

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	September 21, 2019/ 4:38 P.M. / 752 S. Francisco Ave.
Date/Time of COPA Notification:	September 23, 2019 / 11:15 A.M.
Involved Officer #1:	Bernadette Kelly, Star No. 7186, Employee No. [REDACTED], Date of Appointment: October 17, 2011, Rank, Police Officer, Unit of Assignment: 189, DOB: [REDACTED], 1982, Female, White
Involved Officer #2:	Kevin Geyer, Star No. 1679, Employee No. [REDACTED], Date of Appointment: October 28, 2002, Rank: Sergeant, Unit of Assignment: 011, DOB: [REDACTED], 1978, Male, White
Involved Officer #3:	Noah Ball, Star No. 11870, Employee No. [REDACTED], Date of Appointment: March 16, 2017, Rank: Police Officer, Unit of Assignment: 011/640, DOB: [REDACTED], 1988, Male, Asian Pacific Islander
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1982, Male, Black
Involved Individual #2:	[REDACTED] DOB: Unknown, Male, Black
Case Type:	Improper Search / Operational Violations

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Bernadette Kelly	It is alleged by [REDACTED] that on or about September 21, 2019, at approximately 4:38 P.M., at or near 752 S. Francisco Avenue, Officer Bernadette Kelly, Star No. 7186, committed misconduct through the following acts or omissions, by:	
	1. Searching a person of the opposite gender in violation of Special Order S04-13-09(VI)(A).	Sustained
	2. Searching [REDACTED] vehicle without justification.	Exonerated
	It is alleged by the Civilian Office of Police Accountability that on or about September 21, 2019, at approximately 4:38 P.M., at or near 752 S. Francisco Avenue, Officer Bernadette Kelly, Star No. 7186, committed misconduct through the following acts or omissions, by:	
	3. Failing to issue [REDACTED] an Investigatory Stop Receipt.	Sustained

<p>Sergeant Kevin Geyer</p>	<p>4. Failing to activate her Body Worn Camera in violation of Special Order S03-14.</p> <p>It is alleged by the Civilian Office of Police Accountability that on or about September 21, 2019, at approximately 4:50 P.M., at or near 752 S. Francisco Avenue, Sergeant Kevin Geyer, Star No. 1679, committed misconduct through the following acts or omissions, by:</p> <p>1. Failing to intervene when Officer Bernadette Kelly searched a person of the opposite gender in violation of Special Order S04-13-09(VI)(A).</p> <p>2. Failing to report Officer Bernadette Kelly for searching a person of the opposite gender in violation of Special Order S04-13-09(VI)(A).</p> <p>3. Failing to comply with Special Order S03-14 by failing to activate his body worn camera.</p>	<p>Unfounded</p> <p>Sustained</p> <p>Sustained</p> <p>Sustained</p>
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II. SUMMARY OF EVIDENCE¹

On September 25, 2019, Complainant ██████████ reported to the Civilian Office of Police Accountability (COPA) that Chicago Police Department officers pulled him over on September 21, 2019 and performed improper searches of his vehicle and person. Mr. ██████████ alleged that Officer Bernadette Kelly directed him from the vehicle, searched the vehicle without probable cause or consent, and improperly searched his person—including grabbing his genitals—while other male officers were present. Mr. ██████████ stated that Officer Kelly also searched his passenger, ██████████ who owned the vehicle. COPA additionally alleged that Officer Kelly failed to provide Mr. ██████████ an Investigatory Stop Receipt and failed to record the stop on her body worn camera (BWC). In reaching its factual findings, COPA reviewed Mr. ██████████ complainant interview,² the statements of accused Officer Bernadette Kelly,³ accused Sergeant Kevin Geyer,⁴ and witness Officer Noah Ball,⁵ BWC videos from the stop,⁶ an Event Query report,⁷ an 11th District Attendance and Assignment report,⁸ and multiple other related documents.

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in COPA’s analysis.

² Attachment 1.

³ Attachments 9, 23.

⁴ Attachments 26 – 27.

⁵ Attachments 8, 24. Mr. ██████████ alleged that Officer Kelly improperly searched his vehicle, but he did not implicate her partner, Officer Ball, in the allegation. Upon review of Officer Ball’s BWC video, COPA confirmed that the vehicle’s owner, ██████████ gave clear verbal consent to search the vehicle. Several minutes later, both Mr. ██████████ and Mr. ██████████ again gave consent to search. As a result, COPA did not serve Officer Ball with an allegation related to the vehicle search.

⁶ Attachments 2 – 5.

⁷ Attachment 6.

⁸ Attachment 7.

COPA finds that on September 21, 2019, at approximately 4:38 P.M., Officer Kelly initiated a traffic stop of Mr. ██████ and Mr. ██████ near 752 S. Francisco Avenue. The two men were in a silver Infiniti SUV belonging to Mr. ██████ but driven by Mr. ██████. As Officer Kelly and her partner, Officer Ball, approached the vehicle, Officer Kelly informed Mr. ██████ that she stopped him for obstructing traffic.⁹ During the stop, Officer Kelly also stated that she smelled cannabis and asked if the occupants had been smoking cannabis, to which both replied in the negative. Officer Kelly then asked Mr. ██████ and Mr. ██████ to exit the vehicle. Mr. ██████ volunteered that the officers could search the vehicle,¹⁰ but Mr. ██████ stated he did not wish to exit the vehicle until a sergeant or lieutenant was present, implying he was concerned about the officers planting contraband.¹¹ The two men remained in the vehicle as three additional officers arrived at the scene—two male officers and one female officer. After several minutes of arguing, Mr. ██████ stated that the officers could search the vehicle, and both he and Mr. ██████ exited.¹²

Officer Kelly placed Mr. ██████ in handcuffs and began patting him down, then escorted him to the rear of the vehicle. Officer Ball patted down Mr. ██████ then escorted him to the rear of the vehicle and placed him in handcuffs. Officer Kelly searched both men, starting with Mr. ██████. She patted down Mr. ██████ around his chest, abdomen, waist, buttocks, and legs, manipulating his pockets.¹³ Sergeant Geyer arrived on scene and interacted with the officers and the occupants as Officer Kelly continued to search Mr. ██████.¹⁴ She went inside Mr. ██████ front and back pants pockets, removing and examining multiple items. Officer Kelly then grabbed Mr. ██████ waistband on both sides and pulled his pants up high around his waist.¹⁵ She directed Mr. ██████ to spread his legs wider and used her foot to move his feet further apart. From behind, Officer Kelly used both hands to grab and manipulate Mr. ██████ genital and groin area, his thighs, and lower legs.¹⁶ Officer Kelly then searched Mr. ██████ in the same manner, patting down his chest, abdomen, waist, buttocks and legs, manipulating his pockets, and going inside his pockets to remove items.¹⁷ She also pulled Mr. ██████ pants high up on his waist, directed him to spread his legs, and used both hands to grab and manipulate his genital and groin area, thighs, and legs. As Officer Kelly conducted the searches, three male officers stood nearby.

While Officer Kelly searched the men, Officer Ball began searching their vehicle. He searched the front seat, center console, floorboards, glovebox, and backseat. Officer Kelly then searched the front driver's side area, rear driver's side area, and trunk. Following the vehicle search, Officers Kelly and Ball removed the handcuffs from Mr. ██████ and Mr. ██████ and Officer Kelly returned their identification. She did not appear to provide an Investigatory Stop Receipt to either man. Additionally, she did not appear to be wearing a BWC. In her statement to COPA, Officer Kelly could not recall whether she issued an Investigatory Stop Receipt, and she

⁹ Attachment 5, PO Ball BWC at 2:35 – 2:38.

¹⁰ Attachment 5, PO Ball BWC at 7:20 – 7:25.

¹¹ Attachment 5, PO Ball BWC at 12:15 – 12:35.

¹² Attachment 5, PO Ball BWC at 12:34 – 12:45.

¹³ Attachment 3, PO Rejman BWC at 5:15 – 6:15; *see also* Attachment 4, PO Coburn BWC at 5:12 – 6:00.

¹⁴ Attachment 3, PO Rejman BWC at 6:15 – 8:05. Sergeant Geyer's vehicle is first visible in Officer Rejman's BWC video at approximately 6:42 – 6:45. After exiting his vehicle, Sergeant Geyer approached the officers and occupants and conversed with Mr. ██████ as Officer Kelly conducted invasive searches of both Mr. ██████ and Mr. ██████.

¹⁵ Attachment 3, PO Rejman BWC at 6:15 – 6:22; *see also* Attachment 2, PO Heidemann BWC at 6:04 – 6:26.

¹⁶ Attachment 3, PO Rejman BWC at 6:22 – 6:40.

¹⁷ Attachment 3, PO Rejman BWC at 6:45 – 8:05; Attachment 2, PO Heidemann BWC at 6:32 – 7:40.

stated she had not yet been issued a BWC, as the incident took place just days after her reassignment to the 11th District. Sergeant Geyer did not recall the incident, but he stated that, to the best of his recollection, he did not register a complaint against Officer Kelly or report her conduct to anyone.

III. LEGAL STANDARD

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy.¹⁸ If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

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. 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.”¹⁹

IV. ANALYSIS AND CONCLUSION

a. Officer Bernadette Kelly

i. Searching a person of the opposite gender

COPA finds that Officer Kelly violated Special Order S04-13-09 when she searched Mr. ██████ and Mr. ██████ both persons of the opposite gender. The provisions of Special Order S04-13-09 specify that an officer conducting a protective pat down is limited to the outer clothing of the subject and may not go inside the pockets unless she touches an object she believes is a weapon.²⁰ The directive further states that a protective pat down must be conducted by an officer

¹⁸ 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).

¹⁹ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

²⁰ Special Order S04-13-09(VI)(A)(2), Investigatory Stop System (effective July 10, 2017, to present).

who is the same gender as the subject, unless one is not immediately available and officer or public safety may be compromised by a delay. Here, BWC video captured Officer Kelly conducting a pat down search of both male occupants, as well as reaching inside their pockets and grabbing and manipulating their genital and groin areas, even though multiple male officers were present. Officer Kelly's actions constituted a direct violation of the Special Order as well as Rules 2, 3, 6, 8, and 11 of CPD's Rules and Regulations and, as such, the allegation is **sustained**.

ii. Searching Mr. [REDACTED] vehicle

COPA finds that Officer Kelly did not search Mr. [REDACTED] vehicle without justification. Officer Kelly stated she smelled cannabis in the vehicle, which may have given her justification to conduct the search, even without consent.²¹ However, in this situation, BWC video captured both Mr. [REDACTED] and Mr. [REDACTED] give clear verbal consent for the officers to search their vehicle. The U.S. Supreme Court has long held that a search conducted pursuant to valid consent does not violate the Fourth Amendment.²² COPA finds the occupants' consent justified the officers' search and, as such, the allegation is **exonerated**.

iii. Failing to issue Mr. [REDACTED] an Investigatory Stop Receipt

COPA finds that Officer Kelly failed to issue Mr. [REDACTED] an Investigatory Stop Receipt or complete an Investigatory Stop Report (ISR) documenting the reasons for Mr. [REDACTED] detention and search. Special Order S04-13-09 states, "Upon completion of an Investigatory Stop that involves a Protective Pat Down or any other search, sworn members are required to provide the subject of the stop a completed Investigatory Stop Receipt. The Receipt will include the event number, the reason for the stop, and the sworn member's name and star number."²³ Here, it is undisputed that Officer Kelly conducted an investigatory stop involving a vehicle search and the pat down and search of both Mr. [REDACTED] and Mr. [REDACTED] BWC evidence establishes that Officer Kelly did not provide Mr. [REDACTED] a receipt before departing, and she subsequently failed to complete an ISR documenting the stop. These failures violated Rules 5 and 6 of CPD's Rules and Regulations and, as such, the allegation is **sustained**.

iv. Failing to activate her BWC

COPA finds that Officer Kelly did not fail to activate her BWC in violation of Special Order S03-14. Special Order S03-14 requires officers to activate their BWCs at the beginning of an incident and record the entire incident for all law-enforcement-related activities.²⁴ In this case, the BWC evidence appears to show Officer Kelly was not wearing a BWC during the incident, and Officer Kelly told COPA she had not yet been issued a BWC in the 11th District following her recent transfer to that unit. Evidence.com records verify that Officer Kelly was not assigned a

²¹ In instances in which an officer smells cannabis, the officer has probable cause to conduct a search of a vehicle; further, this principle has been extended to include searches of the driver and passengers of that vehicle. *See People v. Zayed*, 2016 IL App (3rd) 140780 ¶22 (2016).

²² *Schneekloth v. Bustamonte*, 412 U.S. 218, 222 (1973); *see also People v. Cardenas*, 237 Ill.App.3d 584, 587 (3rd Dist. 1992).

²³ Special Order S04-13-09(VIII)(A)(3).

²⁴ Special Order S03-14(III)(A)(2), Body Worn Cameras (effective April 30, 2018, to present).

BWC on the date of the incident.²⁵ For these reasons, COPA finds there is clear and convincing evidence that Officer Kelly did not violate Special Order S03-14 during this incident and, as such, COPA finds the allegation **unfounded**.

b. Sergeant Kevin Geyer

i. Failure to intervene

COPA finds that Sergeant Geyer failed to intervene when Officer Kelly searched a person of the opposite gender in violation of Special Order S04-13-09. CPD's Rules and Regulations set forth specific requirements for supervisory members, including Rule 3, which prohibits any failure to promote the Department's efforts to implement its policy or accomplish its goals. This rule "applies to supervisory and other members who, through carelessness, inefficiency or design fail to implement all policy goals, rules, regulations, orders and directives of the Department or fail to report to the Department any and all known violations of same, or who through carelessness, inefficiency or design fail to become aware of any such violation, when their assigned duty or supervisory responsibility would require them to become so aware."²⁶ Here, BWC evidence shows that Sergeant Geyer responded to the scene and arrived as Officer Kelly was searching Mr. [REDACTED] and Mr. [REDACTED]. Sergeant Geyer was personally present as Officer Kelly patted the men down, went inside their pockets, and grabbed and manipulated their genital and groin areas. Indeed, at one point, Sergeant Geyer stood just feet away from the officers and occupants, facing the improper searches and speaking with Mr. [REDACTED] as they occurred. Despite this, Sergeant Geyer did not intervene or take any supervisory action when Officer Kelly searched the men. His inaction violated Rules 3, 5, 6, and 10 of CPD's Rules and Regulations and, as such, this allegation is **sustained**.

ii. Failure to report

COPA finds that Sergeant Geyer failed to report Officer Kelly for searching a person of the opposite gender in violation of Special Order S04-13-09. Rule 22 requires all members "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."²⁷ Additionally, Department policy specifies that supervisory members who observe misconduct must report the incident to COPA within one hour, complete a written report recording all available information, and forward the report to COPA without unnecessary delay.²⁸ As described above, Sergeant Geyer was personally present for Officer Kelly's improper searches of Mr. [REDACTED] and Mr. [REDACTED]. COPA has found no record indicating Sergeant Geyer reported the misconduct to anyone, and Sergeant

²⁵ BWC records from September 2019 show that Officer Kelly was issued BWC Serial # X81217730 in the 007th District until approximately September 12, 2019, and she was subsequently issued BWC Serial # X81257438 in the 011th District on approximately September 26, 2019. The records reveal a two-week gap between September 12, 2019 and September 26, 2019, during which time Officer Kelly had no BWC recordings despite being newly on duty in the 011th District. That gap includes the date of this incident, September 21, 2019, corroborating Officer Kelly's statement that she had not yet been issued a BWC in her new unit of assignment. *See* CMS Note CO-0087223.

²⁶ Comment to Rule 3, Rules and Regulations of the Chicago Police Department.

²⁷ Rule 22, Rules and Regulations of the Chicago Police Department.

²⁸ *See* General Order G08-01-02(II)(B), Specific Responsibilities Regarding Allegations of Misconduct (effective May 4, 2018, to December 31, 2021).

Geyer acknowledged he likely did not make a report. His failure to do so violated Rules 3, 5, 6, and 22 of CPD's Rules and Regulations and, as such, the allegation is **sustained**.

iii. Failure to activate his BWC

COPA finds that Sergeant Geyer failed to comply with Special Order S03-14 when he failed to activate his BWC during this incident. S03-14 requires Department members to activate their BWCs to event mode for the duration of all law-enforcement-related activities.²⁹ Sergeant Geyer was engaged in law-enforcement-related activities when he responded to the request for a supervisor to be present for the search. As such, he should have activated his BWC en route to the scene. Sergeant Geyer's failure to do so violated Rules 5 and 6 of CPD's Rules and Regulations and, as such, the allegation is **sustained**.

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Bernadette Kelly

i. Complimentary and Disciplinary History

In considering disciplinary recommendations for sustained findings, COPA reviewed Officer Kelly's disciplinary and complimentary histories.³⁰ Officer Kelly has no sustained complaints and two SPARS for failure to perform assigned tasks in February 2021. She received reprimands as a result of both incidents. Officer Kelly has received 63 awards, including one life saving award, three Department commendations, four complimentary letters, and 50 honorable mentions.

ii. Recommended Penalty

COPA has found that Officer Kelly violated Rules 2, 3, 5, 6, 8, and 11 when she searched persons of the opposite gender and failed to provide an Investigatory Stop Receipt, both in violation of Special Order S04-13-09. The Special Order requires officers to issue Investigatory Stop Receipts to provide citizens with the information they need to seek redress for improper stops, and Officer Kelly's failure to issue one constituted a breach of public trust.

Moreover, Special Order S04-13-09 requires protective pat downs to be performed by officers of the same gender, to prevent sexual abuse, gender-based humiliation, and other indignities during investigatory stops. Officer Kelly's flagrant violation of this directive is aggravated by four main factors. First, while the Special Order limits protective pat downs to the outer clothing of the subject, Officer Kelly went inside the men's pockets, removing and inspecting everyday items such as wallets and keys. Second, Officer Kelly acted recklessly in the manner she patted down Mr. [REDACTED] and Mr. [REDACTED] conducting highly invasive searches that included grabbing and manipulating their genital and groin areas. Third, Officer Kelly took additional, unnecessary steps that made the searches more intrusive, directing the men to spread their legs wide and pulling their pants up by the waistband to better expose the contours of their groin areas. Finally, Officer Kelly chose to search the men in this manner even though multiple male officers

²⁹ Special Order S03-14(III)(A)(2).

³⁰ Attachment 11.

were present and available to perform the pat downs. Officer Kelly's actions violated the Department's rules and directives and constituted a gross breach of public trust that citizens will not be exposed to indignity or abuse at the hands of Chicago police officers. For all these reasons, COPA recommends that Officer Kelly be **separated** from the Chicago Police Department.

b. Sergeant Kevin Geyer

i. Complimentary and Disciplinary History

In considering disciplinary recommendations for sustained findings, COPA reviewed Sergeant Geyer's disciplinary and complimentary histories.³¹ Sergeant Geyer has no complaint history or sustained findings in the Department. He has received 102 awards, including one Department commendation, one complimentary letter, three crime reduction awards, and 72 honorable mentions.

ii. Recommended Penalty

COPA has found that Sergeant Geyer violated Rules 3, 5, 6, 10, and 22 when he failed to intervene in or report Officer Kelly's improper searches and failed to activate his BWC. Mr. [REDACTED] specifically requested a sergeant respond to the scene to supervise the officers' actions so as to ensure no misconduct occurred. When Sergeant Geyer arrived, however, he allowed misconduct to occur directly in front of him as Officer Kelly inappropriately searched Mr. [REDACTED] and Mr. [REDACTED]. Sergeant Geyer did not intervene, nor is there any indication he reported the misconduct. His inaction violated the Department's rules and directives and constituted a gross breach of public trust, particularly for a supervisory member. Considering the severity of the misconduct and Sergeant Geyer's twenty years of service, COPA finds a **45-day suspension** is the appropriate penalty for these violations.

Approved:

[REDACTED]

2/24/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

³¹ Attachment 28.