

Port Orange Police Department
INTERNAL AFFAIRS INVESTIGATION IA2019-0004

Complainant: Chief Thomas Grimaldi

Employee: Officer Darnell Gatling

Investigator: Lieutenant Thomas Aiken

Summary of Allegations

On Tuesday 03/19/19, at about 13:27hrs, Lt. Christopher Besuden contacted Larry Fortun regarding a compliment for Officer Darnell Gatling returning his wallet on 03/13/2019. Mr. Fortun mentioned to Lt. Besuden that he gave Officer Gatling \$100.00 to give to a local charity. Lt. Besuden viewed Officer Gatling's BWC footage for this contact, which showed Mr. Fortun appearing to remove money from his wallet and starting to hand it to Officer Gatling, but the video footage came to a stop while Mr. Fortun was still talking to Officer Gatling. Lt. Besuden checked with Beth Unruh, who advised no officer has recently turned over any money to the Chief's Office. Lt. Besuden also saw no mention in CAD for this call regarding money given to him as a donation.

On 04/10/2019, at about 10:08hrs, Ofc. Darnell Gatling was interviewed regarding the allegations of accepting a gratuity and stopping his BWC recording before his contact with the citizen was concluded. Prior to any questions being asked, Ofc. Gatling was sworn in and stated that the statement(s) he was about to make would be the truth, the whole truth, and nothing but the truth. During the sworn recorded interview Ofc. Gatling knowingly made false statements to Lt. Thomas Aiken.

On Friday 04/19/2019, at about 21:14hrs, Ofc. Darnell Gatling refused to submit to a second interview after being compelled to do so by Lt. Thomas Aiken, knowing that it was a refusal of a lawful and proper direct order.

- 1) **1.1.36 Police officers shall not compromise their integrity, nor that of the Port Orange Police Department or their profession, by accepting, giving or soliciting any gratuity which could be reasonably interpreted as capable of influencing their official acts or judgments, or by using their status as a police officer for personal, commercial, or political gain.**
- 2) **41.7.11 Once activated the BWC shall remain in event mode until the event/contact is concluded. If a member fails to activate the body worn camera, fails to record the entire event/contact, or interrupts the recording the member shall document the reason the recording was**

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not made, was interrupted, or was terminated in the appropriate report(s) documenting the contact (CAD, incident report, arrest affidavit, etc.).

- 3) **26.1.123 Perjury in an Official Proceeding - Employees shall not knowingly make false statements while under oath in any court, civil or criminal, in statements made to internal affairs investigators, notaries and persons taking depositions or other testimony or any other official proceeding as defined in FS 837.**

- 4) **26.1.137 Compliance With Direct Order of a Superior or Competent Authority - Employees shall comply with the direct orders or instructions given by a supervisor or superior officer and shall not refuse to comply when such orders or instructions are lawful and proper.**

Investigation Narrative

Review of CAD

I conducted a "Unit History" search in CAD for Officer Gatling, with the time frame being 03/13/19 06:00hrs to 03/13/19 23:59hrs, and located a Found Property call under Event #P190820858. The location of the call was the Burger King restaurant at 3811 Nova Rd and appears to have been the result of Officer Gatling being flagged down, since all but the "Closed" times for the call are listed as 09:55:24hrs.

Review of BWC

BWC video from Ofc. Gatling and Ofc. Fernandez captured footage relevant to this investigation.

The four BWC videos uploaded by Officer Gatling tagged under Event #P190820858 revealed the following:

Title #2019-03-13 0947

- 09:47:28hrs – Ofc. Gatling's BWC was activated as he arrived at the Burger King to assist Ofc. Fernandez with a Suspicious Person call. Ofc. Gatling recorded for 3min 12sec then stopped recording.

Title #2019-03-13 0955

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- 09:55:20hrs – Ofc. Gatling activated his BWC while standing near Ofc. Fernandez after the unidentified woman handed him Mr. Fortun’s wallet.
- The video is 2min 19sec long and showed Ofc. Gatling walking back to his patrol car.

Title #2019-031-13 1005

- 10:05:03hrs - Ofc. Gatling activated his BWC while sitting in his vehicle and running Mr. Fortun’s DL via VCSO Central Dispatch. The video is 3min 50sec in length.

Title #2019-03013 1012

- 10:12:04hrs – Ofc. Gatling activated his BWC just prior to contact with Larry Fortun.
- 45sec into the video Ofc. Gatling is observed handing the wallet to Larry Fortun and explained how it was found.
- 1min 45sec into the video Mr. Fortun was observed removing what appeared to be an unknown denomination bill (paper currency) from the wallet and began to hand it to Ofc. Gatling while saying “If you happen to know the person who turned it in...” Ofc. Gatling turned slightly to the right, then the video stopped recording.
- The video is only 1min 49sec in length.

I also reviewed BWC video footage uploaded by Ofc. Gatling tagged under case #PO190002174 (03/13/2019 11:10:37hrs), which was a traffic stop conducted after this Found Property call. The purpose for reviewing the footage was to determine if Ofc. Gatling may have been experiencing any issues with his BWC. That video is 33min 12sec in length and recorded the entirety of the traffic stop without any malfunctions.

BWC video recorded by Ofc. Fernandez relevant to this investigation was not tagged under any case # or event #. The three videos are as follows:

Title #2019-03-13 0947

- 09:47:25hrs – Ofc. Fernandez activated his BWC upon arriving at the Burger King for the Suspicious Person call.
- 04:55 minutes into the video it appeared that Ofc. Gatling’s attention became directed out toward Dunlawton Ave, then he began walking in that direction.
- 5:31 minutes into the video Ofc. Gatling is observed standing at the northern edge of the Burger King parking lot looking out at Dunlawton Ave and may be shouting to someone. Ofc. Fernandez walked to a spot nearby Ofc. Gatling then stopped his BWC recording. Total length of the recording is 5:52 minutes.

Title #2019-03-13 0954

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- 09:54:05hrs – Ofc. Fernandez and Ofc. Gatling were standing at the northern driveway adjacent to the Burger King at the start of the recording.
- 23 seconds into the recording Ofc. Gatling began to move toward where Ofc. Fernandez's car was parked, walking from Ofc. Fernandez's left to right. Ofc. Fernandez turned his body to the right and his BWC captured a silver colored car (possibly a KIA) coming to a stop behind his patrol car (Chevy Caprice).
- 30 seconds into the video a white female exited the silver car and began talking to Ofc. Gatling. I was unable to hear what she was saying. Ofc. Fernandez then radioed VCSO Central Dispatch about the flag down.
- 41 seconds into the video the woman is observed handing the wallet to Ofc. Gatling.
- 52 seconds into the video the woman is seen getting back into her car, then backed up and drove away.
- Ofc. Gatling is observed walking away from Ofc. Fernandez, and headed back to his own patrol car, as Ofc. Fernandez stops his BWC recording. The total recorded time for this video was 1:34 minutes.

Review of ForceWatch Replay

Using the ForceWatch program, I viewed the movements of Ofc. Gatling's vehicle on 03/13/2019 from 10:00hrs – 18:00hrs. This search was conducted to determine if Ofc. Gatling stopped anywhere that he might be able to make a purchase using a \$100 bill or may have exchanged the \$100 bill for smaller denominations. Aside from normal patrol activities and calls for service, Ofc. Gatling made a few stops, which I verified by reviewing video at the locations. Those locations are as follows:

- 10:38hrs – WaWa at 1031 Dunlawton Ave., where he purchased snacks with cash in the form of a single paper bill. The Transaction Journal from the store revealed the purchase was for \$3.67, and that he received \$1.33 in change, which meant he paid with a \$5 bill.
- 12:50hrs – Circle K at 4040 Nova Rd. No purchase was made and it appeared Ofc. Gatling only stopped there to use the bathroom.
- 13:26hrs – Ofc. Gatling logged out on meal break at Popeyes Louisiana Chicken located at 1678 Taylor Rd. The review of that video is listed separately.

I sent a request to VCSO I.T. for the AVL information for Ofc. Gatling's movements between 10:00hrs – 18:00hrs on 03/13/2019, and asked if there was also a way to obtain a copy of the ForceWatch Replay. They were able to

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provide the AVL data in a spreadsheet, but advised that the replay was not something they would be able to copy.

I noted in CAD that at 14:28hrs on 03/13/2019, Ofc. Gatling responded to 1165 Dunlawton Ave. for a 911 hang up call. Upon completion of the call at 14:42hrs, Ofc. Gatling's car appeared to not move for several minutes. I noted that there is a TD Bank in the same group of buildings where he was located for the 911 hang up call, and within walking distance from where he parked his patrol car. I contacted TD Bank personnel and inquired about obtaining video from the bank to see if Ofc. Gatling entered it to exchange a \$100 bill for smaller denominations. I was put in touch with James Skrak, Crime Prevention Specialist for TD Bank, and explained the information I was looking for and provided him Ofc. Gatling's description and that he would have been in full uniform. James Skrak reviewed their video and advised that Ofc. Gatling did not enter the bank.

Review of Video from Popeyes Louisiana Chicken

On Friday 04/12/2019, at about 10:29hrs, I went to the Popeyes Louisiana Chicken restaurant located at 1678 Taylor Rd. to inquire about obtaining video from when Ofc. Gatling ate lunch there on 03/13/2019 at about 13:26hrs. I was informed that the manager, Loreen, would be in to work at 11:00hrs and would be able to assist me. I returned at 11:05hrs and met with Loreen, who advised that she spoke with her Area Manager, Dave, prior to my arrival and was told that only employees were allowed back where the video system is located. I explained that I would need to see the video for myself, asked for a contact phone number for Dave, then spoke with him via telephone. After explaining what I was looking for his assistance with, Dave agreed to meet with me at the store at around 13:30hrs after he finished his work at the Deland store.

I returned to the store at 13:47hrs and met with Dave Lau, who welcomed me back to where the store's video system is kept. I informed Mr. Lau that Ofc. Gatling logged out on meal break there on 03/13/2019 at 13:26hrs, and Mr. Lau was able to retrieve the surveillance video from that date & time showing Ofc. Gatling entering the restaurant for his meal break. Information from that video is as follows:

- 13:26:53hrs – Ofc. Gatling stood at the order counter.

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- 13:27:05hrs – Debra Hill and Memori Oliver came into the camera view together behind the counter and Ofc. Gatling engaged them in conversation.
- 13:28:07hrs – Debra Hill placed a tray of food on the counter in front of Ofc. Gatling, who then reached out and took ahold of it. Ofc. Gatling did not pay for the food, and no order appeared to have been entered into the screen on the front counter.
- 13:28:32hrs – Ofc. Gatling, while still in conversation with Debra Hill and Memori Oliver, reached into his right uniform shirt pocket with his right hand but did not take anything out of it.
- 13:28:57hrs – Ofc. Gatling again reached into his right uniform shirt pocket with his right hand but didn't take anything out of it.
- 13:29:07hrs – Ofc. Gatling reached into his right uniform shirt pocket with his right hand again while speaking with Debra Hill and Memori Oliver, then removed what appeared to be a piece of paper U.S. currency from that shirt pocket and showed it to Debra Hill and Memori Oliver.
- 13:29:12hrs – Debra Hill physically reacted to seeing what Ofc. Gatling showed her and Memori Oliver.
- 13:29:14hrs – Debra Hill moved to her left and picked up what appeared to be a counterfeit bill detector pen, that had a black colored body, off the counter, then turned back toward Ofc. Gatling with the pen in her hand while saying something to him.
- 13:29:16hrs – Memori Oliver began walking toward ofc. Gatling with her left arm and hand outstretched and saying something to Ofc. Gatling.
- 13:29:47hrs – Ofc. Gatling began pantomiming something to Memori Oliver and Debra Hill.
- 13:51:16hrs – Ofc. Gatling took his tray of food from the counter and walked away.
- 13:50:23hrs – Ofc. Gatling returned to the ordering counter and returned his empty tray, spoke with Memori Oliver and refilled his beverage cup.
- 14:00:13hrs – Ofc. Gatling left the restaurant.

Interviews

Interview: Larry Fortun

On 04/01/19, at about 11:18hrs, I conducted a sworn recorded interview with Larry Fortun via telephone. The following is a synopsis of that interview:

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Mr. Fortun recalled that he rode his motorcycle (trike) to the Walgreen's drugstore at the intersection of Dunlawton Ave. & Nova Rd. on 03/13/2019 to pick up a prescription, and apparently didn't put his wallet back into a pocket when he rode away. Mr. Fortun said he went back out onto Dunlawton Ave. and made a u-turn at Nova Rd. and headed eastbound to get back to his residence. Mr. Fortun said his wallet must have slid out onto the roadway at that point. After he got home and realized he didn't have his wallet, Mr. Fortun rode back to the intersection to retrace his steps and saw Ofc. Gatling waving at him with a wallet, asking "Are you looking for this?" Ofc. Gatling told Mr. Fortun that a woman found the wallet and turned it over to him. Mr. Fortun said he was so happy to have the wallet back, which contained about \$500-\$700 cash and various banks cards, etc..., that he handed \$100 to Ofc. Gatling to give to the woman who found his wallet. Ofc. Gatling told Mr. Fortun that he didn't know the woman's name, so Mr. Fortun told Ofc. Gatling to give the money to what ever charity he decided. I asked Mr. Fortun if he remembered if it was a single \$100 bill or what denominations it was in, and Mr. Fortun said he handed Ofc. Gatling a single \$100 bill. I asked Mr. Fortun if Ofc. Gatling made any mention of a particular charity he planned to give it to, but Mr. Fortun didn't believe Ofc. Gatling said where he would bring the money. Mr. Fortun had nothing further relevant to add. The interview was concluded at 11:28hrs.

Interview: Beth Unruh, Sr. Administrative Asst.

On Tuesday 04/02/2019, at 10:08hrs, I conducted a sworn recorded interview with Beth Unruh, Sr. Administrative Asst., in my office at the Port Orange Police Dept. The following is a summary of that interview:

After explaining the found property call and that Larry Fortun stated he gave \$100 to Ofc. Gatling to donate to someone, I asked Beth Unruh if Ofc. Gatling has turned any money over to her. Beth Unruh said that he has not, and that no officer has turned over any money to her recently. When asked when the last time an officer turned over donated money to her, Beth Unruh said she believed Ofc. Jean turned in a gift card around Christmas (2018) or November 2018. Beth Unruh said that those items are locked in a safe.

Beth Unruh had no further relevant information to add. The interview was concluded at 10:11hrs.

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Interview: Officer Darnell Gatling

On Wednesday 04/10/19, at 10:08hrs, I conducted a sworn recorded interview with Ofc. Darnell Gatling in my office at the Port Orange Police Dept. He was accompanied by Kevin McCarthy, CFPBA. The following is a synopsis of that interview:

I read the Subject Employee Statement to Ofc. Gatling, who stated that he understood what I read to him. I then read the Garrity Warning to Ofc. Gatling, which he stated he understood what I read to him and had no questions about what I read to him. Ofc. Gatling and I then each signed the Garrity Warning form in the presence of Kevin McCarthy. Ofc. Gatling was provided a copy of the signed documents.

I explained to Ofc. Gatling that the investigation began as a result of conversation between Lt. Besuden and Mr. Fortun, when Mr. Fortun told Lt. Besuden that he gave \$100 to Ofc. Gatling to donate to a charity. I asked Ofc. Gatling if he recalled the found property call in question from 03/13/2019, and he stated that he did.

I asked Ofc. Gatling how he became aware of the found property call, and if it was when the woman flagged him down, and Ofc. Gatling replied "Right." I pointed out to Ofc. Gatling that he didn't activate his BWC when he was in contact with the woman who handed him the wallet and asked him why. Ofc. Gatling replied that he believed his BWC was still on from the previous call with Ofc. Fernandez, and that he turned it off then back on again when the woman pulled up. I pointed out to Ofc. Gatling that while he was on the suspicious person call with Ofc. Fernandez that his BWC recording ended when the Burger King employee walked to her vehicle to get her ID. I asked Ofc. Gatling if he thought he was just muting the BWC at that point, to which he replied that he thought he was still recording, since the call wasn't completed yet.

I asked Ofc. Gatling if he got any information from the woman who handed him the wallet and he stated that he didn't. When asked why he didn't, Ofc. Gatling replied "She just handed it to me, and I said okay, I'll take it to the PD for evidence." Ofc. Gatling went on to say that is what he usually does with found property. I asked Ofc. Gatling that if something had come up missing from the wallet, did he see the importance of knowing who gave him the wallet, so he would know where to begin tracing it back to? Ofc. Gatling replied "Most definitely now!" I asked Ofc. Gatling what exactly the woman turned over to him and he described the contents of the wallet consistent with what Mr. Fortun told me had been in it.

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I asked Ofc. Gatling what actions he then took, and he described how he found the Wisconsin identification for Mr. Fortun inside the wallet and ran it, but was unable to locate a contact number for Mr. Fortun. Ofc. Gatling stated he then began to itemize the contents of the wallet because he was going to submit it into evidence at the PD. While doing that, Ofc. Gatling observed a blue motorcycle stop in the median on Dunlawton Ave. across from the Burger King, and that the rider appeared to be looking for something on the ground in the area. Ofc. Gatling moved his patrol car closer, exited it and called out to the male using the name seen on the ID and waved the wallet in the air. Mr. Fortun then walked over to Ofc. Gatling.

I pointed out to Ofc. Gatling that his BWC was recording when he made contact with Mr. Fortun, but that it stopped after Mr. Fortun appeared to be removing money from his wallet and said "If you happen to know the person who turned it in..." I asked Ofc. Gatling what Mr. Fortun said to him after that point. Ofc. Gatling said that Mr. Fortun asked him about the person who found the wallet, and Ofc. Gatling said he told him (Mr. Fortun) that he didn't know who turned it in and wouldn't be able to get in contact with them. Ofc. Gatling went on to say that Mr. Fortun then asked him about making a donation to the PD, so he told Mr. Fortun to call or go to the PD and ask about it, because Ofc. Gatling didn't know how donations work. Ofc. Gatling said Mr. Fortun told him he would be headed back to Wisconsin soon, and Ofc. Gatling told him he could probably just call the PD to get that information then. He said Mr. Fortun told him again how happy he was to have the wallet back, shook his hand then Ofc. Gatling walked away. I explained to Ofc. Gatling that the BWC footage showed that Mr. Fortun appeared to be handing him (Ofc. Gatling) some money, and then I asked Ofc. Gatling directly if Mr. Fortune handed him money. Ofc. Gatling replied "At no point in time did we exchange money." Mr. McCarthy had a question regarding the video, after which Ofc. Gatling stated "But at no time did he hand me money, or offer to give me money, or anything like that. It never happened, that way. He asked about donations to the PD, I told him you can come to the PD, he said "I'm gonna be leaving soon, I may not have the time", I said you can call, he said "I'll call", and that was the end of our interaction. I pointed out that Mr. Fortun brought it up when he was talking with Lt. Besuden, not the other way around, to which Ofc. Gatling replied that no money was ever exchanged between them, and he didn't know why Mr. Fortun would say that there was. Ofc. Gatling reiterated this by saying "I never received money from him, at all, in no way, shape, form, or fashion."

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I asked Ofc. Gatling if he was aware of the PD's policy regarding accepting gratuities. He stated that he is aware of it, having been told about it at the academy and being told about it here (POPD).

I asked Ofc. Gatling why the BWC recording of his contact with Mr. Fortun ended where it did. Ofc. Gatling stated he had no idea, and that he thought it was recording the entire time, believing he turned it off while walking back to his car. He said he didn't know it was off until I served him the notice for the IA, which said his recording was stopped, after which he reviewed the video himself and saw that it stopped recording. I asked Ofc. Gatling if he manually shut it off at that point and he said that he did not. I asked Ofc. Gatling if he had been having any problems with his BWC, to which he replied that he recently had a problem turning it on for a call, and that he mentioned it to Sgt. Harrison. I asked if he's any problems with his BWC shutting off, and he replied that he's had problems with it shutting off on him and battery life problems, so he had to be issued a new camera. He then clarified that he was referring to an older camera, not the one he currently has, which was the one used on 03/13/2019 to record his contact with Larry Fortun. Ofc. Gatling said that the new camera seems to work better than the first one, but still does it to him every now and then. I informed Ofc. Gatling that I viewed BWC videos from him for calls that occurred before and after the found property call and that he recorded the full length of the call. I again pointed out that during the call at the Burger King with Ofc. Fernandez that it appeared that he (Gatling) manually stopped the recording based on seeing his hand positioning on Ofc. Fernandez's BWC video from the same call.

I asked Ofc. Gatling if he's aware of the POPD policy regarding the use of Body Cameras, starting & stopping BWC recordings. Ofc. Gatling stated "It has to remain through the whole contact, yup."

I then asked Ofc. Gatling if there was anything I failed to ask him that he would like to add to his statement. Ofc. Gatling replied, "Not that I can think of. Like I said, you know, money was not exchanged, at no point in time. You know, I was honest about what was said after the camera shut off at that point. As far as the camera, like I said, I thought it was still on the whole time, I didn't realize that it was off, but, you know, there's no excuse I can make for that. But, as far as the money, (inaudible), that's not something I would do. That's, that's not me." I then asked Ofc. Gatling if everything he has said been the truth to the best of his knowledge. Ofc. Gatling replied "Yes, sir." Ofc. Gatling had nothing further to add and the interview was concluded at 10:33hrs.

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Interview: Sergeant William Harrison

On 04/11/2019, at 10:58hrs, I conducted a sworn recorded interview with Sgt. William Harrison in my office at the Port Orange Police Dept. The following is a synopsis of that interview.

Sgt. Harrison, who is a Patrol Sergeant on Alpha Platoon, previously served as the Accreditation Manager for the Port Orange Police Dept., and while in that capacity he helped implement the BWC program for the department. During the implementation of the body worn cameras, Sgt. Harrison was responsible for writing the policies and procedures related to BWCs and was the backup Administrator to Cpt. McIlrath. Sgt. Harrison is currently the Administrator of the evidence.com program as well as the Administrator for the BWC program. I confirmed with Sgt. Harrison that he is highly familiar with how the BWC works, the functions of the buttons, etc..., with him replying that he was the one tasked with training department personnel on the use and functions of the BWC.

I presented Sgt. Harrison with a paper depicting an AXON Body 2 Camera with a front view, top view, and bottom view, and he confirmed that the AXON Body 2 Camera is the model currently in use by POPD Officers. Since the paper didn't have a line or arrow pointing from the label "Event Button" to where the button is located, I asked Sgt. Harrison what is contained within the green circle showing on the paper. Sgt. Harrison stated that it is the Event Button, which activates the camera by pressing it twice. The Event Button is also used to stop the recording by depressing it for three (3) seconds. Sgt. Harrison further elaborated that after tapping the Event Button twice to activate the recording, the green flashing light on the top of the camera will change to a red flashing light to indicate that the camera is active and recording, and that the camera will vibrate and issue an audible beep. I asked Sgt. Harrison to again describe how to stop a recording, to which he reiterated that the Event Button must be held down for a full three seconds. Sgt. Harrison said that if the officer's finger slips off the button before the three seconds has elapsed, the recording will not stop and the officer would have to start pressing the button again for three seconds. When the recording is stopped the camera will vibrate, issue an audible beep for about 1 second in length, and the red flashing light on the top of the camera will change back to a green flashing light.

I asked Sgt. Harrison if there was a way for officers to disable the audible alarm, and he replied that there is a volume control and the user may also place the camera into Stealth Mode. If the camera is placed into Stealth Mode it will emit no audible beep, none of the lights will flash, and the camera will not vibrate. Sgt. Harrison stated that Stealth Mode is vary rarely used, however. I confirmed

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that if the camera were in Stealth Mode that there would be no audible tone or vibration, which Sgt. Harrison confirmed and also added that the officer would have no way of knowing if the camera stopped recording. Sgt. Harrison then described the shape of the Event Button and pressure needed to be applied to it in order to stop the recording, and stated that it was designed so as to not be accidentally shut off.

I confirmed with Sgt. Harrison that Ofc. Gatling is one of the officers on his shift that he supervises. I confirmed with Sgt. Harrison that the Port Orange PD recently replaced all of the Body Worn Cameras, which he said occurred either in January or February 2019, prior to the 03/13/2019 incident this investigation was resultant of. Sgt. Harrison confirmed that old cameras were replaced with the same model of BWC (AXON Body 2), so there were no retraining issues since all of the buttons and features were the same as what the officers had already been using. I asked Sgt. Harrison if Ofc. Gatling report any issues with his new BWC prior to the 03/13/2019 call involving Larry Fortun, to which Sgt. Harrison replied that he did not recall Ofc. Gatling reporting any issues. I asked Sgt. Harrison if Ofc. Gatling has reported any issues with his camera since 03/13/2019, and Sgt. Harrison said that Ofc. Gatling went to him on 04/10/2019 after his (Ofc. Gatling's) interview with me, then again that morning (04/11/2019) to reiterate that the camera sometimes just stops recording.

I then went over the Audit Trail for Ofc. Gatling's video recording of contact with Larry Fortun in Event #P190720858. I pointed out that in the table for item 1 it showed "Recording started due to event button press", which Sgt. Harrison confirmed would be the double press/tab by Ofc. Gatling to activate the recording. I then pointed out that item 2 showed "Recording stopped due to event button hold", which Sgt. Harrison confirmed as Ofc. Gatling holding the Event Button in to stop the recording manually. I pointed out that subsequent lines in the Audit trail showed that the camera was successfully docked and uploaded, and asked Sgt. Harrison if there was anything showing in the Audit Trail to indicate a malfunction with Ofc. Gatling's BWC.

I then discussed the tests Sgt. Harrison did with his own BWC the morning of 04/11/2019 to show how activating the different features of the camera during a recording would show up on the Audit trail. In the video titled AXON Body 2 Video 2019-04-11 0816, Sgt. Harrison activated the camera by pressing the Event Button twice, then pressed the Function Button to place a marker in the video, muted the audio via the Function Button, un-muted the audio via the Function Button, then stopped the recording by holding the Event Button. In the video titled AXON Body 2 Video 2019-04-11 0750 Sgt. Harrison activated the recording by pressing the Event Button twice, then turned off the power to the

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camera in order to see what the Audit Trail showed when that occurred, which would simulate a power failure of the camera. The Audit trail showed "Recording started due to event button press" on line 1, then "Recording stopped due to camera power down" on line 2. Sgt. Harrison reiterated that the camera is designed so that the recording can't be unintentionally stopped by brushing against the Event Button, because the Event Button is concave in shape. Additionally, the lighted power indicator ring around the Event Button is raised, so you could actually start a recording, turn the camera onto its face and press on the back of it and the Event Button will not become depressed and stop the recording.

When asked if there was anything else about the Axon Body 2 camera, its functionality and buttons, that is relevant, Sgt. Harrison said that there haven't been any reports of errors with the cameras stopping recording by themselves. He also stated that the manufacturer hasn't said anything about that being an issue reported.

Sgt. Harrison had nothing further to add and the interview was concluded at 11:18hrs.

Interview: Memori Oliver

On 04/15/2019, at about 11:45hrs, I went to the Popeyes Louisiana Chicken restaurant located at 1678 Taylor Rd. and conducted a sworn recorded interview with Memori Oliver. The following is a synopsis of that interview;

I explained to Memori Oliver that I was conducting an internal investigation, and that on 03/13/2019 Ofc. Gatling was there for lunch. I further explained that I obtained video from the store which showed Ofc. Gatling there on that date, and that she and her coworker were also seen on the video. I pointed out that after Ofc. Gatling got his food he stood at the counter and was talking to them about something, and I asked her if she remembered what that conversation was. Memori Oliver said that they talk to the officers about a lot of things and could not remember what they were specifically talking about with Ofc. Gatling that day. I asked her if she remembered if Ofc. Gatling told her about someone finding a wallet and turning it over to him to get back to the owner, to which she replied "Oh yeah, he was telling us that he pulled over a guy or something, but he found a wallet on the side of the road, and it got returned to the rightful owner, or something like that. That's all I remember, though." I printed still images from the video I obtained from the store and showed them to Memori Oliver, who immediately identified herself in the photos. I showed her the still image which

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showed Ofc. Gatling holding the item in his right hand which he had just taken from his shirt pocket to show to them, and asked Memori Oliver if she knew what it was. Memori Oliver looked at the photo and said "It looks like a piece of money." Memori Oliver then said it might be a couple dollar bills, but she wasn't sure. I showed Memori the photo of her with her hand outstretched toward Ofc. Gatling and pointed out to her that she was very interested in what he took from his pocket, based on her expression and her hand gesture, to which she replied "I said, ooh, give me here!" I then asked her if that refreshed her memory, to which she replied "It does, I believe it was a \$100 bill, if it's the same day I'm thinking about." She then confirmed that it was the same day due to the shirt she was wearing that day and said "Yeah, he pulled out a \$100 bill." When asked if Ofc. Gatling said where the \$100 bill came from, Memori Oliver stated "Not that I heard." I pointed out the black colored pen on the counter in the photo that Debra picked up, and asked Memori if it was a counterfeit detector pen, to which Memori said that it was either a money marker or a regular pen, then said "She was probably seeing it was real. I again asked Memori if Ofc. Gatling described to her how the bill was found, to which she said "I remember him telling us about the dude losing his wallet and he returned it to him, and he said something about him being so grateful... for it...or something." Memori Oliver said that she didn't hear anything directly from Ofc. Gatling about the \$100 bill coming from the man who got his wallet back.

Interview: Debra Hill

Immediately following my interview with Memori Oliver I conducted a sworn interview with Debra Hill inside the Popeyes Louisiana Chicken restaurant. The following is a synopsis of that interview:

I explained that I was conducting an internal affairs investigation, showed Debra one of the still images from the video and asked if that was her in the image, to which she replied that it was. I asked Debra if she recalled Ofc. Gatling telling her about a wallet being found and getting returned to the owner, and she said that she did not remember anything like that. She said that in the past Ofc. Gatling has told her that he's worked a couple crashes, or something like that, but that he doesn't go into details. I explained that Ofc. Gatling removed something from his right shirt pocket and showed it to them, and asked her if she remembered him doing that. Debra stated that she didn't remember that. I pointed out the black colored pen in the image and asked Debra what it was. She replied that it was either a grease pen or a money marker pen. I pointed out that in the video she reacted to what Ofc. Gatling pulled from his shirt pocket then grabbed the pen as if to mark the item. Debra said "He's never

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taken any money out of his pocket. Usually when he comes in he always pays with his credit card, or free." I then showed her the still image of Memori Oliver stepping toward Ofc. Gatling with her arm and hand outstretched and asked if that refreshed her memory. Debra stated that she still didn't recall what he said or did. Debra Hill was displaying numerous signs of deception, such as beginning to say something then stopping, avoiding eye contact with me, fidgeting, and laughing while making statements for no apparent reason. I pointed out to Debra that it seemed to me that she was remembering what happened but just didn't want to tell me. I eventually asked Debra if seeing the video would help refresh her memory of that day, and told Debra that I was going to do exactly that. I retrieved my laptop from my office and returned to the store to play the video for Debra Hill. Upon my return, and showing her the video, Debra still was displaying signs of deception and said that she didn't know what Ofc. Gatling pulled from his pocket. When asked again about the pen, and why she would have picked it up after her reaction to what Ofc. Gatling showed her, Debra said that it may have been money he pulled out, but she wasn't sure, that maybe it was a card. Debra told me that she started to remember things while I was gone, and that she recalled ofc. Gatling saying that he found a wallet and returned it to a gentleman. Debra Hill continued to deny knowing what ofc. Gatling removed from his shirt pocket, and I concluded the interview after swearing her to her statement.

2nd Interview: Ofc. Darnell Gatling

Based on the new evidence discovered in the Evidence Audit Trail for Ofc. Gatling's BWC video of his contact with Larry Fortun, as well as the video from the Popeyes Louisiana Chicken restaurant, a second interview with Ofc. Gatling was determined to be necessary. I met with Ofc. Gatling on 04/16/2019 in my office, provided him with copies of all the new evidence I developed since the first interview, and had him sign a receipt for the items (IA Packet 4). I then scheduled the second interview for Friday 04/19/2019 at 19:30hrs in my office at the Port Orange Police Dept.

On 04/19/2019, at about 18:47hrs, Greg Forhan, CFPBA General Counsel, called me to advise that he and Kevin McCarthy were on their way to the PD, and asked if they'd be able to listen to the recording of Ofc. Gatling's first interview. Mr. Forhan said that Ofc. Gatling hadn't provided it to him as of yet, and Mr. Forhan wanted to hear the denials made by Ofc. Gatling during that interview.

Upon their arrival at the PD I escorted them to my office, where I played the recording for Mr. Forhan as requested. I also showed Mr. Forhan and Mr.

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McCarthy still images captured from the BWC video of Ofc. Gatling's contact with Larry Fortun on 03/13/19. The first still image was from when I paused the video at 1:45min, and clearly showed Mr. Fortun removing a \$100 bill from his wallet. The second still image was from the last frame of the video at 1:49min, and clearly showed a portion of a \$100 bill in the upper left corner of the photo while Mr. Fortun's hand was extended toward Ofc. Gatling. Mr. McCarthy said that his previous viewing of that video was on a cell phone, which he said made it difficult to see what Mr. Fortun had in his hand. Mr. Forhan and Mr. McCarthy then told me that they watched the video from the Popeyes restaurant via Windows Media Player, zoomed in at 400%, and were able to clearly see that Ofc. Gatling took a \$100 bill from his uniform shirt pocket to show to the two employees. I attempted to open the video in Windows Media Player but was unable to do so.

Mr. Forhan asked if he and Mr. McCarthy would be able to take Ofc. Gatling aside to speak with him prior to the commencement of the interview and I agreed. Ofc. Gatling arrived at my office at about 19:35hrs, at which time he went with Mr. Forhan and Mr. McCarthy to the Patrol Conference Room for their private discussion. Mr. Forhan asked me if Ofc. Gatling would be suspended and sent home pending termination proceedings by the Chief if he refused to give a statement, to which I replied that I would indeed immediately suspend him for insubordination and send him home. Mr. Forhan told me that he already informed Ofc. Gatling of that being the possible outcome, and that Ofc. Gatling was prepared for it. I informed Mr. Forhan that I would activate my audio recorder before Ofc. Gatling re-entered my office so that everything said would be recorded. They then went to get Ofc. Gatling and escorted him back to my office.

Upon their return, Mr. Forhan said "Lieutenant, this officer, under the advice of counsel, at this time does not wish to give a statement. We know that you're ordering him to give a statement, but he is not going to. Is that correct, Ofc. Gatling?" Ofc. Gatling then replied "That is correct." I then addressed Ofc. Gatling myself and advised him that under the rules of Garrity, since he is an employee, I can compel him to give a statement, and confirmed with him that he was not going to submit to an interview. Ofc. Gatling replied "Not at this point. No."

I then recorded the date and time (04/19/19 @ 21:14hrs) for the audio and informed Ofc. Gatling that I was placing him on emergency administrative suspension for insubordination, and that I would be sending him home. I then called Lt. Besuden and asked for him to come to my office. When Lt. Besuden arrived I informed him of the circumstances and the action I took, and turned Ofc. Gatling over to him for the collection of his firearms, ID Card, proxy card, and

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other high liability items. I then escorted Mr. Forhan and Mr. McCarthy out of the building. I then briefed Chief Grimaldi and Asst. Chief Proctor via telephone calls of what occurred and the action I took.

Summary of Evidence

- CAD data for Ofc. Gatling for 03/13/19.
- CAD sheet for POPD Event #P190820858.
- ARS Report.
- 4 BWC videos from Ofc. Gatling for POPD Event #P190820858.
- BWC video from Ofc. Gatling for case #PO190002174.
- BWC video from Ofc. Fernandez – title #2013-03-13 0947.
- BWC video from Ofc. Fernandez – title #2013-03-13 0954.
- BWC video from Ofc. Fernandez – title #2013-03-13 1002.
- Interviews with Larry Fortun, Beth Unruh, Sgt. Harrison, Memori Oliver, Debra Hill, and Ofc. Gatling.
- Audio from 04/19/2019 attempted second interview with Ofc. Gatling.
- Evidence Audit Trail for BWC video AXON Body 2 Video 2019-03-13 1012.
- Evidence Audit Trail for BWC video AXON Body 2 Video 2019-04-11 0750.
- Evidence Audit Trail for BWC video AXON Body 2 Video 2019-04-11 0816.
- Getting to Know Your Axon Body 2 Camera sheet.
- Video from Popeyes Louisiana Chicken.

Investigative Summary

Lt. Besuden contacted Larry Fortun via telephone on 03/19/2019, at the request of Cpt. Brozio, regarding Mr. Fortun wanting to compliment Ofc. Gatling for recovering his wallet.

Mr. Fortun explained how he lost the wallet and that a woman found it and turned it over to Ofc. Gatling, then stated that he gave \$100 to Ofc. Gatling to give to the woman who found the wallet.

Mr. Fortun said that Ofc. Gatling told him he didn't know the name of the woman, at which time Mr. Fortun told him to donate the money to a charity of his choice or one that the PD donates to.

On 03/27/2019 I provided Ofc. Gatling with an Employee Notification of Internal Affairs Investigation and a copy of the Florida Law Enforcement Officer's Rights, which he signed a receipt for.

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I performed a Unit History check of Ofc. Gatling's activity for 03/13/2019 and located the Found Property call (Event #P190720858) regarding Mr. Fortun's wallet.

Ofc. Gatling entered the following notes in CAD while closing out the call: "Larry Fortun was traveling west on Dunlawton Ave on his motorcycle when his wallet fell out of his pocket into the road. The wallet was collected by citizens that were passing by. Larry arrived back on the scene and the wallet was returned back to him. No criminal activity. BWC x3 non Gatling."

There was no mention in Ofc. Gatling's CAD Comment regarding Mr. Fortun giving him \$100 to donate to a charity, nor was there anything noted about Ofc. Gatling donating that money/delivering it to a charity. Additionally, there was nothing noted about the person who found the wallet and turned it over to Ofc. Gatling.

A review was made of these BWC videos from Ofc. Gatling associated with Event #P190720858. During that review it was discovered that Ofc. Gatling did not activate his BWC during the contact with the woman who handed him the wallet. In one of the videos I noted that Ofc. Kevin Fernandez was also on scene, so I researched his BWC videos on Evidence.com.

BWC video from Ofc. Fernandez showed the contact between Ofc. Gatling and a woman driving a silver colored car. It also revealed that Ofc. Gatling did not obtain any contact information, not even the vehicle's tag #, from the woman who handed him the wallet. That video was not tagged with a case # or event #, but was titled 2019-03013 0954.

Ofc. Gatling activated his BWC while walking back to his patrol car after the wallet was handed to him, then shut it off. He started a new recording while sitting in his car running the DL for the owner, then shut it off again.

The third BWC video (titled 2019-03-13 1012) related to this call is 1min 49sec in length and showed the contact between Ofc. Gatling and Larry Fortun.

At 1min 45sec into the video, Mr. Fortun was observed removing what appeared to be an unknown denomination bill of paper currency from the wallet and began to hand it to Ofc. Gatling while saying "If you happen to know the person who turned it in..."

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Ofc. Gatling turned his body slightly to the right at that same time and the recording was stopped. The rest of their conversation and contact was not recorded, as Ofc. Gatling stopped recording prior to the completion of the call with Mr. Fortun.

I included BWC uploaded by Ofc. Gatling (tagged with Event #P190720858 and titled 2019-03-13 0947) from his assist to Ofc. Fernandez on a call at the Burger King restaurant which occurred just prior to the wallet being found in the roadway by the woman.

During that call it appeared that Ofc. Gatling stopped his BWC recording at 3min 12sec when the complainant walked to her vehicle to get her ID.

Ofc. Fernandez's BWC showed that Ofc. Gatling remained there for about another minute and a half before it appeared he saw the woman on Dunlawton Ave. picking up the wallet from the roadway, causing him to start walking in that direction.

I viewed the BWC video uploaded by Ofc. Gatling tagged with case #PO190002174, which was a traffic stop conducted by him after his contact with Larry Fortun, to see if Ofc. Gatling had any issues with his BWC. The review showed that his BWC recorded the entire traffic stop and appeared to be working properly.

On 04/02/2019 I conducted an interview with Beth Unruh, Sr. Administrative Asst., who stated that Ofc. Gatling had not turned over any money to her.

During his interview, Ofc. Gatling stated that was working a call in the Burger King parking lot with Ofc. Fernandez when a woman in a silver car pulled up and flagged him down.

The woman told him that she found wallet and its contents on the roadway on Dunlawton Ave. and turned the items over to Ofc. Gatling.

When asked why he didn't activate his BWC to record his contact with this citizen, Ofc. Gatling stated that he thought it was still recording from the Burger King call.

I pointed out to Ofc. Gatling that located the interaction by viewing BWC videos uploaded to Evidence.com by Ofc. Fernandez. I also pointed out to him that while he was working the call with Ofc. Fernandez, he (Ofc. Gatling) stopped his BWC recording prior to his completion of the call.

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I informed Ofc. Gatling that Ofc. Fernandez's BWC recording showed the point where he held the Event Button on his BWC to stop the recording. Ofc. Gatling maintained that he thought he was still recording.

Ofc. Gatling was asked if he obtained any information from the woman who handed him the wallet, and Ofc. Gatling said that he did not. When asked why he didn't, Ofc. Gatling replied that the woman just handed it to him, so he decided he would bring it to the PD to be logged into evidence.

Ofc. Gatling returned to his patrol car to attempt to identify the owner. He found Mr. Fortun's WI driver's license in the wallet and ran him via VCSO Central Dispatch. Ofc. Gatling activated his BWC while running Mr. Fortun's DL via his two-way radio.

While inventorying the wallet, Ofc. Gatling observed a motorcycle parked on the median adjacent to the Burger King, and that a male was walking on the median and appeared to be looking for something.

Ofc. Gatling drove his patrol car closer to the Dunlawton Ave. side of the Burger King parking lot, exited his patrol car and called out to the male, who turned out to be the owner of the wallet, Larry Fortun. This action was also captured by Ofc. Gatling's BWC.

Mr. Fortun walked over to meet Ofc. Gatling, at which time Ofc. Gatling handed the wallet to him and explained how it was found. Mr. Fortun was visibly very happy that his wallet had been found and returned to him with what appeared to be all of its original contents still there.

The video from Ofc. Gatling's BWC then showed Mr. Fortun opening the wallet and starting to remove money from the wallet while saying "If you happen to know the person who turned it in..."

As Mr. Fortun began saying those words, Ofc. Gatling turned his body to the right, preventing a clear view of what Mr. Fortun was doing.

Ofc. Gatling's BWC recording stopped at that point. In the upper left corner of the video, however, Mr. Fortun's hand outstretched toward Ofc. Gatling can be seen and is holding what appears to be a \$100 bill.

When asked what Mr. Fortun said after the recording stopped, Ofc. Gatling said that Mr. Fortun asked him about who found the wallet, to which Ofc. Gatling told

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him that he didn't know the person's name and wouldn't be able to get in contact with them.

Ofc. Gatling said that Mr. Fortun then asked him about making a donation to the PD, so Ofc. Gatling told Mr. Fortun to either call the PD or go there in person to inquire about it, since he didn't know the procedure for that.

Ofc. Gatling said that Mr. Fortun told him again how happy he was to have the wallet back and shook Ofc. Gatling's hand. Ofc. Gatling said he then walked away at that time.

I explained to Ofc. Gatling that his BWC video appeared to show Mr. Fortun handing him money and asked him directly if Mr. Fortun did in-fact hand him money.

Ofc. Gatling replied "At no point in time did we exchange money." After a question about the video from his PBA representative, Ofc. Gatling said "But at no time did he hand me money, or offer to give me money, or anything like that."

I pointed out to Ofc. Gatling that Mr. Fortun was the one who told Lt. Besuden that he handed him (Ofc. Gatling) a \$100 bill, to which he replied "I never received money from him, at, all, in no way, shape, form, or fashion."

Ofc. Gatling was asked if he was aware of the PD's policy regarding accepting gratuities, to which he stated that he is aware of it.

I asked Ofc. Gatling why his BWC recording of his contact with Mr. Fortun ended where it did. Ofc. Gatling stated that he didn't know why, and that he thought he was recording the entire time. Ofc. Gatling said he thought he turned it off while walking back to his patrol car.

I asked Ofc. Gatling if he manually stopped the recording during his contact with Mr. Fortun and he stated that he did not.

I asked Ofc. Gatling if he had been having any problems with his BWC, and he replied that he recently had an issue with it not turning on for a call, which he said he notified Sgt. Harrison of.

When asked if he had any problems with it shutting off on its own, Ofc. Gatling said that he had in the past, but that was with a previous camera and not with the one he currently has. I confirmed with Ofc. Gatling that the camera he is

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currently wearing was the one used by him on 03/13/2019 during the call with Larry Fortun.

I pointed out to Ofc. Gatling that I viewed BWC recordings uploaded from his camera from calls before and after his contact with Larry Fortun, and that there did not appear to be any malfunctions occurring with his camera.

I also pointed out that Ofc. Fernandez's BWC recording from the Burger King call showed Ofc. Gatling manually stopping the recording, and that it was not a malfunction.

I asked Ofc. Gatling if he was aware of the POPD policy regarding the use of Body Worn Cameras, starting and stopping recordings. Ofc. Gatling's reply was "It has to remain through the whole contact, yup."

When asked if he had anything he wanted to add to his statement, Ofc. Gatling made several more statements denying having received any money from Larry Fortun, and reiterated that he thought his BWC was still recording his contact with him.

I asked Sgt. Harrison if there was a way to determine if Ofc. Gatling's BWC malfunctioned during the recording, and Sgt. Harrison said to check the "log", and that he would show me how.

Sgt. Harrison asked me to open the video in question in Evidence.com, then told me to click on the tab labeled "Audit Trail", to which I replied that I thought that only showed who viewed the video.

Upon viewing the Evidence Audit Trail for the video, I observed that there was a table which showed how the recording was started, stopped, when the BWC was docked, when it was uploaded to Evidence.com, as well as who later viewed the video.

Line 1 in the table for the video showed "Recording started due to event button press." Line 2 in the table showed "Recording stopped due to event button hold."

Sgt. Harrison conducted a test with his own BWC to see what showed in the Audit trail when each of the buttons on the camera were pressed while recording, and also what would show in the Audit Trail if the camera was powered down while recording.

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When Sgt. Harrison stopped the recording by holding the Event Button in, the Audit Trail showed "Recording stopped due to event button hold." When Sgt. Harrison stopped the recording by turning off the camera's power switch, to simulate a power failure, the Audit Trail showed "Recording stopped due to power down."

That information confirmed that Ofc. Gatling's BWC video recording of his contact with Larry Fortun was stopped by him holding the Event Button to stop the recording, and not because of any malfunction of the camera.

That information also meant that Ofc. Gatling knowingly made a false statement to me during his interview on 04/10/2019.

On 04/10/2019 I provided Ofc. Gatling with a copy of the Audit Trail for his video with Larry Fortun and scheduled a second interview for the afternoon of 04/11/2019, which was later postponed.

I checked Ofc. Gatling's Unit History in CAD for 03/13/2019 and saw that he logged out on a meal break at the Popeyes restaurant at 13:26hrs

I conducted a review of Ofc. Gatling's movements on 03/13/2019 from 10:00hrs – 18:00hrs using the "Replay" feature in the ForceWatch program. The intent of the review was to see where else Ofc. Gatling went after the call with Larry Fortun in order to determine where he might have had an opportunity to either use the \$100 bill or exchange it for smaller denominations.

The "Replay" showed that Ofc. Gatling stopped at the WaWa store at 1031 Dunlawton Ave. at 10:38hrs, the Circle K store at 4040 Nova Rd. at 12:50hrs, then his meal break at the Popeyes Louisiana Chicken restaurant at 13:26hrs.

I also noted that Ofc. Gatling responded to a 911CK at 1165 Dunlawton Ave. at 14:28hrs, and that the business was in the same plaza as the TD Bank.

A check of video from the WaWa, Circle K, and TD Bank revealed nothing of evidence related to this case.

A review of the video from the Popeyes Louisiana Chicken store revealed that Ofc. Gatling removed something from his shirt pocket to show to two female employees who were behind the restaurant's front counter.

The reactions displayed by the two female employees led me to believe that Ofc. Gatling removed a piece of money from his pocket to show to them.

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Debra Hill reacted by turning to her left and grabbing a black colored pen off the counter, then turning back to Ofc. Gatling with the pen in hand and saying something while motioning slightly toward him with the pen.

Memori Oliver reacted by walking toward Ofc. Gatling with her left arm and hand outstretched toward him.

On 04/15/2019 I conducted interviews with the two employees, identified as Memori Oliver and Debra Hill.

I printed still images from the video, with one showing Ofc. Gatling holding the item from his pocket in his right hand, the next showing Debra Hill holding the black colored pen, and the third showing Memori Oliver walking toward Ofc. Gatling with her arm and hand outstretched.

When shown the image with Ofc. Gatling holding the item in his hand, Memori Oliver said that it looked "...like a piece of money."

When Shown the image of herself walking toward Ofc. Gatling with her arm and hand outstretched, Memori Oliver said "I said, ooh, give me here!" When asked if that refreshed her memory, she stated that she believed it was a \$100 bill Ofc. Gatling removed from his shirt pocket. She then stated that she was certain that it was a \$100 bill when she said "Yeah, he pulled out a \$100 bill."

When shown the image of Debra Hill holding the black pen, Memori Oliver said the pen was either a money marker or a regular pen.

Memori Oliver recalled that Ofc. Gatling told her and Debra about someone finding the wallet and turning it over to him, and that he got it back to "the rightful owner."

Memori Oliver stated that she did not hear Ofc. Gatling say where the \$100 bill came from, however.

Debra Hill was also interviewed on 04/15/2019, immediately following the interview with Memori Oliver.

Debra Hill denied knowing or remembering what Ofc. Gatling removed from his shirt pocket to show to her and Memori Oliver, even though she was standing closer to Ofc. Gatling than Memori was.

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Debra Hill eventually stated that she recalled Ofc. Gatling telling them something about a wallet being found and returned to the owner, but could not recall any specifics.

Debra Hill displayed numerous signs of deception during her interview, and I mentioned to her that it seemed as though she did remember what occurred and just didn't want to tell me. Debra Hill continuously maintained that she couldn't remember all the details.

Ofc. Gatling's second interview was rescheduled for Friday 04/19/2019 at 19:30hrs in my office at the Port Orange Police Dept.

Greg Forhan, CFPBA General Counsel, and Kevin McCarthy, PBA Rep, met with me prior to Ofc. Gatling's arrival so Mr. Forhan could listen to Ofc. Gatling's first interview and hear him say that he didn't take any money.

Mr. McCarthy stated that he viewed the video from Popeyes Louisiana Chicken via the Windows Media Player program and was able to zoom in to 400%. Mr. McCarthy said that when he did so he could clearly see that Ofc. Gatling was holding a \$100 bill in his hand and showing it to the two employees.

Mr. Forhan asked if he could speak with Ofc. Gatling for a few minutes before the interview, which I agreed to. Upon Ofc. Gatling's arrival at my office at 19:35hrs, Mr. Forhan and Mr. McCarthy took him to the Patrol Conference Room for their conversation.

Mr. Forhan and Mr. McCarthy returned to my office at about 21:00hrs, without Ofc. Gatling.

Mr. Forhan then asked me if Ofc. Gatling would be suspended and sent home pending termination proceedings by Chief Grimaldi if he refused to give a statement. I replied that I would indeed immediately suspend Ofc. Gatling for insubordination and send him home if he refuses to submit to an interview.

Mr. Forhan said that he already made Ofc. Gatling aware of that as a possible outcome and that Ofc. Gatling was prepared for it. Mr. Forhan and Mr. McCarthy then brought Ofc. Gatling to my office.

Upon their return, Mr. Forhan stated "Lieutenant, this officer, under the advice of counsel, at this time does not wish to give a statement. We know that you're ordering him to give a statement, but he is not going to. Is that correct, Ofc. Gatling?" Ofc. Gatling replied "That is correct."

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I then addressed Ofc. Gatling directly and that under the rules of Garrity I am able to compel him to give a statement, since he is an employee, and confirmed with him that he was refusing to submit to an interview. Ofc. Gatling replied "Not at this point. No."

I noted the date and time for the recording as being 04/19/2019 @ 21:14hrs, and informed Ofc. Gatling that I was placing him on emergency administrative suspension for insubordination and that I would be sending him home.

I then contacted Lt. Christopher Besuden, the on-duty shift commander, and asked for him to come to my office. Once there, I informed Lt. Besuden of the circumstances and turned Ofc. Gatling over to him.

Disposition

- 1) **1.1.36 Police officers shall not compromise their integrity, nor that of the Port Orange Police Department or their profession, by accepting, giving or soliciting any gratuity which could be reasonably interpreted as capable of influencing their official acts or judgments, or by using their status as a police officer for personal, commercial, or political gain. Sustained**

Larry Fortun gave a sworn recorded statement saying that he handed Ofc. Darnell Gatling a \$100 bill to give to the person who found his wallet, or to a charity of some sort. The BWC video of Ofc. Darnell Gatling's contact with Larry Fortun clearly showed Larry Fortun removing money from his wallet while making the statement about the person who found it. Although the BWC video was stopped before the contact was concluded, the last image on the video clearly showed Larry Fortun's hand being away from the wallet and close to Ofc. Darnell Gatling, and that Larry Fortun had a \$100 in that hand. Memori Oliver, an employee of the Popeyes Louisiana Chicken restaurant confirmed that Ofc. Darnell Gatling pulled a \$100 bill from his shirt pocket and showed it to her and another employee, Debra Hill, as well as describing the call about the found wallet.

This investigation has revealed sufficient evidence to show that Ofc. Darnell Gatling did in-fact take the \$100 bill handed to him by Larry Fortun, in violation of the POPD policy related to accepting gratuities.

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- 2) **41.7.11 Once activated the BWC shall remain in event mode until the event/contact is concluded. If a member fails to activate the body worn camera, fails to record the entire event/contact, or interrupts the recording the member shall document the reason the recording was not made, was interrupted, or was terminated in the appropriate report(s) documenting the contact (CAD, incident report, arrest affidavit, etc.). Sustained**

Review of BWC video recorded before and after Event #P190720858 revealed that Ofc. Gatling's BWC appeared to be in proper working order. During the BWC recording tagged under case #PO190002174 Ofc. Gatling left his BWC recording throughout the traffic stop until it was completed, thereby clearly demonstrating an understanding of this policy. During his interview Ofc. Gatling stated that he thought he recorded the entire contact with Larry Fortun and didn't stop the recording until he was walking back to his patrol car. The Evidence Audit Trail for his BWC recording of contact with Larry Fortun showed "Recording stopped due to event button hold", which meant that Ofc. Gatling knowingly stopped the recording, and that there was no malfunction.

This investigation has revealed sufficient evidence to show that Ofc. Darnell Gatling knowing stopped the BWC recording of his contact with Larry Fortun prior to the conclusion of the contact, in violation of this policy governing recording all contacts with citizens until the contact is concluded.

- 3) **26.1.123 Perjury in an Official Proceeding - Employees shall not knowingly make false statements while under oath in any court, civil or criminal, in statements made to internal affairs investigators, notaries and persons taking depositions or other testimony or any other official proceeding as defined in FS 837. Sustained**

During his sworn recorded interview on 04/10/2019, Ofc. Darnell Gatling stated that he did not manually stop the BWC recording of his contact with Larry Fortun. Ofc. Darnell Gatling also stated, unequivocally, that Larry Fortun did not hand him any money and that he did not take any money from Larry Fortun. The BWC recording of his contact with Larry Fortun, although stopped short, matches the sworn recorded statements made by Larry Fortun describing how he gave a \$100 bill to Ofc. Darnell Gatling. The Evidence Audit Trail for that BWC video showed that Ofc. Darnell Gatling manually stopped the BWC recording by holding the Event Button, in direct contradiction to his statement that he did not stop the recording.

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This investigation has revealed sufficient evidence to show that Ofc. Darnell Gatling committed perjury during an official proceeding.

- 4) **26.1.137 Compliance With Direct Order of a Superior or Competent Authority - Employees shall comply with the direct orders or instructions given by a supervisor or superior officer and shall not refuse to comply when such orders or instructions are lawful and proper. Sustained**

Ofc. Darnell Gatling was scheduled to submit to a second interview on 04/19/2019 at 19:30hrs. Prior to the start of the interview, Ofc. Gatling met with Greg Forhan, CFPBA General Counsel, and Kevin McCarthy, CFPBA Rep. Ofc. Darnell Gatling later came to my office with Mr. Forhan and Mr. McCarthy, at which time Mr. Forhan advised that Ofc. Darnell Gatling, under the advice of counsel, would not be submitting to an interview. He further stated that Ofc. Darnell Gatling knew that I was ordering him to submit to an interview, but that he would not be doing so. I addressed Ofc. Gatling directly and informed him that he was compelled under the rules of Garrity to submit to the interview, and confirmed with him that he was no going to submit to an interview, to which he replied "Not at this time. No."

This investigation has revealed sufficient evidence to show that Ofc. Darnell Gatling was insubordinate and failed to comply with the lawful and proper direct order of a superior or competent authority, in violation of this POPD policy.