

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 21, 2018
Time of Incident:	6:00 pm
Location of Incident:	5531 S. Elizabeth Street, Chicago, IL 60636
Date of COPA Notification:	March 23, 2018
Time of COPA Notification:	2:04 pm

The complainant, Mr. [REDACTED] was sitting on the porch of an abandoned residence when Chicago Police Officers Bernadette Kelly and Matthew Skalski (collectively “the Officers”) approached him and inquired if he had identification. [REDACTED] responded by removing his gloves, standing up, walking towards the Officers, and reaching into his pocket while verbally expressing his displeasure with being stopped. The Officers ordered [REDACTED] to stop, but he did not. Officer Skalski conducted a search of [REDACTED] which resulted in the recovery of two knives. [REDACTED] detention was brief and lasted no more than ten minutes. He was provided an Investigatory Stop Receipt and released. [REDACTED] later made a complaint to COPA about the incident.

II. INVOLVED PARTIES

Involved Officer #1:	Police Officer Bernadette Kelly Star #7186 / Employee ID# [REDACTED] Appointed October 17, 2011 Unit 007 Born [REDACTED], 1982 Female / White
Involved Officer #2:	Police Officer Matthew Skalski Star #16752 / Employee ID# [REDACTED] Appointed August 31, 2015 Unit 007 Born [REDACTED], 1989 Male / White
Subject #1:	[REDACTED] Born July 2, 1958 Male / Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Bernadette Kelly	1. Unlawfully detained Mr. [REDACTED] in violation of Rule 1.	Unfounded
	2. Unlawfully searched Mr. [REDACTED] in violation of Rule 1.	Unfounded
Officer Matthew Skalski	1. Unlawfully detained Mr. [REDACTED] in violation of Rule 1.	Unfounded
	2. Unlawfully searched Mr. [REDACTED] in violation of Rule 6.	Sustained / 2 days

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Prohibits violation of any law or ordinance.
2. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.

General Orders

1. General Order: G06-01-02 – Restraining Arrestees – effective December 8, 2017.

Special Orders

1. Special Order: S04-13-019 – Investigatory Stop System – effective July 10, 2017.

United States Constitutional Provisions

1. United States Constitution, Amendment IV

V. INVESTIGATION

a. Interviews

In a **statement to COPA**,¹ on March 27, 2018, **Mr. [REDACTED]** made the allegations detailed above. Additionally, **[REDACTED]** admitted that he knew the residence was abandoned, that the residence was not his, and that he was armed with two knives.

In a **statement to COPA**,² on May 15, 2018, **Accused Officer Bernadette Kelly**, stated that her partner, Officer Matthew Skalski, and she were patrolling the area of S. Elizabeth Street,

¹ Att. 10.

² Att. 25.

when they observed a black male (██████████) sitting on the porch of a boarded-up residence. Believing ██████████ was trespassing, the Officers approached ██████████ to determine why he was on the porch. ██████████ told the Officers that he did not live at the residence but was permitted to sit on the porch because he pays taxes. Officer Kelly requested ██████████ accompany the officers to their vehicle so they could do a name check. While at the vehicle, Officer Kelly recalled Officer Skalski recovering a knife from ██████████ left side. Officer Kelly was not certain when Officer Skalski first observed the knife. The officers asked ██████████ if he had any additional weapons. ██████████ began to reach for a second knife while stating that he was armed. Officer Kelly then put handcuffs on ██████████ to prevent him from reaching for the knife. Once ██████████ was secured, Officer Kelly completed a name check, determined that no owner of the property could be identified, provided ██████████ with an investigatory stop receipt, and informed ██████████ that he was free to leave.

In a **statement to COPA**,³ on June 20, 2018, **Accused Officer Matthew Skalski**, stated essentially the same information as Officer Kelly. Officer Skalski explained that he conducted a protective pat down of ██████████ because he observed a knife in ██████████ rear right pocket when ██████████ placed his hand on the CPD vehicle. Officer Skalski admitted that he initially completed a protective pat down search of ██████████ but that he exceeded the scope the protective pat down and subjected ██████████ to a custodial search. Officer Skalski explained that he understands a custodial search is permitted when a subject is placed in custody or a member develops reasonable suspicion that the subject is in possession of contraband – specifically narcotics-related contraband. Officer Skalski was clear that ██████████ was not in custody but said that he reasonably suspected ██████████ to be in possession of narcotics-related contraband. Additionally, after reviewing ██████████ Investigatory Stop Report (ISR), Officer Skalski admitted that he reported that ██████████ was only subjected to a protective pat down. Skalski, explained that this was an inadvertent error. Further, Officer Skalski, explained that he should have used the word “search” instead of “protective pat down” in the narrative section of ██████████ ISR. Finally, Officer Skalski certain that Officer Kelly did not assist in any search of ██████████

b. Digital Evidence⁴

Body Worn Camera (BWC) footage,⁵ depicts essentially the same information provided by Officers Kelly and Skalski. Additionally, the footage clearly shows that ██████████ was sitting on the porch of a boarded-up residence and that Officer Kelly does not search ██████████ at all. Further, as ██████████ is placed in handcuffs, Officer Kelly tells ██████████ he is not under arrest and is only being placed in handcuffs for officer safety reasons.

c. Documentary Evidence

³ Att. 29.

⁴ CPD provided two files of In-Car Camera footage, however neither is related to this incident.

⁵ Att. 17.

Investigatory Stop Report 000476007,⁶ details the essentially same information provided by Officers Kelly and Skalski and depicted on the BWC footage.⁷

██████████ **Investigatory Stop Receipt**,⁸ details that the Officers stopped ██████████ because of his proximity to the location of a reported crime, gang/narcotic enforcement, and sitting on abandoned property. Both Officers' names were listed on the receipt.

VI. ANALYSIS

COPA recommends a finding of **Unfounded** for the allegations that the Officers unlawfully detained ██████████. In Illinois, criminal trespass to real property occurs when a person “knowingly and without lawful authority enters or remains within or *on* a building.”⁹ Additionally, Peace Officers are permitted to stop and detain subjects for a reasonable amount of time if the officer reasonably infers, from all the circumstances known to the officer, that the subject is about to commit, is committing, or has committed a criminal offense and must last no longer than necessary to determine if a criminal offense has occurred.¹⁰ This stop is known as an Investigatory Stop. A police officer may detain an individual when the “officer has probable cause to believe a person committed even a minor crime in his presence . . . the arrest is constitutionally reasonable.” *Virginia v. Moore*, 553 U.S. 164, 171 (2008).

Here, it is undisputed that ██████████ was sitting on the porch of a clearly abandoned residence that was not his. ██████████ presence on the porch prompted the Officers to reasonably infer that ██████████ was possibly trespassing and permitted his detention to determine if he was engaged in criminal activity. Therefore, COPA determined the detention of ██████████ was lawful and proper.

COPA recommends a finding of **Unfounded** for the allegation that Officer Kelly unlawfully searched ██████████. Officers Kelly and Skalski and the BWC were clear that Officer Kelly did not search ██████████. Therefore, COPA determined Officer Kelly did not search ██████████.

COPA recommends a finding of **Sustained** for the allegation that Officer Skalski unlawfully searched ██████████. A subject who is lawfully detained for an Investigatory Stop is subjected to a limited search (a protective pat down) for weapons if an officer reasonably suspects, based on all the circumstances, that the subject may be armed or a danger of attack.¹¹ Further, if during the limited search the officer discovers a weapon, it may be seized until the end of the detention.¹² S04-13-09(II)B defines a protective pat down as “a limited search . . . of the outer clothing of a person for weapons for the protection of the . . . member. . . .” Additionally, S04-13-09(II)B explains that “[i]f, during a [p]rotective [p]at [d]own . . . [a] member touches an object

⁶ Att. 14.

⁷ The Investigatory Stop Report incorrectly refers to the search as a pat down, which COPA attributes to a minor error and did not address via allegations.

⁸ Att. 12.

⁹ 720 ILCS 5/21-3(a)(1) (emphasis added.)

¹⁰ *Terry v. Ohio*, 932 U.S. 1 (1986); codified in 725 ILCS 5/107-14.

¹¹ *Knowles v. Iowa*, 525 U.S. 113, 118 (1998) codified in 725 ILCS 5/108-1.01.

¹² *Id.*

which the ... member reasonably believes is a weapon, the ... member may ... retrieve the object.” Further, S04-13-09(II)B is clear that a “[p]rotective [p]at [d]own is not a general exploratory search for evidence of criminal activity.” However, while an officer may conduct a pat down for weapons to ensure his own safety, “no amount of probable cause can justify a warrantless search or seizure absent exigent circumstances” or an arrest.¹³ Finally, G06-01-02(IV)A in part defines custodial search as “a warrantless search of a person under arrest....”

Here, ██████ was lawfully detained for an Investigatory Stop but was not under arrest. When ██████ placed his hands on the CPD vehicle as directed, Officer Skalski observed a knife in ██████ right rear pocket. Based on his observations, Officer Skalski realized ██████ was armed and conducted a protective pat down of ██████. However, Officer Skalski admitted that he exceeded the limited scope search of ██████ outer clothing and began an exploratory search for evidence of criminal activity – specifically narcotics contraband. Officer Skalski did not deny that he completed a custodial search of ██████ and explained that he was actively looking for contraband. Based on Officer Skalski’s statement and the BWC footage, COPA determined that Officer Skalski was aware that ██████ armed when Officer Skalski began his protective pat down; therefore, the decision to complete the protective pat down was proper. Additionally, COPA determined, based on Officer Skalski’s own admission and the BWC footage, that it is more likely than not that Officer Skalski’s search of ██████ exceeded the limits of a protective pat down and was in fact a custodial search. Therefore, Officer Skalski’s search of ██████ exceed the limits imposed by S04-13-09(II)B and the 4th Amendment to the United States Constitution and was improper and in violation of Department Orders.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Matthew Skalski

i. Complimentary and Disciplinary History

1. **Complimentary:** 5 Honorable Mentions
2. **Disciplinary:** 2 SPARs for preventable accidents in 2017

ii. Recommended Penalty, by Allegation

1. **Allegation No. 2:** 2 Days

Officer Skalski acknowledged that he exceeded the scope of his initial pat down search and accepted responsibility for his actions, which he attributed to inadvertent error. This search did not increase the length of ██████ detention.

VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

¹³ *People b. Franklin*, 2016 IL App (1st) 140049, ¶ 24

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Approved: 


Angela Hearts-Glass
 Deputy Chief Administrator – Chief Investigator

10-2-18
 Date

Appendix A

Assigned Investigative Staff

Squad#:	9
Investigator:	Garrett Schaaf
Supervising Investigator:	Shannon Hayes
Deputy Chief Administrator:	Angela Hearts-Glass
Attorney:	Scott Crouch