

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	October 3, 2019
Time of Incident:	2:51 am
Location of Incident:	Red Line Terminal at 95 th and State Street
Date of COPA Notification:	October 3, 2019
Time of COPA Notification:	10:12 pm

The Complainant, [REDACTED] was arrested by Department members at the 95th Street CTA Red Line terminal for allegedly possessing narcotics in the form of four pills. [REDACTED] alleges he was falsely arrested by the Accused Officers who subsequently failed to inventory his personal property upon taking him into custody, resulting in [REDACTED] loss of jewelry and several expensive electronic items.

II. INVOLVED PARTIES

Involved Officer #1:	Dennis Huberts Jr. #9883; Emp.# [REDACTED]; Date of Appt. 5/1/06; Rank: PO/FTO; Unit of Assignment: 022; M/BLK
Involved Officer #2:	Brandon Smith #16812; Emp.# [REDACTED]; Date of Appt. 9/25/06; Rank: PO; Unit of Assignment: 022; M/BLK
Involved Individual #1:	[REDACTED] DOB; M/BLK

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Dennis Huberts	1. Falsely arrested the Complainant [REDACTED] at the 95 th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.	Exonerated
	2. Failed to inventory and process the Complainant [REDACTED] personal property following his arrest at the 95 th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.	Exonerated

	<p>3 Deprived the Complainant of his personal property by intentionally giving it away to random strangers after placing Complainant ██████ in custody at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.</p>	<p>Exonerated</p>
<p>Officer Brandon Smith</p>	<p>1. Falsely arrested the Complainant ██████ at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.</p> <p>2. Failed to inventory and process the Complainant ██████ personal property following his arrest at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.</p> <p>3. Deprived the Complainant of his personal property by intentionally giving it away to random strangers after placing Complainant ██████ in custody at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am.</p>	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2—Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department
 2. Rule 9—Engaging in any unjustified verbal or physical altercation with any person, while on or off duty
 3. Rule 14—Making a false report, written or oral
 4. Rule 40—Failure to inventory and process recovered property in conformance of Department orders.
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General Orders

1. G07-01: Processing Property Under Department Control

Special Orders

1. S07-01-01: Inventorying Arrestees' Personal Property

Federal Laws

1. The Fourth Amendment to the United States Constitution

V. INVESTIGATION**a. Interviews****Interview of Complainant ██████████**

████████ came to COPA on Jan. 27, 2020. ██████████ told COPA that he was traveling home after a night out with friends when the Accused grabbed him and arrested him because he was in a crowd of black males. He claims that he was handcuffed too tightly, tussled with, and pushed around by the Accused. He also claimed that the accused took his valuable personal property—an I-Phone, Apple watch, Beats headphones, and a gold necklace—and gave it to random civilians standing in the vicinity of his arrest.

b. Digital Evidence**Officer Dennis Huberts' Body Worn Camera Footage²**

Officer Huberts' footage begins in the stand-by mode with no audio, with the image of a tall, African-American male clad in an "A-shirt" and black jogging pants—now known to be ██████████—standing in front of Officer Hubert. ██████████ is not handcuffed and appears to be taking off his watch while Officer Huberts holds him by his waist band. Before ██████████ can take off the watch, he places his hands behind his back and a pair of handcuffs can be seen in Officer Huberts' left hand. Officer Huberts cuffs ██████████ left hand and then brings it towards ██████████ right to secure both wrists in handcuffs. There's still no audio as Officer Huberts walks ██████████ forward towards a PACE bus outside the terminal. Officer Huberts proceeds to conduct a pat-down search of ██████████

¹ Att. #5

² Att. #12

as Officer Smith comes into view. Officer Smith approaches [REDACTED] and takes control of him while Officer Huberts immediately begins to search the ground near the PACE bus.

Officer Huberts reaches down and appears to pick a small plastic bag from under the PACE bus. Officer Huberts examines the bag and it appears to contain an indiscernible number of pills. Officer Huberts continues to search around the vicinity of the PACE bus while Officer Smith detains [REDACTED]. Three young African American males appear and approach the handcuffed [REDACTED] and Officer Smith. One of the youths is wearing a green sweatshirt and has a pair of large headphones in his left hand. The youth tries to give the headphones to [REDACTED] but then withdraws his hand in response to something one of the officers said. [REDACTED] appears to say something too and the three- turn and walk a short distance away, but do not depart the exterior of the terminal.

Officer Huberts then taps on the frame of the PACE bus to get the driver's attention to ask the driver to move the bus. The driver complies and begins moving to the driver's seat to engage the bus. Officer Huberts' activates his BWC and the sound is now audible. The same three young males are visible, and [REDACTED] is heard engaging Officer Smith. [REDACTED] tells Officer Smith, "I ain't all the way clean cuz I had a little grass on me. I had a little grass on me, but I ain't got a gun on me sir; I ain't commit a crime sir."³ The noise of the PACE bus pulling away drowns out some of the dialogue between Officer Smith and [REDACTED]. When the bus is out of earshot, [REDACTED] is heard saying "Me and little brother right there, we were on our way home,"⁴ referring to one of the three aforementioned youths. [REDACTED] then said "That's what I had in my pocket what that officer had right there. I told him I was going to be truthful."⁵ [REDACTED] then suggests the pills that Officer Huberts recovered are actually candy and not narcotics. Officer Smith asks [REDACTED] if the police lab tests test the substance, will the substance be found to be candy; to which [REDACTED] says it's not ecstasy.

[REDACTED] continues to discuss his impending arrest with Officer Smith while Officer Huberts stands nearby. Officer Smith asks [REDACTED] why he ran from him and Officer Huberts and [REDACTED] indicates he ran out of fear for his life. Officer Smith and Officer Huberts then walk [REDACTED] towards the three youth who had approached them earlier. [REDACTED] then identifies all of the youths as his little brothers. The officers continue with [REDACTED] towards an unmarked Ford Explorer SUV, and Officer Smith opens the right rear passenger seat door. Officer Smith then begins to remove a necklace from the neck of [REDACTED] as [REDACTED] begins pleading loudly that he did not resist arrest. Officer Smith taps [REDACTED] on his chest to interrupt his near sobbing to ask "Do you want him to take your chain? (necklace)"⁶ referring to the youth immediately behind [REDACTED] to which [REDACTED] replies "Yes."⁷ In similar fashion, Officer Smith takes the watch that [REDACTED] was wearing and states, "What about this watch? Do you want him to take this watch?"⁸ to which [REDACTED] shouts "I'm a motherly loved son! I'm a motherly loved son!"⁹ He doesn't seem to answer Officer Smith but

³ Att. #12 at the 2:55:25 mark

⁴ Att. #12 at the 2:55:44 mark

⁵ Att. #12 at the 2:55:55 mark

⁶ Att. #12 at the 2:59:51 mark

⁷ Att. #12 at the 2:59:53 mark

⁸ Att. #12 at the 2:59:58 mark

⁹ Att. #12 at the 3:00:03 mark

does not object when Officer Smith hands the watch to the same individual. At this point [REDACTED] has become hysterical and is begging the officers to not arrest him.

At the 3:00:34 am mark, Officer Huberts asks [REDACTED] if he wants to give the same individual the money [REDACTED] is carrying on his person. [REDACTED] hesitates and Officer Smith then states “do you want him to have it or not?”¹⁰ Officer Huberts then asks, “That’s your brother, right?”¹¹, to which [REDACTED] says “yes.”¹² [REDACTED] decides to keep the money and one of young men asks about a house key, which Officer Smith gives to him and then [REDACTED] is placed in the unmarked SUV. [REDACTED] continues to protest his arrest, attesting that the pills found in the plastic bag are candy and that he hasn’t done anything wrong. At the 3:01:53 am mark, Officer Smith again asks [REDACTED] why did he run, to which he replies, “I ran from the police, sir, because I knew that I had the evidence you found in my pocket sir.”¹³ Officer Smith thanks him for his honesty.

Officer Brandon Smith’s Body Worn Camera Footage¹⁴

Officer Smith’s Body Worn Camera (‘BWC’) footage begins in the stand-by mode with no audio as the BWC is in standby mode. The camera shows Smith walking through the CTA train station terminal and approaching an entrance/exit. Officer Smith opens a door and steps outside of the terminal where [REDACTED] appears in handcuffs standing next to Officer Huberts who appears to be patting down [REDACTED] left pants’ leg. Officer Huberts relinquishes [REDACTED] to Officer Smith and Officer Smith continues to pat down [REDACTED] while Officer Huberts walks over to a PACE bus and searches the grounds near the bus. Three young African American males appear and approach Officer Smith and [REDACTED]. One of the youths who is clad in a green hooded sweatshirt is carrying a large pair of headphones in his left hand which he extends outwards toward [REDACTED] who cannot take them because he is handcuffed. After a brief inaudible conversation, the three youths walk backwards away from Officer Smith and [REDACTED] to the space they were previously occupying but do not leave the terminal. Officer Smith’s fingers can be seen twice fumbling on the record button of his BWC in an effort to put the camera in active mode.

With the audio activated, there is now overlap with Officer Huberts’ BWC footage. [REDACTED] is heard admitting to possessing a small amount of marijuana and insisting that the pills in the plastic bag that Officer Huberts’ is holding is candy. Officer Smith tells [REDACTED] that he is being audibly and visually recorded via his BWC. [REDACTED] continues to plead with the officers that he’s done nothing wrong. From this point on, Officer Smith’s footage is duplicative of Officer Huberts’ footage.

c. Physical Evidence

N/A

¹⁰ Att. #12 at the 3:00:34 mark

¹¹ Att. #12 at the 3:00:37 mark

¹² Att. #12 at the 3:00:42 mark

¹³ Att. #12 at the 3:01:53 mark

¹⁴ Att. #11

d. Documentary Evidence

OEMC Event Query #1927601472¹⁵

OEMC Event Query #1927601472 details the 911 call for police assistance coming in at 2:39 am. The initial event type for the call is PERGUN, which means person with a gun, and the call is from an individual named [REDACTED]. According to the comments entered in shorthand by the OEMC operator, Mr. [REDACTED] placed the call on behalf of his wife who was a passenger on an inbound Red Line train to 95th station. According to Mr. [REDACTED] three male black teenagers accosted her with at least one pulling a gun on her because she refused to buy drugs from them. Mr. [REDACTED] wife described the attire of the teenagers as being one clothed in a red hoodie, the other with a black jacket and white t shirt on his head, and the third no description.¹⁶ The event query indicates Beat 2206A responded to the call.

Arrest Report of [REDACTED]

The arrest report for [REDACTED] CB #19878726 indicates that [REDACTED] was arrested on Oct. 3, 2019 at 2:51 am, at 16 W. 95th Street. This address corresponds to the location of the Chicago Transit Authority ('CTA') 95th Street Red Line terminal. The arrest report indicates that [REDACTED] was charged with felony possession of a controlled substance. The report contains a narrative that describes the actions leading to [REDACTED] arrest.

Original Case Incident Report¹⁸

The Original Case Incident Report for the police actions detailed under RD #JC457993 in response to the OEMC call with regards to Event #1927601472. The report includes the name, address, and identifiers of the suspect, [REDACTED] as well as a description of his attire. The report contains a narrative that states [REDACTED] had \$381.00 U.S.C on his person at the time of his arrest.¹⁹

CPD Inventory Record for Inventory #14559727²⁰

Details the inventory of the effects taken from [REDACTED] following his arrest under RD JC457993. The inventory sheet indicates that the only item taken from [REDACTED] were suspected narcotics in the form of four assorted colored pills wrapped in a small plastic baggie.²¹

¹⁵ Att. #1

¹⁶ Att. #1

¹⁷ Att. #3

¹⁸ Att. #2

¹⁹ Att. #2

²⁰ Att. #13

²¹ Att. #13

Initiation Report prepared by Sgt. Stephen Pietrzak²²

In response to an in-person complaint made by ██████████ Sgt. Stephen Pietrzak prepared an initiation report detailing accusations of misconduct that ██████████ wished to bring against the officers who arrested him earlier on Oct. 3, 2019. Sgt. Pietrzak's report indicates that ██████████ accused Officer Huberts and Officer Smith of falsely arresting him and failing to inventory the personal property he had on his person at the time of his arrest. ██████████ alleged he was missing a gold chain with a basketball pendant, Apple I-Phone 7, an Apple watch, and a pair of Beats Audio headphones.²³

VI. 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 reviewed complied with Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the 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. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

²² Att. #4

²³ Att.#4

VII. ANALYSIS

██████████ allegations, as described in Sgt. Pietrzak's initiation report, are that he was falsely arrested and the personal property he was carrying was not inventoried by the Accused officers. When ██████ gave his statement to COPA, he added the details that the officers deliberately gave away his personal property to random strangers, instead of inventorying it. The items included a gold chain, an Apple I-phone 7, an Apple watch, and a pair of Beats Audio headphones,²⁴ all of which are considerably expensive items.

COPA's analysis of ██████ complaint looked at the three main issues in ██████ allegations: 1). Was ██████ lawfully detained and arrested? 2). Did the Accused officers give away ██████ personal property to random passerby in the vicinity of the arrest location? 3). Did the Accused officers follow Department procedures regarding inventorying arrestee's property?

Allegation #1: Arrest of ██████

The foundation for ██████ arrest began with a 911 call to OEMC from a husband of a rider on a CTA Red Line train approaching the 95th station, the last stop for a southbound train. Based on the contemporary notes from Event Query # 1927601472, the call described three teenaged black males brandishing a gun at a woman who refused to buy drugs they were peddling. The Event Query further described the victim as having left the scene by the time Beat 2206A arrived.

The caller described the clothing the suspects were wearing as consisting of one wearing a red hooded sweatshirt, another with a black jacket and white t-shirt, and the third with no description. As shown in the BWC footage, ██████ is attired in a white t-shirt,²⁵ and at the time the officers caught up with him, he had placed his black long-sleeved garment in his waistband and now had on an A-shirt styled white undershirt.²⁶ One of the three youths who approached ██████ as he was being detained—individuals ██████ professed to know and named as his brothers, in the officers' BWC footage, is wearing a red hooded sweatshirt, like was described in the event query.²⁷ Equipped with this information, Officer Smith and Officer Huberts responded to the 95th street terminal and began searching for a man with a gun. According to the arrest report authored by Officer Huberts, they encountered ██████ on the lower level and ██████ took off running from the officers.²⁸

By his own admission, ██████ stated that upon seeing the officers, he ran "in fear for his life,"²⁹ and then later stated he ran because he "knew that I had the evidence you found in my

²⁴ Att. #5

²⁵ Att. #12

²⁶ Att. #12

²⁷ Att. #1

²⁸ Att. #3

²⁹ Att. #12 at the

pocket sir.”³⁰ Throughout the audible BWC footage, ██████ repeatedly admits to possessing the suspected ecstasy pills and a small amount of marijuana, with the full knowledge that Officer Smith’s BWC was recording. He continuously pleads with the officers to not arrest him, repeatedly claiming that to be a “motherly-loved son”³¹.

The Accused officers had reasonable articulable suspicion to detain ██████ based on ██████ matching the description of the potential suspect with a gun articulated in the 911 call. His flight from the officers, in and of itself, is not probable cause to arrest ██████ but his resemblance to the very specific description of the person with a gun, his subsequent flight, and then his attempt to toss the plastic bag away from his person, constituted the probable cause to arrest him. Further investigation did not yield the discovery of a firearm, so accordingly ██████ was only charged with a single felony count of possession of a controlled substance and was released later that same day.

COPA finds that the basis for ██████ initial detainment was lawful and that sufficient probable cause existed for his subsequent arrest as a result of the officers’ investigation. Therefore, COPA makes a finding of **EXONERATED** for Allegation #1 for both officers.

Allegation #2 and #3: Failure to Properly Inventory ██████ Property

██████ made an additional claim to COPA than he had previously asserted to Sgt. Pietrzak. When he made his initial complaint to the sergeant on Oct. 5, 2019, he alleged that the Accused officers were negligent in failing to properly inventory ██████ possessions. However, in his COPA interview, ██████ claims the Accused officers deliberately gave away the items to complete strangers in the vicinity of his arrest location.

However, the Accused officers’ BWC footage clearly and convincingly contradicts ██████ allegations in every aspect. First, at the time of his arrest, ██████ is only carrying the necklace, Apple watch, and \$381 cash, on his person, when Officer Huberts and then Officer Smith encounter him. The Beats headphones and the Apple I-phone 7 are not on him and not found during the pat down search or the subsequent search incident to arrest. Both BWCs captured one of the young males, whom ██████ described as his “brothers,” carrying a pair of headphones, consistent in appearance with the Beats style headphones. This young man attempts to hand the headphones to ██████ but ██████ is handcuffed and cannot take them. Later, another young man ██████ purports to be his brother, is seen holding a cellphone and small earphones when he takes possession of ██████ necklace, after ██████ agrees to let him take it on ██████ behalf. ██████ clearly, did not have in his possession two of the four items he attested the Accused officers took from him and gave away to strangers. At no time in the BWC footage do the officers’ recover the Beats headphones or the Apple I-phone, as those items are already possessed by the young men

³⁰ Att. #12 at the 3:01:53 mark

³¹ Att. #12 at the 3:00:03 mark

██████████ purports to be related to. This substantially contradicts ██████████ statement that he did not know the three youths and that the Accused officers randomly gave away his possessions.

Secondly, ██████████ willfully agrees to allow the individual he identified as his brother, take his necklace and Apple watch. ██████████ is asked by Officer Smith if he wants that person to take custody of the necklace, and ██████████ responds “Yes”.³² Similarly ██████████ is asked about his watch and eventually his money, which he decides to keep with him. It is a striking contradiction to attest to COPA that he does not know the other three youths, after previously professing to be related to them, as seen in the Accused officers’ BWC footage.

While there are orders governing the chain of custody and inventory of arrestees’ property after they are arrested, there is very little Department guidance governing an officer’s use of discretion to allow a friend or family member to take custody of the property of an individual who is about to be arrested.

In the present case, with body worn cameras recording, Officer Huberts and Officer Smith documented ██████████ approving giving his property to the youths he claimed he knew. Even after the multiple times ██████████ refers to the individuals as his brothers, Officer Huberts still asks him if the individual they give the items to is ██████████ brothers.³³ This was ██████████ opportunity to state he did not know the three youths or that he would rather prefer that the officers process his property. At no point did ██████████ object or insist that Officer Huberts and Officer Smith inventory his property and take it with them to the 22nd District station where ██████████ was processed. In choosing to entrust his brothers with his property, ██████████ was accepting Officer Huberts’ and Officer Smith’s alternative to inventorying his property. The arrest report shows that ██████████ was charged with a class 4 felony of possession of a controlled substance, and he was released later that same morning at 7:00 am.³⁴

There does not appear to be a deviation from the Department’s accepted practices regarding the use of discretion in the disposition of an arrestee’s property in a manner consented to by the arrestee/owner. ██████████ is asked and consents on camera to leaving his items with the individuals he identified as his brothers. Additionally, half the items ██████████ is accusing the Department of losing were already in the possession of one of his “brothers.” Therefore, COPA makes a finding of **EXONERATED** for Allegation #2 and Allegation #3 for both officers.

VIII. CONCLUSION

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

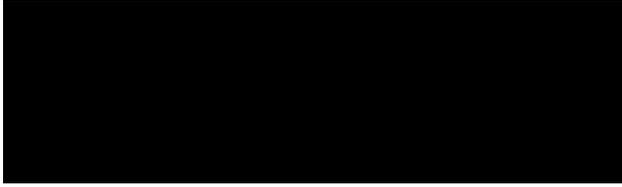
³² Att. #12

³³ Att. #12

³⁴ Att. #2

Officer	Allegation	Finding / Recommendation
Officer Dennis Huberts	<ol style="list-style-type: none"> 1. Falsely arrested the Complainant, [REDACTED] at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 2. Failed to inventory and process [REDACTED] personal property following his arrest at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 3. Deprived the Complainant of his personal property by intentionally giving it away to random strangers after placing Complainant [REDACTED] in custody at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>
Officer Brandon Smith	<ol style="list-style-type: none"> 1. Falsely arrested the Complainant, [REDACTED] at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 2. Failed to inventory and process [REDACTED] personal property following his arrest at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 3. Deprived the Complainant of his personal property by intentionally giving it away to random strangers after placing Complainant [REDACTED] in custody at the 95th Street CTA train station on Oct. 3, 2019 at approximately 2:51 am. 	<p>Exonerated</p> <p>Exonerated</p> <p>Exonerated</p>

Approved:



Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

8-18-2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Michael Fleury #62
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass
*Attorney:	Christopher Reed