

Donald J. Lee, Jr.

Chief of Police



Key West

POLICE DEPARTMENT

TO: Sgt. Joe Tripp

FROM: Chief Donald J. Lee, Jr. 

DATE: October 22, 2014

RE: PS 14-06

I have reviewed the file and finding of fact completed by Capt. Torres. I concur with his findings. Please ensure the personnel actions are executed and the appropriate training is conducted.



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TO: Sgt. Joe Tripp, Commander Professional Standards Division

FROM: Captain J.R. Torres, Patrol Operations Bureau

DATE: October 16, 2014

RE: Conclusion/Finding of Fact-PS 14-06

I have received the above referenced file for the purpose of making a finding of fact based on the preponderance of evidence of the information contained therein.

The complaint was originated by Glenn Hanes and investigated by the Office of Professional Standards of the Key West Police Department and the Florida Department of Law Enforcement. Detective Mark Siracuse and Sergeant Pablo Rodriguez are the subject members and the allegations of policy violations are as follows:

- **Unlawful Conduct (02.21.04.17)**
 - A. Members shall not commit any act or crime which is define by Florida Statutes as a misdemeanor, or which constitutes a criminal municipal ordinance violation, whether chargeable or not, which brings discredit upon the Key West Police Department, and/or which is likely to impair the ability of personnel concerned to perform assigned duties effectively.
 - B. Members shall not commit any act or crime defined by state or federal law as a felony, whether chargeable or not.
- **Property and Evidence Collection (03.08.01.02)**
 - A. As circumstances warrant, the member shall take property and/or evidence into his custody in accordance with the procedures described in this directive. The member shall take packaged and labeled property/evidence over directly to the Evidence Custodian Officer, (ECO). The impounding member must remain with the property/evidence until it is properly received, logged in and received by the ECO.
- **Prisoner Transport (03.15.04.03)**

Prisoners/detainees shall not be left unattended during transport. Prisoners/detainees shall be transported in a manner that allows for constant visual observation. Seating of officers and



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prisoners/detainees should conform to the following:

- A. When transported in vehicles equipped with safety screens, persons in custody will be placed in the rear seat area of the vehicle, and the seat belt securely fastened.
- B. One-officer patrol vehicles not equipped with safety screens shall not be used to transport persons in custody.
- C. In two-officer patrol vehicles without screens, the arrested /detained person will be placed in the rear seat behind the passenger's position with the seat belt securely fastened and the second officer will place himself behind the driver.

• **Strip Searches (03.36.07.05)**

A strip search requires an arrested person to remove or arrange some or all of his clothing to permit a visual or manual inspection of the genitals, buttocks, anus, breasts (in the case of a female) or undergarments of such person.

- A. Strip searches will be conducted only in accordance with F.S. 901.211 and with written approval of the member's supervisor. The officer will document in his Offense/Incident Report the reason for conducting the strip search, as well as the name of the supervisor giving approval for the search.
- B. Strip searches will not be conducted outside the Monroe County Detention Center except under extraordinary circumstances and with prior approval from the officer's supervisor.
- C. Members of the Key West Police Department will not perform a body cavity search. Only appropriate medical personnel will perform body cavity searches pursuant to a lawfully executed search warrant.

I have conducted a complete review of all reports, recordings, and videos supplied to me in reference to this complaint and conclude the following:

- The investigation conducted by the Florida Department of Law Enforcement was thorough and comprehensive and no further investigation for the internal affairs investigation is necessary for the unlawful conduct allegation.



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- The evidence (\$1240.00 US Currency) was left unattended on the trunk lid of the car and as a result was stolen.
- The prisoner was left unattended in a vehicle which is not equipped with safety screens and should not have been unattended.
- Upon returning to the car the detectives noticed the defendant was moving around in the back seat. They removed him from the car and noticed that his shorts were pulled down and it appeared he had something in his underwear. The defendant was clenching his buttocks as if he was hiding something. The defendant was taken out of the car and moved around the corner behind another unit and searched under his clothing. These actions demonstrate that both detectives were clearly unfamiliar with departmental policy and Florida Statute 901.211 governing strip searches.

Based on all the evidence provided to me, I find and recommend the following:

- On the allegation of Unlawful Conduct, I find the allegation **Unfounded** and the investigation conducted by the Florida Department of Law Enforcement sufficient.
- On the allegation of Property/Evidence Collection, I find the allegation **Sustained** and recommend Detective Siracuse and Sergeant Rodriguez receive Letters of Counseling.
- On the allegation of Prisoner Transport, I find the allegation against Sergeant Rodriguez **Sustained** and recommend he receive a Letter of Reprimand.
- On the allegation of Prisoner Transport, I find the allegation against Detective Siracuse to be **Exonerated** because he was directed by Sergeant Rodriguez to attend to matters away from the car that the prisoner was in.
- On the allegation of Strip Searches, I find the allegation **Sustained** and recommend remedial training for Detective Siracuse and Sergeant Rodriguez, as well as department wide retraining.



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TO: Captain Torres
FROM: Sergeant Tripp
DATE: 9-29-14
RE: PS 14-6 Report

**PARTS OF THIS REPORT ARE EXEMPT FROM PUBLIC RECORD- CONTAINS
ALLEGED SEXUAL BATTERY VICTIM INFORMATION**

Below is the investigation into the above referenced complaint. Please review it and all supporting documentation in the folder in order to make a finding of fact, by preponderance of the evidence, for each allegation/suspicion for each subject member. If there are multiple allegations, a conclusion of fact should be determined for each.

There are 4 allegations in this report which require a finding:

02.21.04.17	A or B	Unlawful Conduct
03.08.01.02	A (1)	Property and Evidence Collection
03.36.07.05	A, B or C	Strip Searches
03.15.04.03		Prisoner Transport

I respectfully request that you have your finding completed, sign the PAFs, and bring the package to Chief Lee by close of business 10/8/14. This file will remain open until a response is received from you.

Thank you for your help. Please contact me if you have any questions or if I can be of assistance.

Investigative Predicate

On 4/4/14, Chief Lee was made aware of a sexual battery complaint allegedly committed by Sgt. P. Rodriguez and Detective Siracuse. The complainant, [REDACTED] said that one of the members penetrated his rectum with a finger during a search incident to arrest. He also mentioned that money was missing from his possession following the arrest. Chief Lee asked FDLE to conduct a criminal investigation and placed any administrative investigation on hold. FDLE presented the investigation to the State Attorney's office and they found insufficient evidence for criminal charges on 6/26/14.

I reviewed the FDLE investigation and found that it includes the same evidence and testimony that I would have attempted to obtain in an administrative investigation, with one exception. The interviews were sworn and complete. The subjects



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participated and were forthcoming. I was unable to obtain the missing interview (Butler). Primarily, information from the criminal investigation shall serve as the administrative investigation in the matter.

I reviewed the KWPD arrest affidavit for the theft of the money (14-1651) and found that it explains the missing money.

There was a revelation regarding the definition of strip searches that arose from Butler's video.

Complainant Interview

██████████ said his rectum was penetrated by Detective Siracuse during a search incident to arrest. He also said his money was stolen during the arrest.

Witness Interviews

Sheila Butler, a witness to the search from across the street, provided a video of her observations which is included. Her proximity to the search would have made it improbable for her to determine penetration. The fact that ██████████ was searched under his clothing was not denied by the subject members. I made contact with her on 8/25/14. She told me that at one point prior to the video starting: ██████████'s pants were pulled down significantly lower, exposing his buttocks and maybe his penis. She agreed to make a sworn statement the following day, along with her friend, whom she said was at the scene alongside of her. She picked the location and time. She did not show up for the interview on 8/26/14 and did not respond to calls at 5:46, 6:44, 7:00 and 7:30pm. She left a message on my work phone requesting to reschedule. I called her on 8/27/14 at 4:52pm, 8/28/14 at 11:25am and 9/2/14 at 5:44pm; each time leaving a message for her to return my call. I did not have any further contact with her.

Darlene Cahill, the nurse who performed the forensic medical exam, was not interviewed. Her report is included.

Sergeant Katz of MCDC said that ██████████ told him that "Pablo" (Sergeant Rodriguez) was the one who penetrated him.

Sergeant Biskup of KWPD, who took the initial complaint, said that he heard another arrestee coaching ██████████ on what to say when he complained. He said that ██████████ told him that he did not know which member penetrated him.

Subject Interviews

Both Detective Siracuse and Sergeant Rodriguez said that ██████████ was searched under his clothing. The search was done by Siracuse, who denied penetrating ██████████ rectum. Sergeant Rodriguez, who was standing next to Siracuse, said he did not see Siracuse penetrate ██████████ rectum. Detective Siracuse said that, when ██████████ was removed from the car, his shorts were pulled down as if to access something hidden in his underwear. He said ██████████ was clenching his buttocks as if he was hiding something, and that was why he was searched under his clothing. They told me that they did the search around the corner and behind another vehicle in order to have some extra privacy and that there were less (if any) people there at the time they moved ██████████ behind the car. Rodriguez said that Butler must have followed them to the area where they did the search. They said ██████████ private areas were not exposed to the public. Neither member was familiar with the strip search law or policy at the time of the incident.



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Both subjects said that they placed [REDACTED] in Rodriguez's detective car (no prisoner screen) and that the money was removed from [REDACTED] person and was left at the scene while they attempted to make another arrest of a man with a gun. Siracuse said he was instructed to leave the scene by his supervisor, Sergeant Rodriguez. Siracuse said that he was far enough away from the car so that it was not under his direct control (about a half block) and when he returned, the rear door to the car in which the subject was in was open. He thought the prisoner was in control of Rodriguez but Rodriguez was not at the car when he returned. He said that Rodriguez walked at least all the way across Emma Street and he did not see Rodriguez in the vicinity of the car when he returned.

Rodriguez said that he told Siracuse to put [REDACTED] in the back of the car and saw him do so, including closing the door. He said he never went more than 15 feet away from the car and that it was under his direct control the whole time. He was Siracuse's supervisor and was approving of Siracuse's actions.

Physical Evidence

A forensic medical exam of [REDACTED] revealed nothing of evidentiary value. The exam evidence was placed into property.

Documentary Evidence

[REDACTED] had previous incidents of hiding contraband in his buttocks, and Sergeant Rodriguez knew of it. A report from the MCSO is included.

Gerald Billingsly was arrested for stealing the money. A copy of his arrest affidavit is included.

A forensic medical exam of [REDACTED] revealed nothing of evidentiary value. A copy of the report is included.

Shelia Butler video recorded the search. A copy of the video is included.

Other Pertinent Information

There is state law (901.211) and department policy regarding strip searches. The policy states that state law will be followed, along with some other department restrictions. The definition of a strip search in the policy and the statute agree with each other. Of note is that someone can perform a "strip" search, without removing clothing, or, for that matter, without seeing flesh. Both definitions include arranging some or all of the arrestee's clothing to permit visual or manual inspection of not only things such as genitals, breasts or the anus, but also undergarments. The state law allows for strip searches in cases which involve controlled substances (section 2) but restricts them to premises where the search cannot be observed by persons not physically conducting or observing the search (section 3) and it requires obtaining written authorization from the supervisor on duty (section 5). The policy restricts it further by stating that no searches can be conducted outside of the detention center except under extraordinary circumstances (section B). Neither the law nor policy contains exception for removing contraband, or even a weapon, in public view. There is case law, *Jenkins v. State*, that state that the search must be conducted out of public view and that merely shielding the private parts of the subject is insufficient to meet the statutory requirement. It also confirms the need for written authorization.



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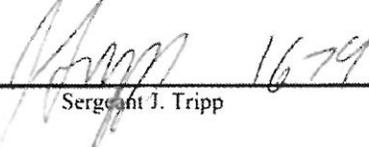
There had been no known in-house training on strip search definition and statutory requirements up to the time of this incident. It has since been done.

Rodriguez and Siracuse both knew of a previous incident where [REDACTED] was hiding a cell phone in his pants. They also recently had an incident where a prisoner had to be hospitalized for ingesting cocaine and were concerned about [REDACTED] doing the same.

At the time of this incident, there was a call involving a man with a gun in the immediate vicinity. Sergeant Rodriguez described the environment as dangerous and chaotic.

Administrative Proceedings FSS 112.532

"I the undersigned do hereby swear under penalty of perjury, that, to the best of my personal knowledge, information and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of and of the rights contained in FSS. 112.532 and 112.533, Florida Statutes."


Sergeant J. Tripp



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Catherine Fogel
State Attorney
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June 26, 2014

Special Agent Millard Quad
Florida Department of Law Enforcement
19980 Overseas Highway
Sugarloaf Key, FL 33042

Re: KW-02-0014

Dear Special Agent Quad:

I have reviewed the investigative report you presented to me regarding the allegations made by [REDACTED] against officers of the Key West Police Department. Our office finds insufficient credible evidence for any criminal charges.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "M E Marduga", followed by a horizontal line.

Manuel E. Marduga
Chief Assistant State Attorney

MEM:sr