

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	March 3, 2016
Time of Incident:	4:00 pm
Location of Incident:	6240 S. Vernon Avenue
Date of COPA Notification:	March 8, 2016
Time of COPA Notification:	9:44 am

On March 3, 2016, at approximately 4:00 pm, Chicago Police executed a search warrant at 6240 S. Vernon Avenue, 3rd Floor. Subsequently, [REDACTED] was arrested for Possession of a Controlled Substance, and alleged that Sergeant Gayle Diggs #2597 choked her. COPA recommends that this allegation be NOT SUSTAINED. [REDACTED] alleged that Sergeant Gayle Diggs improperly searched her. COPA recommends that this allegation be UNFOUNDED. [REDACTED] alleged that Sergeant Gayle Diggs handcuffed her too tightly. COPA recommends that this allegation be NOT SUSTAINED. [REDACTED] alleged that Sergeant Gayle Diggs failed to accurately document and inventory the amount of cash removed from the home. COPA recommends that this allegation be UNFOUNDED.

II. INVOLVED PARTIES

Involved Officer #1:	DIGGS, Gayle, star# 2597, employee ID# [REDACTED] Date of Appointment: January 3, 1995, Sergeant, Unit of Assignment: 189, DOB: [REDACTED], 1962, Female, Black
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1981, Female, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Sergeant Gayle Diggs	1. Choked the complainant in violation of rules 2, 6, and 8.	NOT SUSTAINED
	2. Inappropriately searched the complainant by placing your hand inside her pants in violation of rules 2, 6, and 8.	UNFOUNDED

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

3. Handcuffed the complainant too tightly in violation of rules 2 and 8.	NOT SUSTAINED
4. Failed to accurately document/inventory the amount of cash removed from the home in violation of rules 2 and 11.	UNFOUNDED

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 6: Disobedience of an order or directive, whether written or oral.
3. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
4. Rule 11: Incompetency or inefficiency in the performance of duty.

General Orders

1. G06-01-02 – Retraining Arrestees (2016)
2. G06-01-03 – Conducting Strip Searches (2016)
3. S07-01-02 – Inventorying Money (2015)

V. INVESTIGATION²

a. Interviews³

The recorded statement of [REDACTED] (“[REDACTED]”) was taken at IPRA on March 10, 2016 regarding her complaint. According to [REDACTED] she first encountered Officers entering her bedroom where they handcuffed her and her boyfriend [REDACTED] (“[REDACTED]”) and [REDACTED] were taken to the dining room in the back of the apartment. Other people present in the apartment included [REDACTED] mother [REDACTED] her cousin, [REDACTED] and a friend [REDACTED] who was also being held in the dining room. Officer Raphael Mitchem (“Officer Mitchem”)⁴ claimed he saw [REDACTED] give [REDACTED] something and that she should be searched first. [REDACTED] remained handcuffed and was brought back to her bedroom to be searched by Sergeant Gayle Diggs (“Sergeant Diggs”) and Officer Robin McGhee (“Officer McGhee”). [REDACTED] claimed that the Officers lifted her shirt and brassiere exposing her breasts, then attempted to pull down her pants. [REDACTED] began to resist and wrestled with the Officers and attempted to pull up her pants. [REDACTED] began

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ The following summarized interviews contain material evidence related to the investigation and are not verbatim unless otherwise indicated.

⁴ Affiant and breach for search warrant# [REDACTED]

to scream that she was being raped by the Officers and believed that the other occupants would hear her. During the struggle with Sergeant Diggs and Officer McGhee, █████ threatened to jump out of the window. █████ claimed that Sergeant Diggs held her on the bed and choked her. Sergeant Diggs accused her of having something and reached into her pants and touched her vagina. █████ complained that her handcuffs were too tight and that the Officers squeezed them tighter during the struggle resulting in some marks on her wrists. █████ was then handcuffed to a chair. After approximately five minutes, Sergeant Diggs loosened █████ handcuffs and allowed █████ to brush her teeth in the bathroom and put on shoes. █████ was transported to the police station and signed an inventory receipt for \$763.00 but claimed there was \$2,800 in the apartment, and an additional \$24.00 was missing from her daughter's jacket. █████ was transported to bond court the next day.⁵

The recorded statement of Sergeant Gayle Diggs was taken at IPRA on January 20, 2017. Sergeant Diggs was informed by Officer Mitchem that upon entry █████ was observed running from the rear of the apartment to a bedroom and threw a plastic bag to █████ then jumped in the bed with █████ showed his hands and was taken into custody by Officer Mitchem, but █████ made motions as to stuffing something into her pants. Sergeant Diggs believed it to be narcotics and that █████ was attempting to push it into her body cavity. As Sergeant Diggs and Officer McGhee attempted to handcuff █████ she began to scream that she was being raped and was screaming profanities. █████ was then handcuffed to a chair because she threatened to jump from the window. After █████ calmed down she was led to the bathroom by Sergeant Diggs and Officer McGhee where █████ pulled the narcotics from her pants and it was placed in an evidence bag. Sergeant Diggs denied the allegations.⁶

The recorded statement of Officer Robin McGhee was taken at IPRA on February 8, 2017. Officer McGhee entered through the rear of the apartment and saw a male run out of the kitchen and into a nearby bedroom. Officer McGhee and Officer Mitchem entered the bedroom and saw the male (█████ throw an object to a female (█████ that was sitting on the bed. █████ began to reach into the front of her and appeared to be stuffing something into her pants, while █████ raised his hands and was taken into custody. █████ was given several orders to raise and show her hands by Officer McGhee and Sergeant Diggs, but she did not comply. When the Officers attempted to handcuff █████ she began to scream that she is being raped and threatened to jump out of the window. The Officers patted █████ down and Sergeant Diggs secured her to a chair for her own safety. █████ remained agitated while handcuffed to the chair during which Sergeant Diggs was attempting to calm her and asked for the items that were placed into her pants. █████ calmed down and agreed to give Sergeant Diggs the items. █████ was uncuffed and escorted to the bathroom by Officer McGhee where she took a plastic bag containing narcotics from her pants which Sergeant Diggs then placed in an evidence bag. Officer McGhee did not see Sergeant Diggs place her hand in █████ pants or choke her.⁷

b. Digital Evidence

Photographs of █████ depict marks to her wrists.⁸

⁵ Att. 12, 42

⁶ Att. 56, 65

⁷ Att. 60, 66

⁸ Att. 14

Photographs taken of the residence during the search warrant.⁹

c. Documentary Evidence

A **Narcotics Division Supplementary Report** contained a narrative, in part, detailing that [REDACTED] turned over the narcotics that were placed in her underwear, and gave the Officers \$763 dollars that was inside of her bra.¹⁰

Inventory # [REDACTED] documents the recovery of \$308.00.¹¹

Inventory # [REDACTED] documents the recovery of \$10.00.¹²

Inventory # [REDACTED] documents the recovery of \$763.00.¹³

Inventory # [REDACTED] documents the recovery of \$580.00.¹⁴

VI. ANALYSIS

LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

⁹ Att. 33

¹⁰ Att. 30

¹¹ Att. 19

¹² Att. 22

¹³ Att. 25

¹⁴ Att. 26

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

COPA determined the following regarding the allegations:

Sergeant Diggs choked [REDACTED]

According to [REDACTED] Sergeant Diggs choked her during her struggle with the Officers. Sergeant Diggs denied the allegation and Officer McGhee did not see the Sergeant choke [REDACTED]. There was no other evidence presented during the investigation and no witnesses¹⁵ to corroborate [REDACTED] claims. COPA found that there was not a preponderance of evidence to prove or disprove [REDACTED] allegation, therefore COPA recommends that this allegation be Not Sustained.

Sergeant Diggs inappropriately searched [REDACTED]

According to [REDACTED] Sergeant Diggs reached into her pants and touched her vagina. Sergeant Diggs denied the allegation¹⁷ and Officer McGhee did not see the Sergeant place her hand in [REDACTED] pants¹⁸. At the time of the alleged incident, [REDACTED] was being placed into custody and struggling with the Officers. According to the Officer's statements and documentation, [REDACTED] was attempting to hide an unknown object in her pants. If the incident occurred as alleged, it would be reasonable to believe that the Officers were trying to prevent destruction of evidence and recover the item from her pants, and at that point, the search would have been custodial; reaching into [REDACTED] pants is not prohibited, and the touching of her vagina would have been incidental and not considered misconduct. COPA found that the totality of the evidence was clear and convincing that this incident is not factual nor occurred as alleged, therefore COPA recommends that this allegation be Unfounded.

Sergeant Diggs handcuffed [REDACTED] too tightly

[REDACTED] admits that she struggled and resisted the Officers as they attempted to place her in custody. [REDACTED] further admits that she threatened to jump from a third-floor window which prompted Sergeant Diggs to handcuff her to a chair for her own safety. It is reasonable to believe that the handcuffs tightened during the struggle and not because Sergeant Diggs tightened them for the purpose of inflicting pain or injury. Sergeant Diggs denied the allegation. Although there was evidence presented that depicted marks on [REDACTED] wrists¹⁹, there is also evidence that provides an explanation for the marks, and that the handcuffs were loosened as soon as [REDACTED] calmed down.

¹⁵ Attempt to contact

¹⁶ Att. 12

¹⁷ Att. 65

¹⁸ Att. 66

¹⁹ Att. 14

COPA found that there was not a preponderance of evidence to prove this allegation, therefore COPA recommends that this allegation be Not Sustained.

Sergeant Diggs failed to accurately document/inventory the amount of cash

According to [REDACTED] Sergeant Diggs had her sign an inventory receipt for \$763 but claims there was \$2,800 in the apartment. In her statement to IPRA, [REDACTED] never specified where the money was located at the time of recovery and failed to provide evidence to its existence. According to the supplementary report, [REDACTED] removed \$763 from her bra, and turned the bundle of cash over to Sergeant Diggs and Officer McGhee. Four inventories documented a total of \$1661.00 that was recovered from throughout the residence by several Officers. COPA found that the Officer's actions and inventory of money were within policy.²⁰ COPA found that the totality of the evidence was clear and convincing that this incident is not factual nor occurred as alleged, therefore COPA recommends that this allegation be Unfounded.

VII. CONCLUSION

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

Officer	Allegation	Finding
Sergeant Gayle Diggs	1. Choked the complainant in violation of rules 2, 6, and 8. 2. Inappropriately searched the complainant by placing your hand inside her pants in violation of rules 2, 6, and 8. 3. Handcuffed the complainant too tightly in violation of rules 2 and 8. 4. Failed to accurately document/inventory the amount of cash removed from the home in violation of rules 2 and 11.	NOT SUSTAINED UNFOUNDED NOT SUSTAINED UNFOUNDED

Approved: [REDACTED]

[REDACTED]

Angela Hearts-Glass
 Deputy Chief Administrator – Chief Investigator

Date 6-19-19

²⁰ Special Order S07-01-02(V)(A)(1)(b) states Money in **any amount** may be seized **with** a search warrant. Money that is subject to forfeiture or is evidence and is seized at the scene of a search warrant will be inventoried with a processing action of "Hold for Investigation".

Appendix A

Assigned Investigative Staff

Squad#:	8
Major Case Specialist:	Anthony Smajo
Supervising Investigator:	Robert Coleman
Deputy Chief Administrator:	Angela Hearts-Glass

