenant O'Brien said when Officer Vitrano activated the overhead lights on the police vehicle signaling Mr. Bailey to stop on Orleans Avenue, Mr. Bailey took three to five blocks to stop his vehicle.

Investigating Officer's Initials: 

Lieutenant O'Brien explained it had been his experience in the past that when known drug dealers delayed being stopped by police and they have small children inside the vehicle, a lot of times not only would the dealer try to hide the contraband on their person, but on small children too believing that police would not search the child. Therefore, on the date in question, the reason the small child was searched was that he believed Mr. Bailey tried to hide contraband on the child. Also, the search was for the wellbeing of the child in case Mr. Bailey put contraband on the child's person and the child was not searched, the child might have accidentally ingested the contraband. Lieutenant O'Brien then reinforced that based on his experience drug dealers would hide contraband on small children and that was why the child was searched at the scene.


The investigator asked Lieutenant O'Brien if his concern was that the child might ingest illegal narcotics, why not tell the adult who picked up the child that he was conducting a narcotics investigation and ask the adult to check the child to ensure his safety. Lieutenant O'Brien said he did not believe it would have been practical to tell the adult because it could have gone in one ear and out the other. Also, he wanted to protect the integrity of the investigation.

Lieutenant O'Brien said he did not get an opportunity to get the adult's first and last name, but he did not think he needed the information for prosecution purposes with the District Attorney's Office. Lieutenant O'Brien said the responsibility for failure to obtain the name of the adult fell with him.

The investigator asked Lieutenant O'Brien why he relocated the vehicle to the station versus searching the vehicle at the location of the stop. Lieutenant O'Brien stated it was more practical to search back at the station versus the location of the stop. Lieutenant O'Brien said he relocated Mr. Bailey to the station because he was the target of the entire investigation. Lieutenant O'Brien reinforced that Mr. Bailey was not taken to the station because he was under arrest for the traffic violations. Lieutenant O'Brien repeated that the traffic arrest was an add-on to the core of the investigation.

Lieutenant O'Brien said he conducted the search of the vehicle in the station and was assisted by Officer Verrette on the search while Mr. Bailey remained handcuffed in the lobby of the station. Lieutenant O'Brien estimated it took him an hour to an hour and twenty minutes to conduct the search of the vehicle. The investigator asked Officer O'Brien if he believed it was practical to have, Mr. Bailey, detained for that amount of time. Lieutenant O'Brien replied yes. Lieutenant O'Brien described the circumstances as follows. Lieutenant O'Brien said Mr. Bailey was the target of the entire investigation. He observed Mr. Bailey in hand-to-hand transactions. Mr. Bailey used the vehicle in question to store the contraband. Because he had a search warrant for the vehicle; therefore, it was necessary to have him detained pending the end of the investigation.

The investigator was aware that Lieutenant O'Brien said he observed what he believed were hand to hand transactions, with one of the alleged transactions happening at least 24 hours before the execution of the order of search. In his application for the search warrant, Lieutenant O'Brien failed to mention Mr. Bailey hid narcotics on his person. Lieutenant O'Brien was clear that the narcotics were stored inside the vehicle, for which he obtained the order of search.

Investigating Officer's Initials: 

Therefore, the investigator asked Lieutenant O'Brien, if during the surveillance on the date he executed the search warrant, did he see Mr. Bailey engaged in any activity that would have led him to believe that Mr. Bailey was involved in the sale or possession of illegal narcotics. Lieutenant O'Brien said no. The investigator then asked Lieutenant O'Brien did Mr. Bailey carry any packages before or did he see him with any packages after he entered the vehicle in question. Lieutenant O'Brien said no.


The investigator asked Lieutenant O'Brien if he did not see any of the aforesaid and he did not mention Mr. Bailey in the order of search, why did he think he had probable cause to search Mr. Bailey on the date he executed the search warrant for the car. Lieutenant O'Brien stated he felt he had probable cause to search Mr. Bailey, not because he had a search warrant for his vehicle, but because of the totality of the circumstances. Lieutenant O'Brien described the circumstances as follows. Based on prior surveillance that indicated Mr. Bailey was involved in the sale of narcotics; the successful takedown of an individual that yielded narcotics; Mr. Bailey's failure to immediately stop during the traffic stop; the lack of narcotics found on the child during the search; and the vehicle not having narcotics in it.

Lieutenant O'Brien stated he believed the search he conducted was a strip search versus a cavity search. Lieutenant O'Brien said according to NOPD policy, a cavity search involved going into the cavity; thus, in this matter, it would have been the anus. Lieutenant O'Brien said that at no time did he or anyone else have the intention to go inside the anal cavity.

Lieutenant O'Brien said he was the lead investigator and Officer Vitrano was the lead assisting officer. Lieutenant O'Brien said he authored the interoffice correspondence giving authorization for the search because he thought that as a supervisor he could authorize the search. Lieutenant O'Brien said he did not talk with his supervisor, Commander Ganthier, on the date he performed the strip search; therefore, he did not receive prior authorization or any authorization from his supervisor as dictated in NOPD policy. Lieutenant O'Brien said his supervisor was not at the scene during the search and he did not get authorization from his supervisor prior or to video record the search. Lieutenant O'Brien stated he had not been trained by the department to conduct strip searches as mandated by the policy.

The investigator presented Lieutenant O'Brien with a still photograph (**Exhibit Y**) from the video-recorded strip search. The photograph depicted the item Lieutenant O'Brien discovered on Mr. Bailey. Lieutenant O'Brien identified the item depicted on the photograph as the item he removed from in-between Mr. Bailey's buttocks and threw to the floor. Lieutenant O'Brien said a small portion of the end or tail portion of the bag, which was described as approximately a quarter of an inch to an inch long, was exposed.

Lieutenant O'Brien said he discovered the item when he pulled back Mr. Bailey's underwear and looked down. He immediately observed the tail end of the bag visible, about a quarter of an inch, near the top portion of his buttocks. Lieutenant O'Brien said Mr. Bailey had his buttocks clinched, in what he imagined was to cancel the bag. The investigator provided Lieutenant O'Brien with a drawing depicting a buttock (**Exhibit Z**) and asked him to circle the area where he believed he saw the tail end of the bag. Lieutenant O'Brien circled the area of the buttock near the tailbone.

Investigating Officer's Initials: 

Lieutenant O'Brien said other than the tail portion of the bag; he was unable to see the rest, which would have indicated the rest of the bag was in-between Mr. Bailey's buttocks. Therefore, the investigator asked Lieutenant O'Brien how he knew the rest of the bag was not inside Mr. Bailey's anal cavity or near the cavity region. Lieutenant O'Brien said if the bag were inside his anal cavity, he would not have been able to see it or the visible tail portion of the bag would have been lower and not near the top of the buttocks. End of statement.

The investigator reviewed Mr. Bailey's criminal court case status related to the arrest by Lieutenant O'Brien. The results are as follows.

- 05/16/2018 – Bailey appeared with counsel for trial. Continued on State motion. Pretrial conference set for 05/31/2018

On Monday, June 25, 2018, pursuant to La. R.S. 40:2531 (B) (7), the investigator provided Sergeant Taillon with a "Notice to the Accused of Completed Investigation and Notice of Pre-Disciplinary Hearing" (**Exhibit AA**). On the same date, Officer Green signed said form acknowledging its content.

On Monday, June 25, 2018, pursuant to La. R.S. 40:2531 (B) (7), the investigator provided Lieutenant O'Brien with a "Notice to the Accused of Completed Investigation and Notice of Pre-Disciplinary Hearing" (**Exhibit BB**). On the same date, Officer Green signed said form acknowledging its content.


On Monday, June 25, 2018, the investigator authored a case disposition letter (**Exhibit CC**.) to the complainant advising the complainant of the investigator's recommendations.

Credibility Assessment

The investigator assessed the credibility of the police officers who were interviewed as witnesses and the accused officers, Lieutenant O'Brien and Sergeant Stephanie Taillon relying on the veracity of their statements based on logical connection to other statements that support or contradict it. The investigator started with the undisputed facts, which both sides accepted. Added are such other facts as seems very likely to be true, as, those spoken by independent witnesses.

This investigator judges a suspect/witness to be unreliable if his/her evidence is in any serious inconsistent with the undisputed or indisputable facts, or if he/she contradicts himself/herself on important points. This investigator relied as little as possible on such deceptive matters as demeanor. Therefore, when this investigator has separated the true from the false by these more or less objective tests, the investigator concluded which story seems to be the most probable.

The complaint against Lieutenant O'Brien involved a multifaceted investigation that consisted of whether Lieutenant O'Brien used a traffic stop as a pretext leading to a search incident to arrest to circumvent search warrant requirements. The validity of a traffic arrest for a minor infraction of the seatbelt laws. Whether probable cause existed for a warrantless search of a six-year-old male and the warrantless search of Mr. William Bailey. Whether the said search of Mr. Bailey was a cavity or strip search. And the constitutionality and criminality implications of the aforesaid acts.

Investigating Officer's Initials: 


The majority of Lieutenant O'Brien's acts were captured on video/audio footage from Officer Vitrano's BWC, in addition to a digital camera that was activated for the search of Mr. Bailey. Thereby, this investigator had tangible evidence to examine Lieutenant O'Brien's credibility by comparing the video/audio footage depiction of the events and the documentation of the events by Lieutenant O'Brien.

The acts conducted by Lieutenant O'Brien's that could have amounted to criminal and constitutional violations were discussed in a consultation with the first assistant to the Orleans Parish District Attorney that lasted a one hour and forty-five minutes. The topics discussed included but were not limited to Lieutenant O'Brien's actions regarding the traffic stop and traffic arrest. A warrantless search of the child and warrantless search of Mr. Bailey. Mr. Martin reviewed the gist, incident report, application of search, and order of search authored by Lieutenant O'Brien. Mr. Martin and the investigator reviewed criminal traffic statute regarding issuing a summons instead of physical arrest, the length of detention of Mr. Bailey, and whether any of the acts conducted by Lieutenant O'Brien raised to the level of criminal wrongdoing. Upon completion of the review, Mr. Martin said he did not believe Lieutenant O'Brien's actions risen to the level of criminality.

The investigator reviewed Lieutenant O'Brien's action using the preponderance of the evidence, that is more likely than not, the accused employee committed the act for which he/she was accused of committing as the burden of proof versus the beyond a reasonable doubt used in criminal circumstances. The investigator was unable to determine with a degree of certainty that Lieutenant O'Brien's actions were committed with the intention to injure, deceive, or circumvent laws. However, Lieutenant O'Brien did violate several administrative rules policies and regulations.

The investigator also evaluated the allegations and response given by Sergeant Taillon, the other accused member in this investigation. Sergeant Taillon was accused of approving Lieutenant O'Brien's incident report, which lacked probable cause for the arrest of Mr. Bailey. Based on the gist written by Lieutenant O'Brien, Lieutenant O'Brien had probable cause to arrest Mr. Bailey. In the incident report, Lieutenant O'Brien said based on prior information he had on Mr. Bailey and his narcotics experience; he had probable cause to searched Mr. Bailey. Solely based on that and without asking additional questions, it was plausible that Sergeant Taillon believed Lieutenant O'Brien had probable cause to arrest Mr. Bailey. Sergeant Taillon did not indicate that she attempted to conspire and with Lieutenant O'Brien in approving a report that did not have probable cause.

Although Commander Ganthier is not named as a suspect in this investigation, the investigator extended his credibility assessment to include the commander due to statements he documented in an email that is attached to this report. Commander Ganthier documented that Lieutenant O'Brien had probable cause to order the warrantless search of a child solely based on the lieutenant's experience, when in fact the lieutenant did not have probable cause. The commander also stated Lieutenant O'Brien had probable cause to conduct a warrantless strip search of Mr. Bailey, again based solely on the lieutenant's experience, when in fact the lieutenant did not have probable cause.

Investigating Officer's Initials: 

NOT
Redacted
By
[unclear]
[unclear]

The commander also stated the lieutenant was within policy when he video recorded the warrantless search of Mr. Bailey's person. That statement is contradictory to the chapter. Commander Ganthier said that the search the lieutenant conducted upon Mr. Bailey was not a body cavity search because the evidence was not inside a cavity. That statement is contradictory to the chapter. Commander Ganthier documented that the traffic violations were used as a reason for the stop and the ensuing investigation lead to further discovery of evidence. That statement contradicted Lieutenant O'Brien's statement to the investigator.

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The investigator found the aforesaid documented statements by the commander troubling in that a commander in the New Orleans Police Department would be that off based with constitutional policing and the rules of the Department or may be lying in order to protect the lieutenant.

This investigator also because aware that the commander wrote an E-mail to members of the PIB-FIT Unit in response to an E-mail by FIT to explain First District police officers' actions in a warrantless search of a residence documented under PIB Control Tracking Number 2018-0296-R. In the email, the commander wrote back and documented that the officers received consent to enter the residence, but the consent was inaudible to the BWC because of ambient noise. The FIT members reviewed three BWC and neither camera gave indication that the homeowner gave consent to search. In fact, the opposite is apparent as the homeowner continued to argue with officers that she did not give permission to enter her house as officers searched her residence.

Because of the commander out ranks this investigator, the investigator is unable to investigate the commander; the investigator recommends that the appointing authority appoint an equal or higher rank to examine the commander's actions in the abovementioned incidents.

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This investigator also finds it chilling that a platoon lieutenant, who obviously has influence with his subordinates, based on how his subordinates blindly followed his orders, would misguide his subordinates, whether right, wrong, or indifferent, giving orders and making decisions that were borderline constitution and criminal law violations and clearly rule and policy violation established by the NOPD.

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Although unable to prove using the preponderance of the evidence, the investigator believed that the answers given by the lieutenant in his statements to the investigator, the discrepancies in the gist and the search warrant return as documented in this report, was a borderline attempt to evade policy regarding search warrants and mislead the internal investigation. The investigator recommends that although violations were clearly violated, if the lieutenant is to remain in his current rank, training should be implemented and close supervision should follow for a probationary period.

Witnesses

- Police Officer Frank; First Police District; 501 North Rampart Street; (504) 658-1010
- Police Officer Anita McKay; First Police District; 501 North Rampart Street; (504) 658-1010
- Police Officer Brianne Verrett; First Police District; 501 North Rampart Street; (504) 658-1010

Investigating Officer's Initials: [Signature]

SUMMARY

The Public Integrity Bureau Command Staff became aware of police misconduct allegations, which were brought forth by members of the Office of the Consent Decree Monitor/Department of Justice. The complaint referenced, among other concerns, that Police Lieutenant John O'Brien conducted an unjustifiable strip search, which may have been a cavity search, of an individual during an investigation for illegal narcotics. That search ended up with the discovery of illegal narcotics hidden upon the individual that was subjected to the search. Because of the findings, the subject was arrested and charged accordingly.

The Public Integrity Bureau Command Staff assigned the allegations to the Intake Section of Public Integrity Bureau to conduct an inquiry into the matter. Based on the initial inquiry, Public Integrity Bureau Investigator Arlen Barnes concluded Lieutenant O'Brien might have violated the Louisiana Statutory Criminal Law relative to False Imprisonment and numerous violations of the rules, policies and/or procedures of the New Orleans Police Department. During the preliminary inquiry, the PIB Intake Investigator also determined that Police Sergeant Stephanie Taillon approved the incident report authored by Lieutenant O'Brien regarding the above-mentioned actions. Said approval indicated Sergeant Taillon concurred that Lieutenant O'Brien had probable cause in the police actions taken by him as documented in the incident report and attached documents. However, the preliminary inquiry conducted by Investigator Barnes indicated probable cause might not have existed.

The investigator assessed the credibility of the police officers who were interviewed as witnesses and the accused officers, Lieutenant O'Brien and Sergeant Stephanie. The complaint against Lieutenant O'Brien consisted of several issues that included a traffic stop as a pretext leading to a search incident to arrest to circumvent search warrant requirements. The validity of a traffic arrest for a minor infraction of the seatbelt laws. Whether justification existed for a warrantless search upon a 6-year-old male and the warrantless search of Mr. William Bailey. Whether the said search of Mr. Bailey was a cavity or strip search. In addition, the constitutionality and criminality implications of the acts above.

The majority of Lieutenant O'Brien's acts were captured on video/audio footage from Officer Vitrano's BWC, in addition to a digital camera that was activated for the search of Mr. Bailey. Thereby, this investigator had tangible evidence to examine Lieutenant O'Brien's credibility by comparing the video/audio footage depiction of the events and the documentation of the events by Lieutenant O'Brien.

The investigator analyzed the evidence throughout the course of this internal investigation and concluded, based on the standard of preponderance of evidence and consultation with the District Attorney's Office that the criminal allegations were not sustained; but Lieutenant O'Brien was sustained for various other administrative rules, regulation, and policy violations as listed in the disciplinary recommendations section of this report.


Investigating Officer's Initials: 

Training, Tactical, and/or Policy Recommendations

Training:

Lieutenant John O'Brien

- Lieutenant O'Brien actions of stopping a black male pedestrian and failing to document the stop properly by describing the similarity in characteristics between two subjects lead to question relative to racial profiling. Which in turn caused several hours of reviewing BWC in order to investigate what appeared to be actions of racial profiling simply because the lieutenant failed to completely document the reasons for the pedestrian stop in his report.
- The order of search issued by a judge was specifically for the vehicle Mr. Bailey operated. However, after not finding contraband inside the vehicle, Lieutenant O'Brien conducted a warrantless strip search that amounted to a cavity search upon Mr. Bailey. Lieutenant O'Brien incorrectly documented that the money and illegal narcotics he found on Mr. Bailey's person during the warrantless search on the search warrant return; thus, giving the impression that the narcotics was located within the vehicle.
- Lieutenant O'Brien incorrectly wrote the sequence of events in the gist section of the report. The gist gave the impression that the driver was arrested for a traffic violation and a full search of the driver, incident to arrest, lead to the discovery of illegal narcotics. When in fact according to the lieutenant's statement to the investigator the traffic stop was secondary to the warrantless search of Mr. Bailey that produced the illegal narcotics. The way the gist was written, if a magistrate did not read the incident report, probable cause would be found; however, the sequence of events did not occur the way the gist was written.
- Lieutenant O'Brien failed to obtain identifying information about the adult to whose custody a six-year-old male was released to by police. Lieutenant O'Brien charged Mr. Bailey with possession of illegal narcotics in the presence of the aforesaid child. Obtaining the identification of the child and contact information of the parent is prudent to the prosecution.
- Lieutenant O'Brien needs training in procedural justice. Lieutenant O'Brien failed in procedural fairness when he ordered the officer who stopped the black male to lie to the subject as to the reason for the stop as illustrated in page 6 of this internal report. Disclosing the reason for the stop was not sensitive to Lieutenant O'Brien's investigation.
- The investigator concluded based on the findings of this investigation; Lieutenant O'Brien might need a refresher course on constitutional policing with an emphasis on probable cause and search warrants.

Investigating Officer's Initials: 

Police Officer Anita McKay

- Officer McKay followed orders from a superior officer when she conducted the search of the minor child at the scene of the traffic stop. Even though the superior officer is held accountable for the erroneous order as related to this administrative investigation, Officer McKay lacked knowledge as to what she could or could not do. Officer McKay needs training in constitutional policing with an emphasis on probable cause and search and seizure.

Police Officer Frank Vitrano

- Officer Vitrano followed orders from a superior officer when he assisted in the search of Mr. Bailey in the locker room of the First District. The superior officer in this matter is held accountable for the erroneous order as related to this administrative investigation, Officer Vitrano lacked knowledge as to what he could or could not do as it related to search and seizures. Officer Vitrano needs training in constitutional policing with an emphasis on probable cause and search and seizure.
- Following orders from his superior, Officer Vitrano assisted his lieutenant in conducted a warrantless search of Mr. Bailey. Although the superior officer will be held administratively accountable, Officer Vitrano should have known he was not trained to conduct strip searches; therefore, Officer Vitrano, who had approximately a year and several months as a commissioned member of the Department, more likely than not, lacked knowledge of the chapter. Therefore, Officer Vitrano needs training.

Sergeant Stephanie Taillon

TRAINED

- Sergeant Taillon had difficulty with delivering both the definitions of probable cause and reasonable suspicion. Although the mishap may have been the result of pressure, steps need to be taken to insure the sergeant is aware of what constitutes probable cause and reasonable suspicion.

Police Commander Hans Ganthier

- The commander needs training in constitutional policing with emphasis on search and seizure and the NOPD police regarding search and seizure.
- Roll Call and Recruit Training regarding the procedures to follow upon arrest for a violation of Title 32 of the State of Louisiana Traffic Code in accordance with Louisiana Revised Statute 32 Section 391-Apperance upon arrest.

Tactical:

*MNF
BC
OK*

- This investigator is not a tactical expert, but he observed an error on the part of Officer Vitrano when the officer escorted Mr. Bailey, who was handcuffed, into the district station by using the elevator instead of the stairs. Said act allowed for a close quarter combat situation with the potential of causing injury to the officer or the subject in custody should the subject have decided to challenge the officer.

Investigating Officer's Initials: *JD*

Policy Recommendations:

- The NOPD should revisit NOPD Chapter: 1.2.4; Title: Search and Seizure. The definitions for Body Cavity Search and Strip Search appear confusing. The investigator contacted NOPD Compliance Manager Michael Pfeifer and voiced his concerns as listed in the investigations section of this report. Mr. Pfeifer agreed that the two definitions could appear confusing and stated he was going to start working on clarifying the matter.

DISCIPLINARY RECOMMENDATIONS

The investigator analyzed the evidence throughout this internal investigation. In light of facts and using the standard of preponderance of the evidence, the investigator submitted the following recommendations:

(A-1) Lieutenant John O'Brien

(V-1) Rule 2: Moral Conduct; Paragraph 1, Adherence to law to wit: RS 14:46, Relative to False Imprisonment – NOT SUSTAINED

(V-2) Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty, Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Policy 344.1.1 Report Preparation - SUSTAINED

Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty prescribes the following. (a) Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either or both of those areas constitutes a neglect of duty. (b) An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures. (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:

New Orleans Police Department Policy Manual


1. Failing to take appropriate and necessary police action; 2. Failing to respond to all assignments promptly and failing to report dispositions of assignments to the dispatcher immediately upon completion; 3. Failing to advise the dispatcher on each occasion of his absence from the patrol vehicle (except for signal 10-42 and the reason therefore; and failing to report his/her return to his vehicles; 4. Failing to make a written report when such is indicated; 5. Unauthorized sleeping on duty; 6. Failing to comply with instructions, oral or written, from any authoritative source; 7. Failing to take necessary actions as to ensure that a prisoner shall not escape as a result of carelessness or neglect; 8. Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation; 9. Failing to ensure that the health, welfare, and property of a prisoner is properly maintained while in individual custody; 10. Failing to properly care for vehicles and other equipment used where in damage results from carelessness or neglect; 11. Failing to take appropriate action as to illegal activity, including vice and gambling violations, and/or to make a written report of the same to his/her commanding officer.

Investigating Officer's Initials: 

Policy 344.1.1 Report Preparation prescribes the following. Employees should ensure that their reports are sufficiently detailed for their purpose and reasonably free of errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty, unless permission to delay submission of the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads or arrest reports where the suspect remains in custody should not be delayed. All reports shall accurately reflect the identity of the persons involved, witnesses, all pertinent information seen, heard or assimilated by any other sense and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such (Item # I-30056-17)

Lieutenant O'Brien violated this rule when he inappropriately documented the following.

- The order of search issued by a judge was specifically for the vehicle Mr. Bailey operated. However, after not finding contraband inside the vehicle, Lieutenant O'Brien conducted a warrantless strip search that amounted to a cavity search upon Mr. Bailey. Lieutenant O'Brien incorrectly documented that the money and illegal narcotics he found on Mr. Bailey's person during the warrantless search on the search warrant return; thus, giving the impression that the narcotics was located within the vehicle.
- Lieutenant O'Brien incorrectly wrote the sequence of events in the gist section of the report. The gist gave the impression that the driver was arrested for a traffic violation and a full search of the driver, incident to arrest, led to the discovery of illegal narcotics. When in fact according to the lieutenant's statement to the investigator the traffic stop was secondary to the warrantless search of Mr. Bailey that produced the illegal narcotics. The way the gist was written, if a magistrate did not read the incident report, probable cause would be found; however, the sequence of events did not occur the way the gist was written.
- Lieutenant O'Brien failed to obtain identifying information about the adult to whose custody a six-year-old male was released to by police. Lieutenant O'Brien charged Mr. Bailey with possession of illegal narcotics in the presence of the aforesaid child. Obtaining the identification of the child and contact information of the parent is prudent to the prosecution.
- X • Lieutenant O'Brien documented the contraband found on Mr. Bailey on the return of search. The order of search was exclusively for a vehicle and only items discovered within the vehicle should have been documented on the return of search.
- Lieutenant O'Brien ordered Officer Vitrano to stop a black male because he believed the subject matched the description of Mr. Bailey. According to Rule 4, the supervisor issuing the order should be held responsible for any conflict arising from said order. The stop raised questions because the lieutenant failed to articulate specificities such as the close characteristics and reason for the stop other than he thought the black male was Mr. Bailey.

Investigating Officer's Initials: 

(V-3) Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty, Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Chapter 1.2.4 Search and Seizure, Paragraph 47, Strip Searches - SUSTAINED

Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty prescribes the following.

(a) Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either or both of those areas constitutes a neglect of duty. (b) An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures. (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:

New Orleans Police Department Policy Manual

1. Failing to take appropriate and necessary police action; 2. Failing to respond to all assignments promptly and failing to report dispositions of assignments to the dispatcher immediately upon completion; 3. Failing to advise the dispatcher on each occasion of his absence from the patrol vehicle (except for signal 10-42 and the reason therefore; and failing to report his/her return to his vehicles; 4. Failing to make a written report when such is indicated; 5. Unauthorized sleeping on duty; 6. Failing to comply with instructions, oral or written, from any authoritative source; 7. Failing to take necessary actions as to ensure that a prisoner shall not escape as a result of carelessness or neglect; 8. Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation; 9. Failing to ensure that the health, welfare, and property of a prisoner is properly maintained while in individual custody; 10. Failing to properly care for vehicles and other equipment used where in damage results from carelessness or neglect; 11. Failing to take appropriate action as to illegal activity, including vice and gambling violations, and/or to make a written report of the same to his/her commanding officer.

Chapter 1.2.4 Search and Seizure, Paragraph 47, Strip Searches prescribes the following. Strip Searches shall be conducted in a Secure Area of a NOPD Facility unless exigent circumstances exist. The following requirements apply to all strip searches: (a) The officer shall obtain written authorization from his or her supervisor prior to the strip search, and the supervisor shall be on-scene at all times during the search. (k) Strip searches shall not be video recorded or photographed unless required for evidentiary reasons and specifically authorized in writing, in advance, by a supervisor.

Lieutenant O'Brien may have violated this rule when he conducted a strip search, but failed to do the following:

- Lieutenant O'Brien admitted in his statement to this investigator that he did not notify his supervisor of the search; therefore, Lieutenant O'Brien violated Section A of the Chapter by failing to obtain written authorization from his supervisor before the strip search and having that supervisor on-scene at all times during the search.

Investigating Officer's Initials: 

- Lieutenant O'Brien violated Section B, which prescribed the following. Only officers trained on how to conduct a proper strip search may participate in a strip search. Lieutenant O'Brien said he was not trained or sent to training by the NOPD on how to conduct proper strip searches.
- Lieutenant O'Brien violated Section K, Lieutenant O'Brien failed to obtain authorization in writing, in advance, by a supervisor before video recording the strip search. Lieutenant O'Brien admitted in his statement to the investigator he did not receive authorization from his supervisor

(V-4) Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty, Subparagraph c-6; failing to comply with instructions, oral or written, from any authoritative source to wit: Chapter 1.2.4 Search and Seizure, Paragraph 51, Body Cavity Search. No person may be subject to a body cavity search without a search warrant – SUSTAINED

Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty prescribes the following. (a) Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either or both of those areas constitutes a neglect of duty. (b) An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures. (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:

New Orleans Police Department Policy Manual

1. Failing to take appropriate and necessary police action; 2. Failing to respond to all assignments promptly and failing to report dispositions of assignments to the dispatcher immediately upon completion; 3. Failing to advise the dispatcher on each occasion of his absence from the patrol vehicle (except for signal 10-42 and the reason therefore; and failing to report his/her return to his vehicles; 4. Failing to make a written report when such is indicated; 5. Unauthorized sleeping on duty; 6. Failing to comply with instructions, oral or written, from any authoritative source; 7. Failing to take necessary actions as to ensure that a prisoner shall not escape as a result of carelessness or neglect; 8. Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation; 9. Failing to ensure that the health, welfare, and property of a prisoner is properly maintained while in individual custody; 10. Failing to properly care for vehicles and other equipment used where in damage results from carelessness or neglect; 11. Failing to take appropriate action as to illegal activity, including vice and gambling violations, and/or to make a written report of the same to his/her commanding officer.

Chapter 1.2.4, Search and Seizure, Paragraph 51, Body Cavity Search prescribed in relative part as follows. No person may be subject to a body cavity search without a search warrant.

Investigating Officer's Initials: 

Handwritten notes:
Should
be
added

Lieutenant O'Brien violated this rule when based on Lieutenant O'Brien's documentation in his incident report and the statement to this investigator, Lieutenant O'Brien said the majority of the contraband was concealed inside, in-between the buttocks, and only a small portion of the bag was visible protruding from within the buttocks near the tail bone. When Lieutenant O'Brien noticed the small portion of plastic protruding out of Mr. Bailey's intergluteal cleft, Lieutenant O'Brien should have ceased the search and applied for a search warrant and transported the subject to a medical facility. Lieutenant O'Brien should have transported Mr. Bailey to a medical facility not only because the chapter dictated that only a medical staff person should remove the contraband, but if the contraband was located inside the anus cavity it could have posed a medical emergency should the container rupture. In addition, Mr. Bailey was handcuffed and three police officers were present; therefore, the chances of Mr. Bailey destroying the evidence was minimal at best.

The fact Lieutenant O'Brien stated he was aware that the majority of the contraband was concealed within the buttocks a portion of the contraband might have been inserted inside the anus. Nevertheless, regardless of whether or not a portion of the contraband could have been located within the cavity of the anus, the simple position of the contraband violated the chapter. The contraband was concealed inside the intergluteal cleft, which is a body cavity, that encompassed the anal region. That in itself constituted a violation of the chapter. Complicated with Lieutenant O'Brien's act of removing the item, established the act of contact; thus also a violation of the chapter.

(V-5) Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.9 Arrests – Paragraph 12 Supervisor's Responsibilities – The Supervisor shall approve the officer's arrest recommendation based on the existence of probable cause and consistency with NOPD regulations (Traffic Affidavit #J869655) – NOT SUSTAINED

V-6) Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.2.4 Search and Seizure, Paragraph 5, Search & Seizures prescribes the following. The U.S. Constitution generally requires law enforcement to obtain a warrant prior to conducting a search. There are, however, limited exceptions to the warrant requirement, such as valid consent, incident to a lawful arrest, and exigent circumstances (Ordered Officer McKay to conduct a warrantless search of a child without probable cause). - SUSTAINED

Investigating Officer's Initials: 

Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty prescribes the following.

- (a) Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either or both of those areas constitutes a neglect of duty. (b) An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures. (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:

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8. Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation;
9. Failing to ensure that the health, welfare, and property of a prisoner is properly maintained while in individual custody;
10. Failing to properly care for vehicles and other equipment used where in damage results from carelessness or neglect;
11. Failing to take appropriate action as to illegal activity, including vice and gambling violations, and/or to make a written report of the same to his/her commanding officer.

Chapter 1.2.4 Search and Seizure, Paragraph 5, Search & Seizures prescribes the following. The U.S. Constitution generally requires law enforcement to obtain a warrant prior to conducting a search. There are, however, limited exceptions to the warrant requirement, such as valid consent, incident to a lawful arrest, and exigent circumstances. (Instructed Officer Anita McKay to search minor child for illicit narcotics) WHD

Lieutenant O'Brien may have violated this rule when he ordered Officer Anita McKay to search a 6-year-old male that was the passenger inside a vehicle that was a target vehicle of a narcotics search warrant. The search of the child did not meet the Louisiana Criminal Code of Procedure Article 215.1-Temporary questioning of persons in public places; frisk and search for weapons. In addition, the search warrant in place for the target vehicle did not extend to the 6-year-old passenger. For those reasons, the warrantless search of the child was conducted without probable cause. Although Officer McKay conducted the search, Lieutenant O'Brien gave her the order to search. NOPD Rule 4: Performance of Duty; paragraph 2: Instructions from an authoritative Source stated in relative part, "... The issuing authority shall be held responsible should any conflict materialize..." Thereby, this investigator concluded the vicarious liability for the erroneous search of the 6-year-old passenger should lie with the supervisor in this case, Lieutenant O'Brien, and not the police officer who was simply followed what she believed to be a lawful order from her platoon commander.

Investigating Officer's Initials: 

ADDITIONAL SUSTAINED VIOLATIONS

- **(V-7) Rule 2: Moral Conduct; Paragraph 1, Adherence to law to wit: Louisiana Revised Statute 32 Section 391-Apperance upon arrest - SUSTAINED**

Rule 2: Moral Conduct; Paragraph 1, Adherence to Law prescribed the following.


“Employees shall act in accordance with the constitutions, statutes, ordinances, administrative regulations, and the official interpretations thereof, of the United States, the State of Louisiana, and the City of New Orleans, but when in another jurisdiction shall obey the applicable laws. Neither ignorance of the law, its interpretations, nor failure to be physically arrested and charged, shall be regarded as a valid defense against the requirements to this rule.”

Louisiana Revised Statute 32 Section 391- Appearance upon Arrest prescribed in relevant part the following.

A. Whenever any person is arrested for a violation of any provision of this Chapter or any regulation of the department or of the secretary of the Department of Public Safety and Corrections adopted pursuant thereto, except as otherwise provided in this Section, the arresting officer shall take his name, address, the license number of his motor vehicle, and the number of his operator's license, and shall issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons and notice. The arresting officer's original or electronic signature shall be affixed to the summons. The time shall be at least five days after arrest, unless the person arrested demands an earlier hearing. If the person arrested demands an earlier hearing, he shall have a right to an immediate hearing or a hearing within twenty-four hours, at a convenient hour, to be before a magistrate within the parish where the offense was committed. Except as otherwise provided in this Section, the person arrested shall have the option of remaining in custody pending his furnishing bail as fixed by a magistrate or depositing his operator's license with the arresting officer, as provided in R.S. 32:411.

Lieutenant O'Brien may have violated this rule when he lawfully arrested Mr. William Bailey for violations of the traffic laws relative to seatbelts under Chapter 32 of the Louisiana Traffic Statutory Laws. The law stated the arresting officer **SHALL** take the name, address, the license number of the motor vehicle, and the number of his operator's license, and issue a summons, which is an arrest, but done in lieu of physically imprisoning the subject. Instead, Lieutenant O'Brien failed to issue a citation and physical arrest the driver.

(V-8) Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.2.4 Search and Seizure, Paragraph 5, Search & Seizures - SUSTAINED

Investigating Officer's Initials: 

Rule 4, Performance of Duty, Paragraph 4, Neglect of Duty prescribes the following.


(a) Each employee, because of his grade and assignment, is required to perform certain duties and assume certain responsibilities. An employee's failure to properly function in either or both of those areas constitutes a neglect of duty. (b) An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures. (c) The following acts or omissions to act, although not exhaustive, are considered neglect of duty:

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Chapter 1.2.4 Search and Seizure, Paragraph 5, Search & Seizures prescribes the following. The U.S. Constitution generally requires law enforcement to obtain a warrant prior to conducting a search. There are, however, limited exceptions to the warrant requirement, such as valid consent, incident to a lawful arrest, and exigent circumstances. (Warrantless search of Mr. Bailey for illicit narcotics no probable cause).

Lieutenant O'Brien may have violated this rule when he conducted a warrantless search of Mr. Bailey. Lieutenant O'Brien documented in the application for the search warrant Mr. Bailey by name. Lieutenant O'Brien said Mr. Bailey facilitated the sale of narcotics by transporting the drugs from his vehicle to the buyer and used the target vehicle as a stash location. In the Order of Search, Lieutenant O'Brien failed to list Mr. Bailey as a person to be searched. Lieutenant O'Brien specifically applied for the search of the vehicle to seize controlled dangerous substances, contraband, paraphernalia, financial proceeds, currency, valuables, weapons, and/or documents related to the occupancy/ownership of the said vehicle. Therefore, it was clear Lieutenant O'Brien believed Mr. Bailey used the target vehicle as a hoard location for illegal narcotics and not on the person of Mr. Bailey.

Investigating Officer's Initials: 

On the date, Lieutenant O'Brien executed the order of search; he set up surveillance upon the target vehicle before the execution of the search. During surveillance, Lieutenant O'Brien did not document in his incident report that he saw Mr. Bailey involved in any activity, which would have indicated he was engaged in illegal narcotics activity. In fact, during the interrogation of Lieutenant O'Brien by this investigator, Lieutenant O'Brien stated he did not see Mr. Bailey involved in any activity that would have led him to believe Mr. Bailey was involved in the possession or selling of narcotics on the date he executed the order of search. During the traffic stop involving Mr. Bailey, neither Lieutenant O'Brien nor Officer Vitrano documented they observed Mr. Bailey's actions alluded that he hid narcotics on his person or on the child that accompanied him.


Lieutenant O'Brien stated he established probable cause that the illegal narcotics were located on the person of Mr. Bailey based on that it took Mr. Bailey several blocks to stop his vehicle when signal by police to stop. The narcotics were not located on the child that was searched on the scene. Also, the narcotics were not located inside the target vehicle. Lieutenant O'Brien said his experience in street-level narcotics and his knowledge that Mr. Bailey had an illegal narcotics background lead him to believe Mr. Bailey hid the drugs on his person.

Said reasons provided by Lieutenant O'Brien amounted to a hunch, not probable cause to conduct a warrantless search upon Mr. Bailey. Exigent circumstances did not appear to be a factor for the following reasons. Mr. Bailey was restrained with handcuffs in the lobby of the police station; therefore, Mr. Bailey was not a threat to the destruction of evidence or safety of the officers. Without question, the illegal narcotics that Lieutenant O'Brien found on Mr. Bailey was not in plain view. Thereby, Lieutenant O'Brien failed to establish a nexus that on the date he conducted the strip search, Mr. Bailey had illegal narcotics hidden on his person.

Lieutenant O'Brien may also be in violation of: **Rule IX of the Civil Service Rules for the City of New Orleans relative to "Maintaining Standards of Service."** Rule IX prescribes:

1.1 When an employee in the classified service is unable or unwilling to perform the duties of his/her position in a satisfactory manner, or has committed any act to the prejudice of the service, or has omitted to perform any act it was his/her duty to perform, or otherwise has become subject to corrective action, the appointing authority shall take action warranted by the circumstances to maintain the standards of effective service. The action may include one or more of the following:

- (1) Removal from the service.
- (2) Involuntary retirement.
- (3) Reduction in pay within the salary range for the employee's classification, subject to the provisions of Rule IV, Section 3.
- (4) Demotion to any position of a lower classification that the employee is deemed by the appointing authority and the Director to be competent to fill, accompanied by a reduction in pay, which is within the salary range for the lower classification, subject to the provisions of Rule IV, Section 3.
- (5) Suspension without pay not exceeding one hundred twenty (120) calendar days.
- (6) Fine.

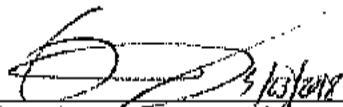
Investigating Officer's Initials: 

*Noted
H.C.
8/27/17*


A-2 Police Sergeant Stephanie Taillon:

- Rule 4: Performance of Duty; Paragraph 4, Neglect of Duty, Subparagraph (b); An employee with supervisory responsibility shall be in neglect of duty whenever he fails to properly supervise subordinates, or when his actions in matters relating to discipline fail to conform with the dictates of Departmental Rules, Policies and Procedures to wit: Chapter 1.9 Arrests – Paragraph 12 Supervisor’s Responsibilities – The Supervisor shall approve the officer’s arrest recommendation based on the existence of probable cause and consistency with NOPD regulations. - **NOT SUSTAINED**

W.H.A. 11
 P.A.R. 11
 P.A.R. 11
 P.A.R. 11
 C.R. 11
 R.E.P. 11



 Sergeant Omar M. Diaz
 Criminal Investigations Section
 Public Integrity Bureau

Investigating Officer’s Initials: 

CONCUR / DO NOT CONCUR

Darryl Watson 6-22-18

Lieutenant Darryl Watson
Criminal Investigations
Public Integrity Bureau

CONCUR / DO NOT CONCUR

Gwendolyn Nolan
for Gwendolyn Nolan
Commander, Public Integrity Bureau

CONCUR / DO NOT CONCUR

Arlinda P. Westbrook 1-7-18

Arlinda P. Westbrook,
Bureau Chief, Public Integrity Bureau

CONCUR / DO NOT CONCUR

Michael S. Harrison 1-7-18
Michael S. Harrison,
Superintendent of Police

Investigating Officer's Initials: DB