

OFFICE OF INDEPENDENT POLICE MONITOR  
**CITY OF NEW ORLEANS**



SUSAN HUTSON  
INDEPENDENT POLICE MONITOR

April 2, 2019

Deputy Chief Arlinda Westbrook  
Public Integrity Bureau  
New Orleans Police Department  
1340 Poydras, Suite 1900  
New Orleans, LA 70112

RE: Disciplinary Hearing Police Lt. John O'Brien (PIB CTN# 2017-0630-R)

Dear Deputy Superintendent Westbrook:

This is to inform you pursuant to New Orleans City Code Section 2-1121 (the Police Monitors Ordinance) that the Office of the Independent Police Monitor (OIPM) has reviewed the above-mentioned disciplinary investigation and has come to the following initial conclusions, suggestions and concerns. Please keep in mind that the below-mentioned conclusions are based on the OIPM's analysis of the PIB investigation only. The OIPM's below-mentioned conclusions, suggestions, and concerns may and often change with the advent of additional information introduced at the disciplinary hearing.

<b>Allegation / Disciplinary Charge</b>	<b>PIB Recommendations</b>	<b>OIPM Recommendations</b>
(V.1) - Rule 2: Moral Conduct, Par. 1: Adherence to Law (RS 14:46, False Imprisonment)	Not Sustained	<b>Sustained</b>
(V.2) - Rule 4: Performance of Duty, Para. 4: Neglect of Duty, Subpara. c-6; failing to comply with instructions (Policy 344.1.1 Report Preparation)	Sustained	Sustained
(V.3) - Rule 4: Performance of Duty, Par. 4: Neglect of Duty, Subpara. c-6; failing to comply with instructions (Chapter 1.2.4 Search & Seizure, Par. 47: Strip Searches)	Sustained	Sustained
(V.4) - Rule 4: Performance of Duty, Para. 4: Neglect of Duty, Subpara. c-6; failing to comply with instructions (Chapter 1.2.4	Sustained	Sustained



Search & Seizure, Para. 51: Body Cavity Search)		
(V.5) Rule 4: Performance of Duty; Para. 4, Neglect of Duty, Subpara. b, supervisory responsibilities (Chapter 1.9 Arrests, Para. 12 Supervisor’s Responsibilities – supervisor shall approve the officer’s arrest recommendation based on the existence of probable cause and consistency with NOPD regulations)	Not Sustained	Not Sustained
(V.6) Rule 4: Performance of Duty; Para. 4, Neglect of Duty, Subpara. b, supervisory responsibilities (Chapter 1.2.4 Search & Seizure, Para. 5 Warrantless Search of Child)	Sustained	Sustained
(V.7) Rule 2: Moral Conduct; Para. 1, Adherence to law (La. RS 32, Section 391 – Appearance Upon Arrest)	Sustained	Sustained
(V.8) Rule 4: Performance of Duty; Para. 4, Neglect of Duty, Subpara. b, supervisory responsibilities (Chapter 1.2.4 Search & Seizure, Para 5. Search & Seizures)	Sustained	Sustained

1. Are there disciplinary charges not included in the PIB investigation which OIPM asserts could have been brought?

Possibly, the OIPM believes an honesty violation could have been raised and analyzed considering Lt. O’Brien authored an inaccurate report and provided statements during this investigation that were contrary to the evidence presented.

2. At this point, before the disciplinary hearing, does the OIPM have any concerns with respect to the police officers Bill of Rights and the disciplinary investigation?

No.

3. At this point, before the disciplinary hearing, does the OIPM have any concerns that the investigation involves whistleblower or retaliation issues?

No.

4. Did the OIPM have any concerns with respect to any particular allegation in the disciplinary investigation?



Yes. While the OIPM commends the Investigating Officer on conducting and authoring an impressively thorough and well-researched investigation, the OIPM does not agree with the finding that the allegation against Lt. O'Brien for false imprisonment be found not sustained. The OIPM recommends that the adherence to law allegation regarding Revised Statute 14:46: False Imprisonment be found sustained.

The fact that the District Attorney's office declined to pursue criminal charges against Lt. O'Brien does not preclude the Public Integrity Bureau from holding Lt. O'Brien accountable for his actions. While criminal charges require a finding of guilt beyond a reasonable doubt, the standard for a violation of NOPD policy is only beyond a preponderance. Here, the thorough investigation presented enough evidence that Lt. O'Brien used the traffic violation for failing to wear a seatbelt (La. RS 32:295, 295.1) as a means to effectuate a pretextual stop and conduct two searches that were not justified by probable cause and the OIPM believes this fulfills the lesser evidentiary burden.

After a detailed discussion of the length of time [REDACTED] was handcuffed during his involuntary relocation to the police station and the policies and practices pertaining to arresting a subject due to a seatbelt violation, (or other minor traffic violations), the Investigating Officer concluded that Lt. O'Brien did not falsely imprison [REDACTED] because he was justified in arresting him for the seat belt violation, citing the language of La. R.S. 32 Section 57 and L.C.Cr.P. Art. 211. statute (see p. 31 of the investigative report). While the language of the aforementioned statutes does technically allow for arrest, it cannot be said that Lt. O'Brien's actions follow the spirit of the law or common NOPD practices. Lt. O'Brien, in his own statement, admitted that he normally only issues a citation for seatbelt violations.

Instead, there are several factors that were revealed during this investigation that support a finding that Lt. O'Brien used the traffic violation as a means of circumventing [REDACTED] 4<sup>th</sup> amendment rights, demonstrating why the false imprisonment allegation has merit:

- First, the search warrant signed by the judge only authorized a search of [REDACTED] vehicle, which produced no evidence and based on the information contained in the investigation, OIPM concludes this failure to find evidence created a motive for Lt. O'Brien to proceed in searching [REDACTED] body and [REDACTED] juvenile child though there was no warrant.
- Second, the arrest was for a seatbelt violation which has no nexus to the search for illegal narcotics.
- Third, Lt. O'Brien's statement, "He [REDACTED] going '10-15' [Police Arrest Code] no matter what regardless of anything that happens..." supports the finding that this was a pretextual stop and an effort to circumvent 4<sup>th</sup> amendment protections (quote from page 13 of the investigative report).
- Fourth, the search of [REDACTED] was not limited to a pat down or strip search, but rather a cavity search.



- Fifth, there were no exigent circumstances to justify the search.
- Sixth, this finding does not address Lt. O'Brien's unconstitutional order to search [REDACTED] child.
- Finally, Lt. O'Brien insists (in his tape recorded statement) that his initial reason for arresting [REDACTED] was due to the search warrant, not the traffic violation (see p. 44 of the investigative report). However, the surveillance of [REDACTED] produced no independent probable cause to search [REDACTED] person.

This investigation showed beyond a preponderance of the evidence that the search of [REDACTED] was unreasonable under 4<sup>th</sup> amendment standards (see pages 28- 35 of investigative report) and that the traffic stop of [REDACTED] was clearly pretextual. Accordingly, the OIPM respectfully finds the decision to not sustain the false imprisonment violation to be contrary to the facts detailed in this investigation. Based on the totality of evidence presented in the investigation, the OIPM disagrees with the Investigating Officer's conclusion that Louisiana law permits the arrest of individuals for minor traffic violations therefore Lt. O'Brien's actions did not rise to the level of criminal wrongdoing.

5. Should training or other programs have been required of the accused employee?

Yes. The OIPM strongly agrees with the Investigating Officer's list of recommended trainings beginning on p. 57 of the investigative report and appreciates the efforts the Investigating Officer made to identify these training opportunities.

The OIPM strongly supports the Investigating Officer's conclusion that Lt. O'Brien should be required to be retrained and closely monitored for a probationary period.

The OIPM would like to highlight and echo the Investigating Officer's sentiments on p. 50 of the investigation recommending an investigation into Commander Ganthier's actions pertaining to this case.

6. Were there any potential constitutional or other legal issues that were not addressed or were addressed inadequately by the investigation?

No.

7. Were there any other OIPM concerns with the investigation and if so what allegation do they pertain to?

No, this was an extremely thorough and thoughtful investigation that considered BWC footage, reports and other documentation, and the statements of officers. The Investigating Officer drew meaningful conclusions based on the law and NOPD manual and put forth



effective recommendations regarding training and policy. OIPM commends and appreciates the attention to detail and work put into this investigative report.

8. Does the investigation suggest policy/procedure, other risk management or liability issues that were not adequately addressed by the Department?

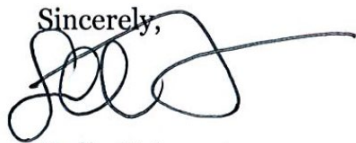
Yes. First, regarding potential liability issues, the Investigating Officer noted that [REDACTED] was transported inside the station by Officer Vitrano in an elevator. The Investigating Officer highlighted this transportation may jeopardize officer safety (see p. 54 of the investigative report) and recommended tactical training to address this potential safety hazard. Additionally, the Investigating Officer's found the responding officers did not follow proper protocol in identifying the child's mother when she came to pick up the child that was riding in [REDACTED] car at the time of this incident. The OIPM recommends that the department address these concerns and issue training on proper protocol on transportation of arrestees that are in custody and the safe NOPD transfer of children to guardians.

Second, regarding policy and procedure, there appears to be several involved officers (both of higher and lower rankings) who were not clear on what the department's policies and guidelines are 4<sup>th</sup> amendment protections against illegal searches and seizures, including probable cause for arrests, searches incidents to arrest, and strip/cavity searches. Accordingly, the department may want to consider department wide training on these topics. Civil violations of this magnitude could expose the department to lawsuits. Additionally, the OIPM agrees with the suggestion by the Investigating Officer listed on p. 54 to revise NOPD Policy Ch. 1.2.4 pertaining to body cavity searches and strip searches.

Finally, regarding risk liability in relation to Lt. O'Brien, OIPM takes particular concern with the actions described in the investigative report. Lt. O'Brien is an experienced officer with 18 years of experience with the NOPD and is a supervisor; therefore, misconstruing NOPD policy or the US constitution in his orders to other officers is particularly alarming. OIPM recommends the department reflect on Lt. O'Brien's capacity to supervise considering the actions highlighted in this investigation and Lt. O'Brien's ability to give orders to fellow officers that are in clear violation of the U.S. Constitution or the opportunity to circumvent supervisor approval prior to conducting strip or cavity searches.

I appreciate your attention to this memo. Please contact me if you have any questions.

Sincerely,



Stella Cziment  
Deputy Independent Police Monitor  
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