



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

May 23, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 W. Chicago Ave., 4th Floor

Re: Superintendent's Concurrence as to Findings and Non-Concurrence as to Penalty
Log #1091276 and Log #2019-0003821
Officer Bernadette Kelly #7186

Dear Chief Administrator Kersten:

Based on a review of the above-referenced complaint registers (CR), the Chicago Police Department (CPD) concurs with the recommended findings as regards the sustained allegations.

However, as will be detailed further below, CPD does not concur with the recommended penalty of separation. While CPD agrees that the evidence of misconduct supports the sustained findings, the conduct is not so egregious as to warrant separation. CPD proposes a 60-day suspension as penalty in these cases. In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalty.

The evidence in both Log #1091276 and Log #2019-3821 is sufficient to support the sustained findings. Both cases involve instances in which Officer Kelly, during the course of a traffic stop, searched a member of the opposite gender (male) while there were Department members of the same gender (male) on scene and available to conduct said searches. In both instances the searches were clearly captured by BWC, showing both that Officer Kelly did perform a pat-down or search of the male complainants, and that there were several male officers readily available on scene. In her statements Officer Kelly does not deny having conducted the searches.


Officer Kelly states in response to the allegations in Log #1091276 that she did not search the complainant, but conducted a pat-down for officer safety, which she erroneously believed was her responsibility as the arresting officer. In response to the allegations in Log #2019-3821, Officer Kelly states that as a female officer who was formerly partnered with another female, she would pat down male subjects as no male officer was immediately available when working with a female partner. While each instance is a search that is in fact violative of Department directives, Officer Kelly has not evinced an intention to engage in misconduct, but rather during the performance of her duties, a misunderstanding of Department rules and procedures. According to COPA's Summary Report of Investigation (SRI), Officer Kelly has no sustained complaints and over 60 Departmental awards throughout the course of her career.

The recommended penalty of separation for Officer Kelly's improper searches is excessive and inconsistent with previous administered penalties for similar conduct. According to the consent decree, discipline is to be consistently applied. "COPA and CPD will ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough, and timely fashion, based on the nature of the misconduct. COPA and CPD will also ensure that mitigating and aggravating factors are identified, consistently applied, and documented" (Paragraph 513, Consent Decree, State of Illinois v. City of Chicago, (No. 17-cv-6260, N.D. Illinois, January 1, 2019). The Consent Decree further requires the Department to "use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts..." (Id. at Paragraph #514).

In Log #2019-4971, COPA sustained an allegation of an improper search against an Officer Cappello. The accused male officer was alleged to have searched a female, juvenile arrestee for narcotics, including around the waistband area of the juvenile. It was further alleged that the officer placed his hand inside the waistband of the female arrestee and touched her pubic hair.

COPA sustained the allegation and recommended a penalty of a 30-day suspension. The undersigned did not concur as to the penalty in that case either, believing that given the nature of the incident and allegation that a more severe penalty of a 45-day suspension was warranted. The improper cross-gender searches conducted by Officer Kelly which are at issue in the present cases are substantially similar in nature to that in the Officer Cappello case. Therefore, it is the belief of the undersigned that a serious penalty – but one short of separation – should be imposed. A penalty of a 60-day suspension is appropriate and fair given the nature of the misconduct and the discipline applied in a recent similar incident.

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department