

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE SUSPENSION OF)
POLICE OFFICER MATTHEW J. O'BRIEN,) No. 14 SR 2331
STAR No. 10634, DEPARTMENT OF POLICE,)
CITY OF CHICAGO.) (CR No. 1027914)

FINDINGS AND DECISION

On or about July 10, 2014, the Superintendent of Police suspended Police Officer Matthew J. O'Brien, Star No. 10634, for ten (10) days for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

On July 15, 2014, Officer O'Brien filed with the Police Board a memorandum requesting Police Board review of this suspension, and delineating specific reasons for which he is requesting the review.

The Executive Director of the Police Board assigned this matter to Hearing Officer Thomas E. Johnson. Hearing Officer Johnson reviewed the investigation file and submitted a written report to the Police Board.

The members of the Police Board reviewed the Summary Report of the investigation file, the recommendations of Command Channel Review, Officer O'Brien's memorandum, the Independent Police Review Authority's response to Officer O'Brien's memorandum, and Hearing Officer Johnson's report. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board Members Melissa M. Ballate, Ghian Foreman, and Elisa Rodriguez recused themselves from this case pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its consideration of this matter, finds and determines that:

1. The allegation, set forth below, that Police Officer Matthew J. O'Brien, Star No. 10634, violated Rule 2 and Rule 9 is supported by sufficient evidence to justify disciplinary action, and the allegation is therefore **sustained**.

On July 3, 2009, at 2158 hours, at 11553 South Prairie Avenue, Officer O'Brien made several unjustified comments toward the reporting party and the victims.

It is undisputed that Officer O'Brien stopped Xavier Hopkins' car at 11553 South Prairie Avenue, and removed Mr. Hopkins (age 23), as well as Jontavious Pruitt (age 26), Donya Jackson (age 23), Marcus Sims (age 23), and Rico Boyd (age 28) from the vehicle. He handcuffed them together. Officer O'Brien made the initial stop but was then joined by other officers. It is also undisputed that Officer O'Brien searched the interior of the vehicle, and in the end wrote Mr. Hopkins two traffic tickets. One was for having tinted glass windows and the other was for having no city sticker. After writing the tickets, Mr. Hopkins and his friends were released and drove away. They promptly complained to the Independent Police Review Authority (IPRA) about their treatment during this stop.

Messrs. Hopkins, Jackson, and Boyd contend that Officer O'Brien pulled Mr. Hopkins out of the car. The others were forced to join him outside the car and were handcuffed together. They say that Officer O'Brien searched Mr. Jackson, going through his pockets and removing various items. When Messrs. Hopkins and Jackson, who are criminal justice students, asked why they were being stopped and searched, Officer O'Brien refused to explain what was going on. Instead, he challenged them, saying "What are you going to do about it?" Then Officer O'Brien said "Johnnie Cochran's dead and Barrack Obama can't do nothing for you." The three men remember

this quote slightly differently, e.g. "Barrack Obama can't save your ass", but their account is essentially the same. When Messrs. Hopkins and Jackson tried to explain they were students, Officer O'Brien called them "dumb asses" and told them to shut up. The three men say that Officer O'Brien proceeded to search the glove compartment and then used the car keys to open and search the trunk. In the trunk, Officer O'Brien found some liquor bottles that were not open. He threw them on the ground, smashing the liquor bottles. When asked why he would do that, they say Officer O'Brien responded "because I can." After releasing the men, they say Officer O'Brien threw Mr. Hopkins' personal items and paper work into the car. (Marcus Sims failed to appear on the date set for his statement and Jontavious Pruitt did not give a statement, as he was out of town and said he would not be returning to Chicago for some time.)

Officer O'Brien says he stopped the vehicle because of its tinted windows. He emphasizes he was alone, at night, in a high crime area, and it was the night before the 4th of July. He says that when he approached the car, he saw several bottles of open alcohol in the middle console of the vehicle. He removed the occupants of the car from the vehicle, seized the alcohol and poured it out. He contends that at least two of the passengers of the vehicle were intoxicated and all five were belligerent and irate, saying they did not have to follow Officer O'Brien's commands. In response, the officer admits (in his statement to the Board) that he engaged in "a heated verbal altercation with the driver and the occupants of the vehicle." Officer O'Brien contends that he did only a pat down of the driver and not a full search. Officer O'Brien admits that he searched the interior of the car by looking under the seats and at everything within eyesight in order to make sure there was nothing there that could hurt him. He originally said he did not recall searching the glove box or the trunk but later (in his statement to the Board) denies that he searched the trunk. He denies making the statements attributed to him and further denies smashing the liquor bottles in the street.

He claims to have explained the basis for the stop at the beginning and at the end of the incident.

Officer Hector Flores, who responded with his partner Officer Granados, did not hear Officer O'Brien verbally abuse the victims. Nor did they see Officer O'Brien search Mr. Hopkins' vehicle. They also did not see him smash any liquor bottles. Officer Tara Reeves and Officer Androniki Ganczewski also deny that Officer O'Brien made the improper statements, smashed liquor on the ground or threw personal items into the car. Officer Reeves says she did not see Officer O'Brien search the car. Officer Ganczewski is silent on the search question.

Officer O'Brien points the Board to the Supreme Court's decision in Arizona v Gant, 129 S.Ct 1710 (2009) to justify his search. This case, however, holds that where the occupant of a vehicle is arrested, the police have the right to search the interior of the vehicle: a) for their protection when the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle; and b) when it is reasonable to believe evidence relevant to the crime causing the arrest might be found in the vehicle. Here, however, there was no arrest. The occupants of the vehicle were secured outside the vehicle and the "crime" here was tinted windows and no city sticker, so the interior of the car would not reasonably contain further evidence of these "crimes." (Officer O'Brien claims that he saw open liquor in the vehicle, after his initial stop, but he did not write a ticket for the violation of transporting open liquor.) This Supreme Court case does not apply here.

The Board finds credible the Messrs. Hopkins, Jackson, and Boyd accounts of the incident, and finds not credible Officer O'Brien's denial of the allegations.

2. The allegation, set forth below, that Police Officer Matthew J. O'Brien, Star No. 10634, violated Rule 2 is supported by sufficient evidence to justify disciplinary action, and the allegation is therefore **sustained**.

On July 3, 2009, at 2158 hours, at 11553 South Prairie Avenue, Officer O'Brien conducted an unauthorized search of the trunk of a vehicle belonging to the reporting party, Xavier Hopkins.

See the findings set forth in paragraph no. 1 above, which are incorporated here by reference.

3. The Police Board has considered the facts and circumstances of Officer O'Brien's conduct, and his complimentary and disciplinary histories. Officer O'Brien's demeaning and unprofessional comments and his unauthorized search of the trunk are serious offenses, and the ten-day suspension ordered in this case is not unwarranted.

POLICE BOARD DECISION

The Police Board of the City of Chicago hereby adopts the findings set forth herein by the following votes:

By votes of 6 in favor (Demetrius E. Carney, William F. Conlon, Michael Eaddy, Rita A. Fry, Susan L. McKeever, and Rhoda D. Sweeney) to 0 opposed, the Board **sustains** the allegations that Police Officer Matthew J. O'Brien violated Rule 2 and Rule 9.

As a result of the foregoing, the Board, by a vote of 6 in favor (Carney, Conlon, Eaddy, Fry, McKeever, and Sweeney) to 0 opposed, hereby determines that cause exists for suspending Police Officer Matthew J. O'Brien from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of ten (10) days.

NOW THEREFORE, IT IS HEREBY ORDERED that the suspension of Police Officer Matthew J. O'Brien, Star No. 10634, for a period of ten (10) days is **sustained**.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, William F. Conlon, Michael Eaddy, Rita A. Fry, Susan L. McKeever, and Rhoda D. Sweeney.

Police Board Case No. 14 SR 2331
Police Officer Matthew J. O'Brien

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY
OF OCTOBER, 2014.

Attested by:

/s/ DEMETRIUS E. CARNEY
President of the Police Board

/s/ MAX A. CAPRONI
Executive Director of the Police Board

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF
THESE FINDINGS AND DECISION
THIS ____ DAY OF _____, 2014.

GARRY F. McCARTHY
Superintendent of Police