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[March 22, 2022](#) by [sokdie comments \(0\)](#)

The Unreasonable Search and Seizure

On January 10, 2020, a San Francisco Superior Court judge, at the request of a San Francisco Police officer, issued an [arrest warrant](#) in connection with a residential burglary. Mot. Suppress Evid. Off'd Against Def. Prelim. Hr'g, 6:1-2. The warrant listed suspects to be arrested and described a residence in Oakland that was to be searched. *Id.* at 3:5-13. The San Francisco Police Department sent a special operations unit to execute the warrant. *Id.* at 10:13-22. When the officers arrived at the house, they found the suspect as well as other individuals in the house.

One of those individuals was a 19-year-old Black woman named Mariyanna Bryant. Mariyanna was visiting her boyfriend at the residence when the warrant was executed. *Id.* at 3:12-14. She willingly exited the house and followed the instructions of the police officers as they bound her hands in zip ties. Rptr. Tr. Proceedings at 13:5-11, July 21, 2021. The officer then patted her down for weapons to ensure the safety of the officers on site and—once the officer determined that Mariyanna did not have any weapons—instructed her to sit on the curb and wait while they conducted a thorough search of the residence. *Id.* at 13:10-15, 14:12-23.

Mariyanna sat on the rough concrete curb in the cold night air as the zip ties cut into her wrists. She sat there for almost four hours while the officers searched the residence. Mot. Suppress Evid. Offered Against Def. at the Prelim. Hr'g, 6:19-20. They recovered weapons, clothing, and other evidence they believed was used during the commission of the crime but did not locate any money. *Id.* Mariyanna was then instructed to stand by Officer Colleen Fitzpatrick of the San Francisco Police Department. The officer stuck her hands inside Mariyanna's sweater and pulled out money that was in her bra. *Id.* at 8:12-13. The officer then put the money into an evidence bag and arrested her.

Wrongfully Charged

The San Francisco District Attorney's Office would not comment on Mariyanna's case. However, they did provide general information on how they decide whether to file charges against an individual. Teleconference Interview with Rachel Marshall, Director of Communications, Office of San Francisco District Attorney Chesa Boudin (Sept. 22, 2021). The charging unit of the District Attorney's Office reads police reports with the main focus on determining whether they can prove the elements of a crime beyond a reasonable doubt. *Id.* District attorneys evaluate whether they can meet this burden by considering what evidence will be admissible in court. *Id.*



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The encounter between Mariyanna and Officer Fitzpatrick is described in a supplemental report drafted by Sergeant Wren which states, "Officer Fitzpatrick conducted a pat down search of Bryant during which US Currency fell out of her bra." *Id.* at 16:20-21. Based on the narrative in the police report describing how the money was discovered, the District Attorney's Office charged Mariyanna with receiving stolen property and being an accessory after the fact to kidnapping, residential robbery, and first-degree burglary. *Id.* at 5:3-6.

The Preliminary Hearing

At the preliminary hearing Officer Fitzpatrick testified that she searched Mariyanna because she was preparing Mariyanna to be transported to the police station in San Francisco. Rptr. Tr. of Proceedings 33:10-15, July 21, 2021. Officer Fitzpatrick also stated under oath, "So while searching her bra, I located a large sum of money which was placed in her personal bag." *Id.* at 34:13-14. On cross-examination, Mariyanna's attorney asked Officer Fitzpatrick whether she conducted a full search incident to arrest. Officer Fitzpatrick responded that she conducted "a full search which is a transport search initially to place [Mariyanna] in my car." *Id.* at 41:17-19.

After the testimony concluded, the judge asked for additional information regarding the search that the officer performed upon Mariyanna. The judge summarized the testimony she heard by stating, “she was detained because she was in the home when the search warrant was being executed . . . basically the officer who searched her is just told she’s under arrest, she needs to be transported, and then performs an arrest search and finds the money.” Rptr. Tr. of Proceedings 219:12-16, July 22, 2021. The judge then asked the district attorney what established probable cause to arrest Mariyanna before the search took place. *Id.* at 219:17-18.

The district attorney explained, per the testimony provided, that Officer Fitzpatrick was instructed to transport Mariyanna to the police station for further investigation and that the search was required as a matter of policy. *Id.* at 219:23-220:3. The judge then required the district attorney to provide legal authority permitting full body searches conducted before transporting an individual. *Id.* at 220:14-15. The district attorney requested a day to provide such authority. *Id.* at 220:16-17. The next day the district attorney came back empty handed. Rptr. Tr. of Proceedings 228:21-25, July 23, 2021. The judge granted Mariyanna’s motion to dismiss because her Fourth Amendment right was violated when she was searched without a valid warrant or probable cause. *Id.* at 250:9-18. Finally, after a year and a half of court dates the judge dismissed the charges against Mariyanna. *Id.*

Fourth Amendment Protection from Unreasonable Searches and Seizures



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The illegal search that Officer Fitzpatrick performed upon Mariyanna violated her rights under the [Fourth Amendment](#) of the U.S. Constitution. The Fourth Amendment protects every person

from [unreasonable searches and seizures](#). Warrantless searches are considered to be [presumptively unreasonable](#) outside of a handful of enumerated exceptions. Magistrates rely on [affidavits](#) to provide information as to why a warrant allowing the search and seizure is necessary. The [warrant](#) must also list the place to be searched with great specificity and detail the items or people to be seized. Mariyanna was not listed on the search warrant. Mot. Suppress Evid. Offered Against Def. at the Prelim. Hr'g, 3:10-11. She was not even a suspect of the crime that was being investigated. *Id.* at 3:11-12.

There are some exceptions that allow officers to conduct warrantless searches. Officers are also allowed to conduct warrantless searches of a person they are taking into custody [to ensure the safety of the officers and other inmates in the jail](#). Under a [search incident to arrest](#), the probable cause that the officer has for the lawful arrest acts as the reason for the search. [Probable cause](#) for an arrest arises when an officer has “a reasonable basis for believing that a crime has been committed or when evidence of the crime is present in the place to be searched.” None of the exceptions to the warrant requirement were applicable to Mariyanna, therefore the search was unreasonable. In Mariyanna’s case, there was no probable cause for her to be arrested at the time Officer Fitzpatrick conducted the search. The money that was found during the search was the evidence that the police used to arrest and charge her with being an accessory to the crime.

The illegal search performed upon Mariyanna resulted in wrongful charges as an accessory to the commission on multiple serious felonies. The search that Officer Fitzpatrick conducted upon Mariyanna was unreasonable because the warrant did not include Mariyanna as a suspect to be searched and the officers lacked probable cause to search her without a warrant. To conceal the fact that there was no probable cause to search Mariyanna, the Sergeant mischaracterized the type of search that was conducted. All of these factors contributed to the wrongful charges that Mariyanna faced for crimes that she did not commit.

Procedural Deceptions to Establish Probable Cause

Mariyanna’s experience is a prime example of one of [the most common procedural deceptions that police use to establish probable cause for a search](#) that would otherwise be unreasonable under the Fourth Amendment. This lie in the police report may have affected the district attorney’s decision to bring charges against Mariyanna. The [exclusionary rule](#) excludes evidence that was obtained through unreasonable searches and seizures. If the money had fallen out of Mariyanna’s bra, the [plain view doctrine](#) may have applied, which would have made the money admissible. On the other hand, if Officer Fitzpatrick searched Mariyanna with no probable cause, the evidence would be inadmissible. Without that evidence there is nothing linking Mariyanna to the crime, and it is likely that charges would not have been brought against her.



Image by [Markus Winkler](#) on [Unsplash](#).

These lies often occur in “[dropsy](#)” cases when officers claim that evidence was dropped before any seizure of the evidence took place. In these situations, since the evidence is in plain view, [the evidence may be admissible](#). This unethical practice has been documented by research spanning decades, and Mariyanna became a part of those statistics on that cold night in January 2020. A single lie catapulted her into the criminal justice system where she would spend the next year and a half fighting for her freedom against an unfair process.

Systemic Corruption Shields Officer from Impeachment for False Police Reports

Mariyanna’s interaction with the San Francisco Police Department also sheds light on a form of systemic corruption that leads to wrongfully charged crimes. Although Officer Fitzpatrick executed the illegal search, Sergeant Wren was responsible for drafting the supplement to the police report which describes the search as a legal pat down. Mot. Suppress Evid. Offered Against Def. at the Prelim. Hr’g, 6:20-21. Despite having nine years of experience in the Major Crimes Burglary Unit, Sergeant Wren mischaracterized the illegal search that Mariyanna was subjected to.

While on the stand, Officer Fitzpatrick used Sergeant Wren’s narrative in the police report to recollect her memory. Rptr. Tr. of Proceedings 35:22-28, July 22, 2021. The district attorney described this portion of the police report to the witness and the court as, “the narrative in the police report generated for this case.” *Id.* at 35:22-23. Although there were discrepancies between the police report and Officer Fitzpatrick’s testimony, the systemic corruption acted as a shield to [impeachment on the stand](#). Officer Fitzpatrick could not be impeached based on the police report and since Sergeant Wren did not conduct the search, he could not be held accountable either. In fact, the attorneys did not even question Sergeant Wren about the statement he provided in the police report.

The Societal and Individual Impact

Being wrongfully charged with a crime leaves a [devastating impact on young Black and Brown women](#) by unjustly forcing them to defend themselves against the awesome power of the state. Mariyanna was subjected to an arrest, detention, and pre-trial supervision while she waited for someone official to question the conduct of the police officer. The shame of being accused of a crime is damaging to a person's reputation and mental health. Being accused of a crime also creates [unique barriers for women](#) by inviting employment discrimination, exclusion from certain occupations and professions, exclusion from government housing, and bans on receiving public assistance.



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This case has left a lasting impact on Mariyanna and the way that she views the criminal justice system: a perspective that so many other young Black and Brown women can relate to. Many officers believe that they can justify their official misconduct with [nebulous claims about “the public good.”](#) Instead, these lies deteriorate the faith and trust that society has in the criminal justice system. While police officers and their union representatives focus on the damage done to the oath breaking officer's career, far greater [damage is inflicted on the integrity of our judiciary](#). These troubling, and unfortunately common, miscarriages of justice perpetuate the notion that convicting the guilty is the only goal of the criminal justice system, with [“equal justice under the law”](#) resting eternally on the back burner.

Mariyanna carries the mental anguish caused by the reality shared by many Black and Brown people today: innocent people are found guilty through the questionable application of law

entirely too often. Unfortunately, Mariyanna’s story is not entirely her own—”[African American” women are imprisoned at double the rates of their White counterparts](#). Over the past 30 years, the [number of women and girls caught in the criminal justice system has skyrocketed](#).

We Must Do Better

In a criminal justice system grounded in the theory that every person accused of a crime is innocent until proven guilty, we have a duty to protect our Black and Brown citizens against wrongful charges. Wrongfully charging an individual with a crime is a step towards a wrongful conviction. Police must be held accountable for procedural lies that impact the lives of people in our community. Actors within the system need to be willing to question the credibility of officers before judicial intervention becomes necessary. Until we are able to ensure that every charge brought against a criminal defendant is supported by the requisite probable cause, we will continue to witness faith in the criminal justice system deteriorate within our communities.



Written by [sokdie](#)