

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	July 13, 2018 / 4:42 pm / 6734 S. Morgan St., Chicago, IL 60621.
Date/Time of COPA Notification:	July 19, 2018 / 11:31 am.
Involved Member #1:	Officer Bernadette Kelly / Star# 7186 / Employee ID# [REDACTED] / DOA: / Unit: 007 / Female / White.
Involved Individual #1:	[REDACTED] / Male / Black.
Case Type:	03B – Improper Search.

I. ALLEGATIONS¹

Member ²	Allegation	Finding / Recommendation
Officer Kelly	1. Searching Mr. [REDACTED] without justification.	Sustained.
	2. Touching, through clothing, the sexual organs of Mr. [REDACTED] without justification.	Sustained.

II. SUMMARY OF EVIDENCE³

On July 13, 2018, Officers Matthew Skalski and Bernadette Kelly (collectively “the Officers”), were on patrol when they observed a group of subjects, to include [REDACTED] standing inside the fence line of a boarded residential building.⁴ Upon observing the subjects, the Officers determined they would conduct an investigatory stop. Officer Kelly approached [REDACTED] handcuffed him to [REDACTED] and conducted a custodial search of [REDACTED] person.⁵ As Officer Kelly searched [REDACTED] groin, [REDACTED] remarked that Officer Kelly was inappropriately touching his sexual organs, specifically his testicles, over the clothing.⁶ Officer Kelly responded that she was searching him and not grabbing his testicles.⁷

¹ COPA made numerous attempts to obtain a statement from Officer Kelly; however, Officer Kelly declined to provide COPA with a verbal statement and submitted an unsolicited written statement to COPA through her attorney. *See* Atts. 27 to 30.

² COPA determined that while Officer Skalski did conduct a search of [REDACTED] that it was after Officer Kelly had completed her custodial search and after she instructed Officer Skalski to complete his own search. Based on this information combined with [REDACTED] complaint being limited to Officer Kelly’s actions during her search, COPA elected to not serve an allegation to Officer Skalski. *See* Att. 17, file Kelly – AXON_Body_2_Video_2018-07-13_1631-2 at 01:19; *also see* Att. 17, file Skalski – AXON_Body_2_Video_2018-07-13_1631-2 at 01:20.

³ COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence.

⁴ Atts. 5 to 8, pg. 2; Att. 17, file Kelly – AXON_Body_2_Video_2018-07-13_1631-2 at 00:37, Att. 29, pg. 2.

⁵ [REDACTED] was depicted wearing a white shirt, light shorts, and sandals. Att. 17, file Kelly – AXON_Body_2_Video_2018-07-13_1631-2 at 00:51.

⁶ Att. 17, file Kelly – AXON_Body_2_Video_2018-07-13_1631-2 from 01:12 to 01:17.

⁷ Att. 17, file Kelly – AXON_Body_2_Video_2018-07-13_1631-2 at 01:17.

After Officer Kelly completed her custodial search of ██████ she completed a custodial search of ██████ After Officer Kelly completed her custodial searches, the Officers searched the around the boarded building for damage, contraband, and other indications of criminal activity. After discovering there were no additional signs of criminal activity, the Officers provided the subject Investigatory Stop Receipts and released the subjects without further incident.

In a statement to COPA, ██████ admitted that he was on the boarded property and alleged that he was improperly searched, and his gentiles were inappropriately touched twice by Officer Kelly.

In an unrequested report to COPA, Officer Kelly denied recalling the specifics of the incident but asserted that any contact she had with ██████ sexual organs was a result of her searching in the manner she was trained. Additionally, Officer Kelly admitted that, based on her current knowledge, her search of ██████ was not permitted by Chicago Police Department (CPD) policy.⁸

III. LEGAL STANDARD

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

1. Sustained - where it is determined, by a preponderance of the evidence, that the allegation in fact occurred;⁹
2. Unfounded - where it is determined, by clear and convincing evidence, that an allegation is not supported by the facts;¹⁰
3. Exonerated - where it is determined, by clear and convincing evidence, that the conduct described in the allegation occurred, but it is lawful and proper; or
4. Not Sustained - where there is insufficient evidence to sustain, unfound or exonerate the allegations.

⁸ Att. 31.

⁹ **Preponderance of evidence** is described as evidence indicating that it is more likely than not that the conduct occurred and violated 1090310

Department policy. 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. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

¹⁰ **Clear and convincing evidence** is described a more that preponderance of the evidence but lower than beyond-a-reasonable doubt required to convict a person of a criminal offense. Clear and Convincing is described as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable” there was no misconduct. *See People v. Coan*, 2016 IL App (2d) 151036 (2016).

IV. ANALYSIS AND CONCLUSION¹¹

COPA finds Allegations #1 and 2 against Officer Kelly, that she improperly searched ██████ and touched his sexual organs, are **sustained**. A person who is lawfully detained can be subjected to a limited search – a protective pat down – for weapons if a CPD member “reasonably suspects that [the member] or another is in danger of attack, [the member] may search the person for weapons.”¹² “[CPD] members [who] tak[e] an individual into custody or [are] accepting custody from other members [are] responsible for conducting a thorough search and ensuring that the persons are appropriately restrained to prevent escape or injury.”¹³ The search CPD members are required to complete is a custodial search which is in part intended “to keep contraband and weapons out of jail, to preserve any possible evidence and to protect the officer.”¹⁴ Finally, when CPD members are completing a custodial search of a person they are instructed that, when possible, searching should only be completed by members of the same gender of the person being searched.¹⁵

Here, it is undisputed that (a) Officer Kelly searched ██████ (b) Officer Kelly is a female; (c) ██████ is male; (d) male members were present at the time Officer Kelly searched ██████ and (e) there was no immediate safety need for Officer Kelly to search ██████. Additionally, ██████ remarks about Officer Kelly touching his testicles and Officer Kelly’s response, both of which were made contemporaneously, support the finding that Officer Kelly in fact touched ██████ testicles without justification. Further, in a report authored by Officer Kelly, she admitted that her search of ██████ violated CPD policy. It is for these reasons that COPA finds Officer Kelly’s actions violated Department policy and Rules 2, 3, 6, 8 and 9.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Kelly

i. Complimentary and Disciplinary History

Officer Kelly has received 64 various awards and has received no discipline in the last five years.¹⁶

ii. Recommended Penalty

Here, COPA has found that Officer Kelly improperly searched a citizen during which she improperly touched his sexual organs. The policies that Officer Kelly violated are designed to protect the rights of citizens and limit occurrences and allegations of sexual abuse, gender-based humiliation, and other indignities. It is for these reasons, combined with her history COPA recommends that Officer Kelly be separated from CPD.

¹¹ COPA preliminary investigation revealed that Officer Kelly and her partner properly detained the individuals trespassing on an abandoned property. Therefore, there was no basis to serve an allegation related to the detention.

¹² S04-13-09 IV(B), Investigatory Stop System (effective July 10, 2017 to current).

¹³ G06-01-02 IV(B), Restraining Arrestees (effective December 8, 2017 to current).

¹⁴ G06-01-02 IV(A).

¹⁵ G06-01-02 IV(C).

¹⁶ Att. 32.

Approved:



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date 12/21/2022