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**CONDENSED SUMMARY DOCUMENT - Office of the Independent Police Monitor Case Review - CTN 2019-0259-P; CTN 2019-0708-P**

**SUMMARY OF THE FACTS – BASIS FOR CTN 2019-0259-P; CTN 2019-0708-P**

The Complainant's son (Seth Donaldson) was killed on October 28, 2018, after his body was fatally ejected through a glass window on the 12<sup>th</sup> story of the Saratoga Loft, 212 Loyola Ave, apartment 1201. Multiple units responded to the scene: Louisiana State Police, NOPD Homicide, NOPD Crime Lab, the Coroner's Office Investigator, and 8<sup>th</sup> District Detectives and Platoon Supervisors. 8<sup>th</sup> District officers Matthew Malveaux and Gabrielle Lewis were dispatched to the scene under a signal 295A (suicide attempt). The signal was later learned to be an unclassified death. The initial report was authored by SPO Malveaux and Police Recruit Lewis. Recruit Lewis entered the apartment and observed signs of a fight on scene as well as an unknown white powdery substance. Recruit Lewis interviewed two witnesses, Fahad Kahn and Cassidy Carter, together who stated that the deceased jumped out of the window after a fight with Kahn. Officers Malveaux and Lewis transported the witnesses to the police station for interviews, and Recruit Lewis later collected the white powdery substance and submitted it to evidence to "hold for investigative purposes." Det. Marshall Scallan of the 8<sup>th</sup> District Investigative Unit investigated the unclassified death of Seth Donaldson. Upon arrival, Det. Scallan separated the two witnesses and later observed much of the same evidence on scene as officers Malveaux and Lewis. Homicide detectives Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, and Det. Brett Mathes also responded to the scene, but the incident was not investigated as a potential Homicide. Det. Scallan noted in his report that the Coroner's Office Technicians collected the deceased's wallet and passport which were located in apartment 1201. Sometime after their interviews, the two witnesses were allowed to re-enter the scene, after which Fahad Kahn took custody of the deceased's cell phone. The phone was later returned to the Complainant (the deceased's mother) by an associate of Fahad Khan.

About 4 to 5 months after the incident Det. Theophilus Kent was instructed to review the initial investigation. Det. Kent spoke with the Complainant several times before being instructed to cease contact by his supervisor. Det. Kent was supplied with two additional witnesses to interview by the Complainant but was only able to contact one of them.

The Complainant (Amy Donaldson) reached out to OIPM in the fall of 2018. Her initial complaint was referred to PIB on April 26, 2019. CTN-2019-0259-P was authored by Investigating Officer Sgt. Arlen Barnes and the completed investigation was approved by Lt. Denise Thomas, Capt. Sabrina Richardson, and Deputy Superintendent Arlinda Westbrook. The Complainant alleged multiple violations for several of the officers involved in the incident. Ultimately, Det. Scallan was investigated for possibly violating Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) and Sgt. Jonathan Bulliung was investigated for possibly violating Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (b). The investigation presented dispositions of "not sustained" for both allegations.

The second formal disciplinary investigation began on January 21, 2020. Capt. Ceasar Ruffin was assigned as the Investigating Officer for CTN 2019-0708-P. Capt. Nicholas Gernon was investigated for a possible Rule 3, Paragraph 1 violation which was found to be "unfounded." Lt. Denise Thomas, Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, Det. Theophilus Kent, Det. Brett Mathes, Det. Rayell Johnson, Police Technician Courtney Carr, and Investigator Sgt. Arlen Barnes were all investigated for possible Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty violations, all of which were found by Investigating Officer Ceasar Ruffin to be "unfounded."

## OIPM ANALYSIS – CTN 2019-0259-P (Initial PIB Investigation)

### **1. ARE THERE DISCIPLINARY CHARGES NOT INCLUDED IN THE PIB INVESTIGATION THAT OIPM ASSERTS COULD HAVE BEEN BROUGHT?**

- A. *Rule 4: Par. 4 (c)(8) - failing to collect evidence or supervise the collection of evidence.*
- B. *Rule 4: Par. 2 - to wit NOPD Ch. 42.16: Preliminary Forensic Drug Testing*
- C. *Rule 4: Par. 2 - to wit NOPD Ch. 1.2.4: Search and Seizure*
- D. *Rule 4: Par. 2 - to wit NOPD Ch.46.20: Crime Scene and Disaster Scene Integrity, par. 23*
- E. *Rule 4: Par. 4 - failing to protect the scene and interview potential suspects in accordance with NOPD Ch. 41.33: Death Investigations, par. 16 (Suspected Homicides)*
- F. *Rule 4: Par. 2 – to wit NOPD Ch. 46.20: Crime and Disaster Scene Integrity, par. 3(m) and 18 (Prevent unauthorized access of personnel, the media, or the public.)*
- G. *Rule 3: Professional Conduct, Par. 1: Professionalism (Det. Marshall Scallan)*

### **2. DOES THE INVESTIGATION SUGGEST POLICY / PROCEDURE, OTHER RISK MANAGEMENT OR LIABILITY ISSUES THAT WERE NOT ADEQUATELY ADDRESSED BY THE DEPARTMENT?**

- A. *Recommendation to revise Major Crime Scene Roster Report (Form #187) to add spaces to record notation of critical times.*
- B. *Recommendation to revise NOPD Ch. 46.20 to provide additional guidance on unauthorized access of personnel, the media, or the public. One witness was allowed to reenter the scene.*
- C. *Recommendation to revise NOPD Ch. 41.33: Death Investigations to accurately state contents of La. R.S. 13:5717. NOPD Ch. 41.33 does not mention that NOPD is responsible for collecting physical property or evidence connected with the cause of death or identity of the deceased which is found at the scene but not on the body.*
- D. *Recommendation to revise NOPD Ch. 1.2.4 to clarify policy on processing scenes related to obtaining a search warrant when officers find suspected drugs on a scene.*
- E. *Recommendation to create standard operating procedure regarding cross-agency interactions on-scene.*

### **3. DID THE OIPM HAVE ANY CONCERNS WITH RESPECT TO ANY ALLEGATION IN THE DISCIPLINARY INVESTIGATION?**

There was substantial evidence that investigator Barnes could have and should have obtained and reviewed to reach a more conclusive result. The investigative report did not include any analysis regarding the search warrant issue. The report does not address numerous items that were not collected or preserved from the crime scene. Investigator Barnes should have asked the accused officers about the decision not obtain a search warrant for apartment 1201. Investigator Barnes did not probe Det. Scallan any further to ascertain his reasoning for failing to obtain a search warrant or search the scene when sufficient facts supported probable cause to obtain a search warrant for the witnesses' phones, apartment 1201, and to collect additional evidence within the apartment for analysis.

Investigator Barnes noted his inability to make a legal or policy determination as justification to not sustain the allegations. He "could not determine" whether a search warrant should have been issued to search the incident location and vehicle location. The inability of an investigator to make a legal interpretation of the law is concerning and not grounds to not sustain an allegation. Additionally, Investigating Officer Barnes concerningly used the exact same language in both determinations.

OIPM concludes there was sufficient evidence to sustain the allegations against Det. Scallan and Sgt. Bulliung.

**4. SHOULD TRAINING OR OTHER PROGRAMS HAVE BEEN REQUIRED OF THE ACCUSED EMPLOYEE?**

OIPM disagrees with Investigating Officer Barnes's determination that no training should be required.

**5. WERE THERE ANY OTHER OIPM CONCERNS WITH THE INVESTIGATION AND IF SO, WHAT ALLEGATION DO THEY PERTAIN TO?**

*A. Investigation Lacked Thoroughness*

OIPM determined the investigation was not comprehensive or thorough. Investigator Barnes did not cite any relevant NOPD policy relating to the investigation. Investigator Barnes did not include any discussion of the accused's correspondence with the Coroner's Office on scene and whether it aligned with NOPD policy. The investigative report noted that the deceased's personal items were collected by the Coroner's Office, but the Complainant stated that a witness received custody of the deceased's phone. The investigative report did not contain any analysis on whether the drugs on the table were not enough to warrant probable cause to obtain a search warrant. The investigative report did not contain any analysis on whether a narcotics investigation should have been conducted.

*B. Referrals to Additional Agencies*

Complainant made other allegations that were not referred to the appropriate agencies.

*C. Interviews were Perfunctory and Opportunities were Missed*

Investigator Barnes seemed to not record interviews in their entirety. Relevant issues were not covered in the interviews. Investigator Barnes failed to ask the accused about the decision to not obtain a search warrant for apartment 1201. The interview with the Complainant was very short and most of the questions were confirming her demographics and contact information. Applicable policies and laws were not covered in the interviews, the only policy referenced in interviews was the Officer Bill of Rights. Investigator Barnes's demeanor was different to the Complainant than towards the NOPD employees. When interviewing the accused, the investigator proceeded his questions with significant factual recitation followed by specific questions that were at times leading in nature. The investigator appeared to rationalize the NOPD employees' behavior. Investigator Barnes did not accurately represent all recorded statements in his summary within the investigation. Investigator Barnes did not ask logical follow up questions in the interviews.

*D. Failed to Consider Additional Allegations*

Investigator Barnes did not follow NOPD Ch. 52.1.1 as he did not document additional allegations raised by Complainant during interviews against Sgt. (Lt.) DeLarge, Det. Guidry, and Det. Mathes.

**6. DOES THE INVESTIGATION SUGGEST ANY OTHER POTENTIAL CONSTITUTIONAL OR LEGAL ISSUES NOT ADEQUATELY ADDRESSED BY THIS DEPARTMENT?**

No.

**7. DOES THE OIPM HAVE ANY OTHER CONCERNS RELATIVE TO THIS INVESTIGATION?**

Officers may be making decisions based on presumptions rather than training when processing scenes.

**CONCLUSION / OIPM RECOMMENDATIONS ON FINDINGS – CTN 2019-0259-P**

**Det. Marshall Scallan; Rule 4: Performance of Duty, Par. 4: Neglect of Duty (c)(8)..... Sustained**

**Sgt. Jonathan Bulliung; Rule 4: Performance of Duty, Par. 4: Neglect of Duty (b)..... Sustained**

**OIPM ANALYSIS – PIB 2019-0708-P (Second PIB Investigation)**

**1. ARE THERE DISCIPLINARY CHARGES NOT INCLUDED IN THE PIB INVESTIGATION WHICH OIPM ASSERTS COULD HAVE BEEN BROUGHT?**

Sgt. Barnes should have been investigated for violating NOPD Ch. 52.1.2: par. 2 (a), 2 (d), 2(g), and 2(k).

**2. DOES THE INVESTIGATION SUGGEST POLICY / PROCEDURE, OTHER RISK MANAGEMENT OR LIABILITY ISSUES THAT WERE NOT ADEQUATELY ADDRESSED BY THE DEPARTMENT?**

Lt. Thomas's multiple roles in this investigation are a conflict of interest, as she was also named in the allegations.

**3. DID THE OIPM HAVE ANY CONCERNS WITH RESPECT TO ANY ALLEGATION IN THE DISCIPLINARY INVESTIGATION?**

**A. Sgt. Arlen Barnes Allegation**

There was substantial evidence that Sgt. Barnes could have obtained and reviewed that he did not. Sgt. Barnes should have asked the accused about the decision not obtain a search warrant for apartment 1201. OIPM recommends that the disposition of this allegation be changed to "sustained."

**B. Capt. Nicholas Gernon Allegation**

Investigating Officer Ruffin violated NOPD Ch. 52.1.2 by not interviewing, recording a statement, and seeking out evidence of supervisory duties from Capt. Gernon. The allegation against Capt. Gernon should have been investigated as a Rule 4 violation for not performing supervisory functions related to Det. Scallan. OIPM recommends that the disposition of this allegation be changed to "not sustained".

**C. Lt. Denise Thomas Allegation**

By signing off on Sgt. Barnes's deficient investigation, Lt. Thomas did not fulfill her supervisory duty. OIPM recommends that the disposition of this allegation be changed to "sustained".

**D. Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, Det. Brett Mathes Allegations**

The focus of the investigation should have been whether the Homicide detectives made the appropriate decision to leave the investigation with Det. Scallan rather than assuming it as Homicide investigation. The investigator should have interviewed the officers and analyzed what factors were decisive in making the decision of who should investigate. Investigating Officer Ruffin should have sought out evidence including BWC. OIPM recommends that the disposition of these allegations be changed to "not sustained".

**E. Det. Theophilus Kent Allegation**

Det. Kent did not fully exhaust all leads at his disposal. OIPM recommends that the disposition of this allegation be changed to "not sustained".

**4. SHOULD TRAINING OR OTHER PROGRAMS HAVE BEEN REQUIRED OF THE ACCUSED EMPLOYEE?**

OIPM recommends both Investigating Officers Ruffin and Barnes receive instruction on developing and articulating more thorough analysis when authoring investigative reports.

**5. WERE THERE ANY OTHER OIPM CONCERNS WITH THE INVESTIGATION AND IF SO, WHAT ALLEGATION DO THEY PERTAIN TO?**

Investigating Officer Ruffin should have listed the roles and responsibilities of each of the responding units. Several issues were raised by Complainant that were not addressed in the PIB investigations. Investigator Ruffin did not conduct any of the interviews in this case. Investigator Ruffin should have addressed why he made the decision not to take certain statements. NOPD should consider whether it should be mandatory for investigating officers to take statements from all accused employees.

**6. DOES THE INVESTIGATION SUGGEST ANY OTHER POTENTIAL CONSTITUTIONAL OR LEGAL ISSUES NOT ADEQUATELY ADDRESSED BY THIS DEPARTMENT?**

No.

**CONCLUSION / OIPM RECOMMENDATIONS ON FINDINGS – PIB 2019-0708-P**

**Capt. Nicholas Gernon; Rule 3: Par. 1..... Not Sustained**  
**Lt. Denise Thomas; Rule 4: Par. 4..... Unable to Determine**  
**Sgt. (Lt.) Wayne DeLarge; Rule 4: Par. 4..... Not Sustained**  
**Det. Patrick Guidry; Rule 4: Par. 4..... Not Sustained**  
**Det. Theophilus Kent; Rule 4: Par. 4..... Not Sustained**  
**Det. Brett Mathes; Rule 4: Par. 4..... Not Sustained**  
**Det. Rayell Johnson; Rule 4: Par. 4..... Unfounded**  
**Police Technician Courtney Carr; Rule 4: Par. 4 (c)(8) ..... Unfounded**  
**Investigator Sgt. Arlen Barnes; Rule 4: Par. 4..... Sustained**

**CLOSING**

Per the MOU with the NOPD, the NOPD has thirty (30) days to respond to this case review with comments, questions, or a formal response. Any formal response will be included in the OIPM’s final case review. The final case review will be available to the public after the thirty (30) day comment period is complete.



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August 23, 2022

Dear Chief Ferguson and Deputy-Chief Westbrook:

The Office of the Independent Police Monitor (OIPM) conducted a case review of two misconduct investigations conducted by the New Orleans Police Department (NOPD). Attached to this letter is the analysis and findings the OIPM concluded based on the investigations conducted by the NOPD. This case review combines our findings from both investigations: CTN 2019-0259-P and CTN 2019-0708-P and references (but does not review) the investigation conducted by the Office of the Inspector General (OIG). This case review was conducted pursuant to New Orleans City Code Section 2-1121 (the Police Monitors Ordinance) and the Memorandum of Understanding between the OIPM and the NOPD executed on November 10, 2010. Considering our findings, analysis, and recommendations, I am writing a cover letter to our case review to state our concerns.

For over three years, OIPM has worked with Amy Donaldson, the Complainant in CTN 2019-0259-P and CTN 2019-0708-P, and the mother of Seth Donaldson. Seth Donaldson was declared dead on October 29, 2018, when he was fatally ejected out of the window of an Airbnb at the Saratoga Loft. This incident occurred within the 8<sup>th</sup> District and when 911 was called for the fall to be reported the NOPD, Louisiana State Troopers and the New Orleans Coroner all responded to this call for service. Many departments and hands touched this investigation and the pursuant misconduct investigations to follow.

What happened next appears to be an incomplete investigation – both the investigation of the cause of death and of the allegations of misconduct that resulted from that death investigation. While the OIPM does not have the capacity nor the jurisdiction to review the death investigation conducted by the NOPD and the investigation conducted by the Coroner's Office, the OIPM did conduct a case review of the two misconduct investigations conducted by the NOPD regarding the misconduct allegations raised by Amy Donaldson.

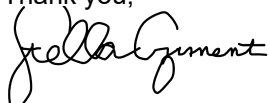
The position of the OIPM is that the investigations conducted into the misconduct allegations were incomplete and unthorough. A comprehensive investigation would have considered all the allegations raised by the Complainant and these two investigations were limited to only one allegation per officer. These investigations missed opportunities to recommend policy clarifications, additional training to the responding officers, and improvements to how joint investigations are conducted by various law enforcement and city agencies or even departments within the NOPD.

These investigations also missed the real human impact of the NOPD's actions on the Donaldson family. For example, under Chapter 41.33: Death Investigations, the NOPD should, where possible and when the notification is not conducted by the Coroner's Office, utilize the Communication Services to have a law enforcement official from that jurisdiction make a personal notification. Instead, the Donaldsons received a call from a detective who asked if they've already talked to someone and then rather awkwardly informed them of their child's death – and this is after the news of their child's death and photos were already on social media. Further, the property belonging to their deceased child was not secured and was released to the custody of a witness of Seth Donaldson's death – someone who may have been considered a person of interest regarding wrongdoing under a different investigation.

The OIPM does not understand the basis for the NOPD's decisions and for that reason, cannot facilitate a thoughtful conversation with the Donaldson family regarding the policing decisions made and not made that night or afterwards. No other family should have to go through this experience and receive the lack of information that the Donaldsons received regarding the death of their child. The OIPM intends to continue to work with leadership at the Public Integrity Bureau (PIB) and the Investigation and Support Bureau (ISB) to address the concerns highlighted in this case review and to ensure that future investigations conducted by both departments improve moving forward.

As for the matter at hand, the OIPM cannot request that the investigation into Seth Donaldson's death be reopened but is of the position that the investigation, and the subsequent investigations into the misconduct, were incomplete. This was not a quality investigation that the OIPM and the public expect from the NOPD.

Thank you,

A handwritten signature in black ink, appearing to read "Stella Cziment". The signature is fluid and cursive, with the first name being more prominent.

Stella Cziment  
Independent Police Monitor



### Glossary of Acronyms / Terms

Complainant	Person who filed the misconduct complaint
SPO	Senior Police Officer
Det.	Detective
Sgt.	Sergeant
Lt.	Lieutenant
OIG	Office of the Inspector General
OIPM	Office of the Independent Police Monitor
NOPD	New Orleans Police Department
Capt.	Captain
PIB	Public Integrity Bureau
MSB	Management Services Bureau
LSP	Louisiana State Police
BWC	Body Worn Camera Footage

# Office of the Independent Police Monitor Case Review

**PIB CASE TRACKING NUMBERS:** 2019-0259-P; 2019-0708-P  
**IPM CASE TRACKING NUMBERS:** CC2019-0028; CC2019-0086

The Office of the Independent Police Monitor (OIPM) is an independent branch of city government responsible for providing oversight to the New Orleans Police Department (NOPD). The OIPM provides transparent assessments of the NOPD's work, progress, and obstacles. Based on those assessments, the OIPM provides the NOPD with detailed recommendations on policy, practice, and how to become or remain compliant with the Federal Consent Decree. Most importantly, at the center of the OIPM's work is the community. The OIPM is responsible for issuing public reports to the people of New Orleans and the NOPD regarding the state of policing in New Orleans. This case review is one such example and is created in conformity with the Memorandum of Understanding between the NOPD and the IPM executed on November 10, 2010; as well as being consistent with La. R.S. § 40:2531 Chapter 25 and Municipal Code of Ordinances, Part II, Chapter 2, Article XII Section 2-1121.

The purpose of case reviews is to examine the misconduct investigations conducted by the NOPD to ensure they are compliant with law and internal policies, including Chapter 26.2: Adjudication of Misconduct, Chapter 26.2.1: Disciplinary Matrix / Penalty Schedule, Chapter 52.1.1: Misconduct Complaint Intake and Investigation, and Chapter 52.1.2: Misconduct Complaint Investigator Responsibilities.

**COMPLAINANT:** Amy Donaldson (Mother of Deceased: Seth Donaldson)  
**DATE OF INCIDENT:** October 28, 2018

## CTN 2019-0259-P (INITIAL INVESTIGATION)

**INVOLVED NOPD EMPLOYEES:**  
Det. Marshall Scallan  
Sgt. Jonathan Bulliung

*Named in the complaint but not in PIB investigation:*  
SPO Matthew Malveaux  
Recruit Gabrielle Lewis

**INVESTIGATING OFFICER:**  
Sgt. Arlen S. Barnes

PIB 2019-0293-P  
This investigation was conducted by  
PIB



*Investigated by Sgt. Arlen S. Barnes*

The officers below were accused of misconduct and were on scene for the investigation into Seth Donaldson's death



Detective  
Marshall Scallan

Sgt. Jonathan  
Bulliung

Senior Police  
Officer Matthew  
Malveaux

Recruit  
Gabrielle Lewis

*Named in Complaint but Not Investigated*

**ALLEGATIONS RAISED; PIB RECOMMENDATIONS:**

Det. Marshall Scallan (Employee ID [REDACTED])

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation ..... **Not Sustained**

Sgt. Jonathan Bulliung (Employee ID [REDACTED])

Rule 4: Performance of Duty, Paragraph 4: 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..... **Not Sustained**

**CTN 2019-0708-P (SUPPLEMENTAL INVESTIGATION)**

**INVOLVED NOPD EMPLOYEES:**

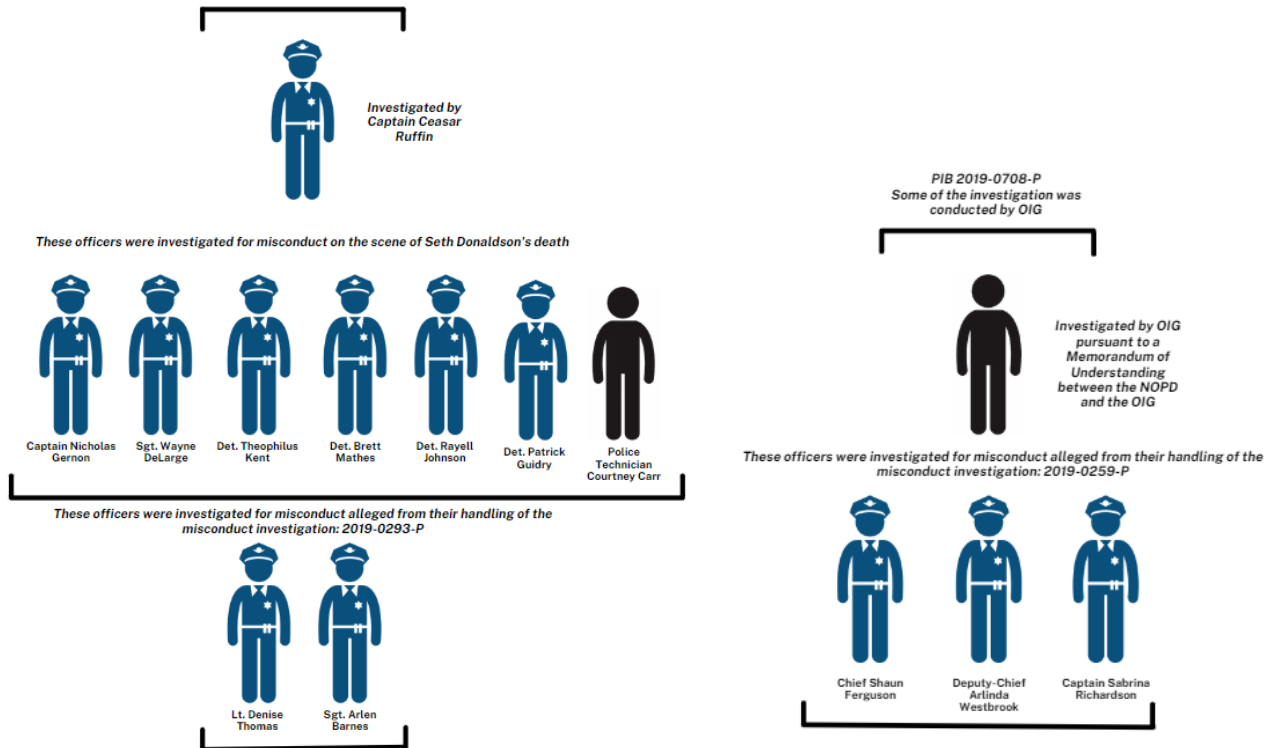
- Capt. Nicholas Gernon
- Lt. Denise Thomas
- Sgt. (Lt.) Wayne DeLarge
- Det. Theophilus Kent
- Det. Patrick Guidry
- Det. Brett Mathes
- Det. Rayell Johnson
- Police Technician Courtney Carr
- Investigating Officer Sgt. Arlen Barnes

*Named in the complaint but not named in the PIB Investigation (A separate review was conducted by the OIG due to the position of the department employees listed below):*

- Former Superintendent Michael S. Harrison*
- Deputy Superintendent Arlinda Westbrook*
- Capt. Sabrina Richardson*

**INVESTIGATING OFFICER:**

Capt. Ceasar Ruffin; OIG



**ALLEGATIONS RAISED; PIB RECOMMENDATIONS:**

- Capt. Nicholas Gernon (Employee ID [REDACTED])  
Rule 3: Professional Conduct, Paragraph 1: Professionalism..... **Unfounded**
- Lt. Denise Thomas (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**
- Sgt. (Lt.) Wayne DeLarge (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

Det. Theophilus Kent (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

Det. Patrick Guidry (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

Det. Brett Mathes (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

Det. Rayell Johnson (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

Police Technician Courtney Carr (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8)..... **Unfounded**

Investigating Officer Sgt. Arlen Barnes (Employee ID [REDACTED])  
Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty..... **Unfounded**

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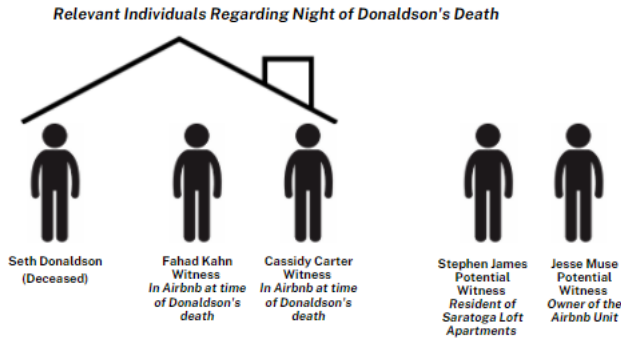
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## SUMMARY OF THE FACTS – BASIS FOR CTN 2019-0259-P; CTN 2019-0708-P

This complaint involves allegations of failure to perform police duties regarding the death investigation of Seth Donaldson. Seth Donaldson was killed on October 28, 2018, after his body was fatally ejected through a solid glass window on the 12<sup>th</sup> story of the Saratoga Loft, 212 Loyola Ave, apartment 1201, New Orleans, LA, 70117.



Officers from NOPD, the Louisiana State Police (LSP), and the Orleans Parish Coroner's Office were on the scene and participated in the investigation. The following units responded to the scene: LSP, NOPD Homicide, NOPD Crime Lab, the Coroner's Office Investigator, and 8<sup>th</sup> District Detectives and Platoon Supervisors. The Homicide team consisted of Sergeant (Lieutenant) Wayne DeLarge, Detective Patrick Guidry, and Detective Brett Mathes. Detective Marshall Scallan was the District Investigative Unit on the scene and responsible for making sure the scene was

properly investigated. Crime Lab Technician Courtney Carr was the crime scene technician called to the scene; she met with Police Recruit Gabrielle Lewis and photographed the scene.

### ***Investigation by 8th District Officers Matthew Malveaux and Gabrielle Lewis***

8<sup>th</sup> District officers Matthew Malveaux and Gabrielle Lewis were dispatched to the scene under a signal 295A (suicide attempt). The signal was later learned to be an unclassified death. ***CTN 2019-0259-P, Exhibit F, Initial Report Item # J-34869-18.*** At all times, regardless of the classification, this investigation was a major crime scene.<sup>1</sup>

Officers Matthew Malveaux and Gabrielle Lewis interviewed Stephen James who lived in apartment 1101, who stated that he heard scuffling and screaming in the apartment above his and glass shattering. Senior Police Officer Matthew Malveaux went downstairs to the third floor and met with Fahad Kahn who said he was struck in the face by his friend (Seth Donaldson), who did acid and jumped out of a window. Fahad Kahn had blood on his hands and his nose was bleeding.

Recruit Gabrielle Lewis observed the body of the victim lying on the third-floor balcony of the apartment building. Recruit Gabrielle Lewis relocated to apartment 1201, documenting her observations of the scene including: (1) blood on the floor and sink of the bathroom, (2) drops of blood near the bed, (3) a couch with a broken right arm, (4) shattered glass, (5) passport, wallet and cell phone belonging to Seth Donaldson (which was collected by the Coroner's investigator), (6) unknown white powdery substance on the coffee table, (7) a drone, (8) flash drives, (9) clothes and shoes on the floor throughout the apartment.

Recruit Gabrielle Lewis interviewed Cassidy Carter and Fahad Kahn together, and they provided an account of what happened prior to Seth Donaldson's death. According to Cassidy Carter, she and Fahad Kahn picked up Seth Donaldson around 12:30 A.M. on October 28, 2018, at The Tchoup Yard and they went to Bourbon Street where they did not ingest any alcohol. Around 4:30 A.M. they relocated to the Airbnb at the Saratoga Loft. Seth Donaldson "freaked out," was running up and down the hallway, and was calling Cassidy Carter "Mom." Cassidy Carter tried to calm him down by holding him and talking to him. Fahad Kahn added that Seth Donaldson randomly attacked him, striking him in the face with a closed fist. Fahad Kahn stated that he pushed Seth Donaldson off and went to the bathroom to clean himself up.

When Fahad Kahn came out of the bathroom, Seth Donaldson began to "freak out again" and was screaming "No, no, no" before he ran back down the hallway screaming for help.

<sup>1</sup> ***NOPD Chapter 46.20: Crime and Disaster Scene Integrity:*** "Major Crime Scene—A location where any of the listed crimes or incidents took place (or another location where evidence linked to those crimes or incidents may be found), and comprises the area from which most of the physical evidence is retrieved by law enforcement personnel, crime scene investigators (CSIs) or, in rare circumstances, forensic scientists. Major crimes include: (a) All deaths (homicides, suicides and unclassified) except for "natural" causes."

Cassidy Carter was assisting Fahad Kahn who was bleeding from a strike to his nose, then heard a crash and observed Seth Donaldson jump out of the window. Fahad Kahn also stated Seth Donaldson threw himself out of the window. Fahad Kahn then went downstairs to notify security.

Seth Donaldson's body was removed from the scene by Reggie Renard of the Coroner's Office. New Orleans EMS Unit #6248 responded to the scene prior to the officer's arrival, but relayed to Louisiana State Trooper Huey Galmiche, Unit #N11 that Dr. Phan of University Medical Center had pronounced Seth Donaldson dead at 6:02 A.M.

Officers Matthew Malveaux and Gabrielle Lewis transported Cassidy Carter and Fahad Kahn to the police station for interviews. Additionally, Recruit Gabrielle Lewis collected evidence of the white powdery substance found on the coffee table and submitted it to evidence to "hold for investigative purposes."

The initial report authored by officers Gabrielle Lewis and Matthew Malveaux does not explicitly state what time they were dispatched or arrived. Recruit Gabrielle Lewis was the scribe who completed a Major Crime Scene Roster / Summary Report, which began at 6:02 A.M. The Major Crime Scene Roster / Summary Report states that the first officers on scene were: Det. Marshall Scallan, SPO Matthew Malveaux, Recruit Gabrielle Lewis, and Det. Patrick Guidry.<sup>2</sup>

### ***Investigation by Det. Marshall Scallan<sup>3</sup>***

On October 28, 2018, at about 6:15 A.M. Det. Marshall Scallan of the 8<sup>th</sup> District Investigative Unit investigated of the unclassified death of Seth Donaldson. Det. Marshall Scallan arrived on scene of the Saratoga Loft apartments and met with LSP units that were first to arrive.<sup>4</sup>

Det. Marshall Scallan was informed that Cassidy Carter and Fahad Kahn were in the lobby. Det. Marshall Scallan separated them and left them to be monitored by LSP Units on scene. Det. Marshall Scallan and LSP Trooper Long relocated to the third-floor balcony area and observed the dead body of Seth Donaldson, about three feet from a jacuzzi, clothed in orange pants, lying face down with blood pooled around his head. Brain matter and broken glass were observed on the ground in an area of about twenty feet from the body in all directions.

Det. Marshall Scallan and Trooper Long relocated to apartment 1201 and made entry.<sup>5</sup> Det. Marshall Scallan described the layout of the apartment and noted much of the same evidence as officers Matthew Malveaux and Gabrielle Lewis, including: (1) blood on the floor and sink of the bathroom, (2) drops of blood near the bed, (3) a couch with a broken right arm, (4) shattered glass.

Det. Marshall Scallan met with Fahad Kahn and Cassidy Carter in the lobby and noted Fahad Kahn had blood on his hands and streaming down his nose. Fahad Kahn stated Seth Donaldson had beat him up. Det. Marshall Scallan noted that Fahad Kahn appeared to be under the influence of narcotics with slurred speech and dilated eyes.

Det. Marshall Scallan met with a resident of the building, Stephen James, who relayed the same information that he had previously given to officers Matthew Malveaux and Gabrielle Lewis.

Det. Marshall Scallan noted other officers, investigators, and technicians who responded to the scene including:

- Sergeant Jonathan Bulliung,
- Reporting unit #899 manned by Recruit Gabrielle Lewis and SPO Matthew Malveaux, and
- Homicide Units: Sgt. Wayne DeLarge, Det. Patrick Guidry, and Det. Brett Mathes.

Det. Marshall Scallan stated: "The Coroner's Office Technicians removed Donaldson and collected his wallet and passport, which were both located on the floor of unit 1201 near the left side of the couch."

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<sup>2</sup> Determining the times at which officers arrived on scene is critical for a PIB investigating officer because NOPD policies delineates responsibility to first responding officers. See **Chapter 46.20 - Crime Scene and Disaster Integrity**.

<sup>3</sup> According to **CTN 2019-0259-P, Exhibit G, Exhibit F**.

<sup>4</sup> It is unclear why Det. Marshall Scallan concluded LSP Units were first to arrive, when the Major Crime Scene Roster / Summary Report stated otherwise. See Note 3.

<sup>5</sup> It is unknown whether Det. Marshall Scallan obtained consent from the apparent occupants of the apartment (Fahad Kahn and Cassidy Carter) or its owner, Jesse Muse.



Det. Marshall Scallan relocated to the 8<sup>th</sup> District Police Station where he conducted interviews of Cassidy Carter and Fahad Kahn, which were video recorded. Cassidy Carter relayed much of the same information to Det. Marshall Scallan that she had told officers Matthew Malveaux and Gabrielle Lewis with two exceptions. In her interview with Det. Marshall Scallan, she said she and Fahad Kahn picked up Seth Donaldson from his work at the Palace Café and that they relocated to the Saratoga Loft at 2:00 A.M., where previously she stated they picked him up from The Tchoup Yard at 12:30 A.M. and then went to the Saratoga Loft at 4:30 A.M. Det. Marshall Scallan conducted an interview with Fahad Kahn; however, Fahad Kahn invoked his Miranda Rights and the interview was terminated.

Det. Marshall Scallan notified Seth Donaldson's father, Scott Donaldson, of Seth Donaldson's death and learned that a possible video of the incident was captured on Fahad Kahn's phone and placed on social media.<sup>6</sup> The Donaldson family also informed Det. Marshall Scallan that an acquaintance of Seth Donaldson and Fahad Kahn (Loren Grey) had spoken with them and gave them a recorded audio statement which they emailed to Det. Marshall Scallan. Loren Grey stated that a video of Seth Donaldson contemplating his life was viewed on Snapchat by her brother and her boyfriend.

Det. Marshall Scallan obtained video footage of the incident from the third-floor balcony, which showed Seth Donaldson falling and making contact with the side of the jacuzzi then coming to rest several feet away at 5:46 A.M. Other video footage which could not be acquired by Det. Marshall Scallan showed Cassidy Carter and Fahad Kahn entering and exiting the lobby area and Fahad Kahn talking to a security guard.

On November 1, 2018, Det. Marshall Scallan obtained a video from Kyle Holt, boyfriend of Loren Grey, which was placed on Snapchat. The video showed Seth Donaldson, lying on the bed of apartment 1201 of the Saratoga Loft, wearing orange pants and a dark colored shirt. Seth Donaldson stated: "I love my, I want to live. For my family. Do I stay? Or Should I just go?" A second voice is heard asking Seth Donaldson what he is talking about. Cassidy Carter is then observed entering the apartment at which time she walked towards the camera, then Seth Donaldson stands from the bed and the video ends.

The Donaldson family informed Det. Marshall Scallan that they had obtained Seth Donaldson's phone from an associate of Fahad Kahn. They asked Det. Marshall Scallan to access the phone and he instructed them to contact the NOPD Digital Forensics Unit, which Det. Marshall Scallan learned was unable to access the device due to needing certain software.

On November 15, 2018, Det. Marshall Scallan obtained search warrants for Seth Donaldson's Facebook and Snapchat accounts, and Fahad Kahn's Facebook and Snapchat accounts.

In December, Det. Marshall Scallan received requested documents from the search returns. Snapchat messages of Fahad Kahn and Seth Donaldson both mentioned them doing acid. There was an "unknown video" posted to Seth Donaldson's Facebook account on October 28, 2018.

On January 16, 2019, Det. Marshall Scallan obtained the completed Coroner's report which classified Seth Donaldson's death as a suicide. Seth Donaldson suffered multiple blunt trauma injuries due to defenestration. The toxicology report showed presence of cocaine, benzoylecgonine, 11- hydroxy delta-9 THC, Delta-9 Carboxy THC, Delta-9 THC, LSD, cocaine metabolites, and cannabinoids.

### ***Follow up Investigation by Detective Theophilus Kent***

About 4 to 5 months after the incident on October 28, 2018, Detective Theophilus Kent was instructed to review the initial investigation. Det. Theophilus Kent documented his review of the suicide investigation in a supplemental report under item J-34689-18 (which was approved by Sergeant John F. Blatcher). According to Det. Theophilus Kent, he spoke with Scott and Amy Donaldson a few times during his investigation (until his supervisor, Sergeant Daniel McMullen, instructed him to cease this communication) and they gave him the names of two additional witnesses to interview regarding Seth Donaldson's death. Det. Theophilus Kent contacted one of them but was unable to reach the other.<sup>7</sup>

This investigation was then submitted to the Orleans Parish District Attorney's office for review. The DA's Office declined to pursue any prosecution in the matter. **CTN 2019-0708-P, Exhibit Z.** Sgt. Jonathan Bulliung was

<sup>6</sup> Det. Marshall Scallan should have obtained a search warrant for Fahad Kahn's phone.

<sup>7</sup> The investigative report did not include their names or their relevancy to the investigation for the reviewer.

transferred to another District on November 4, 2018 and did not have any involvement with the supervision of the follow up investigation conducted by Det. Marshall Scallan.

### ***Complaint History***

In the late fall of 2018, after the death of her son, Amy Donaldson, the Complainant, started to reach out to the OIPM. Initially, Amy Donaldson was meeting with city officials and did not seek to file a complaint. In the early spring of 2019, Amy Donaldson decided to file a complaint with the OIPM under IPM Case # CC2019-0028. It was referred to PIB on April 26, 2019.

On April 29, 2019, PIB Sergeant Kevin Thompson reviewed the OIPM correspondence and assigned the PIB investigation (designated as CTN 2019-0259-P) to Investigator Sergeant Arlen Barnes. The Complainant's allegations detailed her account of how the investigation into her son's death had been mishandled by the Department, the Coroner's Office, and possible building code violations related to the window her son went through during the incident.

CTN 2019-0259-P was authored by Investigating Officer Arlen Barnes and the completed investigation was approved by Lieutenant Denise Thomas, Captain Sabrina Richardson, and Deputy Superintendent Arlinda Westbrook (who was also the designee for Superintendent Shaun Ferguson).

On April 29, 2021, PIB Sgt. Kevin Thompson conducted a preliminary investigation into Amy Donaldson's complaint and initiated a Formal Disciplinary Investigation to determine if Det. Marshall Scallan may have violated Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation and whether Sgt. Jonathan Bulliung may have violated Rule 4: Performance of Duty, Paragraph 4: 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.

On May 1, 2019, Amy Donaldson provided supplemental complaint information which was sent to Deputy Superintendent Arlinda Westbrook on May 8, 2019. ***CTN 2019-0259-P, Exhibit J.***

On May 17, 2021, Investigating Officer Arlen Barnes began this Formal Disciplinary Investigation by reviewing the Formal Disciplinary Investigation Transmittal Form. On May 17, 2019, Investigating Officer Arlen Barnes requested an extension of time to the Department of Civil Service.

On May 17, 2019, Stacie Joseph of Management Services Division, Department of City Civil Service wrote Det. Marshall Scallan advising him that the Department requested an extension of time for the completion of the investigation, and it was set for hearing on May 21, 2019. ***CTN 2019-0259-P, Exhibit R.***

On May 20, 2019, Investigating Officer Arlen Barnes emailed Det. Marshall Scallan and Sgt. Jonathan Bulliung informing them of his assignment to the complaint of alleged misconduct and requested their contact numbers and the need to obtain administrative statements from them. ***CTN 2019-0259-P, Exhibit O.***

On May 22, 2019, Investigating Officer Arlen Barnes forwarded Amy Donaldson's complaint to Tarrence Barrett of the OIG's office as the complaint alleged the City of New Orleans Safety and Permits may have issued a permit to a structure in violation of the building code. Tarrence Barrett responded "we will review and evaluate" the complaint. ***CTN 2019-0259-P, Exhibit V.***

On August 22, 2019, Investigating Officer Arlen Barnes submitted his investigative report "Interoffice Correspondence" to Shaun Ferguson, Superintendent of Police, with exhibits A-Z, AA-ZZ, and AAA.

### ***CTN 2019-0708-P (second PIB investigation)***

The second Formal Disciplinary Investigation (CTN 2019-0708-P) began on January 21, 2020, with Captain Caesar Ruffin as the investigator.

CTN 2019-0708-P was initiated due to a second / supplemental complaint that the Complainant lodged with the OIPM under CC2019-0086 in the fall of 2019. On November 26, 2019, the OIPM referred the complaint to PIB. Captain Simon Hargrove assigned Lt. Denise Thomas to conduct a preliminary classification of the OIPM

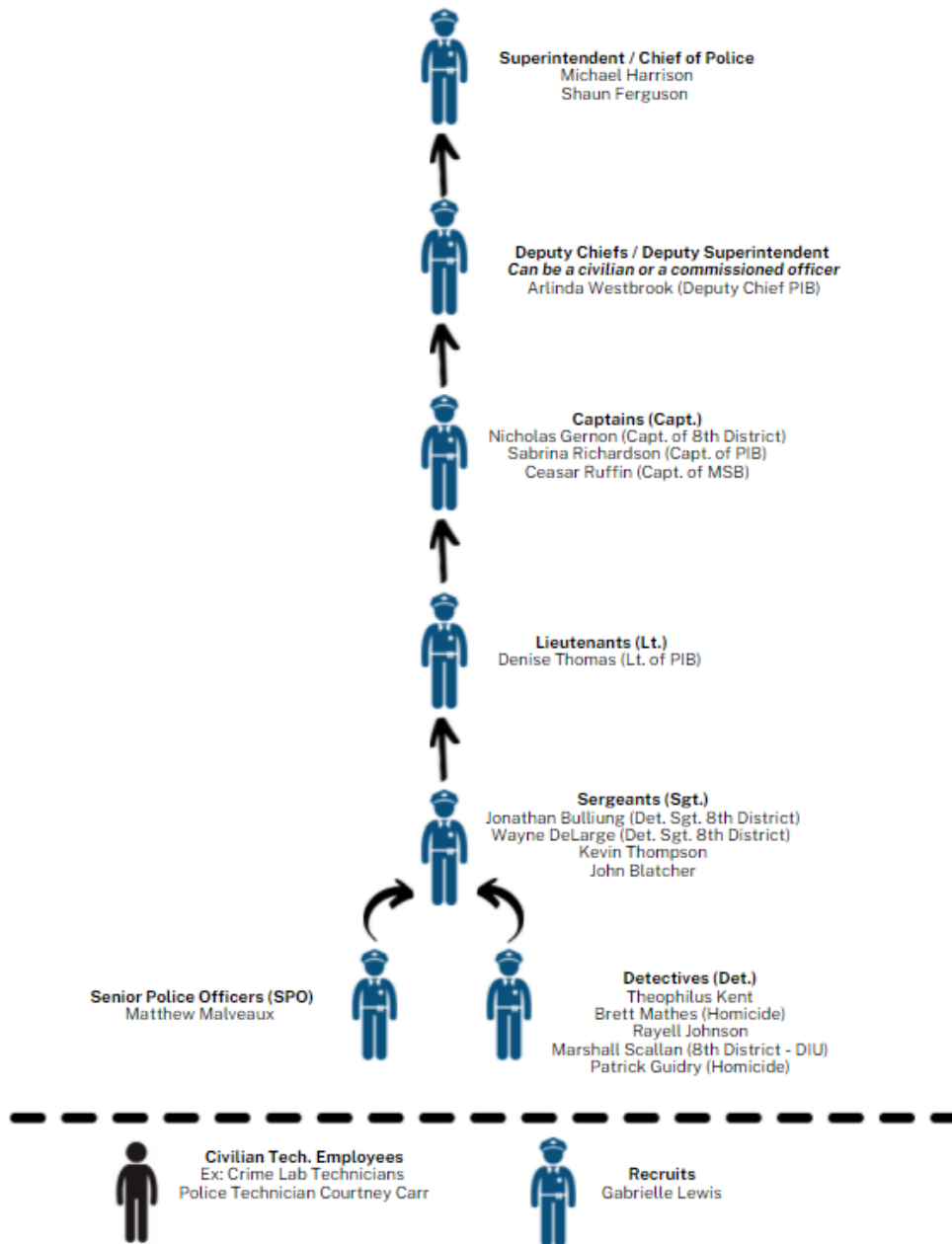
complaint. Subsequently, Capt. Ceasar Ruffin, under Management Services Bureau (MSB), was assigned as the Investigating Officer for CTN 2019-0708-P.

Due to allegations the Complainant raised in CTN 2019-0708-P citing Deputy Superintendent Arlinda Westbrook, Capt. Sabrina Richardson, and NOPD Superintendent of Police Shaun Ferguson, this complaint was reviewed by the OIG (pursuant to the MOU between NOPD and the OIG).

The OIG is responsible under the MOU for investigating allegations of misconduct raised against the Chief of Police, the Deputy-Chief of the PIB, and the active Captain of the PIB. Although the OIG report does not go into the particulars of the allegations raised by the accused officers, it does appear that they performed an independent review of the investigation cited as CTN 2019-0708-P to ensure that the investigation was handled properly.

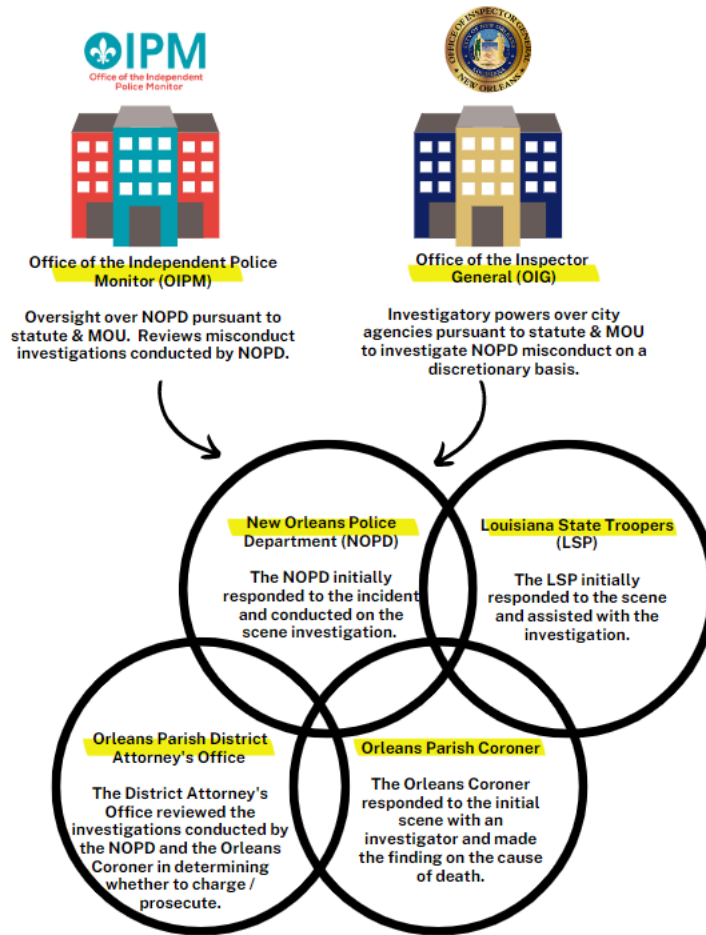
## Understanding the Chain of Command

To provide a comprehensive review of the steps taken by each involved NOPD employee and supervisor, it is important to understand the chain of command. Below is the chain of command between the named involved officers including their rank at the time of the incident and misconduct complaints.



## Understanding Oversight Jurisdiction and Agency Involvement

Multiple agencies were involved in this case. The OIPM created a chart to clarify where the agencies were involved with one another and interacted. This is a brief overview. Each agency may have taken more action than is described below.



Ultimately, the determination of the Orleans Parish Coroner's Office on the cause of death was based on their own on-scene investigation and the investigatory / response actions taken by the NOPD and the LSP. This decision informed the Orleans Parish District Attorney's Office decision to not pursue the matter in court and informed the NOPD decision to not investigate the matter as criminal.

Additionally, the OIPM is aware that the Complainant is concerned of other possible questions of civil liability and negligence regarding code enforcement and the building construction; however, review is limited in our ability to address these issues.

## OIPM ANALYSIS – CTN 2019-0259-P (Initial PIB Investigation)

The OIPM agrees that the allegations regarding the Coroner's Office and the building code are beyond the purview of this review but will discuss them below if the action of the Coroner's Office are related to the investigations being reviewed.

### **1. ARE THERE DISCIPLINARY CHARGES NOT INCLUDED IN THE PIB INVESTIGATION WHICH OIPM ASSERTS COULD HAVE BEEN BROUGHT?**

Yes. According to Investigating Officer Arlen Barnes, the OIPM complaint CC2019-0028, filed by Amy Donaldson on March 25, 2019, "indicated [that] Senior Police Officer Matthew Malveaux, Police Recruit Gabrielle Lewis, and Senior Police Officer Marshall Scallan were involved in the incident." **CTN 2019-0259-P, page 4.** However, Investigating Officer Arlen Barnes limited his investigation to only Det. Marshall Scallan and Sgt. Jonathan Bulliung. It is possible that Investigating Officer Arlen Barnes concluded that alleged violations against SPO Matthew Malveaux and Recruit Gabrielle Lewis were ultimately the responsibility of Det. Marshall Scallan as the Investigating Officer; however, if that was his conclusion it should have been discussed and clearly stated in his report.

At the onset, it is important to note that this investigation was limited to one rule violation per officer (neglect of duty), which appears to limit the scope of the investigation. Moreover, Investigating Officer Arlen Barnes based his findings on one primary issue: whether a search warrant of the incident location and Fahad Kahn's vehicle was obtained when there were several parts of the death investigation that the Complainant alleged were mishandled. **The OIPM finds the investigation failed to evaluate the full scope of the allegations of the Complainant.** Some specific instances of allegations that should have been further explored are as follows:

- A. Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) - failing to collect evidence or supervise the collection of evidence.

The Complainant alleged that the accused officers failed to collect several key pieces of evidence from the scene, including:

- Bloody pants that Fahad Kahn was wearing.
- Cellphones (including Seth Donaldson's phone) weren't collected (*a discussion of whether retaining Seth Donaldson's cell phone was the responsibility of the accused officers or the Coroner's Office's investigator pursuant to NOPD policy is needed and should have been included in the investigation*).
- White powdery substance left on the coffee table at the scene.
- Fingerprints from the location of the incident.
- Blood samples in the room where Seth Donaldson's body was ejected from the window.

In CTN 2019-0259-P, Investigating Officer Arlen Barnes should have detailed which pieces of evidence were in fact collected, what evidence was not collected, and whose responsibility it was to collect each piece of evidence. For example, one of the allegations referenced the collection of the deceased person's personal belongings (specifically Seth Donaldson's phone). The Complainant stated that her son's phone was eventually returned to her not by the Coroner's Office or NOPD, but by a friend of Fahad Kahn who had received the phone from Kahn, who himself took possession of the phone when he was allowed to re-enter the scene. The collection of evidence from the deceased's body is governed by NOPD Chapter 41.33, and reads as follows:

Coroner's Office—The medical examiner for the State of Louisiana whose role includes (R.S. 13:5717) retention of decedent's personal effects; moving or disturbing the body of a deceased person; prohibitions including: it shall be unlawful for any person without specific authorization from the coroner or his designee, other than law enforcement or medical personnel, to touch, move, or disturb the body of a deceased person or remove any personal effects or disturb the immediate area where the body is or has been found, if the deceased person's death occurred under any circumstances which reasonably suggest that the person's death, either directly or indirectly, occurred as a result of a violation of law or a coroner's case as defined by law.

#### SEARCHING DEAD BODIES

7. The Coroner, Assistant Medical Examiner, or authorized Coroner's Investigator are generally the only persons that should move, handle or search a body. These Coroner's Office representatives may take property, objects or articles found on the deceased or in the deceased's immediate vicinity that may be

necessary for conducting an investigation to determine the identity of the deceased or the cause or manner of death. The Coroner's Office shall inventory the body on scene.

8. Should exigent circumstances indicate to an investigating officer that a search of a dead body is warranted prior to the arrival of the Coroner's Office representative, the investigating officer should, when reasonably possible, first obtain verbal consent from the Coroner's Office. However, the body may be moved if it is necessary for the preservation of the body, or if necessary to protect public safety or welfare.<sup>8</sup>

Investigating Officer Arlen Barnes should have cited this policy in his investigation and used it to guide his analysis on what evidence should have been collected by the accused officers and what evidence should have been collected by the Coroner's Office in accordance with NOPD policy. **Accordingly, CTN 2019-0259-P should have included an analysis on whether the accused officers acted in accordance with NOPD policy as it pertains to evidence collection.**

**B. Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source – to wit NOPD Chapter 42.16: Preliminary Forensic Drug Testing**

The Investigating Officer Arlen Barnes failed to consider if the responding officers followed NOPD policy in their handling of the white powdery substance found in the Airbnb that was believed to be drugs.

NOPD Chapter 42.16 states:

*When an officer encounters a compound believed to be a controlled dangerous substance, it is collected for evidentiary purposes. A preliminary drug test kit shall be used to confirm the presence of the suspected substance if a test kit for that suspected substance is available unless the officer is only charging under Sec. 54-505 – Simple Possession of Marijuana and/or Synthetic Cannabinoids in which case officers shall not field test suspected contraband when charging under the municipal ordinance.*

NOPD Chapter 42.16, paragraph 11 further states:

*“Any substance believed to be a Controlled Dangerous Substance and observed in possession of a victim, witness, or at a crime scene, shall be preliminary drug tested by the investigating officer if the required kit is available.”*

NOPD Chapter 42.16, paragraph 12 defines Supervisor's Responsibilities:

*“Usage of preliminary drug test kits shall: (a) Be witnessed by a supervisor, and (b) The supervisor will affix his/her signature to the checklist for each test conducted.”*

SPO Matthew Malveaux, Recruit Gabrielle Lewis, and Det. Marshall Scallan were all cognizant of the white powdery substance found on the coffee table and Recruit Gabrielle Lewis did in fact collect it for testing by NOPD Crime Lab, which later tested positive for cocaine. Upon Det. Marshall Scallan's arrival on the scene and functioning in the capacity as a supervisor to Recruit Gabrielle Lewis and SPO Matthew Malveaux, he should have directed one of his subordinates or a crime scene technician to field test the substance and take further appropriate action in accordance with NOPD Chapter 42.16 based on the results. **Accordingly, CTN 2019-0259-P should have included an analysis of whether SPO Matthew Malveaux, Recruit Gabrielle Lewis, and Det. Marshall Scallan violated NOPD Chapter 42.16: Preliminary Forensic Drug Testing.**

**C. Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source – to wit NOPD Chapter 1.2.4: Search and Seizure**

Officers Matthew Malveaux, Gabrielle Lewis, Det. Marshall Scallan, and Sgt. Jonathan Bulliung all conducted searches of apartment 1201 of the Saratoga Loft without a warrant which is a violation of NOPD policy and the law.

NOPD Chapter 1.2.4: Search and Seizure, paragraphs 6 and 7 state:

*6. 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 to search, search incident to a lawful arrest, and a search conducted under exigent circumstances.*

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<sup>8</sup> Emphasis added by OIPM.

7. Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts it is the officer's responsibility to remain current on the legal aspects of search and seizure laws. When in doubt as to the existence or applicability of an exception to the search warrant requirement, the officer should take the time to obtain a search warrant (refer to Chapter 1.2.4.2 – Search Warrants).<sup>9</sup>

The above stated policy was enacted on May 21, 2021. At the time of issuance of this report, the OIPM was unable to obtain the policy in effect at the time of Investigating Officer Arlen Barnes's investigation.<sup>10</sup>

The Fourth Amendment to the United States Constitution and Article I, § 5 of the Louisiana Constitution protect people against unreasonable searches and seizures. A search made without a warrant issued on probable cause is considered unreasonable unless that search can be justified by one of the narrowly drawn exceptions to the warrant requirement. *State v. Cavalier*, 14-0579, p. 17 (La. App. 4 Cir. 6/19/15), 171 So.3d 1117, 1128. As per La. C.Cr.P. art. 703(D), the state has the burden of proving the admissibility of any evidence seized without a warrant. *State v. Wells*, 08-2262, p. 5 (La. 7/6/10), 45 So.3d 577, 581; *State v. Luzzo*, 214 So.3d 55 (La. App. 2017).

The United States Supreme Court and the Louisiana Supreme Court have repeatedly refused to acknowledge a "murder scene" or "crime scene" exception to the warrant requirement. *Luzzo* at 70, citing *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) and *Fippo v. West Virginia*, 528 U.S. 11, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999).; *State v. Luzzo*, 214 So.3d 55 (La. App. 2017).<sup>11</sup>

In this death investigation, Officers Matthew Malveaux, Gabrielle Lewis, Det. Marshall Scallan, and Sgt. Jonathan Bulliung all conducted searches of apartment 1201 of the Saratoga Loft without a warrant. It is not stated in the investigative reports whether any of these officers obtained consent from the apparent occupants of the apartment (Fahad Kahn and Cassidy Carter) or its owner, Jesse Muse. Pursuant to NOPD Chapter 1.2.4. (Revised Jan. 15, 2019), the failure to document a consent search in writing and the failure to record the search on BWC is a direct violation of paragraphs 22 through 26. If consent was not obtained to conduct the search, Det. Marshall Scallan should have obtained a search warrant for the premises. **Accordingly, CTN 2019-0259-P should have included an analysis on whether the accused officers acted in accordance with NOPD policy as it pertains to searches.**

*D. Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source – to wit NOPD Chapter 46.20: Crime Scene and Disaster Scene Integrity, paragraph 23 (Separation of witnesses)*

The two witnesses of Seth Donaldson's death gave joint statements to the Investigating Officers together, in violation of NOPD policy. NOPD Chapter 46.20, paragraph 23 states:

*Witnesses shall be separated whenever possible, to ensure accurate preservation of their individual accounts and observations. The responding officer shall interview witnesses to gain basic facts to classify the incident, gain probable cause for an arrest, and/or obtain descriptions of wanted subjects. Detailed statements and interviews shall be performed and coordinated by the assigned investigator.*

Further, NOPD Chapter 83.1: Collection and Preservation of Evidence, paragraph 15 states:

*"All commissioned personnel shall be held responsible for basic knowledge of crime scene protection and proper handling of evidence. See Chapter 46.20 – Crime and Disaster Scene Integrity for on scene officer's responsibilities at a crime scene."*

In this case, witnesses Fahad Kahn and Cassidy Carter gave a joint statement to officers Matthew Malveaux and Gabrielle Lewis, prior to Det. Marshall Scallan's arrival on scene. Det. Marshall Scallan then separated Cassidy Carter and Fahad Kahn. As a commissioned officer, SPO Matthew Malveaux should have separated Fahad Kahn and Cassidy Carter to preserve the integrity of their statements unless it was not possible. As

<sup>9</sup> Emphasis added by OIPM.

<sup>10</sup> On September 2, 2021, OIPM contacted PIB at NOPD requesting the policies in effect in 2018.

<sup>11</sup> But see *State v. Brady*, 569 So.2d 110 (La. App. 4 Cir. 1990). "The court in *Brady* distinguished *Mincey* and *Thompson*, where no occupant of the premises called the police, or acted in any manner that demonstrated the occupant's diminished expectation of privacy in the premises. In *Brady*, the defendant, a co-occupant of the premises with the victim, had her neighbor call the police. She admitted the officers into the apartment; disclaimed any culpability; and allowed the officers to conduct an investigation. The court found that the police in *Brady* reasonably believed that defendant wanted them to investigate the murder. Thus, the court ultimately found that the case was not one in which the accused merely acquiesced to the authority of the police, and the limited search conducted was clearly reasonable under the circumstances and within the tacit consent of defendant. The court in *Brady* also contrasted the "immediate and particular search" in that case with the "delayed and extended general" searches in *Mincey* and *Thompson*." *State v. Luzzo*, 214 So.3d 55 (La. App. 2017).



previously stated, it is unclear from the evidence reviewed exactly what time LSP officers arrived to assist with this investigation. If LSP officers were present, it would have been possible to separate Fahad Kahn and Cassidy Carter to obtain their statements. **As such, CTN 2019-0259-P should have included an assessment of whether it was possible for SPO Matthew Malveaux to separate the two witnesses, and if so, whether SPO Matthew Malveaux violated NOPD Chapter 46.20: Crime Scene and Disaster Scene Integrity, paragraph 23.**

*E. Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty – failing to protect the scene and interview potential suspects in accordance with NOPD Chapter 41.33: Death Investigations, paragraph 16 (Suspected Homicides)*

Another key foundational issue in this case is whether the incident was improperly classified as an unclassified death / suicide instead of a homicide / suspected homicide. For the Investigating Officer to determine whether the officers responded accordingly from the onset, one would need to at least discuss whether the scene warranted treatment as a suspected homicide. If so, the NOPD policy that governs this area, NOPD Chapter 41.33, reads as follows:

SUSPECTED HOMICIDES

16. If the initially assigned officer suspects that the death involves a **homicide or other suspicious circumstances surround the cause of death exist, the officer shall take all necessary steps to protect the scene and isolate possible witnesses.**

17. The officer shall notify the ISB – Homicide Section through Communications Services to request that a Homicide investigator respond to the scene for further investigation.

18. The officer shall notify his/her supervisor and request additional officers, units, equipment, or support services as appropriate. The District investigating officer's supervisor shall respond to the scene when notified.

19. The assigned officer or detective investigating a homicide or a death under suspicious circumstances shall request the Coroner through Communications Services and document the request in the incident report (EPR).<sup>12</sup>

Here, the Complainant alleged that witnesses (or possible suspects) Fahad Kahn and Cassidy Carter were allowed to come and go from the scene while possibly removing or tampering with items and were interviewed together instead of separately. The Complainant additionally alleged that Fahad Kahn, upon re-entering the scene, took possession of the deceased's cell phone and later returned it to the Complainant through a mutual associate. **As such, CTN 2019-0259-P should have included an assessment of whether the alleged conduct took place and if the incident was improperly classified, and if so, whether it violated NOPD Chapter 41.33: Death Investigations, paragraph 16.**

*F. Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source – to wit NOPD Chapter 46.20: Crime and Disaster Scene Integrity, paragraphs 3(m) and 18 (Prevent unauthorized access of personnel, the media, or the public.)*

The Complainant alleged that officers Matthew Malveaux and Gabrielle Lewis allowed Fahad Kahn and Cassidy Carter to re-enter the crime scene after they were interviewed at the police station in violation of NOPD policy.

NOPD Chapter 46.20, paragraph 3 states:

*The following describes the functions which the first responding officer should take at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation, the availability of resources, capacity of personnel and totality of each circumstance:*

- (a) **Safety of officer(s)**—Ensure adequate police personnel are present to control the scene. Code 4 (no other units needed) the scene or wait for support/back-up. Ensure no suspects are still in the area.
- (b) Safety of others (render aid if it can be done safely and/or request medical support).
- (c) Identify/apprehend possible suspect(s) on scene and/or broadcast critical identifying information.

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<sup>12</sup> Emphasis added by OIPM.

- (d) **Secure/preserve the scene from tampering or contamination; restrict access and set perimeter(s).**  
Evacuate the area if safety demands.
- (e) Identify hazards or dangerous conditions to responding personnel.
- (f) Identify and isolate victim(s) / witness(es) to preserve credibility / accuracy of information.
- (g) Determine basic facts of incident and classify the crime if possible.
- (h) Protect items of apparent evidentiary value.
- (i) Request required support/resource units – SCIS, SWAT, Canine, Coroner, CIT, etc.
- (j) Notify supervisor and/or request presence.
- (k) Notify/request investigative specialists if required (FIT, Homicide, SVS, DV, etc.).
- (l) Start a chronological log noting critical times and personnel allowed access (can use Major Crime Scene Roster Repo-t - Form #187).
- (m) Prevent unauthorized access of personnel, the media, or the public.
- (n) Conclude scene investigation and processing; release the scene.<sup>13</sup>

NOPD Chapter 46.20, paragraph 18 states:

*Access to the crime scene (interior perimeter) will be strictly limited. Personnel from the Scientific Criminal Investigations Section (SCIS), assigned specialized investigators, EMS personnel rendering first aid and the medical examiner shall be the only personnel allowed in the secondary crime scene area absent specific permission of the principle investigator of the case.*

The Complainant alleged that officers Matthew Malveaux and Gabrielle Lewis allowed Fahad Kahn and Cassidy Carter to re-enter the crime scene after they were interviewed at the police station, during which time Fahad Kahn recorded a video which he sent to the Complainant on October 29, 2018. It appears that the Complainant included a google drive link to this video in her initial complaint to the OIPM and emailed it again to Investigating Officer Arlen Barnes. Additionally, the Complainant alleged that Fahad Kahn, upon re-entering the crime scene, took possession of the deceased's cell phone and later gave it to an associate who returned it to the Complainant.

It is extremely concerning that witnesses (and possible suspects) to the death of Seth Donaldson were allowed to re-enter the scene, and while doing so, were able to record the scene and take possession of the deceased's personal belongings.

Investigating Officer Arlen Barnes did not watch the recorded video or take any action to investigate these allegations. Investigating Officer Arlen Barnes should have interviewed officers Matthew Malveaux and Gabrielle Lewis and questioned them regarding these allegations. Investigating Officer Arlen Barnes could have also asked Det. Marshall Scallan whether he authorized officers Matthew Malveaux and Gabrielle Lewis to allow Fahad Kahn and Cassidy Carter to re-enter the crime scene. **If Det. Marshall Scallan did not authorize their entry, then SPO Matthew Malveaux violated NOPD Chapter 46.20, paragraph 18 by allowing Cassidy Carter and Fahad Kahn to re-enter the scene where Fahad Kahn then took custody of the deceased's phone. As such, CTN 2019-0259-P should have included an assessment of whether the alleged conduct took place, and if so, whether it violated NOPD Chapter 46.20, paragraph 18.**

G. Rule 3: Professional Conduct, Paragraph 1: Professionalism (Det. Marshall Scallan)

Det. Marshall Scallan made comments to the Complainant that were possibly not accurate and were not helpful or professional. According to NOPD Chapter 41.33 pertaining to suspected homicide investigations, it seems that it could have been the duty of the accused officers to classify the incident as a suspected homicide and respond accordingly. Instead, the Complainant alleged that when she questioned Det. Marshall Scallan as to why the incident had not been investigated as homicide, he told her to contact Homicide herself.

The Complainant also alleged that Det. Marshall Scallan told her that the Homicide Department could not investigate the matter until the Coroner's Office completed the autopsy and toxicology reports which could take 6-16 weeks. Investigating Officer Arlen Barnes does question Det. Marshall Scallan about this statement in the investigation (see page 24 of the investigative report for a summary of this line of questioning) but did not include any analysis / findings about the issue.

It is possible that these alleged statements do not align with the NOPD policy or are a mischaracterization of NOPD policy. Either way, if this was indeed said to the Complainant it is not professional or becoming of the

<sup>13</sup> Emphasis added by OIPM.

Department. **As such, an allegation for professionalism could have been investigated in CTN 2019-0259-P.**

## **2. DOES THE INVESTIGATION SUGGEST POLICY / PROCEDURE, OTHER RISK MANAGEMENT OR LIABILITY ISSUES THAT WERE NOT ADEQUATELY ADDRESSED BY THE DEPARTMENT?**

Yes. OIPM has identified the following policy / procedure, risk management issues, and liability issues which are discussed below in further detail.

### A. Recommendation to Revise Major Crime Scene Roster Report (Form #187)

First, the OIPM recommends the NOPD revise Chapter 46.20: Crime and Disaster Scene Integrity, Form #187 - Major Crime Scene Roster Report to coordinate with responsibilities and directives in NOPD Chapter 46.20.

NOPD Chapter 46.20, paragraph 3 states:

*The following describes the functions which the first responding officer should take at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation, the availability of resources, capacity of personnel and totality of each circumstance:*

- (a) **Safety of officer(s)**—Ensure adequate police personnel are present to control the scene. Code 4 (no other units needed) the scene or wait for support/back-up. Ensure no suspects are still in the area.*
- (b) Safety of others (render aid if it can be done safely and/or request medical support).*
- (c) Identify/apprehend possible suspect(s) on scene and/or broadcast critical identifying information.*
- (d) Secure/preserve the scene from tampering or contamination; restrict access and set perimeter(s). Evacuate the area if safety demands.*
- (e) Identify hazards or dangerous conditions to responding personnel.*
- (f) Identify and isolate victim(s) / witness(es) to preserve credibility / accuracy of information.*
- (g) Determine basic facts of incident and classify the crime if possible.*
- (h) Protect items of apparent evidentiary value.*
- (i) Request required support/resource units – SCIS, SWAT, Canine, Coroner, CIT, etc.*
- (j) Notify supervisor and/or request presence.*
- (k) Notify/request investigative specialists if required (FIT, Homicide, SVS, DV, etc.).*
- (l) Start a chronological log noting critical times and personnel allowed access (can use **Major Crime Scene Roster Report - Form #187**).*
- (m) Prevent unauthorized access of personnel, the media, or the public.*
- (n) Conclude scene investigation and processing; release the scene.*

Although NOPD Chapter 46.20, paragraph 3 (l) requires notation of critical times, there are no spaces for such information on Form #187.

Form #187 should be updated to include spaces to note time of entry and exit from scene of all responding officers, EMS, investigators, and civilians. NOPD should consider implementing the Crime Scene Entry Log (**Appendix C-6**) published by the National Forensic Science Technology Center in its 2013 publication: "Crime Scene Investigation: A Guide for Law Enforcement."<sup>14</sup>

### B. Recommendation to Revise NOPD Chapter 46.20 to Provide Additional Guidance

Second, the OIPM recommends the NOPD revise Chapter 46.20 to provide additional guidance on "unauthorized access of personnel, the media, or the public."

The Complainant alleged that officers Matthew Malveaux and Gabrielle Lewis allowed Fahad Kahn to re-enter the crime scene after he was interviewed by Det. Marshall Scallan, during which time Fahad Kahn recorded a video that he subsequently sent to the Complainant and took possession of the deceased's cell phone. A discussion of the confusion over which entity was in charge of collecting the deceased's cell phone and other possessions is included in the next section of this review. Regardless of which entity was in charge of evidence collection, the collection of the deceased's cell phone by a witness to the deceased's death could have been prevented by the officers' better understanding of NOPD Chapter 46.20. A witness to a person's death being

<sup>14</sup> Available at <https://www.nist.gov/system/files/documents/forensics/Crime-Scene-Investigation.pdf>

allowed to collect evidence by law enforcement is antithetical to basic principles of crime scene integrity and is extremely concerning to the OIPM.

NOPD policy should clearly state under what circumstances civilians should be allowed to enter a crime scene and what type of restrictions should be placed on them, such as law enforcement chaperoning, and providing exemplars (hair, blood, shoe, fingerprints, etc.) for elimination purposes.<sup>15</sup>

### C. Recommendation to Revise NOPD Chapter 41.33: Death Investigations

Third, the OIPM recommends the NOPD revise Chapter 41.33: Death Investigations to accurately state contents of *La. R.S. 13:5717 Retention of decedent's personal effects; moving or disturbing the body of a deceased person; prohibitions* and provide additional guidance to officers for dealing with situations where the Coroner's Office acts outside the scope of this law.

The Complainant raises a very important question: how and why was her son's (Seth Donaldson) phone released to a witness of his death (Fahad Kahn) as opposed to his next of kin?

Police Recruit Gabrielle Lewis stated: "there was a passport, wallet and cell phone in the room that belonged to Mr. Donaldson (All collected by the Coroner Investigator)." Det. Marshall Scallan stated: "The Coroner's Office Technicians removed Donaldson and collected his wallet and passport, which were both located on the floor of unit 1201 near the left side of the couch." Regardless of which entity was in charge of collecting evidence, the cell phone of the deceased ultimately ended up in the possession of a witness to the deceased's death and not in the possession of NOPD or the Coroner's Office.

The starting point for this analysis is NOPD Chapter 41:33: Death Investigations.

Under Definitions, NOPD Chapter 41.33 states:

*Coroner's Office—The medical examiner for the State of Louisiana whose role includes (R.S. 13:5717) retention of decedent's personal effects; moving or disturbing the body of a deceased person; prohibitions including: it shall be unlawful for any person without specific authorization from the coroner or his designee, other than law enforcement or medical personnel, to touch, move, or disturb the body of a deceased person or remove any personal effects or disturb the immediate area where the body is or has been found, if the deceased person's death occurred under any circumstances which reasonably suggest that the person's death, either directly or indirectly, occurred as a result of a violation of law or a coroner's case as defined by law. However, the body may be moved if it is necessary for the preservation of the body, or if necessary to protect public safety or welfare.*<sup>16</sup>

Under the section "Searching Dead Bodies," paragraph 7 states:

*The Coroner, Assistant Medical Examiner, or authorized Coroner's Investigator are generally the only persons that should move, handle, or search a body. These Coroner's Office representatives may take property, objects or articles found on the deceased or in the deceased's immediate vicinity that may be necessary for conducting an investigation to determine the identity of the deceased or the cause or manner of death. The Coroner's Office shall inventory the body on scene.*<sup>17</sup>

Louisiana Revised Statute 13:5717 states:

- §5717. *Retention of decedent's personal effects; moving or disturbing the body of a deceased person; prohibitions*
- A. *The coroner shall take charge of the personal effects and property of the deceased at the scene of death. As soon as practicable all of the effects and property shall be turned over to the lawful owner after use in court when needed.*
  - B. *The coroner shall collect any physical property or evidence found on the body which relates to the cause and manner of death or identity of the deceased. The coroner shall request law enforcement officials to collect any physical property or evidence connected with the cause of death or identity of the deceased which is found at the scene but not on the body. If law enforcement officials refuse to gather such evidence when requested by the coroner, the evidence may be collected by the coroner. The evidence or effects shall then be disposed of in accordance with law.*<sup>18</sup>

<sup>15</sup> See D.H. Garrison, Jr., Protecting the Crime Scene, FBI Law Enforcement Bulletin (September 1994), <https://leb.fbi.gov/file-repository/archives/september-1994.pdf/view>

<sup>16</sup> Emphasis added by OIPM.

<sup>17</sup> Emphasis added by OIPM.

<sup>18</sup> Emphasis added by OIPM.

Comparison of NOPD Chapter 41.33 with R.S. 13:5717 illustrates that NOPD Chapter 41.33 is overly simplistic in that it suggests that the Coroner's Office is responsible for collecting all of the decedent's personal effects on the body or the immediate vicinity, but it does not mention that law enforcement is responsible for collecting physical property or evidence connected with the cause of death or identity of the deceased which is found at the scene but not on the body.

Therefore, pursuant to R.S. 13:5717, the Coroner's Office should have directed Det. Marshall Scallan or a crime scene technician to collect Seth Donaldson's phone, passport, and wallet, as they were found in apartment 1201, which was not within the immediate vicinity of his body on a third-floor balcony.

Further, it is unclear from NOPD Chapter 41.33 and R.S. 13:5717 whether the legislature and NOPD policy writers intentionally decided to relieve law enforcement from the responsibility of collecting a decedent's personal belongings other than those pertaining to identity or cause of death. This policy should be explored further by examining best practices in policing and legislative history.

NOPD Chapter 41.33 should be revised to include the entirety of R.S. 13:5717 and provide guidance to officers on how to deal with a situation such as this one, where it appears the Coroner's Office may have exceeded the scope of its legislative authority by collecting a decedent's personal effects that were found outside the immediate vicinity of the body.

#### *D. Recommendation to Revise NOPD Chapter 1.2.4 to Clarify Policy on Processing Scenes*

Fourth, there appears to be a need for the NOPD to create clear policy on how responding officers should process a scene related to obtaining a search warrant when they find suspected drugs on a scene. The OIPM referenced NOPD Chapter 1.2.4 (revised May 15, 2022) in analyzing this issue. The policy speaks to how searches should be conducted but does not address what factors officers should consider when deciding whether a scene warrants a search (and thereby triggers the necessity of obtaining a search warrant). The OIPM strongly recommends updating this policy to reflect the considerations listed above and conduct a Department training on this topic. Specifically, the OIPM would recommend that the NOPD institute a policy requiring a mandatory search of any scene when a fatality is involved.

Additionally, the investigation into the death of Seth Donaldson raises concerns about whether officers are making decisions based on presumptions instead of training when processing crime scenes. Based on the number of items from the scene that were either not collected, tested, or searched, there is an implication that the responding officers made some presumptions about what they thought happened at the scene and processed the scene accordingly, instead of collecting all the evidence and letting the evidence guide their investigation and conclusions. This is a concern that NOPD should consider addressing Department wide.

#### *E. Recommendation to Create Standard Operating Procedure Regarding Cross-Agency Interactions On-Scene*

Finally, the OIPM recommends the NOPD create Standard Operating Procedures or guiding factors to consider when determining whether to process a scene as a suspected homicide and how to handle multiple agencies working in collaboration on the same investigation. Death investigations require close collaboration and coordination among NOPD officers, the Coroner's Office, and Emergency Medical Services. In this case, LSP officers also participated in this investigation; however, there was no documentation or reports by LSP provided to the OIPM and it is unknown whether any reports were provided to NOPD.<sup>19</sup> Further, Det. Marshall Scallan obtained the Coroner's report, but this was not provided to OIPM for review. It is also unclear whether Investigating Officer Arlen Barnes reviewed the Coroner's report. When there are multiple agencies working on an investigation there needs to be a clear understanding of the role and responsibilities of each agency representative. This did not appear to be the case in the investigation of Seth Donaldson's death, and it influenced the way the scene was processed, and whether evidence was collected or not collected.

As noted previously, the investigative report stated that the deceased's personal items were collected by the Coroner's Office officer, yet the Complainant stated that she retrieved her son's (the deceased) phone from an

<sup>19</sup> The Coroner's Autopsy Report and any documents memorializing collection and release of evidence would have been helpful for the OIPM review; however, they were not provided by PIB.

associate of one of the witnesses who was in the room at the time of the incident. These statements obviously do not match up and indicates a need for a clearer chain of command when processing a scene where there are multiple units / responders involved. There should be a clear understanding of who is responsible for processing what aspects of the investigation, controlling the evidence, sequestering witnesses, and securing the scene.

**3. DID THE OIPM HAVE ANY CONCERNS WITH RESPECT TO ANY ALLEGATION IN THE DISCIPLINARY INVESTIGATION?**

Yes, the OIPM disagrees with the investigation findings of “not sustained” for Det. Marshall Scallan and Sgt. Jonathan Bulliung. The investigation presented the following dispositions:

**Det. Marshall Scallan (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation..... **Not Sustained**

**Sgt. Jonathan Bulliung (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: 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..... **Not Sustained**

With respect to both allegations, the Investigating Officer concluded: “The investigator was unable to determine if the decision not to obtain a search warrant for the incident location and a vehicle which belonged to one of the witnesses violated Departmental Rules regarding Neglect of Duty. The investigator could not determine, based on a preponderance of evidence, whether the alleged misconduct occurred.” The OIPM disagrees with the finding and does not agree with the rationale for the finding.

First, as to the rationale for the finding, based on the OIPM’s review of the investigation there appears to be substantial evidence that the Investigating Officer could have and should have obtained and reviewed to reach a more conclusive result in the investigation. Such evidence includes, but is not limited to:

- BWC from officers Matthew Malveaux and Gabrielle Lewis. This footage would have enabled the Investigating Officer to determine the precise arrival times of NOPD and LSP officers and resolve the discrepancies between the Malveaux / Lewis report (*CTN 2019-0259-P, Exhibit F*) which suggested they were the first responding officers, and Det. Marshall Scallan’s report (*CTN 2019-0259-P, Exhibit G*) which suggested that LSP were first responding officers.
- Trip sheets belonging to officers Matthew Malveaux and Gabrielle Lewis.
- Compact Disc containing video of incident, photos, and documents. See *CTN 2019-0259-P, Exhibit G (page 38 or 40, NOPD Evidence Property Worksheet)*.
- Recorded interviews of Fahad Kahn and Cassidy Carter by Det. Marshall Scallan.
- Coroner’s report and other documentation of the Coroner’s Office showing what evidence was collected and its chain of custody. This report could have enabled the Investigating Officer to determine whether NOPD officers or the Coroner’s Office was responsible for the release of Seth Donaldson’s phone to Fahad Kahn.
- Google drive link provided by Complainant which allegedly showed Fahad Kahn recording the crime scene after he was interviewed by Det. Marshall Scallan.

Additionally, during his interviews, the Investigating Officer should have asked Det. Marshall Scallan, Sgt. Jonathan Bulliung, Capt. Nicholas Gernon, Det. Theophilus Kent, and Sgt. (Lt.) Wayne DeLarge about the decision to not obtain a search warrant for apartment 1201. Sgt. Jonathan Bulliung explained no search warrant was obtained because the only suspicious circumstance was the existence of the white powdery substance which was found at the scene. According to Sgt. Jonathan Bulliung, the possible drug substance did not rise to the level of probable cause until the Crime Lab results were obtained confirming the substance was cocaine. However, if Det. Marshall Scallan had followed NOPD Chapter 42.16: Preliminary Forensic Drug Testing policy, the white powdery substance would have been field tested and, if positive, would have provided independent probable cause for a search warrant for additional drugs. The Investigating Officer did not probe Det. Marshall Scallan any further to ascertain his reasoning for failing to obtain a search warrant and, at the very least, search the scene. The Investigating Officer also did not probe him about whether he observed anything else on the scene such as blood, or anything else that would have warranted a search.

Sgt. Jonathan Bulliung was transferred to another department on November 4, 2018, and was not a part of the follow up investigation. Investigating Officer Arlen Barnes did not question Sgt. Jonathan Bulliung as to what steps he took to supervise / advise Det. Marshall Scallan on what steps he should take once the test results came back. As such, it appears that Sgt. Jonathan Bulliung may have been unaware of the test results of the white powdery substance, by his own admission the substance was “suspicious.” Moreover, based on witness statements, the OIPM finds factors that should have alerted Sgt. Jonathan Bulliung and Det. Marshall Scallan that drugs were highly likely to have played a factor in Seth Donaldson’s death and that there was probable cause to obtain a search warrant to search the scene.

Notwithstanding the deficiencies in the investigation, there were sufficient facts that supported probable cause to obtain a search warrant for Fahad Kahn and Cassidy Carter’s phones, apartment 1201, and to collect additional evidence within the apartment for analysis. The sufficient facts that supported probable cause to obtain a search warrant include:

- The blood spatter evidence found in various locations of apartment 1201.
- The blood on Fahad Kahn’s hands and nose and clothing.
- Cassidy Carter providing inconsistent statements to officer Matthew Malveaux and Det. Marshall Scallan about where and when they picked up Seth Donaldson, and their whereabouts that evening,
- The Complainant, Amy Donaldson, made a statement to Det. Marshall Scallan disclosing a possible video of the incident was captured on Fahad Kahn’s phone.
- The video that Det. Marshall Scallan subsequently obtained from Kyle Holt showing Seth Donaldson contemplating his life.
- The statement from witness Stephen James that he heard scuffling and screaming coming from the apartment.
- Fahad Kahn’s own admission that Seth Donaldson punched him.
- Damage to the right side of the couch.

As stated above, Det. Marshall Scallan mentioned during his interview that he noticed the couch was damaged (which could have indicated that a fight / struggle occurred) along with possible drug substances and blood stains, which would warrant a full search before ruling out whether to escalate the matter to a homicide investigation.

There was no discussion (in the audio interview) or in the investigation regarding whether the officers undertook any Fourth Amendment analysis to determine if they had grounds for a search warrant (in plain language – the investigation did not explain or show the involved officers’ work if there was any).

NOPD officers are required to keep apprised of current Fourth Amendment case law according to NOPD Chapter 1.2.4: Search & Seizure, which states:

*Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts it is the officer’s responsibility to remain current on the legal aspects of search and seizure laws. When in doubt as to the existence or applicability of an exception to the search warrant requirement, the officer should take the time to obtain a search warrant (refer to Chapter 1.2.4.2 – Search Warrants)*

This investigation and the underlying investigation are both examples of a failure to stay abreast of current legal aspects of search and seizure law. One ground the Investigating Officer noted as justification to not sustain the allegations was his inability to make a legal or policy determination. This was why it was stated that both allegations to be not sustained because he “could not determine” whether a search warrant should have been issued to search the incident location and vehicle location. First, an investigator’s inability to make a legal or policy determination should not be the determining factor on whether to sustain an allegation. Investigations often rely on legal interpretations of the law and if the NOPD’s position in this investigation is that it is unable to determine when or if a search warrant is required or needed, then this is concerning and a violation of the above policy. Moreover, the investigative report did not include any analysis or discussion regarding the search warrant issue, which would have given insight as to what efforts the Investigating Officer undertook to answer this question during his investigation. Also, this finding does not address the numerous items that were not collected or preserved from the crime scene (listed above as sufficient evidence to support the obtainment of a search warrant).

Additionally, the OIPM will note that Investigating Officer Arlen Barnes used the exact same language in both determinations. Copying and pasting the same language for different allegations involving different officers

does not demonstrate any analysis of the facts / circumstances or help a reviewer to understand how the Investigating Officer reached the final determination.

**Based on the information above and our analysis, OIPM concludes there was sufficient evidence to sustain the allegations against Det. Marshall Scallan and Sgt. Jonathan Bulliung and at the very least, insufficient rationale to justify the “not sustained” determination within the investigation.**

#### **4. SHOULD TRAINING OR OTHER PROGRAMS HAVE BEEN REQUIRED OF THE ACCUSED EMPLOYEE?**

The OIPM disagrees with Investigating Officer Arlen Barnes’s determination in CTN 2019-0259-P that no training should be required. There were several learning opportunities that this investigation uncovered, for example:

- Whether a search warrant should have been obtained for the Airbnb where the incident occurred or the witness’s vehicle;
- What evidence should have been collected by the investigating officers and what evidence should have been collected by the Coroner’s Office;
- Whether the incident should have been initially treated as a suspected homicide;
- Why witnesses were allowed to re-enter the scene (and take possession of the deceased’s belongings).

The lack of clear direction on these topics indicates a need for individual, supervisor and possibly departmental training or policy review.

#### **5. WERE THERE ANY OTHER OIPM CONCERNS WITH THE INVESTIGATION AND IF SO, WHAT ALLEGATION DO THEY PERTAIN TO?**

##### **A. Investigation Lacked Thoroughness**

After reviewing the investigation, the OIPM determined the investigation was not comprehensive or thorough, particularly considering the allegations and the subject matter. Specifically, the OIPM found the investigation to be lacking in the following areas:

- Investigating Officer Arlen Barnes did not cite any of the relevant NOPD policy relating to the investigation. This information would assist a reviewer in determining if the accused officers’ actions complied or failed to comply with NOPD policy.
- Some exhibits are missing or not in order.
- While the emails from the Donaldson family may be included as exhibits in the investigation, none of the specific concerns mentioned in the emails are addressed in the investigative report.
- The investigative report noted that the deceased’s personal items were collected by the officer for the Coroner’s Office, yet the Complainant states that she retrieved her son’s (the deceased) phone from an associate of one of the witnesses who was in the room at the time of the incident. Also, related to the deceased’s personal belongings, the investigative report did not include any detail on whether the involved officers or the Investigating Officer corresponded with Coroner’s Office to confirm the allegations made by the Complainant.
- In addition, Investigating Officer Arlen Barnes did not include any discussion of the accused officer’s correspondence with the Coroner’s Office once they arrived at the crime scene and whether it was in accordance with NOPD policy, specifically NOPD Chapter 41.33, paragraph 19, which states that the assigned officer or detective investigating a homicide or a death under suspicious circumstances shall request the Coroner through Communications Services and document the request in the incident report (EPR). It seems that the central issue here was whether the accused officers suspected this incident to be a homicide or death under suspicious circumstance. Therefore, this issue should have been explored in the investigation and questioning of the accused officers and analyzed in the investigative report to determine if the officers acted in accordance with policy.
- Department’s policy (if any) pertaining to Coroner’s Office findings regarding the cause of death and whether the Coroner’s Office’s findings had any impact on the investigation of Seth Donaldson’s death.
- The investigative report did not contain any analysis on whether a narcotics investigation should have been conducted. Similarly, the investigative report did not contain any analysis on whether the drugs on the table were not enough to warrant probable cause to obtain a search warrant, yet Investigating Officer



Arlen Barnes's inability to make a determination on this issue was his justification for not sustaining the allegations against Det. Marshall Scallan and Sgt. Jonathan Bulliung.

- The investigative report did not mention the contradictions that were provided to the Donaldson family regarding the availability of video and the NOPD's refusal to show the video to the Donaldson family.

### B. Referrals to Additional Agencies

While the OIPM appreciates that Investigating Officer Arlen Barnes referred some of the allegations raised by the Complainant outside the scope of his jurisdiction to the appropriate investigative entities, the OIPM notes that the Complainant made other allegations outside of the PIB jurisdiction that were not referred for investigation by the appropriate agencies. On May 22, 2019, Investigating Officer Arlen Barnes forwarded Amy Donaldson's complaint to Tarrence Barrett of the OIG's office as the complaint alleged the City of New Orleans Safety and Permits may have issued a permit to a structure in violation of the building code. Tarrence Barrett responded "we will review and evaluate" the complaint. **CTN 2019-0259-P, Exhibit V**. It is unknown whether the OIG did review and evaluate this allegation. The allegations against LSP could have been referred to Internal Affairs, 7919 Independence Blvd., A-20, Baton Rouge, LA 70806, (225) 925-6189, but there is no information included in the investigation to suggest that such referrals were completed.

### C. Interviews were Perfunctory and Opportunities were Missed

Investigating Officer Arlen Barnes's interviews were perfunctory and lacked probative questions, as discussed further below.

First, Investigating Officer Arlen Barnes seemed to not record interviews in their entirety. For example, the beginning of the phone call with the Complainant, Amy Donaldson, was cut off from the rest of the recording.

Second, relevant issues were not covered in the interviews. Investigating Officer Arlen Barnes failed to ask Det. Marshall Scallan, Sgt. Jonathan Bulliung, Capt. Nicholas Gernon, Det. Theophilus Kent and Sgt. (Lt.) Wayne DeLarge about the decision to not obtain a search warrant for apartment 1201. Sgt. Jonathan Bulliung explained no search warrant was obtained because the only suspicious circumstance was the fact that a white powdery substance was found, which according to Sgt. Jonathan Bulliung did not rise to the level of probable cause until the Crime Lab results confirming the substance was cocaine were obtained. However, there were other facts that supported probable cause to obtain a search warrant for apartment 1201, and to collect additional evidence for analysis such as blood spatter evidence found in various locations of apartment 1201, blood on Fahad Kahn's hands and nose and clothing, and Fahad Kahn's phone.<sup>20</sup>

The interview with the Complainant was very short. Most of the questions were confirming her demographics and contact information. In contrast to the interviews with NOPD employees, Investigating Officer Arlen Barnes asked the Complainant only a couple substantive questions that were open-ended, such as: "Is there anything aside from what you provided to OIPM that could assist me with the investigation?"

He stated that he had at least 25 pages of information that Amy Donaldson forwarded to OIPM. He could have used this opportunity to ask specific questions that followed up on the written complaint and documents provided, but he did not do so.

Third, applicable policies and laws were not covered in the interviews. The only policy referenced was the Officer Bill of Rights during the interview of Det. Marshall Scallan and Sgt. Jonathan Bulliung. Investigating Officer Arlen Barnes could have covered: NOPD Chapter 46.20: Crime and Disaster Scene Integrity, paragraph 23 (Separation of witnesses); NOPD Chapter 42.16: Preliminary Forensic Drug Testing; NOPD Chapter 1.2.4: Search and Seizure; Chapter 46.20: Crime Scene and Disaster Scene Integrity, paragraphs 3(m) and 18 (Prevent unauthorized access of personnel, the media or the public); NOPD Chapter 41.33: Death Investigations; and La. R.S. 13:5717 (Retention of decedent's personal effects); however, Investigating Officer Arlen Barnes did not mention any of these relevant policies or laws which should have been under investigation and therefore considered.

Fourth, the Investigating Officer's demeanor towards civilian witnesses compared to NOPD employees changed. The Investigating Officer's demeanor was different to the Complainant than towards the NOPD employees during the interview. The Investigating Officer only asked the Complainant a few open-ended

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<sup>20</sup> See page 9, *infra*.

questions that did not seem designed to elicit information or clarify points made in the written materials the Complainant provided. When interviewing the NOPD employees, the Investigating Officer proceeded his questions with significant factual recitation, followed by specific questions, that were at times leading in nature. When reviewing the interviews, it did not appear the Investigating Officer was trying to question the employees but instead trying to confirm information he already concluded mattered to the investigation.

Fifth, Investigating Officer Arlen Barnes appeared to rationalize the NOPD employees' behavior. In the Investigating Officer's interview with Sgt. Jonathan Bulliung, the Investigating Officer rationalized the failure to collect Seth Donaldson's phone as a miscommunication between the Coroner's Office and NOPD investigators. This type of minimalization of failure to execute NOPD policy is inappropriate in an investigation and is an admission that NOPD policy was not followed. This statement should have been used to demonstrate that NOPD policy was not followed which is why the allegation should be sustained – not as a justification to not sustain the allegation.

Sixth, Investigating Officer Arlen Barnes did not accurately represent all recorded statements in his summary within the investigation. The summary of Capt. Nicholas Gernon, Amy Donaldson, and Sgt. Jonathan Bulliung's interviews were accurate. The summary of Det. Marshall Scallan's interview was mostly accurate and representative of audio recording however, Investigating Officer Arlen Barnes did not include follow up questions and answers regarding Seth Donaldson's phone such as the fact that the phone somehow ended up in custody of Fahad Kahn.

Seventh, the Investigating Officer did not ask logical follow up questions in the interviews. Investigating Officer Arlen Barnes's tone of voice and the fact that he asked broad questions about various topics but did not ask more specific questions based on Det. Marshall Scallan's answers suggested that he had written questions beforehand and did not ask any logical follow up questions. Det. Marshall Scallan made many conclusions regarding the investigation based on his interviews of the male and female witnesses (Cassidy Carter and Fahad Kahn), but this is somewhat inconsistent with Investigating Officer Arlen Barnes's notation elsewhere in the report that Fahad Kahn was not interviewed after being advised of his Miranda Rights. Follow up questions regarding how Amy Donaldson began acting erratically and how her emails were combative could have also been useful in explaining Investigating Officer Arlen Barnes's ultimate determination as to why he concluded Amy Donaldson was not credible.

#### *D. Failed to Consider Additional Allegations*

Finally, Investigating Officer Arlen Barnes failed to consider additional allegations raised during the recorded interviews. The Investigating Officer asked the Complainant if there was "any other information I need to go forward." The Complainant stated she did not know this until she saw Katie Moore's investigative interview that she did not include in her complaint "the names of two Homicide detectives that came and left and left Marshall Scallan holding the bag not knowing what to do." The Homicide detectives that came to the crime scene were Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, and Det. Brett Mathes.

NOPD Chapter 52.1.1, paragraph 15 states: "Any Departmental member who observes or becomes aware of any act of possible misconduct by another employee shall report the incident in accordance with this Chapter. Failure to report or document an act of misconduct or criminal behavior shall be grounds for discipline up to and including termination." Acts of possible misconduct by another employee of **equal or lesser rank**, shall be reported the to any Departmental supervisor or directly to PIB.<sup>21</sup> Any act of possible misconduct by another employee of **greater rank**, he / she shall report this incident directly to PIB prior to the end of his / her tour of duty.<sup>22</sup>

Investigating Officer Arlen Barnes did not follow NOPD Chapter 52.1.1 in that he did not document or report these additional allegations against Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, and Det. Brett Mathes. Although the Complainant did not specifically articulate the allegations against these detectives, she made it clear that she wanted them to add them to her complaint.

## **6. DOES THE INVESTIGATION SUGGEST ANY OTHER POTENTIAL CONSTITUTIONAL OR LEGAL ISSUES NOT ADEQUATELY ADDRESSED BY THIS DEPARTMENT?**

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<sup>21</sup> NOPD Chapter 52.1.1, paragraph 16.

<sup>22</sup> NOPD Chapter 52.1.1, paragraph 18.

No. If the officers had searched the Airbnb apartment where the incident occurred or Fahad Kahn's vehicle without a warrant (or a legal justification for a warrantless search) there may have been a Fourth Amendment violation, but this did not occur.

**CONCLUSION / OIPM RECOMMENDATIONS ON FINDINGS – CTN 2019-0259-P (Initial PIB Investigation)**

Accordingly, the OIPM makes the following assessments regarding the findings in the reviewed investigations:

**Det. Marshall Scallan (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) Failing to thoroughly search for, collect, preserve, and identify evidence in an arrest or investigative situation..... **Sustained**

*The OIPM disagrees with the finding of "not sustained" and would have sustained the accused officer. Based on the nature and scene of the incident the OIPM finds that Det. Marshall Scallan should have obtained a search warrant to search the apartment where the incident in question occurred which is why the OIPM recommends this allegation be sustained. This would have helped to identify evidence that could have possibly aided in the investigation of Seth Donaldson's death. Though Investigating Officer Arlen Barnes failed to detail what roles / responsibilities this accused employee had in evidence collection (if any), OIPM's position is that evidence was not collected. Based on the investigation, though it's not clearly stated, Det. Scallan was in a position to complete this task. Additionally, the OIPM finds that Investigating Officer Arlen Barnes's investigation demonstrated beyond a preponderance of evidence that Det. Marshall Scallan had sufficient evidence establishing probable cause for a search warrant of apartment 1201 and Fahad Kahn and Cassidy Carter's phones. Accordingly, Det. Marshall Scallan neglected his duties by not obtaining and executing said warrant. Therefore, the OIPM finds that the allegation against Det. Marshall Scallan should be sustained.*

**Sgt. Jonathan Bulliung (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: 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..... **Sustained**

*The OIPM disagrees with the finding of "not sustained" and would have sustained the accused officer. As Sgt. Jonathan Bulliung was Det. Marshall Scallan's supervisor and responsible for the scene on the date of the incident, it was his duty to inquire into and substantiate Det. Marshall Scallan's decision not to obtain a search warrant. Even though he was transferred out of that department a few days after the incident (on November 4, 2018), it was his responsibility to give Det. Marshall Scallan instructions on whether he should pursue a search warrant if the test results for the white powdery substance were positive for cocaine. Because the Investigating Officer Arlen Barnes did not pursue this information, it is unclear whether Sgt. Jonathan Bulliung had any such conversations with Det. Marshall Scallan. Notwithstanding the pending test results, the OIPM finds that there was enough suspicion raised from the white powder substance that was observed in plain view at the scene, and the confirmed drug use by witness statements and the toxicology reports, that Sgt. Jonathan Bulliung should have ensured that Det. Marshall Scallan pursued a search warrant and conducted a search of the scene of the incident. Additionally, the OIPM finds that Investigating Officer Arlen Barnes's investigation demonstrated beyond a preponderance of evidence that Sgt. Jonathan Bulliung was aware of the facts known to Det. Marshall Scallan which established probable cause for a search warrant of apartment 1201 and Fahad Kahn and Cassidy Carter's phones. Accordingly, Sgt. Jonathan Bulliung neglected his supervisory duties by not instructing Det. Marshall Scallan to obtain a search warrant. Therefore, the OIPM finds that the allegation against Sgt. Jonathan Bulliung should be sustained.*

## OIPM ANALYSIS – CTN 2019-0708-P (Second PIB Investigation)

The OIPM agrees that the allegations regarding the Coroner's Office and the building code are beyond the purview of this review but will discuss them below if the action of the Coroner's Office are related to the investigations being reviewed. Similarly, the OIPM is unable to review the investigatory actions taken by the Office of the Inspector General (OIG) but may reference investigatory decisions if they are relevant.

### **1. ARE THERE DISCIPLINARY CHARGES NOT INCLUDED IN THE PIB INVESTIGATION WHICH OIPM ASSERTS COULD HAVE BEEN BROUGHT?**

Yes. Sgt. Arlen Barnes should have been investigated for violating the following provisions of NOPD Chapter 52.1.2: Misconduct Complaint Investigator Responsibilities:

- Conducting a complete investigation that thoroughly exhausts all leads under NOPD Chapter 52.1.2, paragraph 2 (a).
- Collecting evidence and property when applicable and maintaining chain of custody records under NOPD Chapter 52.1.2, paragraph 2 (d).
- Reach a conclusion supported by the preponderance of the evidence and prepare a written recommendation under NOPD Chapter 52.1.2, paragraph 2 (g).
- Submit a complete, coherent investigative report to his / her immediate supervisor by the investigator's assigned due date under NOPD Chapter 52.1.2, paragraph 2 (k).

The conclusions and recommendations of the OIPM are limited in this case due to OIPM's limited access to relevant materials. Nine officers are subjects of this investigation. However, only two interviews were conducted: Det. Theophilus Kent (**CTN 2019-0708-P, Exhibit W**) and his supervisor, Sgt. Daniel McMullen (**CTN 2019-0708-P, Exhibit AA**). OIPM was unable to review the recorded interviews of these officers. Similarly, OIPM was unable to review the audio-recorded statement of Amy Donaldson, who was interviewed by Lt. Denise Thomas on December 5, 2019 (**CTN 2019-0708-P, Exhibit E**).

Further, Lt. Denise Thomas stated that her audio recorder was not working for the first several minutes of Amy Donaldson's interview and thus did not capture her complaints against Capt. Nicholas Gernon and the Homicide personnel listed. Lt. Denise Thomas documented the complaints against the employees as per her memory.

Additionally, upon reviewing the exhibits contained in the investigation (specifically the **NOPD incident report J-34869-18, CTN 2019-0708-P, Exhibit T**), the OIPM finds that it would have been beneficial to list all of the officers that responded to the scene and address their roles / responsibilities to better analyze the allegations contained in the PIB investigation and whether any additional allegations should have been raised.

### **2. DOES THE INVESTIGATION SUGGEST POLICY / PROCEDURE, OTHER RISK MANAGEMENT OR LIABILITY ISSUES THAT WERE NOT ADEQUATELY ADDRESSED BY THE DEPARTMENT?**

Yes. The complaint submitted by the OIPM to PIB (**CTN 2019-0708-P, Exhibit D**) does not allege complaints against Lt. Denise Thomas. It appears that PIB added Lt. Denise Thomas as a subject because a complaint was alleged against Sgt. Arlen Barnes (the PIB Investigating Officer for CTN 2019-0259-P) and she was his supervisor who approved his report.

According to page 14 of the investigative report, this supplemental investigation was initiated and authored by Lt. Denise Thomas, who was also named in the allegations of the complaint. Lt. Denise Thomas was the PIB officer who initiated this investigation and interviewed the Complainant Amy Donaldson, which was supplemental to CTN 2019-0259, conducted by Sgt. Arlen Barnes. **Lt. Denise Thomas's multiple roles in this investigation is a conflict of interest.** NOPD Chapter 52.1.1: Misconduct Complaint Intake and Investigation, paragraph 65 states: "The investigation shall be assigned to a supervisor of at least equal or higher rank than the accused. The investigator shall not be a member who was involved in the incident as a witness or alleged participant." Although Lt. Denise Thomas was not the assigned investigator to this case, she performed a significant investigative function in interviewing the Complainant. This should not have occurred.<sup>23</sup> The OIPM flags this as a conflict of interest, and something the Department should address and prohibit.

<sup>23</sup> See NOPD Chapter 52.1.1, paragraph 75 which provides: "The supervisor who has been assigned to conduct a complaint investigation

The complaint, however, was reviewed by the OIG (pursuant to the MOU between NOPD and the OIG) due to allegations the Complainant raised regarding this investigation citing Deputy Superintendent Arlinda Westbrook, Capt. Sabrina Richardson, and NOPD Superintendent of Police Michael S. Harrison. Although the OIG report does not go into the particulars of the allegations raised by the accused officers, it does appear that they performed an independent review of the investigation cited as CTN 2019-0708-P to ensure that the investigation was handled properly.

**3. DID THE OIPM HAVE ANY CONCERNS WITH RESPECT TO ANY ALLEGATION IN THE DISCIPLINARY INVESTIGATION?**

**A. Sgt. Arlen Barnes Allegation**

Under Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (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. Here, Sgt. Arlen Barnes's investigation was allegedly incomplete and faulty. He allegedly failed to address all items contained in the OIPM correspondence regarding the investigation into Seth Donaldson's death.

Investigating Officer Ceasar Ruffin issued a finding of "unfounded" regarding the allegation of Neglect of Duty (for failing to address all the allegations listed in the initial complaint) against the Investigating Officer of CTN 2019-0259-P, Sgt. Arlen Barnes, and the OIPM disagrees with this determination.

Investigating Officer Ceasar Ruffin's reason for this finding was that the investigation was deemed as completed by the reviewing authorities (who are also listed as accused employees in CTN 2019-0708-P). The OIPM finds that Investigating Officer Ceasar Ruffin should have conducted his own independent review of Sgt. Arlen Barnes's investigation and discussed whether Sgt. Arlen Barnes failed to address the alleged misconduct detailed in the Complainant's referral. Instead, Investigating Officer Ceasar Ruffin did not mention the Complainant's referral in his analysis on whether to sustain the neglect of duty allegation. It appears that Investigating Officer Ceasar Ruffin's findings were limited to only whether the investigation was "completed," which indicates a lack of a substantive review.

Additionally, the only evidence that Investigating Officer Ceasar Ruffin addressed in his investigation was the white powdery substance (which was collected by Police Recruit Gabrielle Lewis). However, there was no discussion or analysis of the numerous other items the Complainant alleged were not collected from the crime scene. There was no discussion or analysis as to whether these additional items were deemed relevant or irrelevant to the investigation. As such, the OIPM is unable to determine whether the employees responsible for collecting such evidence fulfilled or neglected their responsibilities. However, page 2 of NOPD Incident Report # J 34869-18 (**CTN 2019-0708-P, Exhibit T**) only lists a white powdery substance under items that were confiscated / seized from the scene. Therefore, the OIPM can assume that no other items were collected from the scene or tested.

Investigating Officer Ceasar Ruffin employed the logic that an officer did their job if their supervisor approved their report. The OIPM disagrees. As discussed in Case Review No. 2019-0259, Sgt. Arlen Barnes's investigation was deficient and OIPM disagrees with Sgt. Arlen Barnes's stated conclusions with regard to the allegations against Det. Marshall Scallan and Sgt. Jonathan Bulliung.

**Det. Marshall Scallan (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) ..... **Not Sustained**

**Sgt. Jonathan Bulliung (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (b) ..... **Not Sustained**

With respect to both allegations, Sgt. Arlen Barnes concluded: "The investigator was unable to determine if the decision not to obtain a search warrant for the incident location and a vehicle which belonged to one of the witnesses violated Departmental Rules regarding Neglect of Duty. The investigator could not determine, based on a preponderance of evidence, whether the alleged misconduct occurred."

There was substantial evidence that Sgt. Arlen Barnes could have obtained and reviewed that may have enabled him to reach more conclusive results in the investigation, but he chose not to do so.<sup>24</sup> Such evidence includes, but is not limited to:

- BWC of officers Matthew Malveaux and Gabrielle Lewis—this may have enabled him to determine the precise arrival times of NOPD and LSP officers and resolve the discrepancies between the Matthew Malveaux / Gabrielle Lewis report (**CTN 2019-0259-P, Exhibit F**) which suggested they were the first responding officers, and Det. Marshall Scallan's report (**CTN 2019-0259-P, Exhibit G**) which suggested that LSP were first responding officers.
- Trip sheets of officers Matthew Malveaux and Gabrielle Lewis.
- Compact Disc containing video of incident, photos, and documents. See **CTN 2019-0259-P, Exhibit G (page 38 or 40, NOPD Evidence Property Worksheet)**.
- Recorded interviews of Fahad Kahn and Cassidy Carter by Det. Marshall Scallan.
- Coroner's report and other documentation of the Coroner's Office showing what evidence was collected and its chain of custody. This could have enabled Sgt. Arlen Barnes to determine whether NOPD officers or the Coroner's Office were responsible for the release of Seth Donaldson's phone to Fahad Kahn.
- Google drive link provided by Complainant which allegedly showed Fahad Kahn recording the crime scene after he was interviewed by Det. Marshall Scallan.

Additionally, during his interviews, Sgt. Arlen Barnes should have asked Det. Marshall Scallan, Sgt. Jonathan Bulliung, Capt. Nicholas Gernon, Det. Theophilus Kent and Sgt. (Lt.) Wayne DeLarge about the decision to not obtain a search warrant for apartment 1201. Sgt. Jonathan Bulliung explained no search warrant was obtained because the only suspicious circumstance was the fact that a white powdery substance was found, which according to Sgt. Jonathan Bulliung did not rise to the level of probable cause until the Crime Lab results confirming the substance was cocaine were obtained. Notwithstanding the deficiencies in Sgt. Arlen Barnes's investigation there were sufficient facts that supported probable cause to obtain a search warrant for Fahad Kahn and Cassidy Carter's phones, apartment 1201, and to collect additional evidence within the apartment for analysis such as blood spatter evidence found in various locations of apartment 1201, and blood on Fahad Kahn's hands and nose and clothing. Facts supporting probable cause include: (1) Cassidy Carter providing inconsistent statements to SPO Matthew Malveaux and Det. Marshall Scallan about where and when they picked up Seth Donaldson, and their whereabouts that evening, (2) Amy Donaldson's statement to Det. Marshall Scallan that a possible video of the incident was captured on Fahad Kahn's phone, (3) The video that Det. Marshall Scallan subsequently obtained from Kyle Holt showing Seth Donaldson contemplating his life, (4) the statement from witness Stephen James that he heard scuffling and screaming coming from the apartment, (5) Fahad Kahn's own admission that Seth Donaldson punched him, and (6) damage to the right side of the couch. Moreover, if Det. Marshall Scallan had followed NOPD Chapter 42.16: Preliminary Forensic Drug Testing, the white powdery substance would have been field tested and if positive would have provided independent probable cause for a search warrant for additional drugs.

**OIPM thus concludes that there was sufficient evidence to sustain the allegations against Det. Marshall Scallan and Sgt. Jonathan Bulliung. Accordingly, Sgt. Arlen Barnes did commit the offense of neglect of duty, and OIPM recommends that the allegation be changed to "sustained."**

#### **B. Capt. Nicholas Gernon Allegation**

In CTN 2019-0708-P, Capt. Nicholas Gernon was accused of allegedly failing on his promise to give the incident the investigation it deserved and was accused of violating the NOPD policy on professionalism.

Investigating Officer Ceasar Ruffin's report stated:

*Captain Nicholas Gernon's was interviewed by Investigator Barnes in PIB Case #2019-0259-P. He acknowledged meeting with the complainant in January 25, 2019. The investigation revealed a second*

<sup>24</sup> On June 27, 2021, subsequent to the completion of Investigator Barnes's report on August 22, 2019, NOPD Chapter 52.1.1: Misconduct Complaint Intake and Investigation was amended to require additional investigative protocols including paragraph 79, which states: "The investigator shall search for, and obtain copies of, relevant video evidence, including body-worn camera footage, mobile-video unit footage, surveillance video of the incident, the accused, witnesses, or other relevant recordings (such as video evidence of the accused, the complainant, or involved witnesses). Copies of the video shall be included as exhibits and labeled with the PIB Complaint Tracking Number. If the investigator is unable to find video evidence, he or she shall provide an explanation for the unavailability of evidence, such as 'Officer's body worn camera not activated'."

review was conducted by the Investigation and Support Bureau's Homicide Section following the classification of the death as a suicide by the Coroner's Office. Therefore, the investigator concluded Captain Nicholas Gernon did not engage in misconduct.<sup>25</sup>

The Sgt. Arlen Barnes found this allegation to be unfounded, explaining: "The investigator determined based by a preponderance of evidence that the alleged misconduct did not occur. The investigation into Seth Donaldson's death was forwarded to the Homicide Unit for review. The Homicide Unit prepared a supplemental report and forwarded it along with the case file to the District Attorney's Office for a final determination to prosecute."

Upon reviewing Investigating Officer Ceasar Ruffin's investigation, the OIPM believes Investigating Officer Ceasar Ruffin violated NOPD Chapter 52.1.2 by not interviewing and digitally recording a statement from Capt. Nicholas Gernon. Although Capt. Nicholas Gernon was interviewed by Sgt. Arlen Barnes in CTN 2019-0259-P it was only as a witness, rather than as an accused officer. The scope of Sgt. Arlen Barnes's interview with Capt. Nicholas Gernon was quite limited.<sup>26</sup>

Further, Investigating Officer Ceasar Ruffin appears to have assumed that the supplemental report by the Homicide Section resulted from action taken by Capt. Nicholas Gernon. Although this is not an unreasonable assumption, the OIPM does not see direct evidence of that conclusion. Sgt. Arlen Barnes did not ask Capt. Nicholas Gernon about what if any actions he took after meeting with the Donaldsons. When Capt. Nicholas Gernon was given the opportunity to add anything to his statement, he said: "Only that I believe that Detective Scallan did more in this case than would occur in most suicides. But unfortunately at the other day, it's hard for the family to accept that. So I think that that's why they were so upset about his investigation."

Further, Investigating Officer Ceasar Ruffin should have reviewed further the portions of CTN 2019-0259-P pertaining to Capt. Nicholas Gernon as they provide greater context of the nature of the complaint against him.

The Complainant's March 26, 2019, complaint to the OIPM (**CTN 2019-0259-P, Exhibit E**) mentions Capt. Nicholas Gernon two times:

- (1) *Jan 25 Dr Donaldson and I met with Commander Nicholas Gernon of 8th District. He said he knew nothing of this case. He spent 3 hours with us and appeared to recognize the many fractures in the investigation. We left under the impression that he would be "hands on involved" in an actual investigation of this case. We expressed our exasperating disappointment and frustration with Detective Scallan and expressed our deep lack of confidence. We expected to hear from Commander Gernon and just a week later he emailed to say that he was going to let Detective Scallan finish his secondary report (which at this point 3 months had passed). We never heard from again.*
- (2) *I hired David Shelton of Advanced Digital Investigations in Greensboro NC who found that Seth's phone had been used to make calls and to log into social media since his death and Fahad or someone else had deleted the majority of the contents of the phone. February 5, Shelton wrote Detective Scallan and Commander Gernon requesting they request FBI help to get into the phone since we had already paid \$800 to get this far and that it would be another \$1500 to do what the FBI could do. Detective Gernon did not seem aware of this request when, in early March, he stated Scallan was finishing up the report and checking Seth's phone "one more time." We reminded him that the phone records are not complete since Kahn deleted so much of the contents and reminded him of the FBI request from Shelton. Gernon stated we should mail the phone to NOPD because they could do everything the FBI could do. We refused to do that since for 4 months, at that time, Scallan and Seton stated they did not have the capability! Is this incompetence or actual attempts to stymie the investigation-which is it? because it's definitely one or the other.*

**OIPM concludes that the allegation against Capt. Nicholas Gernon should have been investigated as a Rule 4 violation for not performing supervisory functions related to Det. Marshall Scallan.** Investigating Officer Ceasar Ruffin should have interviewed Capt. Nicholas Gernon as an accused officer and specifically asked him about how long he met with the Donaldsons, what did they specifically complain about during this meeting, what actions he took as Det. Marshall Scallan's supervisor after this meeting, and what communications did he and Det. Marshall Scallan have with the Donaldsons regarding Seth Donaldson's phone. Additionally, Investigating Officer Ceasar Ruffin should have sought out evidence of Capt. Nicholas Gernon's meeting with the Donaldsons such as BWC or audio recordings. In the absence of critical evidence— Capt. Nicholas Gernon's interview as an accused officer, the Complainant's audio recorded statement, the Homicide section's supplemental report regarding Seth Donaldson's death, and a recording of Capt. Nicholas Gernon's meeting with

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<sup>25</sup> CTN 2019-0708-P, pages 10-11.

<sup>26</sup> CTN 2019-0259-P, Exhibit 1: Transcript of Interview with Commander Nicholas Gernon.

the Donaldsons—the OIPM recommends that the disposition of this allegation be changed from “unfounded” to “not sustained.”

C. Lt. Denise Thomas Allegation

In CTN 2019-0708-P, Lt. Denise Thomas allegedly failed to properly supervise Sgt. Arlen Barnes’s investigation complaint.

Investigating Officer Ceasar Ruffin determined based by a preponderance of evidence that the alleged misconduct did not occur. Lt. Denise Thomas was a part of the reviewing chain of Sgt. Arlen Barnes’s Administrative Investigation documented under CTN 2019-0259-P. The commander of the Bureaus Capt. Sabrina Richardson and Bureau Chief Arlinda Westbrook, who is also the Superintendent’s designee approved Investigator for Sgt. Arlen Barnes’s Administrative Investigation, acknowledged the investigation was complete.

Investigating Officer Ceasar Ruffin’s conclusion here is based on the logic that a supervisor fulfills their duty of properly supervising a subordinate when they sign off on a report.

NOPD Chapter 82.1 is entitled “Report Preparation.” Paragraph 19 states:

*Supervisors shall review reports for sufficiency, content, and accuracy. If a correction is necessary, the reviewing supervisor shall return the report to the reporting member for correction as soon as practicable. It shall be the responsibility of the originating member to ensure that any report returned for correction is processed in a timely manner.*

OIPM asserts that this rule is vague and non-specific. The policy should be more detailed and define what measure should be taken to ensure sufficiency, content, and accuracy. However, a supervisor’s review for sufficiency in this context should include ensuring that investigator responsibilities defined by NOPD Chapter 52.1.2, paragraph 2 are satisfied such as collecting evidence and property, reaching conclusions supported by the preponderance of evidence, and submitting a complete and coherent investigative report. As discussed below, Sgt. Arlen Barnes violated NOPD Chapter 52.1.2. and did not perform many of these duties. **By signing off on Sgt. Arlen Barnes’s deficient investigation, Lt. Denise Thomas did not fulfill her supervisory duty to ensure the sufficiency of the investigation in this regard. Thus, the OIPM recommends that the disposition of this allegation be changed from “unfounded” to “unable to determine.”**

D. Sgt. (Lt.) Wayne DeLarge, Det. Patrick Guidry, Det. Brett Mathes Allegations

These officers were accused of failing to perform required certain duties and responsibilities under Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (a). Sgt. (Lt.) Wayne DeLarge is also accused of failing to supervise a proper on-scene investigation.

Investigating Officer Ceasar Ruffin’s report stated: “Wayne DeLarge, Patrick Guidry, and Brett Mathes were all assigned to the Homicide Unit. The aforementioned employees were on scene in a support capacity.”

Per NOPD Chapter 46.20: Crime and Disaster Scene Integrity, a Major Crime Scene consists of all deaths (homicides, suicides and unclassified) except for “natural causes.” First Responder Considerations include notifying / requesting investigative specialists if required, such as Homicide. Based on the aforementioned information, the investigator concluded the Homicide detectives did not engage in misconduct.

**The focus of the investigation should have been whether the Homicide detectives made the appropriate decision to leave the investigation with Det. Marshall Scallan rather than assuming it as an investigation for the Homicide Unit.** Investigating Officer Ceasar Ruffin should have interviewed the accused officers and Det. Marshall Scallan regarding the conversations that occurred among them on scene and what factors were ultimately decisive in making the decision of who should investigate this death. He also should have sought out evidence including officers’ BWC. **In the absence of critical evidence, the OIPM recommends that the disposition of these allegations be changed from “unfounded” to “not sustained.”**

E. Det. Theophilus Kent Allegation

Det. Theophilus Kent allegedly did not contact the Donaldson family on a biweekly basis to respond to action points. Det. Theophilus Kent also did not contact a witness, Stephen James, or two other witnesses’ attorneys in violation of Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty. Investigating Officer Ceasar Ruffin



determined based by a preponderance of evidence that the alleged misconduct did not occur. On March 4, 2020, Lieutenant Precious Banks assisted Investigating Officer Ceasar Ruffin by obtaining an audio recorded statement of Det. Theophilus Kent. PIB did not provide the OIPM with this audio-recording for review.

NOPD Chapter 52.1.2, Paragraph 2 specifies an investigator's responsibilities for a Formal Disciplinary Investigation which includes: conducting a complete investigation that thoroughly exhausts all leads, collecting evidence and property when applicable, and interviewing and digitally recording the statements of the complainant, any principal, and every known witness, both for an against the accused employee.

According to Det. Theophilus Kent, he became involved about 4-5 months after the original incident when he was tasked to review it. Det. Theophilus Kent spoke to the Complainant only a few times and she provided him with the names and contact information of two witnesses. He claims he utilized the information the Complainant provided. He was successful speaking with one person and unsuccessful with speaking with the other person. Det. Theophilus Kent was eventually instructed by his supervisor, Sgt. Daniel McMullen, to cease all contact with the Complainant in order to protect the confidentiality of the investigation. Det. Theophilus Kent stated that his completed investigation was forwarded to the District Attorney's Office for review.

Det. Theophilus Kent's investigative report is evidence of the misconduct allegations against him due to Det. Theophilus Kent not fully exhausting all leads at his disposal. Det. Theophilus Kent only contacted the Complainant a limited amount of times, did not contact a witness, Stephen James, and failed to contact one of the witnesses that the Complainant informed him of. Investigating Officer Ceasar Ruffin should have obtained Det. Theophilus Kent's report, and any additional evidence associated with it such as BWC or audio recorded statements of the two additional witnesses. Investigating Officer Ceasar Ruffin should have compared this evidence to Det. Theophilus Kent's interview and contacted the two witnesses to resolve any inconsistency.

Additionally, Investigating Officer Ceasar Ruffin should have asked the Complainant to elaborate on her allegation against Det. Theophilus Kent. PIB did not provide the OIPM with the recorded statement of the Complainant. **In the absence of critical evidence, the OIPM recommends that the disposition of this allegation be changed from "unfounded" to "not sustained."**

#### **4. SHOULD TRAINING OR OTHER PROGRAMS HAVE BEEN REQUIRED OF THE ACCUSED EMPLOYEE?**

The OIPM did not find any specific training recommendations pertaining to the officer's actions under CTN 2019-0708-P. However, for the reasons noted in the OIPM comments pertaining to Sgt. Arlen Barnes's investigation in PIB 2019-0259-P and Investigating Officer Ceasar Ruffin's investigation in CTN 2019-0708-P, both investigating officers should be re-trained on how to conduct a thorough investigation that complies with NOPD Chapter 52.1.1. **The OIPM recommends both Investigating Officer Ceasar Ruffin and Sgt. Arlen Barnes receive instruction on developing and articulating more thorough analysis when authoring investigative reports.**

Additionally, the Investigating Officer Ceasar Ruffin was unable to review the PIB complaint history for any of the accused employees due to the cyber-attack on the City of New Orleans. Therefore, no assessments of patterns of misconduct were made, nor did they inform Investigating Officer Ceasar Ruffin's ability to make training recommendations.

#### **5. WERE THERE ANY OTHER OIPM CONCERNS WITH THE INVESTIGATION AND IF SO, WHAT ALLEGATION DO THEY PERTAIN TO?**

In both investigations, but particularly in CTN 2019-0708-P, it would have been very helpful for Investigating Officer Ceasar Ruffin to list the roles and responsibilities of each of the units that responded to the initial scene. This would assist a reviewer in determining whether the accused employees were performing or neglecting the duties, and who had the decision-making authority (particularly in regard to determining whether the scene should be processed as a homicide or a suicide). The OIPM suggests that this be outlined in future investigations when there are multiple employees with multiple roles responding to a scene.

Overall, the major flaw in both investigations was a lack of thoroughness. As detailed throughout this review, there were several issues that were raised by the Complainant in their OIPM complaint and their communication with the Department directly that were not addressed in the PIB investigations. This in turn made it impossible (for most of the allegations) for the OIPM to make definitive recommendations as to the allegations. The lack of

organization and analysis in the reports and follow through on the allegations made by the Complainant resulted in a lack of material by which a reviewer could make an informed decision on whether the alleged misconduct occurred, and more importantly, how it would have impacted the investigation into the death of Seth Donaldson.

Another critical piece of evidence that Investigating Officer Ceasar Ruffin did not collect was Det. Theophilus Kent's supplemental report, which is also referred to as the Homicide Unit's supplemental report.

The Investigating Officer Ceasar Ruffin did not conduct any of the interviews in this case. In fact, Lt. Precious Banks of the PIB performed a substantial portion of the investigation— interviewing Det. Theophilus Kent and Sgt. Daniel McMullen, appearing at the Civil Service Hearing to request an extension of the investigative period, and contacting Sarah Hawkins at the District Attorney's Office. As previously stated, Investigating Officer Ceasar Ruffin did not take statements from all the accused employees in the supplemental investigation. Rule 4: Performance of Duty, Paragraph 2: Instructions from an Authoritative Source cites that Department employees can be cited for failing to render a statement in an administrative statement. It is unclear whether there is an actual requirement that the Investigating Officer conduct administrative statements during his or her investigation, but it is implied that the Department sees value in the role statements play in an administrative investigation. Therefore, the Investigating Officer Ceasar Ruffin should have addressed why he made the decision not to take certain statements. Further, the NOPD should consider whether it should be mandatory for investigating officers to take statements from all accused employees (at a minimum).

NOPD Chapter 52.1.1, paragraph 4 states that officer misconduct investigations "shall be as thorough as necessary to reach reliable and complete findings." Investigating Officer Ceasar Ruffin's report stated that he conducted a "cursory review" of CTN 2019-0259-P. A thorough investigation would have given greater consideration to evidence available from CTN 2019-0259-P, particularly the Complainant's initial complaint made to the OIPM on March 26, 2019, which was 22 pages and should have been read in context with Amy Donaldson's October 25, 2019 complaint (**CTN 2019-0259, Exhibit E**), which OIPM specifically referenced as a "Supplemental Referral" to CTN 2019-0259-P in its November 26, 2019 Referral Letter to Deputy Superintendent Arlinda Westbrook (**CTN 2019-0259, Exhibit D**).

**6. DOES THE INVESTIGATION SUGGEST ANY OTHER POTENTIAL CONSTITUTIONAL OR LEGAL ISSUES NOT ADEQUATELY ADDRESSED BY THIS DEPARTMENT?**

No.

**CONCLUSION / OIPM RECOMMENDATIONS ON FINDINGS – CTN 2019-0708-P (Second PIB Investigation)**

Accordingly, the OIPM makes the following assessments regarding the findings in the reviewed investigations:

**Capt. Nicholas Gernon (Employee ID [REDACTED])**

Rule 3: Professional Conduct, Paragraph 1: Professionalism (Failure to keep promise of giving the incident the investigation it deserved)..... **Not Sustained**

*The OIPM disagrees with the finding of “unfounded” and instead believes the finding of “not sustained” is better justified. The OIPM is unable to determine whether this allegation should be sustained, but there is evidence here that makes a finding of unfounded to be inappropriate. Without knowing what the uncollected evidence would have demonstrated, it is difficult to determine what further steps Capt. Nicholas Gernon should have been taken in the investigation. At the very least, the OIPM did find that most of the evidence the Complainant listed in the OIPM complaint was not collected from the scene. While this means a reviewer could not sustain this allegation by a preponderance of the evidence (because the evidence was not collected), it does support the argument that the allegation should not be classified as “unfounded,” which would indicate that it did not occur. Instead, the OIPM would recommend a classification of “not sustained” because there is not enough evidence gathered to meet the burden of proof to sustain the allegation.*

**Lt. Denise Thomas (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to supervise investigator Arlen Barnes during his investigation of the initial complaint)..... **Unable to Determine**

*The OIPM disagrees with the finding of “unfounded;” however, because the investigation completed by Sgt. Arlen Barnes under CTN 2019-0259-P was deficient in discussing the relevant NOPD policy that was / should have been considered during the PIB investigation and providing thorough written reasons for his findings, the OIPM is unable to determine the appropriate finding.*

*In CTN 2019-0708-P, Investigating Officer Ceasar Ruffin cited NOPD Chapter 52.11: Misconduct Intake and Complaint Investigation to the extent that PIB and the Bureau Commander share the responsibility for ensuring the timely completion of a comprehensive disciplinary investigation.*

*Here, it appears that a timely investigation was completed, but not a comprehensive or throughout one. In CTN 2019-0259-P, Lt. Denise Thomas, Capt. Sabrina Richardson and Deputy Superintendent Arlinda Westbrook were responsible for reviewing and approving Sgt. Arlen Barnes’s completed investigation. In CTN 2019-0708-P, Investigating Officer Ceasar Ruffin investigated whether they failed to perform these duties but did not discuss whether the investigation was complete / comprehensive in terms of addressing the allegations and submitting reasoned findings or interview Lt. Denise Thomas, Capt. Sabrina Richardson and Deputy Superintendent Arlinda Westbrook to determine what they considered when determining if Sgt. Arlen Barnes’s investigation was complete and comprehensive. For this reason, the OIPM is unable to determine what considerations Lt. Denise Thomas made when signing off on Sgt. Arlen Barnes’s investigation.*

**Sgt. (Lt.) Wayne DeLarge (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to supervise a proper on scene investigation)..... **Not Sustained**

*The OIPM disagrees with the finding of “unfounded” and instead believes the finding of “not sustained” is better justified. The OIPM is unable to determine whether this allegation should be sustained based on the investigation conducted. Without knowing what the uncollected evidence would have proven, it is difficult to determine what further steps Sgt. (Lt.) Wayne DeLarge should have taken in the investigation.*

*At the very least, the OIPM did find that most of the evidence the Complainant listed in the OIPM complaint referral was not collected from the scene. While this means a reviewer could not sustain this allegation by a preponderance of the evidence (because the evidence was not collected), it does support the argument that the allegation should not be classified as “unfounded,” which would indicate that it did not occur. Instead, the OIPM would recommend a classification of “not sustained” because there is not enough evidence gathered to meet the burden of proof to sustain the allegation.*

**Det. Patrick Guidry (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to conduct an on scene investigation)..... **Not Sustained**

*Similarly, the OIPM disagrees with the finding of “unfounded” and instead believes the finding of “not sustained” is better justified. The OIPM is unable to determine whether this allegation should be sustained. Without knowing what the uncollected evidence would have proven, it is difficult to determine what further steps Det. Guidry should have taken in the investigation.*

*At the very least, the OIPM did find that most of the evidence the Complainant listed in the OIPM complaint was not collected from the scene. While this means a reviewer could not sustain this allegation by a preponderance of the evidence (because the evidence was not collected), it does support the argument that the allegation should not be classified as “unfounded,” which would indicate that it did not occur. Instead, the OIPM would recommend a classification of “not sustained” because there is not enough evidence gathered to meet the burden of proof to sustain the allegation.*

**Det. Theophilus Kent (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to contact the Donaldsons on a biweekly basis and contact witness Stephen James or two other witnesses’ attorneys)... **Not Sustained**

*The OIPM disagrees with the finding of “unfounded” and instead believes the finding of “not sustained” is better justified. The OIPM finds that this allegation should not be classified as “unfounded,” which would indicate that it did not occur. While the OIPM is unable to make a definitive recommendation for this allegation based on the information provided by Investigating Officer Ceasar Ruffin in CTN 2019-0708-P, Det. Theophilus Kent did admit that he did not contact one of the witnesses (however Investigating Officer Ceasar Ruffin failed to provide further detail as to why). For this reason, it is possible that Det. Theophilus Kent could have been sustained on failing to contact witnesses, but the OIPM cannot affirm this without further information. On the other hand, Det. Theophilus Kent was instructed to cease communication with the Donaldson family by his supervisor (to protect the confidentiality / integrity of the ongoing investigation), and therefore the OIPM would not sustain Det. Theophilus Kent on that portion of the allegation.*

**Det. Brett Mathes (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to conduct an on-scene investigation) ..... **Not Sustained**

*The OIPM disagrees with the finding of “unfounded” and instead believes the finding of “not sustained” is better justified. The OIPM is unable to determine whether this allegation should be sustained. Without knowing what the uncollected evidence would have proven, it is difficult to determine what further steps Det. Brett Mathes should have taken in the investigation to either collect that evidence or follow up on it.*

*At the very least, the OIPM did find that most of the evidence the Complainant listed in the OIPM complaint was not collected from the scene. While this means a reviewer could not sustain this allegation by a preponderance of the evidence (because the evidence was not collected), it does support the argument that the allegation should not be classified as “unfounded,” which would indicate that it did not occur. Instead, the OIPM would recommend a classification of “not sustained” because there is not enough evidence gathered to meet the burden of proof to sustain the allegation.*

**Det. Rayell Johnson (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failure to conduct an on scene investigation) ..... **Unfounded**

*The OIPM agrees with this finding of “unfounded” made in the investigation. It does not appear Detective Rayell Johnson was on the scene on the date of the incident. The investigator determined based by a preponderance of evidence that the alleged misconduct did not occur. There was no evidence that Det. Rayell Johnson was on scene or on duty on the date in question.*

**Police Technician Courtney Carr (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (c)(8) (Failure to thoroughly collect, preserve, and identify evidence in an arrest or investigative situation) ..... **Unfounded**

*The OIPM agrees with this finding of “unfounded” made in the investigation. The OIPM agrees with this finding, as it appears that Police Technician Courtney Carr’s only responsibility was to photograph the scene, which she did. The investigator determined based by a preponderance of evidence that the alleged misconduct did not occur. Police Technician Courtney Carr was only requested to take photographs of the scene.*

*NOPD Chapter 46.20: Crime and Disaster Scene Integrity, paragraph 12 provides: “The case investigator(s) shall be responsible for determining which evidence is necessary for his/her investigation. Specialists and other crime scene technicians shall serve in a support role on the crime scene. The collection, preservation, and photographing of evidence shall be guided by the recognized procedures of evidence collection as determined by the crime scene technician.”*

*Pursuant to this policy, the OIPM concurs with PIB’s recommendation that Police Technician Courtney Carr did not engage in misconduct as she was not the case investigator.*

**Investigator Sgt. Arlen Barnes (Employee ID [REDACTED])**

Rule 4: Performance of Duty, Paragraph 4: Neglect of Duty (Failing to address all items contained in the OIPM correspondence regarding the investigation into Seth Donaldson’s death) ..... **Sustained**

*The OIPM disagrees with the Investigative Officer’s finding of “unfounded” and instead would recommend a “sustained” finding. As stated above, there were several points in both the Complainant’s allegations and the OIPM correspondence that Sgt. Arlen Barnes did not properly address (even if to cite his reasons for not finding the alleged conduct to be in violation of NOPD policy). As such, the OIPM would recommend a finding of “sustained” for this allegation.*

**CLOSING**

Per the MOU with the NOPD, the NOPD has thirty (30) days to respond to this case review with comments, questions, or a formal response. Any formal response will be included in the OIPM’s final case review. The final case review will be available to the public after the thirty (30) day comment period is complete.

Again, as stated in the cover letter for this case review, the OIPM intends to continue to work with the NOPD leadership to address the policy and procedural issues addressed in this case review.

This review approved by:



Stella Cziment  
Independent Police Monitor

First reviews conducted by: Mummi Ibrahim, Case Review Contract Attorney  
Katherine Crouch, Case Review Contract Attorney