

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 9, 2017
Time of Incident:	2:46 pm
Location of Incident:	████████████████████
Date of COPA Notification:	October 26, 2018
Time of COPA Notification:	3:24 pm

This incident occurred on December 9, 2017. On October 26, 2018, Mr. ██████████ filed a Freedom of Information Act (FOIA) request with the Department.¹ Sergeant Kimberly Woods, who was assigned to the Freedom of Information Section (FOIA) was reviewing Body Worn Camera (BWC)² video of Officer Bernadette Kelly for possible redactions when she observed Officer Kelly on at least three occasions conduct improper searches of persons and vehicles. Officer Kelly was observed reaching into the pockets and rearranging clothing on persons who were detained but were not taken into custody. Sergeant Woods reported that Officer Kelly’s action constituted a search beyond the scope of a pat down that is allowable when a subject is detained and not arrested. Officer Kelly was also observed opening and looking into the glove compartment of a vehicle that was occupied by some unknown detained subjects that were not arrested. The vehicles were not seized negating the necessity for a custodial search of the vehicle. After numerous attempts to speak with Mr. ██████████ via letter and email, Mr. ██████████ finally contacted COPA and a telephone interview³ was conducted.

II. INVOLVED PARTIES

Involved Officer #1:	Bernadette Kelly, Star 7186, Employee ID ██████████ DOA:10/17/11, Police Officer, Unit of Assignment 011, DOB ██████████82, Female, White.
Involved Officer #2:	Gabriela Santana, Star 16129, Employee ID ██████████ DOA:10/26/15, Police Officer, Unit of Assignment 011, DOB: ██████████85, Female, White Hispanic.
Involved Officer #3:	James Cabay, Star 5713, Employee ID ██████████ DOA:09/14/12, Police Officer, Unit of Assignment 007/716, DOB: ██████████87, Male, White.

¹ Attachment #5, Freedom of Information Act request, P4459363-091418.

² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly.

³ Attachment #87, Interview transcription of ██████████

Involved Officer #4: Timothy Fenton, Star 1212, Employee ID [REDACTED] DOA:12-02-02, Sergeant, Unit of Assignment 007, DOB [REDACTED] 77, Male, White.

Involved Individual #1: [REDACTED] DOB: [REDACTED] 81, Male, Black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Bernadette Kelly	<p>It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Officer Kelly committed misconduct through the following acts or omissions by,</p> <ol style="list-style-type: none"> 1. Observed [REDACTED] walking and said, "Let's stop this fucker." 2. Stopped and Detained [REDACTED] without lawful justification. 3. Conducted a search of [REDACTED] without lawful justification. 4. Performed an unlawful strip search on [REDACTED] 5. Verbally abusive in the manner in which she spoke to persons on the scene. 6. Pointed her weapon without lawful justification at unknown persons that were sitting in a parked vehicle. 7. Detained and searched persons without lawful justification. 8. Failed to properly document the stop of persons and complete Investigatory Stop Reports (ISR) and issue ISR receipts. 	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p>

	<p>9. Conducted improper searches of vehicles.</p> <p>10. At the 007th District Station Sally port, Officer Bernadette Kelly performed an unlawful strip search on [REDACTED]</p> <p>11. At the 007th District Station Sally port, Officer Bernadette Kelly performed an unlawful strip search on [REDACTED]</p>	<p>Exonerated</p> <p>Sustained</p> <p>Unfounded</p>
<p>Officer Gabriela Santana</p>	<p>It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Officer Santana committed misconduct through the following acts or omissions by,</p> <ol style="list-style-type: none"> 1. Stopped and Detained [REDACTED] without lawful justification. 2. Conducted an unlawful search on [REDACTED] 3. Conducted an unlawful arrest on [REDACTED] 4. Failed to accurately complete her authored police report. 5. At the 007th District Sallyport, Officer Gabriela Santana failed to report misconduct by Officer Bernadette Kelly. 	<p>Sustained</p> <p>Sustained</p> <p>Exonerated</p> <p>Sustained</p> <p>Not Sustained</p>
<p>Officer James Cabay</p>	<p>It is alleged that on December 9, 2017, at the 007th District Station Holding cell, Officer James Cabay committed misconduct through the following acts or omissions by,</p> <ol style="list-style-type: none"> 1. Performed an unlawful strip search on [REDACTED] 	<p>Sustained</p>
<p>Sergeant Timothy Fenton</p>	<p>It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Sergeant Fenton committed misconduct through the following acts or omissions by,</p>	

	<p>1. Failed to entirely record a law-enforcement-related activity.</p>	<p>Sustained</p>
	<p>2. Failed to direct subordinates and ensure that Investigatory Stop Reports had been properly completed.</p>	<p>Sustained</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 1: Violation of any law or ordinance.
2. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
3. Rule 6: Disobedience of an order directive, whether written or oral.
4. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
5. Rule 10: Inattention to Duty.
6. Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders, or directives of the Department.
7. Rule 38: Unlawful or unnecessary use or display of a weapon.

General Orders

1. GO 01-01, Mission Statement and Core Values⁴
2. GO 06-01-02, Restraining Arrestees⁵
3. GO 06-01-03, Conducting Strip Searches⁶
4. GO 08-01-02, Specific Responsibilities Regarding Allegations of Misconduct⁷

Special Orders

1. SO 04-13-09, Investigatory Stop System⁸
2. SO 03-14, Body Worn Cameras⁹

Federal Laws

⁴ Attachment #29, General Order 01-01, Mission Statement and Core Values, effective March 1, 2011.

⁵ Attachment #42, General Order 06-01-02, Restraining Arrestee, effective December 8, 2017.

⁶ Attachment #46, General Order 06-01-03, Conducting Strip Searches, effective December 8, 2017.

⁷ Attachment #67, GO 08-01-02, Specific Responsibilities Regarding Allegations of Misconduct, effective March 17, 2013.

⁸ Attachment #28, Special Order 04-13-09, Investigatory Stop System, effective July 10, 2017.

⁹ Attachment #77, Special Order 03-14, Body Worn Cameras, effective October 17, 2017.

1. Fourth Amendment, United States Constitution

V. INVESTIGATION¹⁰

a. Interviews

In an **interview with COPA**¹¹ on July 31, 2020, ██████████ related that on December 9, 2017, he was walking when Officer Bernadette Kelly and Officer Gabriela Santana pulled over and approached him. Mr. ██████████ related that Officer Kelly told him to stop, but Mr. ██████████ refused and continued walking. Officer Kelly stepped in front of Mr. ██████████ and grabbed him and accused him of throwing something away. Mr. ██████████ denied throwing anything away and Officer Kelly began to search the area. Mr. ██████████ related while being searched, Officer Kelly pulled his pants and looked around his buttocks and groin area. Mr. ██████████ also observed Officer Kelly searching a friend named ██████████ around his private area. Mr. ██████████ described there being at least fifteen male officers on the scene that could have searched him instead of Officer Kelly. Mr. ██████████ was carrying a backpack that was searched by Officer Kelly. Mr. ██████████ denied having any narcotics on him or throwing away any narcotics. Mr. ██████████ admitted to possibly having a marijuana joint on him. Mr. ██████████ was transported to the police station and while inside the sally port, he was accused of consuming narcotics. Mr. ██████████ denied having any narcotics or ever selling crack cocaine. Mr. ██████████ related that he does not consume narcotics but described himself as being a “pothead.”¹² Mr. ██████████ did not recall the entire incident, but did recall being placed inside a room and being strip searched and having his buttocks exposed other male white officers.

In an **interview with COPA**¹³ on January 22, 2020, Officer Bernadette Kelly related that on December 9, 2017, she and her partner Officer Gabriela Santana responded to a call regarding four males entering a home at ██████████. Officer Kelly did not know the race of the males, their heights or what they were wearing. Officer Kelly was allowed to view ██████████ Arrest Report,¹⁴ CPD Event Query Report¹⁵ and viewed video excerpts of her BWC.¹⁶ Upon arriving at the scene, Officer Kelly observed four males standing in front of a house. Officer Kelly viewed a video excerpt from her BWC¹⁷ that captured her stating, “*Let’s stop this fucker.*” Officer Kelly admitted making that comment and described it as a private conversation with Officer Santana. Officer Kelly observed a male, now known as ██████████ crossing the street.

¹⁰ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

¹¹ Attachment #87, Interview transcription of ██████████

¹² *Id.*, page #39, line 3.

¹³ Attachment #54, Interview transcription of Officer Bernadette Kelly (January 22, 2020).

¹⁴ Attachment #6, Arrest Report of ██████████

¹⁵ Attachment #16, OEMC CPD Event Query #1734308210.

¹⁶ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly.

¹⁷ *Id.*, minute 2:49.

After stopping and exiting, Officer Kelly approached Mr. ██████ and ordered him to stop because she wanted to conduct a field interview. Officer Kelly was asked if she had reasonable suspicion that Mr. ██████ had committed a crime, was committing a crime, or about to commit a crime¹⁸. Officer Kelly related that she observed Mr. ██████ toss an unknown item and stated, *“The proximity to the call that we were dispatched. I asked him to stop. He tried to run from me while putting his hands down the front of his pants leading me to believe that he was trying to conceal a weapon or drugs or conceal drugs or any of those.”*¹⁹ Officer Kelly could not provide a description of the item that Mr. ██████ threw. A search of the immediate area by Officer Kelly and other responding officers did not recover any narcotics or weapons.

Officer Kelly described the interaction with Mr. ██████ as a detainment and not as an arrest. Officer Kelly described herself as conducting a custodial search of Mr. ██████ and denied the allegation that she stopped and detained Mr. ██████ without lawful justification. Officer Kelly viewed a video excerpt from her BWC²⁰ that captured her unzipping Mr. ██████ book bag and searching his pant pockets. Officer Kelly stated *“I would say more of a pat-down of a bag. It's not a full-blown search of his bag or I would have taken everything out.”*²¹ Officer Kelly did not have consent to open the bookbag but believed that she had reasonable suspicion to open the bag. Officer Kelly stated, *“I believe at the time when I originally came across him, I believed that he was in possession of a gun. I've said it several times on there. And just because he didn't have one there does not mean he didn't have one in his bag. Sometimes people carry two, three.”*²² Officer Kelly did not have verbal consent to reach into Mr. ██████ pant pockets. Officer Kelly described her actions as conducting a pat-down on Mr. ██████ and not a custodial search.

Officer Kelly believed that Mr. ██████ made a gesture to look inside his pant pocket for his identification. Officer Kelly reached into Mr. ██████ left pant pocket and recovered a knotted bag of suspected cannabis. Officer Kelly was shown Mr. ██████ Arrest Report²³ that stated, *“During a pat-down, P.O. Kelly #7186 felt a small hard object in above's coat pocket that was consistent with the feel of narcotics.”*²⁴ Officer Kelly admitted that she recovered the narcotics from Mr. ██████ pant pocket and not from his coat pocket. Officer Kelly admitted the Arrest Report was not accurate, but that the mistake was not intentional. Officer Kelly believed that an officer is allowed to conduct a pat-down around the crotch area of an individual who is of the opposite sex.²⁵ Therefore, Officer Kelly denied the allegation that she conducted an unlawful search on Mr. ██████

¹⁸ See *Terry v. Ohio*, 392 U.S. 1 (1968): “A police officer may conduct a brief investigatory stop of a person when the officer reasonably believes that the person has committed, or is about to commit, a crime.”

¹⁹ *Id.*, Page 34, lines 11-15.

²⁰ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 9:13.

²¹ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 83, lines 14-16.

²² Attachment #54, Interview transcription of Officer Bernadette Kelly, page 79, lines 18-23.

²³ Attachment #6, Arrest Report of ██████

²⁴ *Id.*, page 2, incident narrative lines 7-8.

²⁵ See Attachment #28, Investigatory Stop System, Section VI, Item A-2-Notes.

While at the scene of the arrest, Officer Kelly admitted to manipulating Mr. [REDACTED] clothing and stated, *"I had to open his belt to search his second pair of pants."*²⁶ Officer Kelly was asked if her actions exposed Mr. [REDACTED] underwear and Officer Kelly replied, *"If I did, I -- I did nothing intentional to expose his underwear. If his underwear were showing, it's because it's how he wears his clothes like many people do."*²⁷ Officer Kelly was shown a General Order 06-01-03 (Conducting Strip Search)²⁸ and specifically Section II, Item A-3-d, which states, *"Strip Search, means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person."*²⁹ Officer Kelly believed her actions did not constitute a strip search and therefore denied the allegation. Officer Kelly was cited for violating General Order 06-01-02³⁰ (Restraining Arrestee)³¹ specifically Section IV, Item C which indicate that custodial searches are to be conducted by a member who is of the same gender as the arrestee. Officer Kelly believed that she was following the order and therefore denied the allegation.

Officer Kelly viewed a video excerpt from her BWC³² that captured her turning her attention to unknown male black occupants that were sitting inside a parked vehicle. Officer Kelly approached the vehicle while unholstering her weapon. Officer Kelly pointed her weapon at the vehicle and told the occupants *"Don't you fucking move."*³³ Officer Kelly was asked to explain her actions and stated *"Because they were also across the street that is -- they had their hands down, and at the time, I thought I was approaching a felony traffic stop. They were attempting to leave the scene when we believed that they were trying to enter that house."*³⁴ As Officer Kelly approached the vehicle, she observed other male black individuals on the sidewalk and stated to them, *"Get the fuck out of here or you will be with them."*³⁵

Officer Kelly was asked about the comments she made and stated, *"I think that the language that I used sometimes has to be used when attempting to stop men in a chaotic situation or anyone really in a chaotic situation to get your point across quickly. And the people walking up on me -- this happens often where officers are ambushed while they're stopping a car or on a job and they needed to know that I was serious and I did not need them coming up behind me."*³⁶ Officer Kelly did not recall having any reasonable suspicion or observing any of the male black occupants committing a crime.³⁷ Officer Kelly admitted that she pointed her weapon, but denied that it was without lawful justification. Officer Kelly ordered the rear passenger, a male

²⁶ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 145, lines 22-23.

²⁷ *Id.*, page 146, lines 2-5.

²⁸ Attachment #46, General Order 06-01-03, Conducting Strip Searches.

²⁹ *Id.*, page 1, Section II, Item A-3-e.

³⁰ *Id.*, page 2, Section IV, Item C.

³¹ Attachment #42, General Order 06-01-02, Restraining Arrestee.

³² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 3:50

³³ *Id.*, minute 4:03.

³⁴ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 42, lines 2-6.

³⁵ *Id.*, page 45, lines 1-2.

³⁶ *Id.*, page 46, lines 19-24 and page 47, lines 1-3.

³⁷ See *Terry v. Ohio*, 392 U.S. 1 (1968): "A police officer may conduct a brief investigatory stop of a person when the officer reasonably believes that the person has committed, or is about to commit, a crime."

black who was wearing a gray hooded sweatshirt and blue jacket out of the vehicle. Officer Kelly did not know the identity of this male black and had him placed in handcuffs. Officer Kelly could not identify any of the male black occupants in the vehicle. Officer Kelly denied the allegation that she detained and searched the male black individual without justification. Officer Kelly did not complete an Investigatory Stop Report or issue an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC³⁸ that captured her approaching another parked vehicle. Officer Kelly opened the driver's side door and ordered all the unknown male black occupants to exit the vehicle. Officer Kelly patted-down a male black who was wearing a blue hooded sweatshirt, black jacket, and cap. Officer Kelly did not observe or have any reasonable suspicion that this male black had committed a crime. Officer Kelly denied the allegation that she detained and searched the male black without justification. Officer Kelly did not complete an Investigatory Stop Report or issue an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC³⁹ that captured her approaching an unknown male black with locks hairstyle wearing a black jacket that was exiting a silver-colored vehicle. Officer Kelly did not recall what drew her attention to the male black, but believed it was the odor of burnt cannabis that was emitting from him. Officer Kelly handcuffed the male black and performed a pat-down over his clothing and crotch area. However, the BWC⁴⁰ video captured Officer Kelly placing her hand on the groin and buttocks area of the male black. The male black is heard complaining that Officer Kelly was touching his groin area and Officer Kelly is heard responding, "*It's alright, I'm searching you.*"⁴¹ Officer Kelly admitted to hearing herself tell the male black "*Spread your fucking legs*"⁴² and could not recall why she used profanity. Officer Kelly was asked if a pat-down could be performed by an officer of the opposite sex and Officer Kelly replied, "*Absolutely. If a woman had a gun, should a man just let her stand there and wait?*"⁴³ Officer Kelly denied the allegation that she detained and searched the male black without justification.

Officer Kelly viewed a video excerpt from her BWC⁴⁴ that captured her returning to the same male black with locks hairstyle and searching his pant pockets. Officer Kelly related that she was searching his pockets for narcotics and did not need consent. Therefore, Officer Kelly denied the allegation that she detained and searched the male black without justification. Officer Kelly did not complete an Investigatory Stop Report or issue an ISR receipt but added that a report should have been completed.

³⁸ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:36 to about 5:15.

³⁹ *Id.*, minute 5:55.

⁴⁰ *Id.*, minute 6:43.

⁴¹ *Id.*, minute 6:49.

⁴² *Id.*, minute 6:03.

⁴³ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 69, lines 18-19

⁴⁴ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 17:30.

Officer Kelly viewed a video excerpt from her BWC⁴⁵ that captured her turning her attention to an unknown person and stating, *"Do you want to join them? I can do the same shit to you."*⁴⁶ Officer Kelly did not recall the person who she was talking too and stated, *"That block is known for high narcotic sales, multiple shootings. I mean, almost every day, every other day, we're on a stop where people are walking up behind us. We use language to keep them back and keep us safe."*⁴⁷

Officer Kelly viewed a video excerpt from her BWC⁴⁸ that captured her turning her attention to a male black who was wearing a red jacket with lettering that stated "CAMBINO." Officer Kelly requested a pair of handcuffs, and the male black is observed being handcuffed. Officer Kelly did not recall having any reasonable suspicion that the male black had committed a crime. Officer Kelly viewed a video excerpt from her BWC⁴⁹ that captured her asking the same male black if he owned the silver SUV. The male black told Officer Kelly that the SUV belonged to his girlfriend. Officer Kelly entered the SUV and conducted a search. Officer Kelly did not request consent to search the SUV and stated, *"No. But I don't need consent for a search for narcotics. I can smell cannabis."*⁵⁰ After searching the vehicle, Officer Kelly re-approached the same male black and placed her hand inside his jacket pocket. Officer Kelly was asked to explain why she searched his pocket and stated, *"I don't know if I'm starting to do a search for narcotics on him, as well."*⁵¹ Officer Kelly related that the only reason for handcuffing the male black was for officer safety reasons. Officer Kelly denied the allegation that she detained and searched the male black without justification. Officer Kelly did not recall completing an Investigatory Stop Report or issuing an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC⁵² that captured her turning her attention to another male black who was detained. Officer Kelly requested his name and the male identified himself as [REDACTED]. Officer Kelly did not recall observing Mr. [REDACTED] smoking any cannabis but could smell the odor of marijuana emitting from him. Officer Kelly could not recall if Mr. [REDACTED] was dangerous or armed with a weapon. Officer Kelly did not recall completing an Investigatory Stop Report or issuing an ISR receipt to Mr. [REDACTED]

Officer Kelly viewed a video excerpt from her BWC⁵³ that captured her turning her attention to another unknown male black with locks hairstyle that was wearing a black hooded jacket. Officer Kelly admitted that she conducted a pat-down and placed her right hand inside his left jacket pocket. Officer Kelly was asked to explain why she searched the pocket and stated, *"I don't know what I felt during that pat-down. Do you know what I'm saying?"*

⁴⁵ *Id.*, minute 6:10

⁴⁶ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 71, lines 21-22.

⁴⁷ *Id.* page 72, lines 23-24 and page 73, lines 1-3.

⁴⁸ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 8:58.

⁴⁹ *Id.*, minute 12:10.

⁵⁰ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 103, lines 23-24.

⁵¹ *Id.*, Page 108, lines 17-18.

⁵² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 11:38.

⁵³ *Id.*, minute 15:28.

*I don't know what I felt in that pat-down. I didn't pull anything out. I could have put my hand in there and felt that it wasn't what I thought it was.*⁵⁴ Officer Kelly did not have consent for the search and could not recall the reason for the search. Officer Kelly did not know the name of the male black and did not recall completing an Investigatory Stop Report or issuing an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC⁵⁵ that captured her turning her attention to another unknown male black who was wearing a gray hooded sweatshirt and black hooded jacket. Officer Kelly admitted that she patted-down the male black and searched his jacket pockets, sweatshirt pockets and pant pockets. Officer Kelly was asked if she was given consent to search the pockets and stated, *“Now, if I believed that what I was doing was a search for narcotics, I did not need his consent to do the search for narcotics.”*⁵⁶ Officer Kelly did not recall having any reasonable suspicion of any crime being committed by the male black. Officer Kelly did not know the name of the male black and did not recall completing an Investigatory Stop Report or issuing an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC⁵⁷ that captured her turning her attention to another unknown male black who was handcuffed and wearing a blue hooded sweatshirt and black jacket. Officer Kelly is observed unzipping his jacket and searching the inside of his pant and jacket pockets while lifting his shirt. Officer Kelly did not ask for consent and stated, *“He does not have to consent. I don't need consent. It's search for narcotics. If I believe he may be in possession of narcotics, I can do the search.”*⁵⁸ Officer Kelly related that she had reasonable suspicion because the man was inside the same vehicle with Mr. [REDACTED] who was found to be in possession of narcotics. Officer Kelly did not know the name of the male black and did not recall completing an Investigatory Stop Report or issuing an ISR receipt but added that a report should have been completed.

Officer Kelly viewed a video excerpt from her BWC⁵⁹ that captured Mr. [REDACTED] inside the 007th District Sally Port being escorted out of the transporting vehicle. Officer Kelly related that Mr. [REDACTED] had repositioned his arms behind his knees and they could not stand him up or lay him down. Officer Kelly believed that Mr. [REDACTED] had ingested some narcotics because an unknown substance was dripping from his mouth. Officer Kelly related that Mr. [REDACTED] underpants were already exposed because of the way he repositioned his handcuffed hands. Officer Kelly viewed a video excerpt from her BWC⁶⁰ that captured her manipulating Mr. [REDACTED] clothing and exposing his buttocks. Officer Kelly was asked if she manipulated Mr. [REDACTED] undergarment and stated, *“Due to the exigent circumstances, of*

⁵⁴ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 113, lines 15-19.

⁵⁵ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 15:51.

⁵⁶ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 123, lines 5-7.

⁵⁷ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 18:02.

⁵⁸ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 134, line 24 and page 135, lines 1-2.

⁵⁹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 40:56.

⁶⁰ *Id.*, minute 42:54.

course I did.”⁶¹ Officer Kelly related that her actions were not intentional, but just wanted to make sure that Mr. ██████ was not concealing any more narcotics that he could ingest. Officer Kelly denied the allegation that she performed an unlawful strip search on Mr. ██████ because of exigent circumstances. Officer Kelly was shown General Order 06-01-03⁶² that governs how strip searches are to be conducted by Chicago Police Officers. After reviewing the order, Officer Kelly admitted that the order did not provide for any exigent circumstances. Officer Kelly did not get prior supervisor approval before manipulating Mr. ██████ undergarment as required in the order. Officer Kelly did not report the manipulation of Mr. ██████ undergarment and exposure of his buttocks in her authored police report. Officer Kelly viewed a video excerpt from her BWC⁶³ that captured her stating, “On scene, he was wearing two pair of pants, did I not put my fucking hand up his.” Officer Kelly was asked to explain her comments and stated, “I said, did I not put my hands in -- you know, and I do that. But let's be honest here. You can say whatever you want or whatever I -- what you think I said, but all the searches that I did of him are on body cam. Okay.”⁶⁴”

Officer Kelly viewed a video excerpt from her BWC⁶⁵ that captured ██████ inside the 007th District Sally Port and exiting the squad car. The video captured Mr. ██████ pants dropping down below his waist and exposing his buttocks. Officer Kelly admitted that she pulled up Mr. ██████ pants to prevent further exposure of his buttocks and denied performing an unlawful strip search on Mr. ██████

Officer Kelly was shown General Order 01-01⁶⁶ which describes the Chicago Police Department’s Mission Statement and Core Values. Officer Kelly was read a portion of Section III, Item A-1 which states, “We aspire to the high ideas: altruism; honor; respect; scholarship; caring, compassion, and communication; leadership; and responsibility,⁶⁷” Officer Kelly was asked if her actions were in compliance with the mission of the Chicago Police Department, she stated, “Also, I think that we need to take into consideration the block that we were on. Do you think that I go to a victim's house and speak to them that way? Absolutely not. I have plenty of awards, complimentary letters. I'm not a bad police officer. But I'm not going to go on that block where they shoot all the time and where I thought people were trying to commit a burglary. They sell drugs, they shoot, they have guns. You don't go on that block and not try to take charge of it because they will -- they will eat you alive. Okay? Being a small female officer, I

⁶¹ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 165, lines 6-7.

⁶² Attachment #46, General Order 06-01-03, Conducting Strip Searches.

⁶³ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette, minute 47:00.

⁶⁴ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 154, lines 20-24.

⁶⁵ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 47:23.

⁶⁶ Attachment #29, General Order 01-01, Mission Statement and Core Values.

⁶⁷ *Id.*, pages 1-2, Section III (Core Values) Item A.

*have to go out in and take charge. That is what I do, and people take me seriously. You can see that however you want, but different situations call for a different demeanor and that's how it is.*⁶⁸”

In interviews with COPA on January 16, 2020⁶⁹ and March 17, 2020⁷⁰, **Officer Gabriela Santana** related that on December 9, 2017, she and her partner Officer Bernadette Kelly responded to a disturbance call involving four males who were attempting to enter a house. Prior to the interview, Officer Santana related that she had viewed her Body Worn Camera (BWC).⁷¹ During the interviews at COPA, Officer Santana was also shown video excerpts of her BWC and video excerpts of Officer Kelly’s BWC. Officer Santana acknowledged hearing Officer Kelly state, *“Let’s stop this fucker”*⁷² but did not know what exactly Officer Kelly was referring too. Officer Santana observed ██████████ walking across the street and pulled over their squad car. Officer Kelly exited the squad car and approached Mr. ██████████ to talk to him.

Officer Santana heard Officer Kelly state that she had observed Mr. ██████████ throw something to the ground. Officer Santana did not witness Mr. ██████████ throw anything to the ground but believed the stop of Mr. ██████████ was justifiable. Officer Santana also stated, *“I think it was, and I’ve been working with Kelly for almost three years now. I know she’s a great officer, and I trust her judgment. And although I didn’t see it, she says that he threw something. So, me hearing that, I’m going to trust what she said.”*⁷³ A search of the immediate area where Mr. ██████████ was arrested revealed no narcotics found. Officer Santana related that a search of Mr. ██████████ did reveal that he was in possession of cannabis. Officer Santana denied the allegation that Mr. ██████████ was stopped and detained without lawful justification. After assisting units arrived, Officer Santana turned her attention to a parked SUV with dark tinted windows that was emitting a strong odor of cannabis. Officer Santana’s BWC⁷⁴ captured three male black occupants sitting inside the SUV. Officer Santana observed the rear passenger, now known as ██████████ with his belt unbuckled and with his hands around his waist. Officer Santana walked around the vehicle as Mr. ██████████ was exiting the vehicle. Officer Santana instructed Mr. ██████████ to spread his legs and patted him down between his thighs and legs and felt something that was consistent with being a package of narcotics.

Officer Santana was not sure if it was a concealed weapon as Mr. ██████████ began to struggle and move away. At one point, Mr. ██████████ body pushed against Officer Santana’s chest area and caused her BWC to deactivate.⁷⁵ Officer Santana recovered a bag containing fifteen pills of suspected crystal meth from Mr. ██████████. Therefore, Officer Santana denied conducting an unlawful search and unlawful arrest of Mr. ██████████

⁶⁸ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 194, lines 12-24, page 195, lines 1-3.

⁶⁹ Attachment #55, Interview transcription of Officer Gabriela Santana, interviewed on January 16, 2020.

⁷⁰ Attachment #66, Interview transcription of Officer Gabriela Santana, interviewed on March 17, 2020.

⁷¹ Attachment #68, Body Worn Camera (BWC) of Officer Gabriela Santana.

⁷² *Id.*, minute 2:15.

⁷³ Attachment #55, Interview transcription of Officer Gabriela Santana, interviewed on January 16, 2020.

⁷⁴ Attachment #68, Body Worn Camera (BWC) of Officer Gabriela Santana, minute 4:49.

⁷⁵ *Id.*, minute 6:18.

Officer Santana viewed a video excerpt from Officer Kelly's BWC⁷⁶ that captured Officer Kelly pointing her weapon at a parked vehicle and yelling "*Don't you fucking move.*"⁷⁷ Officer Santana did not witness the initial incident and could not identify any of the male black occupants that were inside the parked vehicle. Officer Santana further stated, "*From this video that you showed me right now, I wouldn't be able to tell you. I don't know why they were stopping them.*"⁷⁸ Officer Santana was shown CPD Event Query Report #1734308210⁷⁹ that indicated four driver's licenses and six names were searched through the Portable Data Terminal (PDT) inside her assigned police vehicle. Officer Santana could not provide an explanation why there was no documentation for the names and driver licenses of the persons that were ran through the PDT.

Officer Santana was shown Mr. ██████ Arrest Report⁸⁰ and the Original Case Incident Report⁸¹ and related that she authored the case report and Officer Kelly authored the arrest report. The reports stated that during a pat-down of Mr. ██████ Officer Kelly discovered a small hard object of suspected narcotics in Mr. ██████ coat pocket. Officer Santana was shown a video excerpt of Officer Kelly's BWC⁸² that captured Officer Kelly discovering the narcotics inside Mr. ██████ pant pocket and not his coat pocket. Officer Santana admitted that the case and arrest reports essentially stated the same account. Officer Santana recanted her account and stated, "*I wanted to clarify that I don't know who wrote what, the arrest or the case, okay? Obviously, both of them have the same type of verbiage.*"⁸³ Officer Santana acknowledged that the police reports did not accurately describe where the narcotics were recovered from Mr. ██████ However, Officer Santana denied the allegation and stated, "*I still deny it. Because at the time I believed that I was doing a correct report.*"⁸⁴

Officer Santana viewed a video excerpt of Officer Kelly's BWC⁸⁵ that captured Officer Kelly inside the Sally Port manipulating Mr. ██████ underwear and exposing his buttocks. Officer Santana was cited with the allegation that she failed to report misconduct by Officer Kelly who conducted an unlawful strip search of Mr. ██████ Officer Santana denied the allegation and related that from the position where she was standing, she did not observe Officer Kelly expose Mr. ██████ buttocks. Officer Santana was shown General Order 06-01-03⁸⁶ that governs how Chicago Police Officers are to conduct strip searches. Officer Santana acknowledged knowing this order and believed that Officer Kelly's action was not a strip search because of exigent circumstances. While being transported to the station, Mr. ██████ was able to maneuver his

⁷⁶ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 3:50.

⁷⁷ *Id.*, minute 4:03.

⁷⁸ Attachment #66, Interview transcription of Officer Gabriela Santana, interviewed on March 17, 2020, page 13, lines 18-20.

⁷⁹ Attachment #16, OEMC CPD Event Query Report #1734308210.

⁸⁰ Attachment #6, Arrest Report of ██████

⁸¹ Attachment #8, Original Case Incident Report, JA543127.

⁸² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 10:31.

⁸³ Attachment #66, Interview transcription of Officer Gabriela Santana, interviewed on March 17, 2020, page 25, lines 16-19.

⁸⁴ *Id.*, page 29, lines 20-21.

⁸⁵ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 42:54.

⁸⁶ Attachment #46, General Order 06-01-03, Conducting Strip Searches.

handcuffed hands toward his mouth. Officer Santana believed that Mr. ██████ had ingested narcotics and Officer Kelly was just checking Mr. ██████ for additional narcotics.

In an **interview with COPA**⁸⁷ on October 8, 2020, Officer James Cabay was shown a copy of a form called “Report of Strip Search”⁸⁸ and General Order 06-01-03 (Conducting Strip Searches)⁸⁹ which outline the procedures for Department members conducting strip searches. Officer Cabay was directed to specifically Section II, Item A-2, which states “*Strip search means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarment of person.*”⁹⁰ Officer Cabay was also directed to Section II, Item 4-a, which states “*Every peace officer or employee of a police department conducting a strip search shall obtain the written permission of the police commander or an agent thereof designated for the purposes of authorizing a strip search in accordance with this section.*”⁹¹ Officer Cabay related that he had not seen this order before and had not participated in an official strip search. Officer Cabay was asked to explain what he believed constituted a strip search and stated, “*My understanding of it would be to remove someone’s clothing in a way that would reveal the removal of their clothing to where they would be naked essentially stripping of their clothing.*”⁹²

Officer Cabay viewed a video excerpt from Officer John Murphy’s BWC⁹³ that captured him assisting in a custodial search of ██████ inside a 007th District holding cell. Officer Cabay explained they were attempting to remove any contrabands from Mr. ██████ before placing him inside a cell. Officer Cabay related that an arrestee was only allowed to have one pair of underwear, socks, shirt, pants, shorts, and coat before being placed inside a cell. Officer Cabay viewed a video excerpt from Officer Murphy’s BWC⁹⁴ that captured items falling from the bottom of Mr. ██████ pants. At that point, Mr. ██████ was instructed to remove his second pair of pants. Officer Cabay related that it was policy, not to allow an arrestee to enter the holding facility with two pairs of pants on. Officer Murphy’s BWC⁹⁵ captured Mr. ██████ being instructed to spread his legs and squad down. Officer Cabay is observed shaking Mr. ██████ underwear to recover any dislodged items that might have come from his buttocks area. After Mr. ██████ stood up, Officer Cabay was captured pulling Mr. ██████ underwear down and looking at his exposed buttocks. At the time of the incident, Officer Cabay did not believe that he was conducting a strip search.

⁸⁷ Attachment #95, Interview transcription of Officer James Cabay.

⁸⁸ Attachment #88, Report of Strip Search, CPD-11-521.

⁸⁹ Attachment #46, General Order 06-01-03, Conducting Strip Searches.

⁹⁰ *Id.* Page 1, Section II, Item A-2.

⁹¹ *Id.* Page 1, Section II, Item 4-a.

⁹² Attachment #95, Interview transcription of Officer James Cabay.

⁹³ Attachment #80, Body Worn Camera (BWC) of Officer John Murphy.

⁹⁴ *Id.* minute 16:30-17:30.

⁹⁵ *Id.* minute 18:30.

After viewing the BWC⁹⁶ video, Officer Cabay admitted to manipulating Mr. [REDACTED] underwear and violated General Order 06-01-03 (Conducting Strip Searches).⁹⁷ Officer Cabay admitted that he did not obtain written permission to conduct a strip search and violated Section II, Item 4-a.⁹⁸ Officer Cabay also admitted that he did not prepare a Strip Search Report and violated Section II, Item 4-b.⁹⁹

In an **interview with COPA**¹⁰⁰ on October 21, 2020, Sergeant Timothy Fenton responded to an assist call in his sector that involved Officer Bernadette Kelly and Officer Gabriela Santana. While on the scene, Sergeant Fenton is captured turning on and turning off his Body Worn Camera (BWC)¹⁰¹ on two occasions. Sergeant Fenton explained that he deactivated his BWC¹⁰² the first time because an officer wanted to speak to him. Sergeant Fenton could not recall the conversation with the officer and could not explain why he deactivated his BWC. Sergeant Fenton deactivated his BWC¹⁰³ for a second time while still in an active scene. Sergeant Fenton was asked to explain why he deactivated his BWC and replied, *“Again, I don’t remember the incident.”*¹⁰⁴ Sergeant Fenton was shown Special Order 03-14, Section III, Item B-1-a¹⁰⁵ which states *“The Department member will not deactivate event mode unless the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity.”* Sergeant Fenton admitted that he failed to comply with Special Order 03-14.¹⁰⁶

Sergeant Fenton viewed his second BWC¹⁰⁷ video that captured him walking through the scene and observing at least eight unknown male black individuals that were detained and in handcuffs. Sergeant Fenton agreed that an Investigatory Stop Reports should have been completed on all the male black individuals. Sergeant Fenton further stated, *“At this point in the video, no, I did not remind any of the officers to complete their ISR’s.”*¹⁰⁸ Sergeant Fenton admitted that he failed to ensure that Investigatory Stop Reports were completed and therefore, violated Special Order 04-13-09 (Investigatory Stop System).¹⁰⁹

b. Digital Evidence¹¹⁰

Body Worn Camera (BWC)¹¹¹ video of Officer Bernadette Kelly captured her conducting unlawful detainments and searches on [REDACTED] and at least nine other unknown male black

⁹⁶ *Id.*

⁹⁷ Attachment #46, General Order 06-01-03, Conducting Strip Searches.

⁹⁸ *Id.* Page 1, Section II, Item 4-a.

⁹⁹ *Id.* Page 1, Section II, Item 4-b.

¹⁰⁰ Attachment #104, Interview transcription of Sergeant Timothy Fenton.

¹⁰¹ Attachments #78-79, Body Worn Camera (BWC) of Sergeant Timothy Fenton.

¹⁰² Attachment #78, Body Worn Camera (BWC) of Sergeant Fenton, minute 3:15.

¹⁰³ *Id.*, minute 16:26.

¹⁰⁴ Attachment #104, Interview transcription of Sergeant Fenton, page 46, line 12.

¹⁰⁵ Attachment #77, Special Order 03-14, Body Worn Cameras, page 12, Section III, Item B-1-a.

¹⁰⁶ Attachment #77, Special Order 03-14, Body Worn Cameras.

¹⁰⁷ Attachment #79, Body Worn Camera (BWC) of Sergeant Fenton, 12:27 thru 16:26.

¹⁰⁸ Attachment #104, Interview transcription of Sergeant Fenton, page 43, lines 9-11.

¹⁰⁹ Attachment #28, Special Order 04-13-09, Investigatory Stop system.

¹¹⁰ *Include all relevant video/audio/photographic evidence here.*

¹¹¹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly.

individuals. Officer Kelly was also observed conducting a search of a vehicle and using abusive language:

- minute 2:49 - directed profanities
- minute 2:54 - detainment of Mr. [REDACTED]
- minute 3:50 - pointed her weapon at a parked vehicle
- minute 3:57 - detainment and search of a man wearing a gray hooded sweatshirt and blue jacket
- minute 4:03 - directed profanities
- minute 4:36 -5:15 detainment and search of a man wearing a blue hooded sweatshirt, black jacket, and cap
- minute 5:55 - detainment of a man with locks hairstyle and wearing a black jacket exiting a silver-colored vehicle
- minute 6:03 - directed profanities at the man with locks hairstyle wearing a black jacket and exiting a silver-colored vehicle
- minute 6:10 - directed profanities at unknown persons
- minute 6:43 - search of a man with locks hairstyle wearing a black jacket after he exited the silver-colored vehicle
- minute 8:58 - detainment of a man wearing a red jacket with lettering that stated "CAMBINO"
- minute 9:13 - search of Mr. [REDACTED]
- minute 12:00 - search of a silver SUV
- minute 15:28 - detainment and search of a man with locks hairstyle wearing a black hooded jacket
- minute 15:51 - detainment and search of a man wearing a gray hooded sweatshirt and black jacket
- minute 18:02 - detainment and search of a man wearing a blue hooded sweatshirt and black jacket
- minute 42:54 - strip search of Mr. [REDACTED]
- minute 46:45 - profanity

Body Worn Camera (BWC)¹¹² video of Officer Gabriel Santana captured her conducting unlawful detainment and search on [REDACTED]

- minute 4:49 – detainment and search of Mr. [REDACTED]

Body Worn Camera (BWC)¹¹³ video of Sgt. Timothy Fenton captured him turning on and turning off his BWC on two occasions and failed to record the entire law-enforcement-related incident. The second BWC¹¹⁴ video of Sergeant Fenton captured Officer Kelly conduct an unlawful search of a vehicle. Sergeant Fenton's video captured at least eight unknown male black individuals being detained and handcuffed:

- minute 3:15 - deactivated BWC during an active scene (attachment 78)
- minute 16:26 - deactivated BWC during an active scene (attachment 79)
- minute :36 - detainment and search of a male black (wearing a gray hooded sweatshirt and black jacket)

¹¹² Attachment #68, Body Worn Camera (BWC) of Officer Gabriela Santana.

¹¹³ Attachments #78-79, Body Worn Camera (BWC) of Sergeant Timothy Fenton.

¹¹⁴ Attachment #79, Body Worn Camera (BWC) of Sergeant Fenton.

- minute :49 - detainment of a man with locks hairstyle wearing a black jacket
- minute :51- detainment and search of a man wearing a blue hooded sweatshirt, black jacket, and cap
- minute 4:36 - detainment of a man wearing a red jacket with lettering that stated “CAMBINO”
- minute 4:51 - Officer Kelly searching a vehicle
- minute 5:11 - detainment of a man wearing a black jacket and black cap
- minute 5:55 - detainment of three men across the street wearing dark-colored hooded jackets

Body Worn Camera (BWC)¹¹⁵ video of Officer John Murphy captured him and other officers conducting a custodial search on [REDACTED] while inside a holding cell. The BWC video of Officer Murphy captured Officer James Cabay conducting an unlawful strip search on Mr. [REDACTED]

- minute 17:30 – instructed Mr. [REDACTED] to remove second pair of pants
- minute 18:39 – instructed Mr. [REDACTED] to spread his legs and squat down
- minute 18:48 – pull back Mr. [REDACTED] underwear and looked at his exposed buttocks

c. Documentary Evidence¹¹⁶

The **Initiation Report**¹¹⁷ was authored by Sergeant Kimberly Woods on October 26, 2018, who was assigned to the Freedom of Information Section. While reviewing Body Worn Camera video of Officer Bernadette Kelly’s (BWC)¹¹⁸ for possible redactions, Sergeant Wood observed Officer Kelly conduct improper searches of persons and vehicles. Officer Kelly was observed reaching inside pockets and rearranging clothing on persons who were detained and not taken into custody. Sergeant Woods related that the actions of Officer Kelly constituted a search beyond the scope of pat down allowable when subjects are detained and not arrested. Officer Kelly was also observed opening and looking into the glove compartment of a vehicle occupied by some unknown detained subjects that were not arrested. The vehicles were not seized negating the necessity for a custodial search of the vehicle.

Freedom of Information Act (FOIA) P459363-091418¹¹⁹ indicated that on September 14, 2018, [REDACTED] requested Body Worn Camera video for an incident that occurred on December 9, 2017.

The **Arrest Report**,¹²⁰ authored by Officer Bernadette Kelly and Officer Gabriela Santana, detailed the arrest of [REDACTED] On December 9, 2017, at about 2:46 pm, the officers responded to a disturbance call of four male black individuals attempting to enter a house located at [REDACTED]. The report indicated that Mr. [REDACTED] was jogging across the street and matched the description of one of the offenders. The officers stopped and exited their police

¹¹⁵ Attachment #80, Body Worn Camera (BWC) of Officer John Murphy.

¹¹⁶ Include all relevant police reports, event queries, etc.

¹¹⁷ Attachment #4, Initiation Report of Sergeant Kimberly Woods.

¹¹⁸ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly.

¹¹⁹ Attachment 5, Freedom of Information Act request, P4459363-091418.

¹²⁰ Attachment #6, Arrest Report of [REDACTED]

vehicle and attempted to conduct a field interview with Mr. [REDACTED]. Officer Kelly reported that she observed Mr. [REDACTED] reach into his pants and throw away an unknown object. Mr. [REDACTED] was detained and a searched of the immediate area for the unknown object revealed negative results. During a pat-down, Officer Kelly felt a small hard object in Mr. [REDACTED] coat pocket that was consistent with the feel of narcotics. Officer Kelly recovered a knotted plastic bag containing a green leafy substance of suspected cannabis. The cannabis had a strange odor and was believed to be laced with another narcotic. While being transported to the 007th District Station, Mr. [REDACTED] was observed moving his handcuffs hands under his knees and was continuously bending down. While in the 007th District Sally Port, the officers opened the backdoor and observed a large, knotted plastic bag on the backseat next to Mr. [REDACTED]. The officers observed a thick black substance dripping out of Mr. [REDACTED] mouth and onto his sweatshirt. The officers recovered pieces of different kinds of pills on the seat and floor of the squad car that totaled 14.1 grams of suspected ecstasy. Mr. [REDACTED] was transported by CFD Ambulance #49 to St. Bernard hospital where he was treated and released.

The **Arrest Report**,¹²¹ authored by Officer Bernadette Kelly and Officer Gabriela Santana, detailed the arrest of [REDACTED]. On December 9, 2017, at about 2:46 pm, the officers responded to a disturbance at 7033 S. Wolcott Avenue. While investigating the disturbance, the officers could smell a strong odor of cannabis coming from a black SUV which had extremely dark tinted windows. While speaking to the occupants of the vehicle, Officer Santana opened the rear passenger door because she observed movement coming from the backseat. Officer Santana observed Mr. [REDACTED] with his belt open and his hands moving around his waist. Mr. [REDACTED] was asked to exit the vehicle because Officer Santana believed that Mr. [REDACTED] may have been attempting to conceal a weapon. While conducting at pat-down on Mr. [REDACTED] Officer Santana felt a hard-round object above his legs that was consistent with being a package of narcotics. A knotted plastic bag containing fifteen smaller plastic bags of suspected ecstasy and five bags of suspected meth were recovered. Mr. [REDACTED] was placed into custody and transported to 007th District Station for processing. While in the processing room, Mr. [REDACTED] laid on the floor face down and related to the officers that he was dying. Mr. [REDACTED] was transported by CFD Ambulance #36 to St. Bernard hospital where he was treated and released. Mr. [REDACTED] was returned to the 007th District Station and placed back inside lockup.

The **Original Case Incident Report**¹²² for JA543127, authored by Officer Gabriela Santana indicated that on December 9, 2017, at about 2:42 pm, she and Officer Bernadette Kelly responded to a disturbance call involving four male black individuals. Upon arrival, the officers observed four males near [REDACTED]. The officers observed one of the males, now known as [REDACTED] walking away from the other three males. Officer Kelly instructed Mr. [REDACTED] to stop, but instead Mr. [REDACTED] began to slowly jog away and make hand movements towards his waistband and saying "nope, nope, nope." Mr. [REDACTED] grabbed something from his

¹²¹ Attachment #7, Arrest Report of [REDACTED]

¹²² Attachment #8, Original Case Incident Report, JA543127.

waistband and tossed it away. Mr. [REDACTED] was detained, and during a pat-down, a bag of suspected cannabis was recovered from Mr. [REDACTED] jacket pocket. During the investigation, the officers smelled a strong odor of cannabis coming from a parked SUV that had extremely dark tinted windows. Officer Santana approached the SUV and observed movement in the backseat and opened the rear passenger door for officer safety. Officer Santana observed [REDACTED] sitting in the rear passenger seat making hand movements towards his waistband while his belt was undone. Officer Santana instructed Mr. [REDACTED] to step out of the vehicle and conducted a pat-down for weapons. Officer Santana felt a hard-round object between Mr. [REDACTED] legs, which was consistent with being a package of narcotics. A plastic bag containing fifteen smaller bags of suspected ecstasy and five bags of suspected crystal meth was recovered from inside Mr. [REDACTED] pants. Mr. [REDACTED] along with Mr. [REDACTED] were taken into custody and transported to 007th District Station for processing. While being transported, Mr. [REDACTED] was observed with his hands behind his legs and moving down toward the seat. While inside the sallyport, the officers opened the door and observed a large plastic knotted bag on the seat next to Mr. [REDACTED]. The plastic bag contained a powdery residue near Mr. [REDACTED] feet. Multiple pieces of different kinds of pills were found on the backseat and on Mr. [REDACTED]. The officers observed a black residue dripping from Mr. [REDACTED] mouth and on his collar. The officers called for an ambulance and Mr. [REDACTED] was transported to St. Bernard Hospital for a medical evaluation. While being in the processing area, Mr. [REDACTED] knocked on the glass window and laid face down on the bullpen floor. When asked by the officers if something was wrong, Mr. [REDACTED] picked up his head from the ground, said "I'm dying" and then placed his head back on the ground. Mr. [REDACTED] was transported by ambulance to St. Bernard Hospital for a medical evaluation. After being released from the hospital, Mr. [REDACTED] was returned to lockup.

OEMC Chicago Police Event Query Report #1734308210¹²³ indicated that on December 9, 2017, at about 2:39 pm, numerous units responded to a disturbance at [REDACTED] [REDACTED]. The report indicated that Officer Bernadette Kelly and Officer Gabriela Santana were the first unit to arrive on the scene.

OEMC Event Query Report #173431492¹²⁴ indicated that on December 9, 2017, at about 3:58 pm, Chicago Fire Department Ambulance #A49 was dispatched to the 007th District Station. The report indicated that the arrestee, [REDACTED] had ingested narcotics while inside the processing room and was transported to St. Bernard Hospital.

Chicago Fire Department Ambulance #49 report¹²⁵ indicated that on December 9, 2017, at about 3:59 pm, paramedics responded to the 007th District Station. The paramedics observed the arrestee [REDACTED] sitting in the lockup area and complaining that he was arrested for no reason. Mr. [REDACTED] refused to provide the paramedics with information but were informed by CPD personnel that Mr. [REDACTED] had chewed, and ingested pills believed to be ecstasy. The paramedics transported Mr. [REDACTED] to St. Bernard Hospital for a medical evaluation.

¹²³ Attachment #16, OEMC CPD Event Query #1734308210.

¹²⁴ Attachment #23, OEMC Event Query #173431492.

¹²⁵ Attachment #27, CFD Ambulance Report #173431492.

St. Bernard Hospital medical records¹²⁶ of ██████████ indicated that he was transported to the hospital by CFD Ambulance #49 and treated for potentially swallowing a pill. Mr. ██████████ denied ingesting any pill and stated that he was eating a hard candy and denied having any pain or any concerns. Mr. ██████████ vital signs were normal, and an abdominal x-ray was negative. Mr. ██████████ was alert and was acting appropriately. Mr. ██████████ was released back to police custody and given instructions for finding treatment for Alcohol and Drug Addiction.

OEMC Event Query Report #173431569¹²⁷ indicated that on December 9, 2017, at about 4:36 pm, Chicago Fire Department Ambulance #A36 was dispatched to the 007th District Station. The report indicated that the arrestee, ██████████ for unknown reason was laying on the floor in lockup and was transported to St. Bernard Hospital.

Chicago Fire Department Ambulance #36 report¹²⁸ indicated that on December 9, 2017, at about 4:36 pm, paramedics responded to the 007th District Station. The paramedics observed the arrestee ██████████ sitting in the lockup area and complaining of abdominal pain. Mr. ██████████ related that he had a psychiatric disorder and wanted to commit suicide. Mr. ██████████ related that he had ingested some drugs but could not provide the names of the drugs. At the time of his arrest, Mr. ██████████ was in possession of cocaine, ecstasy, and other unknown pills. The paramedics transported Mr. ██████████ to St. Bernard Hospital for a medical evaluation.

St. Bernard Hospital medical records¹²⁹ of ██████████ indicated that he was transported to the hospital by CFD Ambulance #36 and treated for ingesting an unknown pill. Mr. ██████████ admitted to using drugs that day but refused to provide the names of the drugs he used. Mr. ██████████ described himself as being sad and depressed and refused to provide any information about his medical history. Mr. ██████████ was awake, alert, and oriented and showed no symptoms of having ingested drugs. Laboratory tests taken of Mr. ██████████ revealed that he tested positive for cannabis. A CT scan of Mr. ██████████ revealed that the impression was normal. Mr. ██████████ was released back to police custody and was given instructions on how to find substance abuse treatment.

VI. LEGAL STANDARD

a. Search and Seizure

The fourth amendment to the United States Constitution protects people from unreasonable searches and seizures, as does the Illinois Constitution's search and seizure provision.¹³⁰ Reasonableness under the fourth amendment generally requires a warrant supported by probable cause.¹³¹ A limited exception to the warrant requirement under *Terry v. Ohio*, 392

¹²⁶ Attachment #105, St. Bernard Hospital medical record of ██████████

¹²⁷ Attachment #25, OEMC Event Query #173431569.

¹²⁸ Attachment #26, CFD Ambulance Report #173431569.

¹²⁹ Attachment #106, St. Bernard Hospital medical record of ██████████

¹³⁰ *People v. Thomas*, 2019 IL App (1st) 170474, ¶15, citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *People v. Smith*, 152 Ill. 2d 229, 244 (1992).

¹³¹ *People v. Johnson*, 237 Ill. 2d 81, 89 (2010).

U.S. 1 (1968), permits a police officer to briefly stop (and therefore necessarily seize) a person for temporary questioning if he reasonably believes the person has committed, or is about to commit, a crime (hereinafter “investigatory stop”).¹³²

Even if an investigative stop is warranted based on a reasonable suspicion that criminal activity is afoot, a police officer needs more to justify a subsequent frisk. To justify a protective pat down of a properly detained citizen for possible weapons, the investigating officers must have a reasonable belief that the citizen was armed and dangerous.¹³³

i. Investigatory Stops

Department Policy defines investigatory stops as the “temporary detention and questioning of a person in the vicinity where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a criminal offense.”¹³⁴ “The person may be detained only for the length of time necessary to confirm or dispel the suspicion of criminal activity.”¹³⁵ The Policy further provides that for investigatory stops, an officer “must possess specific and articulable facts which, combined with rational inferences from these facts, reasonably warrant a belief that the suspect is committing, is about to commit, or has committed a criminal offense.”¹³⁶

ii. Protective Pat Downs

Department Policy defines a protective pat down as a “limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area.”¹³⁷ If the officer, during the protective pat down, touches an object through outer clothing that he or she reasonably believes is a weapon, the officer may reach into that area and retrieve the object.¹³⁸ Department Policy warns that a protective pat down “is not a general exploratory search for evidence of criminal activity.”¹³⁹

The Policy further provides that for a protective pat down, an officer “must possess specific and articulable facts, combined with rational inferences from these facts, that the suspect is armed and dangerous or reasonably suspects that the person presents a danger of attack to the sworn member or others in the area.”¹⁴⁰

Special Order S04-13-09 provides that protective pat downs “will be conducted by a member who is the same gender as the person that is the subject of the Investigatory Stop. If a member of the same gender is not immediately available, officer and public safety is compromised,

¹³² *Johnson*, 237 Ill. 2d at 89, 91.

¹³³ *People v. Jackson*, 2012 IL App (1st) 103300, ¶ 19; 725 ILCS 5/108-1.01

¹³⁴ S04-13-09.II.A (eff. July 10, 2017)

¹³⁵ S04-13-09.II.A

¹³⁶ S04-13-09.II.C

¹³⁷ S04-13-09.II.B

¹³⁸ S04-13-09.II.B

¹³⁹ S04-13-09.II.B

¹⁴⁰ S04-13-09.II.C

and it is imperative that an immediate search be conducted, members will not endanger themselves or the public to comply with this requirement. Members will exercise caution when patting down outer garments of persons of the opposite sex.”¹⁴¹

iii. Custodial Searches

General Order G06-01-02 defines a custodial search as a “warrantless search of a **person under arrest** with or without probable cause to believe there is any contraband or evidence subject to seizure on the person.”¹⁴² The General Order further provides that “[c]ustodial searches will be conducted by a member who is the same gender as the arrestee; however, if a member of the same gender is not immediately available and officer or citizen safety is compromised absent an immediate search, members will not endanger themselves or the public to comply with this requirement.”¹⁴³

iv. Strip Searches

Department Policy provides that “[s]trip search means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.”¹⁴⁴ Department Policy also mandates that strip searches “shall be performed by persons of the same sex as the arrested person and on premises where the search cannot be observed by persons not physically conducting the search.”¹⁴⁵ In addition, Department Policy requires any officer conducting a strip search to obtain written permission of the police commander or their agent for any strip search.¹⁴⁶ Strip searches “will ordinarily be conducted in a police lockup facility.”¹⁴⁷ If it is necessary for an arrestee to be strip searched outside of the lockup in any police facility, prior written approval must be obtained from the watch operations lieutenant at a district station, or immediate supervisor if other than a district station.¹⁴⁸

v. Standard of Proof

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

¹⁴¹ S04-13-09.VI.A

¹⁴² G06-01-02.IV.A (emphasis added) (eff. Dec. 8, 2017)

¹⁴³ G06-01-02

¹⁴⁴ Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section II, Item A-3-d.

¹⁴⁵ Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section II, Item A-3-d.

¹⁴⁶ Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section II, Item A-3-d.

¹⁴⁷ Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section IV, Item A.

¹⁴⁸ Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section IV, Item E.

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 reviewed complied with Department policy.¹⁴⁹ If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

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.¹⁵⁰ 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."¹⁵¹

VII. ANALYSIS

Officer Bernadette Kelly

Allegation #1, that Officer Kelly observed [REDACTED] walking and said, "Let's stop this fucker" is Sustained.

While arriving on scene in their squad car, Officer Kelly stated to Officer Santana words to the effect of "*Let's stop this fucker.*"¹⁵² Officer Kelly told COPA investigators that she believed at the time she was having a private conversation with Officer Santana when she made the comment. Officer Kelly's comment brought discredit upon the department, in violation of Rule #2 which applies to both the professional and private conduct of all members. Therefore, COPA finds this allegation **Sustained**.

Allegation #2, that Officer Kelly stopped and detained [REDACTED] without lawful justification is Sustained.

On the date of incident, Officer Kelly responded to a call of a disturbance involving four males entering a home at [REDACTED]. She admitted to COPA that she did not know the race, height or a description of the persons involved in the incident. Nevertheless, she stopped Mr. [REDACTED] and immediately handcuffed him, thus seizing him under the Fourth Amendment.¹⁵³

Thus, the facts known to Officer Kelly prior to handcuffing Mr. [REDACTED] were that Mr. [REDACTED] crossed the street from the east side of S. Wolcott, where [REDACTED] is located, to the west side of S. Wolcott. Officer Kelly indicated that she initially observed Mr. [REDACTED] near an unknown number of men in the vicinity of [REDACTED]. Officer Kelly could not

¹⁴⁹ 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).

¹⁵⁰ See e.g., *People v. Coan*, 2016 IL App (2d) 151036.

¹⁵¹ *Id.* at ¶ 28.

¹⁵² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 2:50.

¹⁵³ *People v. Gherna*, 203 Ill. 2d 165, 177 (2003) ("For purposes of the fourth amendment, an individual is "seized" when an officer 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' " quoting *Florida v. Bostick*, 501 U.S. 429).

specify with how many men she saw Mr. [REDACTED] nor could she provide any type of description of them. Officer Kelly explained that she placed Mr. [REDACTED] in handcuffs because she believed he attempted to run from her while manipulating his pants and then appeared to toss an object to the ground.¹⁵⁹

Here, Officer Kelly lacked reasonable articulable suspicion to believe that Mr. [REDACTED] was committing a crime, was about to commit a crime or had committed a crime.¹⁶⁰ Officer Kelly could not see what object Mr. [REDACTED] put in his pants, she did not say that she saw him going to or leaving from [REDACTED], and she did not have any indication that Mr. [REDACTED] fit the description of any of the males who were the subject of the call to which Officer Kelly responded. All Officer Kelly saw was Mr. [REDACTED] put something that she could not identify in the crotch area of his pants and walk away from her. The totality of the circumstances show that Mr. [REDACTED] was not engaging in any illegal activity. Officer Kelly's belief that he possessed a weapon or contraband amounted to little more than a hunch. Officer Kelly therefore lacked reasonable articulable suspicion to conduct an investigatory stop¹⁶¹ and violated Department Policy.¹⁶² COPA finds this allegation **Sustained**.

Allegation #3, that Officer Kelly conducted a search of [REDACTED] without lawful justification is Sustained.

After handcuffing Mr. [REDACTED] Officer Kelly was captured on her BWC¹⁶³ unzipping and searching Mr. [REDACTED] bookbag and going through his pant pockets. Officer Kelly's actions constituted an unlawful search without a warrant, probable cause, reasonable suspicion, or voluntary consent.¹⁶⁴

The search of Mr. [REDACTED] that Officer Kelly performed was akin to a custodial search. However, the custodial search was unlawful where Mr. [REDACTED] was not under lawful arrest because Officer Kelly lacked probable cause to arrest Mr. [REDACTED] for merely walking down the

¹⁵⁹ Attachment #54, Interview transcription of Officer Bernadette Kelly (January 22, 2020) pages 31-33.

¹⁶⁰ See *Terry v. Ohio*, 392 U.S. 1 (1968): "A police officer may conduct a brief investigatory stop of a person when the officer reasonably believes that the person has committed, or is about to commit, a crime." See also Special Order 04-13-09 (Investigatory Stop System) Section II, Item A, that refers to the basis of an Investigatory Stop

¹⁶¹ *People v. Sims*, 2014 IL App (1st) 121306, ¶¶12-17 (officer investigating suspect narcotics activity observed the defendant put an object into the front of his pants and start to walk away, actions that officer believed were consistent with secreting a weapon combined with officer's knowledge that defendant had previously been arrested for a weapons violation were insufficient to demonstrate reasonable articulable suspicion for *Terry* stop and subsequent search of defendant)

¹⁶² S04-13-09.II.A (eff. July 10, 2017)

¹⁶³ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 9:13.

¹⁶⁴ The fourth amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; accord Ill. Const. 1970, art I § 6; see *Fink v. Ryan*, 174 Ill. 2d 302, 314 (1996) ("This court has construed the search and seizure language found in section 6 in a manner that is consistent with the Supreme Court's fourth amendment jurisprudence.").

Reasonableness in this context generally requires a warrant supported by probable cause. *Katz v. United States*, 389 U.S. 347, 357 (1967).

street and placing something down the front of his pants.¹⁶⁵ Absent probable cause to arrest Mr. ██████ Officer Kelly could not conduct a custodial search or a search incident to arrest.

Moreover, the search of Mr. ██████ bookbag and pockets exceeded the parameters of a protective pat down, where there is no evidence that Officer Kelly, while touching Mr. ██████ outer clothing felt an object which she reasonably believed was a weapon. Officer Kelly did not possess reasonable articulable facts to show that Mr. ██████ posed any type of threat to her or her partners, or that he was armed or dangerous.

In addition, Mr. ██████ did not provide voluntary consent for Officer Kelly to search his pockets and his bookbag. In fact, Mr. ██████ attempted to verbally object to Officer Kelly's search of his bookbag, repeatedly stating words to the effect of: "I did nothing wrong. They are going through my intellectual property."¹⁶⁶ Mr. ██████ likewise did not provide voluntary consent for the search of his pockets. Specifically, after Officer Kelly searched Mr. ██████ bookbag, she asked him if he had an ID on him. Mr. ██████ responded in the affirmative, stating words to the effect of "It's back there."¹⁶⁷ Mr. ██████ statement did not constitute consent.

First, Officer Kelly's question did not imply she was seeking consent to search Mr. ██████. Rather, it was simply a question to determine where she needed to search Mr. ██████ in order to find his ID. She did not ask Mr. ██████ if she could search "back there" or request his consent in any other way. Courts have held that "[c]onsent must be received, not extracted 'by explicit or implicit means, by implied threat or covert force.'"¹⁶⁸ In fact, the Illinois Supreme Court has emphasized that "[i]n examining all the surrounding circumstances to determine if in fact the consent to search was coerced, account must be taken of subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents."¹⁶⁹ Here, Mr. ██████ was handcuffed and was actively being searched by Officer Kelly while another officer held him. Nothing about this situation indicated to Mr. ██████ that he was free to refuse Officer Kelly's further search for his ID.

Second, Mr. ██████ statement could not reasonably be interpreted as consent as he stood surrounded by several officers, one of whom just got done searching his bookbag. Rather, it was a

¹⁶⁵ Special Order 04-13-09 (Investigatory Stop System) Section VI, Item B-2 (defining a protective pat down as "A limited search during an Investigatory Stop in which the sworn member conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a Protective Pat Down of the outer clothing, the sworn member touches an object which the sworn member reasonably believes is a weapon, the sworn member may reach into that area of the clothing and retrieve the object. A Protective Pat Down is not a general exploratory search for evidence of criminal activity."); (defining Plain Touch Doctrine as "When a sworn member is conducting a lawful Protective Pat Down of a suspect's outer clothing for weapons and encounters an object that, based upon their training and experience, the sworn member believes that the object is contraband, the sworn member may seize the item without a warrant. The object may not be manipulated in order to determine the identity of the object.").

¹⁶⁶ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 09:00.

¹⁶⁷ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 09:00.

¹⁶⁸ *People v. Banta*, 2021 IL App (4th) 180761, P25

¹⁶⁹ *People v. Anthony*, 198 Ill. 2d 194, 202 (2001)

capitulation to the reality that Officer Kelly would search exactly what she wanted to search and how she wanted to search, while male officers stood by and held handcuffed Mr. ██████ in place.¹⁷⁰ As such, Officer Kelly's search of Mr. ██████ not only lacked lawful justification, but it also violated Department Policy. Specifically, Department Policy requires that custodial searches will be conducted by a member who is of the same gender. Therefore, COPA finds this allegation **Sustained**.

Allegation #4, that Officer Kelly performed an unlawful strip search on ██████ is Sustained.

Officer Kelly was captured on her BWC¹⁷¹ unbuckling Mr. ██████ belt, pulling down his jeans and manipulating the thermal clothing underneath. Officer Kelly admitted to manipulating Mr. ██████ clothing and stated, *"I had to open his belt to search his second pair of pants."*¹⁷² Officer Kelly did not obtain prior supervisor approval before manipulating Mr. ██████ clothing and revealing his undergarments, in violation of General Order 06-01-03, Section II, Item A, 4-a.¹⁷⁴ Officer Kelly performed an unlawful strip search on Mr. ██████ who was of the opposite sex, in violation of General Order 06-01-03, Section II, Item A-3¹⁷⁵ which outlines that strip searches are to be conducted by a member who is of the same sex as the arrestee. Officer Kelly did not report in any of her authored police reports the manipulation of Mr. ██████ clothing, in violation of General Order 06-01-03, Section II, Item A-4, b¹⁷⁶ that outline the required contents in the Strip Search Report. Therefore, COPA finds this allegation **Sustained**.

Allegation #5, that Officer Kelly was verbally abusive in the manner in which she spoke to persons on the scene is Sustained.

Officer Kelly viewed a video excerpt from her BWC¹⁷⁷ that captured her turning her attention to unknown male black occupants inside of a parked vehicle. Officer Kelly unholstered her weapon and pointed it at the vehicle and told the occupants words to the effect of *"Don't you fucking move."*¹⁷⁸ The abusive language used by Officer Kelly toward the occupants was unjustified and violated Rule #9. As Officer Kelly approached the vehicle, she observed other male black citizens on the sidewalk and told them words to the effect of *"Get the fuck out of here or you will be with them."*¹⁷⁹ The abusive language used by Officer Kelly toward the black citizens on the sidewalk was unjustified and violated Rule #9. Officer Kelly viewed a video excerpt from her BWC¹⁸⁰ that captured her stating words to the effect of *"Spread your*

¹⁷⁰*People v. Banta*, 2021 IL App (4th) 180761, P25 (explaining that nonverbal conduct may constitute consent, but "mere acquiescence to apparent authority is not necessarily consent")

¹⁷¹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 31:23.

¹⁷² Attachment #54, Interview transcription of Officer Bernadette Kelly, page 145, lines 22-23; *see also* Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 31:29.

¹⁷⁴ Special Order 04-13-09 (Investigatory Stop System) Section II, Item A, 4-a.

¹⁷⁵ *Id.*, page 1, Section II, Item A-3.

¹⁷⁶ *Id.*, page 1, Section II, Item A-4-b.

¹⁷⁷ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 3:50

¹⁷⁸ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:03.

¹⁷⁹ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 45, lines 1-2.

¹⁸⁰ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 6:03

fucking legs” to a black man with locks hairstyle that was wearing a black jacket. Officer Kelly could not recall the man or why she directed profanities at him. The abusive language used by Officer Kelly toward the black man with locks hairstyle was unjustified and violated Rule #9. Officer Kelly viewed a video excerpt from her BWC¹⁸¹ that captured her turning her attention to an unknown person and stating words to the effect of *“Do you want to join them? I can do the same shit to you.”*¹⁸² When asked to explain her conduct, Officer Kelly related that the area is known for its high sales of narcotics and shootings and that she uses this type of language to control situations. The abusive language used by Officer Kelly toward the unknown person was unjustified and violated Rule #9. Therefore, COPA finds this allegation **Sustained**.

Allegation #6, that Officer Kelly pointed her weapon without lawful justification at unknown persons that were sitting in a parked vehicle is Sustained.

Officer Kelly’s conduct in pointing her weapon at the occupants of the parked car constituted a seizure within the Fourth Amendment. Officer Kelly’s BWC captured her¹⁸³ approaching a parked vehicle, unholstering her weapon and pointing it at the occupants of the parked vehicle¹⁸⁴ while stating words to the effect of *“Don’t you fucking move!”* immediately followed by *“Get your fucking hands up. Now!”*¹⁸⁵ COPA notes that Officer Kelly’s conduct here, which included these contradictory commands given within seconds of each other to the three occupants of the car, combined with Officer Kelly’s weapon pointed at them, is extremely concerning, especially given that Officer Kelly had no lawful justification for the seizure in the first place.

Officer Kelly explained that she pointed her weapon at no one occupant in particular and was pointing it at the car in general.¹⁸⁶ This claim is contradicted by Officer Kelly’s own BWC. The video footage shows that she pointed the weapon directly at various occupants of the car (see Figures 1-3 below). By pointing the gun at the car and its occupants, Officer Kelly was seizing all of the car’s occupants. Under the Fourth Amendment, “a person is seized when an officer, by means of physical force or show of authority, has in some way restrained the citizen’s liberty.”¹⁸⁷

¹⁸¹ *Id.*, minute 6:10

¹⁸² Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 47-53; page 71, lines 21-22.

¹⁸³ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 3:55

¹⁸⁴ Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 43 – 44.

¹⁸⁵ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:03.

¹⁸⁶ Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 43-44.

¹⁸⁷ *People v. Edwards*, 2020 IL App (1st) 182245, ¶25 (“Indicative of a seizure are the so-called *Mendenhall* factors (see *United States v. Mendenhall*, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)), including the threatening presence of several police officers, the display of a weapon by an officer, some physical touching of the person, and the use of language or tone of voice indicating that compliance with the officer’s request is required. [...] Additional factors supporting seizure of a parked vehicle include ‘boxing the car in, approaching it on all sides by many officers, pointing a gun at the suspect and ordering him to place his hands on the steering wheel, or use of flashing lights as a show of authority.’)

Here, the totality of the circumstances show that the occupants of the parked car were seized. Specifically, Officer Kelly’s and other squad cars boxed the parked car in, Officer Kelly used a threatening tone of voice while pointing her firearm at the occupants of the parked car and ordered them to stop moving and put their hands up while directing profanities at them (see Figures 1-3 below). The totality of these circumstances shows that a reasonable person in the position of the three occupants of the car would not have believed he was free to decline Officer Kelly’s orders or otherwise terminate the encounter.



Figure 1: Officer Kelly pointing her firearm at the parked car. Nearby pedestrians can be seen raising their hands (left side of the screen). Officer Kelly’s squad car can be seen next to the parked car.¹⁸⁸



¹⁸⁸ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 4:03.

Figure 2: Officer Kelly’s firearm pointed at the occupants of the parked car while her squad car is stopped immediately next to the parked car. Mr. [REDACTED] and other officers can be seen circled in yellow.¹⁸⁹



Figure 3: Officer Kelly’s firearm still pointed at the occupants of the parked car. Numerous male officers on scene as well as a portion of a black squad car blocking the road ahead (in orange square).¹⁹⁰



Figure 4: Surrounded by an orange square are the squad cars in Figure 3 blocking the parked car’s exit. Mr. [REDACTED] and assisting officers can be seen across the street, circled in yellow. Circled in red is a black SUV that Officer Kelly approached next, pulling out its occupants, handcuffing them and searching them. The silver sedan, circled in purple, was the next car Officer Kelly approached, pulled out its sole occupant, and searched and handcuffed him.¹⁹¹ Officer Kelly then approached Mr. [REDACTED] and searched his pockets and backpack.

¹⁸⁹ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 4:03

¹⁹⁰ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 4:03

¹⁹¹ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 4:54

Officer Kelly then approached the grey SUV (circled in blue), who were already outside of the SUV and proceeded to search the SUV.

Officer Kelly further explained that she pointed her firearm at the vehicle out of a concern for her safety, because she could not see the vehicle's occupants' hands and she believed that the occupants were "attempting to leave the scene of a possible felony."¹⁹² However, Officer Kelly had no description of the suspects for the call to which she had responded, she did not know if they were armed, and she did not have any information indicating that they were in a car, let alone the car she had approached with her gun drawn.

All in all, Officer Kelly did not have any reasonable articulable suspicion that the parked car's occupants had committed a crime, were in process of committing a crime or were about to commit a crime. Officer Kelly's actions were excessive and objectively unreasonable. There is no evidence that the occupants of the car posed any threat to the safety of Officer Kelly or any other officers. Moreover, despite Officer Kelly's claim, none of the occupants of the car were attempting to flee. The black car was parked on the street with its engine off and the occupants sitting inside. Further undermining Officer Kelly's claim that the occupants of the car were attempting to leave is the fact that various squad cars, including that of Officer Kelly and Santana, blocked in their car. Thus, the possibility of the occupants fleeing in the car was very low. Likewise, given the numerous officers on scene, the possibility of the occupants fleeing on foot was also very low. As such, there is no evidence to support Officer Kelly's justifications for drawing and pointing her weapon at the occupants of the parked car.

Officer Kelly's pointing of her weapon was unnecessary and was in violation of Rule #38. Furthermore, Officer Kelly violated Rule #10, in that she was inattentive to duty and failed to document the displaying and pointing of her weapon in any of her authored police reports. Therefore, COPA finds this allegation **Sustained**.

Allegations #7, that Officer Kelly detained and searched persons without lawful justification is Sustained.

During the incident, Officer Kelly asked several individuals in various parked cars to exit their vehicles. Officer Kelly and other officers then searched and handcuffed the occupants.¹⁹⁴ After pointing her firearm at the parked black car,¹⁹⁵ Officer Kelly walked across the street to a black SUV and had the occupants exit the car (see Figure 4 above, circled in red).¹⁹⁶ She patted down the driver of the SUV, grabbed his right arm and pulled it behind his back while another female officer took his left arm and assisted in handcuffing him.¹⁹⁷ During her COPA interview, Officer Kelly could not recall why she handcuffed and

¹⁹² Attachment #54, Interview transcription of Officer Bernadette Kelly, page 43 at lines 23-24.

¹⁹⁴ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 6:49.

¹⁹⁵ *Id.*, minute 4:20.

¹⁹⁶ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:36 to about 6:00.

¹⁹⁷ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:36 to about 6:00.

patted down the driver of the black SUV.¹⁹⁸ No apparent reason for the driver's detention can be discerned from her BWC footage. Therefore, it is more likely than not that Officer Kelly lacked reasonable articulable suspicion for his detention, rendering it unlawful.¹⁹⁹ Similarly, there is no evidence in the record that Officer Kelly had a reasonable belief that the driver of the black SUV was armed and dangerous, justifying a pat down. Consequently, the pat down Officer Kelly performed on him was also unlawful.

Officer Kelly then approached an individual exiting a parked silver car, handcuffed him and appeared to pat him down. Officer Kelly²⁰⁰ then placed her hand on his front groin area and buttocks (see Figures 5 and 6 below). While patting him down, Officer Kelly acknowledged hearing the man state, "*You're touching my balls*"²⁰¹ and Officer Kelly replied, "*It's alright, I'm searching you.*"²⁰² During the detention and subsequent search, a male officer can be seen standing next to Officer Kelly. Pursuant to Department Policy, an officer of the same gender as the arrestee was to conduct the pat down. Here, no exigent circumstances appeared to exist preventing the male officer from conducting the search.

Later, Officer Kelly was captured returning to the same man and searching his pant pockets.²⁰³ Again, there were male officers on scene who could have conducted this search. As such, Officer Kelly's search of the male detainee violated Department Policy.

During her COPA interview, Officer Kelly could not recall what drew her attention to this man but believed that it was the odor of burnt cannabis emitting from him.²⁰⁴ Officer Kelly stated that she searched the man's pockets a second time for narcotics. Her claim, however, is undermined by the fact that she did not search his car for narcotics even after he indicated to her that he was smoking in the car. Once Officer Kelly started patting him down, the man stated words to the effect of "I was smoking in the car. You can see it. Look!"²⁰⁵ However, there is no evidence his car was searched, any contraband was found in his car or on his person, or that he was arrested for possession of a controlled substance. It is more likely than not, based on this evidence, that the man was smoking cigarettes and not cannabis. As such, Officer Kelly had no reasonable articulable suspicion to detain or search him. Nevertheless, she handcuffed him, performed an intrusive search while touching his genitals through clothing, and then returned and searched his pockets. Her searches and detainment of this unknown man was unjustified and unlawful.

¹⁹⁸ Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 55-61.

¹⁹⁹ Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 55-61.

²⁰⁰ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 5:55.

²⁰¹ *Id.*, minute 6:40.

²⁰² *Id.*, minute 6:49.

²⁰³ *Id.*, minute 17:30.

²⁰⁴ Attachment #54, Interview transcription of Officer Bernadette Kelly, pages 61-63.

²⁰⁵ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 6:28.

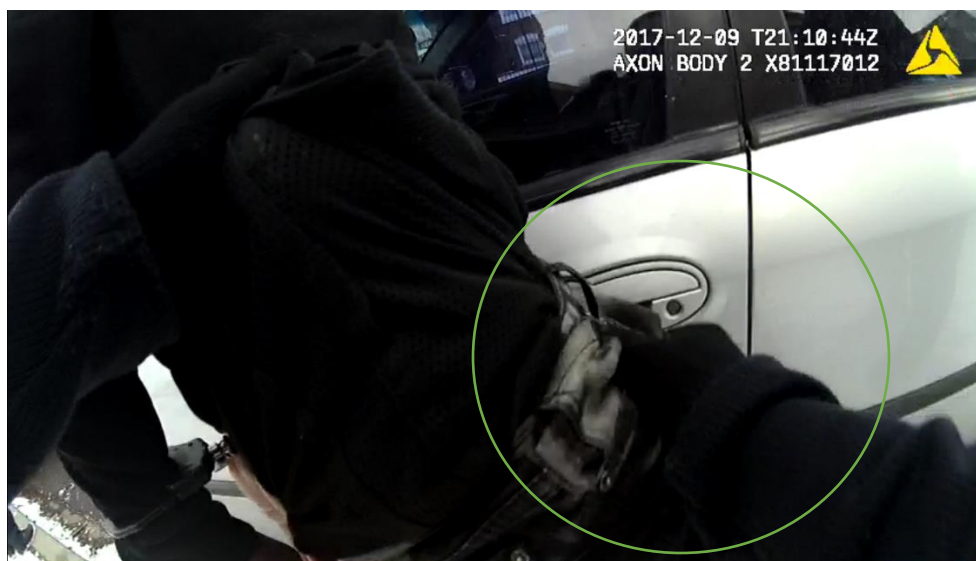


Figure 5: Officer Kelly's right hand grabbing the crotch area of the occupant of the silver sedan circled in green.²⁰⁶



Figure 6: Officer Kelly's right hand reaching between the legs of the occupant of the silver sedan.²⁰⁷

Officer Kelly then turned her attention to another black male with locks hairstyle that was wearing a black hooded jacket.²⁰⁸ While conducting a pat down, Officer Kelly placed her right hand inside his left jacket pocket. Officer Kelly did not have consent to search his pocket and could not recall the reason for searching him. Moreover, there were male officers present on scene who could have performed the search of the male detainee.

²⁰⁶ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 6:28.

²⁰⁷ Attachment #69, Body Worn Camera of Officer Bernadette Kelly, minute 6:42.

²⁰⁸ *Id.*, minute 15:28.

Officer Kelly then searched a black man who was wearing a gray hooded sweatshirt and **black** jacket.²⁰⁹ She searched inside his jacket pockets, hooded sweatshirt pockets and pant pockets. When asked if she was given consent to search the pockets, she stated, “*Now, if I believed that what I was doing was a search for narcotics, I did not need his consent to do the search for narcotics.*”²¹⁰ Officer Kelly could not recall having any reasonable suspicion that this man had committed any crime. Officer Kelly violated Special Order 04-13-09 (Investigatory Stop System) Section II, Item A, that refers to the basis of an Investigatory Stop.

Officer Kelly then searched another black man who was handcuffed and wearing a blue hooded sweatshirt and **black** jacket.²¹¹ Officer Kelly unzipped his jacket, searched his pant and jacket pockets and lifted his shirt. Officer Kelly did not request consent for the search and stated, “*He does not have to consent. I don't need consent. It's search for narcotics. If I believe he may be in possession of narcotics, I can do the search.*”²¹² Officer Kelly, however, provided no basis upon which she believed that the man possessed narcotics. Officer Kelly violated Special Order 04-13-09 (Investigatory Stop System) Section II, Item A, that refers to the basis of an Investigatory Stop. Therefore, this allegation is **Sustained**.

Allegation #8, that Officer Kelly failed to properly document the stop of persons and complete Investigatory Stop Reports (ISRs) and issue ISR receipts is Sustained.

Although Officer Kelly²¹⁴ detained and patted-down at least one occupant of the black SUV, she did not document the encounter in any of her authored police reports and failed to complete an Investigatory Stop Report or issue an ISR receipt as required in Special Order 04-13-09. Similarly, Officer Kelly²¹⁵ searched the occupant of the silver vehicle twice,²¹⁶ the first time in an intrusive way that cause the man to exclaim “*You're touching my balls!*”²¹⁷ Officer Kelly, however, did not issue an ISR receipt or fill out an ISR. Officer Kelly²²⁰ also handcuffed a man wearing a red jacket with lettering that stated “CAMBINO.” Officer Kelly is heard requesting a pair handcuff and the man is observed being handcuffed and detained. Again, Officer Kelly did not document the encounter in any of her authored police reports and failed to complete an Investigatory Stop Report or issue an ISR receipt, in violation of Special Order 04-13-09. This Allegation is therefore **Sustained**.

Allegation #9, that Officer Kelly conducted improper searches of vehicles is Exonerated.

²⁰⁹ *Id.*, minute 15:51.

²¹⁰ Attachment #54, Interview transcription of Officer Bernadette Kelly, page 123, lines 5-7.

²¹¹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 18:02.

²¹² Attachment #54, Interview transcription of Officer Bernadette Kelly, page 134, line 24 and page 135, lines 1-2.

²¹⁴ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 4:36 to about 5:15.

²¹⁵ *Id.*, minute 5:55.

²¹⁶ *Id.*, minute 17:30.

²¹⁷ *Id.*, minute 6:40.

²²⁰ *Id.*, minute 8:58.

On the day of the incident, Officer Kelly searched a silver SUV after smelling the odor of cannabis emanating from the car.²²¹ One of the occupants of the SUV also admitted to Officer Kelly that he had been smoking cannabis.²²² The law is well established that a police officer may search a vehicle without a warrant when he or she has probable cause to believe that the vehicle contains evidence of a crime.²²³ Moreover, courts have held that the “distinctive smell of burning cannabis emanating from a vehicle will provide police officers [...] with probable cause to search a vehicle and all persons seated therein.”²²⁴ Therefore, because there is clear and convincing evidence that Officer Kelly had probable cause to search the vehicle, this allegation is **Exonerated**.

Allegation #10, that Officer Kelly performed an unlawful strip search on [REDACTED] at the 007th District Station sally port is Sustained.

Officer Kelly viewed a video excerpt from her BWC²³³ that captured Mr. [REDACTED] inside the 007th District Sally Port. Mr. [REDACTED] had repositioned his arms behind his knees and could not be stood up or laid down. Officer Kelly viewed a video excerpt from her BWC²³⁴ that captured her manipulating Mr. [REDACTED] clothing and exposing his buttocks while searching him. Officer Kelly admitted to manipulating Mr. [REDACTED] underwear, in violation of General Order 06-01-03²³⁵ that pertains to Conducting Strip Searches. Officer Kelly failed to obtain prior supervisor approval before conducting the strip search, in violation of General Order 06-01-03, Section II, Item A, 4-a.²³⁶ Officer Kelly also violated General Order 06-01-03, Section II, Item A-3²³⁷ which outlines that strip searches are to be conducted by a member who is of the same gender as the arrestee. Officer Kelly did not report in any of her authored police reports, the manipulation of Mr. [REDACTED] underwear and the exposure of his buttocks. Officer Kelly violated General Order 06-01-03, Section II, Item A-4, b²³⁸ which outline the required contents in the Strip Search Report.

Officer Kelly’s overall conduct was unprofessional and lacked honor, respect, compassion, leadership, and integrity. Officer Kelly violated General Order 01-01 which is the Chicago Police Department’s Mission Statement and Core Values. **Allegation #10 is Sustained.**

Allegation #11, that Officer Kelly performed an unlawful strip search of [REDACTED] at the 007th District Station sally port is Unfounded.

²²¹ *Id.*, minute 12:10; see also Attachment #54, Interview transcription of Officer Bernadette Kelly, page 103, lines 23-24 (indicating she could smell cannabis).

²²² Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 12:10.

²²³ *People v. Contreras*, 2014 IL App (1st) 131889, ¶ 28

²²⁴ *People v. O.S. (In re O.S.)*, 2018 IL App (1st) 171765, ¶ 26

²²³ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 40:56.

²³⁴ *Id.*, minute 42:54.

²³⁵ Attachment #46, General Order 06-01-03, Conducting Strip Searches.

²³⁶ *Id.*, page 1, Section II, Item A, 4-a.

²³⁷ *Id.*, page 1, Section II, Item A-3.

²³⁸ *Id.*, page 1, Section II, Item A-4-b.

While inside the sally port, Officer Kelly's BWC²³⁹ captured her escorting Mr. ██████ out of the transport vehicle. Mr. ██████ is observed handcuffed and complaining that his pants are falling below his waist. As Mr. ██████ is exiting, his pants lowered themselves and his buttock is exposed. Officer Kelly raised Mr. ██████ pants up to prevent further exposure of his buttocks. Therefore, this allegation is **Unfounded**.

Officer Gabriela Santana

Allegation #1, that Officer Santana Stopped and detained ██████ without justification is Sustained.

As analyzed above in Allegation #2 for Officer Kelly, Officer Santana and Officer Kelly responded to a disturbance call involving four males entering a home at 7033 S. Wolcott Avenue. As they approached the scene, Officer Kelly stated, "Let's stop this fucker²⁴⁰" and observed ██████ crossing the street. After exiting their police vehicle, Officer Kelly relayed the basis for the stop to Officer Santana. Although Officer Santana may not have witnessed Mr. ██████ conduct that Officer Kelly observed, Officer Kelly communicated her observation to Officer Santana. As such, Officer Kelly's knowledge can be imputed to Officer Santana.²⁴¹ As previously noted above, Officer Kelly had no reasonable articulable suspicion to believe that Mr. ██████ was committing a crime, was about to commit a crime or had committed a crime. Nevertheless, Officer Kelly and Officer Santana seized and searched Mr. ██████ without lawful justification. Therefore, this allegation is **Sustained**.

Allegations #2, that Officer Santana conducted an unlawful search on ██████ is Sustained.

After the detainment of Mr. ██████²⁴³ Officer Santana turned her attention to a nearby parked SUV occupied by three black men.²⁴⁴ Officer Santana related that she smelled a strong odor of cannabis emanating from the SUV and observed ██████ with his belt unbuckled and with his hands around his waist.²⁴⁵ Officer Santana walked around the vehicle as Mr. ██████ was exiting the rear passenger door. Officer Santana placed Mr. ██████ in handcuffs and began to unzip his jacket and search the inside of his pockets. Officer Santana instructed Mr. ██████ to spread his legs and placed her hand between Mr. ██████ thighs, buttocks and legs. Mr. ██████ reacted by turning around and pushing his body against Officer Santana's chest area which appeared to cause her BWC to deactivate. A male officer stood next to Officer Santana during the search of Mr. ██████. Despite the male officer's presence, Officer Santana who is female, chose to conduct the search around the crotch and buttocks area of Mr. ██████ who is of the opposite sex. Officer Santana violated Department Policy, which requires that protective pat downs and

²³⁹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 47:23.

²⁴⁰ *Id.*, minute 2:15.

²⁴¹ *People v. Williams*, 2020 IL App (1st) 172992, ¶11 (Under the "collective knowledge" doctrine, "the knowledge of officers who communicate with each other is attributed to all of them.")

²⁴³ See *Terry v. Ohio*, 392 U.S. 1 (1968): "A police officer may conduct a brief investigatory stop of a person when the officer reasonably believes that the person has committed, or is about to commit, a crime."

²⁴⁴ Attachment #68, Body Worn Camera (BWC) of Officer Gabriela Santana, minute 4:49.

²⁴⁵ Attachment #55, Transcript of Officer Gabriela Santana (Jan. 16, 2020) at pp. 17-18.

custodial searches will be conducted by a member who is of the same gender as the arrestee. This Allegation is therefore **Sustained**.

Allegation #3, that Officer Santana conducted an unlawful arrest of [REDACTED] is Exonerated.

After smelling a strong odor of cannabis emanating from the SUV, Officer Santana instructed Mr. [REDACTED] to spread his legs and patted him down between his thighs and legs and felt something that was consistent as being a package of narcotics.²⁴⁶ Officer Santana recovered a bag containing fifteen pills of suspected crystal meth from Mr. [REDACTED]. Based on the totality of the circumstances, COPA finds that this allegation is **Exonerated**.

Allegations #4, that Officer Santana failed to accurately complete her authored police report is Sustained.

Officer Santana related that she authored Mr. [REDACTED] Arrest Report²⁴⁷ and Officer Kelly authored the Original Case Incident Report.²⁴⁸ Officer Santana later recanted her account and stated that she was not sure what report she completed. Both reports essentially stated the same account, that Officer Kelly recovered suspected narcotics from Mr. [REDACTED] coat pocket during his search. However, a video excerpt from Officer Kelly's BWC²⁴⁹ captured Officer Kelly recovering the narcotics from inside Mr. [REDACTED] pant pocket and not his coat pocket. Officer Santana acknowledged that the reports did not accurately document where narcotics found on Mr. [REDACTED]. Officer Santana was inattention to duty, in that she failed to properly document the recovered narcotics in her authored police report, in violation of Rule #10. Therefore, this allegation is **Sustained**.

Allegation #5, that Officer Santana failed to report misconduct by Officer Kelly that occurred at the 007th District Sally Port is Not Sustained.

Officer Santana was shown a video excerpt of Officer Kelly's BWC²⁵⁰ inside the 007th District sally port that captured Officer Kelly manipulating Mr. [REDACTED] underwear and exposing his buttocks. Officer Santana related that from the position where she was standing, she did not witness the exposure of Mr. [REDACTED] buttocks. Officer Santana related that Mr. [REDACTED] had consumed narcotics while being transported to the station and Officer Kelly was ensuring that Mr. [REDACTED] had no additional narcotics. The video did capture Officer Santana standing across from Officer Kelly and therefore it is possible that Officer Santana did not witness the exposure of Mr. [REDACTED]. Therefore, this allegation is **Not Sustained**.

Officer James Cabay

Allegation #1, that Officer Cabay performed an unlawful strip search on [REDACTED] is Sustained.

²⁴⁶ Attachment #68, Body Worn Camera (BWC) of Officer Gabriela Santana.

²⁴⁷ Attachment #6, Arrest Report of [REDACTED]

²⁴⁸ Attachment #8, Original Case Incident Report, JA543127.

²⁴⁹ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 10:31.

²⁵⁰ Attachment #69, Body Worn Camera (BWC) of Officer Bernadette Kelly, minute 42:54.

Officer James Cabay assisted in the custodial search of [REDACTED] inside a 007th District holding cell. Officer Cabay was shown video excerpts from Officer John Murphy's BWC²⁵¹ that captured him manipulating Mr. [REDACTED] underwear while inside the holding cell.²⁵² Officer Cabay admitted that he did manipulate Mr. [REDACTED] underwear. Officer Cabay admitted that he did not obtain prior supervisor approval before manipulating Mr. [REDACTED] underwear, in violation of General Order 06-01-03, Section II, Item A, 4-a.²⁵³ Officer Cabay admitted that he did not prepare a Strip Search Report on Mr. [REDACTED] in violation of General Order 06-01-03, Section II, Item A-4, b²⁵⁴ which outline the required contents in the Strip Search Report. Therefore, this allegation is **Sustained**.

Sergeant Timothy Fenton

Allegation #1, that Sergeant Fenton failed to entirely record a law-enforcement-related activity is Sustained.

Sergeant Timothy Fenton responded to an assist call in his sector that involved Officer Bernadette Kelly and Officer Gabriela Santana. Sergeant Fenton was captured twice deactivating his Body Worn Camera (BWC)²⁵⁶ while law-enforcement-related activity was still in progress. Sergeant Fenton's BWC²⁵⁷ captured about eight male black individuals on the scene that were detained and in handcuffs. Sergeant Fenton admitted that he failed to comply with Special Order 03-14.²⁵⁸ This allegation is therefore **Sustained**.

Allegation #2, that Sergeant Fenton failed to direct subordinates and ensure that Investigatory Stop Reports had been properly completed is Sustained.

Sergeant Timothy Fenton agreed that an Investigatory Stop Reports should have been completed on all the male black individuals who were detained and searched on the day of incident. Sergeant Fenton admitted that he failed to ensure that Investigatory Stop Reports were completed by his direct subordinates and therefore, violated Special Order 04-13-09 (Investigatory Stop System).²⁵⁹ Therefore, this allegation is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Bernadette Kelly

i. Complimentary and Disciplinary History

²⁵¹ Attachment #80, Body Worn Camera (BWC) of Officer John Murphy.

²⁵² Attachment #46, General Order 06-01-03, Conducting Strip Searches, Section II, Item A-3-d.

²⁵³ *Id.*, page 1, Section II, Item A, 4-a.

²⁵⁴ *Id.*, page 1, Section II, Item A-4-b.

²⁵⁶ Attachments #78-79, Body Worn Camera (BWC) of Sergeant Timothy Fenton.

²⁵⁷ Attachment #79, Body Worn Camera (BWC) of Sergeant Fenton.

²⁵⁸ Attachment #77, Special Order 03-14, Body Worn Cameras.

²⁵⁹ Attachment #28, Special Order 04-13-09, Investigatory Stop system.

Officer Kelly's complimentary history consists of a (1) Crime Reduction Award 2019, (4) Complimentary Letter, (3) Department Commendation, (50) Honorable Mention, (1) Life Saving Award, (1) NATO Summit Service Award, (2) Traffic Stop of the Month, (1) Unit Meritorious Performance Award. Total of (63).

As of October 7, 2021, Officer Kelly had no sustained Disciplinary History. SPAR histories consist of:

(1) Log# 561736, February 10, 2021, Reprimand, Completed June 16, 2021, Failure to Perform Assigned Tasks.

(2) Log# 561737, February 11, 2021, Reprimand, Completed June 16, 2021, Failure to Perform Assigned Tasks.

ii. Recommended Penalty

COPA recommends 25 days of Suspension for Officer Bernadette Kelly. Officer Kelly performed an illegal stop on Mr. ██████████ and Officer Kelly performed an illegal search on ██████████. Officer Kelly has Sustained findings on all allegations 1 through 8, and 10. Officer Kelly violated numerous Chicago Police Department General Orders. Officer Kelly performed a full body search and strip search on ██████████ a member of the opposite sex while others same sex CPD members were present and available.

b. Officer Gabriela Santana

i. Complimentary and Disciplinary History

Officer Santana's complimentary history consists of a (1) Crime Reduction Award 2019, (2) Complimentary Letter, (1) Department Commendation, (3) Emblem of Recognition-Physical Fitness, (19) Honorable Mention Ribbon Award, (1) Traffic Stop of the Month, (1) Unit Meritorious Performance Award. Total of (28).

As of October 7, 2021, Officer Santana does not have a Disciplinary or SPAR history.

ii. Recommendation Penalty

COPA recommends 25 days of Suspension for Officer Santana. By the preponderance of evidence, the allegation of Officer Santana performing a strip search is sustained. Officer Santana additionally performed a search on a male subject, Mr. ██████████ when there were ample male officers available. Officer Santana did not properly document her actions nor the misconduct of Officer Kelly.

c. Officer James Cabay

i. Complimentary and Disciplinary History

Officer Cabay's complimentary history consists of a (1) Crime Reduction Award

2019, (2) Attendance Recognition Award, (3) Complimentary Letter, (3) Department Commendation, (1) Emblem of Recognition-Physical Fitness, (103) Honorable Mention, (1) Honorable Mention Ribbon Award, (1) Military Service Award, (1) Unit Meritorious Performance Award. Total of (116).

As of October 7, 2021, Officer Cabay does not have a Disciplinary or SPAR History.

i. Recommendation Penalty

COPA recommends a 10 day Suspension for Officer Cabay. Officer Cabay participated in the strip search of Mr. [REDACTED] in that he manipulated Mr. [REDACTED] underwear.

d. Sergeant Timothy Fenton

i. Complimentary and Disciplinary History

Sergeant Fenton’s complimentary history consists of a (1) Crime Reduction Award 2004, (1) Crime Reduction Award 2009, (1) Crime Reduction Award 2019, (3) Attendance Recognition Award, (5) Complimentary Letter, (5) Department Commendation, (62) Honorable Mention, (1) Honorable Mention Ribbon Award, (1) NATO Summit Service Award, (1) Presidential Election Deployment Award 2008, (1) Special Commendation, (1) Unit Meritorious Performance Award. Total of (83).

As of October 7, 2021, Sergeant Fenton’s Disciplinary History consists of Case: C 1089294 April 20, 2018, 12D-Fail to Obtain a Complaint Register- 2 Day Suspension. No SPARs noted.

i. Recommended Penalty,

COPA recommends a Reprimand for Sergeant Fenton. Sergeant Fenton repeatedly deactivated his Body Worn Camera and failed to make certain his officers did Investigatory Stop Reports.

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Bernadette Kelly	It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Officer Kelly committed misconduct through the following acts or omissions by,	

	<ol style="list-style-type: none"> 1. Observed [REDACTED] walking and said, "Let's stop this fucker." 2. Stopped and Detained [REDACTED] without lawful justification. 3. Conducted a search of [REDACTED] without lawful justification. 4. Performed an unlawful strip search on [REDACTED] 5. Verbally abusive in the manner in which she spoke to persons on the scene. 6. Pointed her weapon without lawful justification at unknown persons that were sitting in a parked vehicle. 7. Detained and Searched persons without lawful justification. 8. Failed to properly document the stop of persons and complete Investigatory Stop Reports (ISR) and issue ISR receipts. 9. Conducted improper searches of vehicles. 10. At the 007th District Station Sally port, Officer Bernadette Kelly performed an unlawful strip search on [REDACTED] 11. At the 007th District Station Sally port, Officer Bernadette Kelly performed an unlawful strip search on [REDACTED] 	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p> <p>Exonerated</p> <p>Sustained</p> <p>Unfounded</p>
<p>Officer Gabriela Santana</p>	<p>It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Officer Santana committed misconduct through the following acts or omissions by,</p> <ol style="list-style-type: none"> 1. Stopped and Detained [REDACTED] without lawful justification. 2. Conducted an unlawful search on [REDACTED] 	<p>Sustained</p> <p>Sustained</p>

	<p>3. Conducted an unlawful arrest on [REDACTED]</p> <p>4. Failed to accurately complete her authored police report.</p> <p>5. At the 007th District Sallyport, Officer Gabriela Santana failed to report misconduct by Officer Bernadette Kelly.</p>	<p>Exonerated</p> <p>Sustained</p> <p>Not Sustained</p>
<p>Officer James Cabay</p>	<p>It is alleged that on December 9, 2017, at the 007th District Station Holding cell, Officer James Cabay committed misconduct through the following acts or omissions by,</p> <p>1. Performed an unlawful strip search on [REDACTED]</p>	<p>Sustained</p>
<p>Sergeant Timothy Fenton</p>	<p>It is alleged that on December 9, 2017, at approximately 2:46 pm at or near 7033 S. Wolcott Avenue, Sergeant Fenton committed misconduct through the following acts or omissions by,</p> <p>1. Failed to entirely record a law-enforcement-related activity.</p> <p>2. Failed to direct subordinates and ensure that Investigatory Stop Reports had been properly completed.</p>	<p>Sustained</p> <p>Sustained</p>

Approved:

[REDACTED]

9-1-2022

 Angela Hearts-Glass
 Deputy Chief Investigator

 Date