

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	January 20, 2019
Time of Incident:	9:00 P.M.
Location of Incident:	3151 West Harrison Street Chicago, Illinois 60612
Date of COPA Notification:	January 22, 2019
Time of COPA Notification:	12:31 P.M.

On January 20, 2019, at 8:51 A.M., POs Michael Gabler and Jason Pagan arrested [REDACTED] for possession of a controlled substance, suspected to be heroin. The substance was contained in small black baggies and inventoried during the arrest. [REDACTED] was taken to the 11<sup>th</sup> District for processing and was searched by Detention Aide Charles Barry prior to entering the holding cell. While in a holding cell and under the watch of Detention Aide’s Jonathan Errum and Andrew McGuire at the 11<sup>th</sup> district, [REDACTED] was discovered by DA Errum in his cell unresponsive with a small black baggie in his hand. [REDACTED] was transported to Mt. Sinai where he was treated for a drug overdose and released.

**II. INVOLVED PARTIES**

Involved Officer #1:	Michael Gabler, Star #13845, Employee ID # [REDACTED], Appointed: February 2, 2015, PO, 11 <sup>th</sup> District, DOB: [REDACTED], 1980, Male, White
Involved Officer #2:	Jason Pagan, Star #11549, Employee ID # [REDACTED], Appointed: February 29, 2016, PO, 11th District, DOB: [REDACTED], 1983, Male, White
Involved Officer #3:	Charles Barry, Star #N/A, Employee ID # [REDACTED], Appointed: May 1, 1992, Detention Aide, 11 <sup>th</sup> District, DOB: [REDACTED], 1960, Male, Black
Involved Officer #4:	Brian Schnier, Star #1273, Employee ID # [REDACTED], Appointed: November 30, 1998, Sergeant, 11 <sup>th</sup> District, DOB: [REDACTED], 1974, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1991, Male, Black

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Michael Gabler	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED]	Not Sustained
Officer Jason Pagan	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED] 2. It is alleged that on January 20, 2019, at approximately 8:51 A.M., at or near 4231 West Madison Street, Chicago, Illinois 60624, PO Jason Pagan failed to comply with S03-14 by failing to activate his body worn camera.	Not Sustained  Sustained/ Reprimand
Detention Aide Charles Barry	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED]	Not Sustained
Sergeant Brian Schnier	1. It is alleged that on January 20, 2019, at approximately 8:51 A.M., at or near 4231 West Madison Street, Chicago, Illinois 60624, Sgt. Brian Schnier failed to comply with S03-14 by failing to activate his body worn camera.	Sustained/ Reprimand

**IV. APPLICABLE RULES AND LAWS**

Rules
1.Rule 6 – Disobedience of an order or directive, whether written or oral.
2.Rule 10 – Inattention to duty.
3.Rule 11 – Incompetency or inefficiency in the performance of duty.
General Orders
1.G06-01-01 Field Arrest Procedures
2.G06-01-03 Conducting Strip Searches
Special Orders
1. S06-01-02 Detention Facilities General Procedures and Responsibilities
2. S03-14 Body Worn Cameras

## V. INVESTIGATION<sup>1</sup>

### a. Interviews

On May 23, 2019, **Police Officer (“PO”) Jason Pagan**,<sup>2</sup> Star #11549, provided an in-person statement to COPA. PO Pagan reported that on January 20, 2019, he and his team (Sgt. Brian Schnier and PO’s William Robles, Michael Gabler,<sup>3</sup> and Joseph Freller) were working a narcotics mission in a high drug-trafficking area. His team observed ██████████ engage in a hand-to-hand transaction. As PO Gabler hopped out of the vehicle to approach ██████████ ██████████ started running. PO Pagan pursued ██████████ in the vehicle, exited the vehicle, and was able to intercept ██████████<sup>4</sup> The POs walked ██████████ to the sidewalk, where they conducted a “custodial search”<sup>5</sup> of him. The POs went in ██████████ pockets looking for contraband. They searched his jacket, waistline, and pockets.<sup>6</sup> He could not recall if he asked ██████████ if he had any further contraband on him after the search was completed on the scene.

POs Freller and Hernandez then transported ██████████ to the station, where POs Pagan and PO Gabler searched him again. PO Pagan reported that the search conducted at the station is more thorough. He believed he searched ██████████ at the station but said PO Gabler may have searched ██████████ as well. According to PO Pagan, ██████████ was cordial at the station and did not appear intoxicated. The POs removed ██████████ jacket, spread it over the table, and ran their hands across it to see if there were any lumps or bulges.<sup>7</sup> The POs also checked the seam and liners of the jacket. PO Pagan conducted all the required searches of ██████████ and did not find any contraband. The next morning when he arrived at work, Lieutenant Bartoli told PO Pagan that ██████████ had an overdose the night before. PO Pagan speculated that ██████████ could have gotten the heroin in lockup.<sup>8</sup>

On January 3, 2020, PO Pagan provided a second statement to COPA.<sup>9</sup> When asked why he did not activate his body camera during the arrest of ██████████ on January 20, 2019, PO Pagan responded he “may have forgotten to activate it.”<sup>10</sup>

On July 3, 2019, **Police Officer (“PO”) Michael Gabler**,<sup>11</sup> Star #13845, provided a statement to COPA. PO Gabler reported that on January 20, 2019, he and his partner (he could not

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<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Audio Att. 29, transcript Att. 38.

<sup>3</sup> PO Gabler was in the same vehicle and partnered with PO Pagan at the time of incident.

<sup>4</sup> PO Pagan later learned PO Robles had observed ██████████ attempt to drop contraband right before the officers grabbed him. PO Robles picked up that contraband, .5 grams of suspect heroin in a black baggie. Att. 38, pg. 11, line 13.

<sup>5</sup> Att. 38, pg. 13, line 2, He defines a custodial search as going through the subject’s person to recover all personal items and/or contraband. His person includes their jacket, waistline, pockets, socks, shoes.

<sup>6</sup> Att. 38, pg. 15, line 4. Due to the snow outside, POs searched ██████████ socks and shoes at the station.

<sup>7</sup> Att. 38, pg. 26, line 7.

<sup>8</sup> Att. 38, pg. 25, line 23. COPA notes that the heroin found in ██████████ cell was in the same kind of bag as what was recovered on the scene of his arrest. There is no evidence to support that ██████████ obtained the

<sup>9</sup> Audio Att. 42, transcript Att. 50.

<sup>10</sup> Att. 42, Audio at 6:29.

<sup>11</sup> Audio Att. 35, transcript Att. 37.

recall who), were on patrol in a vehicle and observed ██████ conduct a hand-to-hand transaction in a high drug-trafficking area at Madison and Keeler. PO Gabler recalled PO Pagan and PO Robles as two of the officers on the scene who assisted in the arrest. He approached ██████ who ran but the POs were eventually able to apprehend him. PO Gabler said PO Robles had observed ██████ throw something as he attempted to run from officers. PO Gabler said he did not recall who put handcuffs on ██████ and did not recall much from the incident. Regarding the search, PO Gabler said that the POs went over the outer layers of ██████ clothing looking for large items, weapons or something big,<sup>12</sup> but that they would do a more thorough search once they get back to the station. He said that due to the wintertime, the officers would not search ██████ shoes or inside his waistband until they get to the station. PO Gabler did not recall who conducted the on-scene searches of ██████. He also did not recall if he asked ██████ if he had any further contraband after the search but said that is something that is commonly asked. PO Gabler does not recall who searched ██████ at the 11<sup>th</sup> district police station, and he described the typical search in a similar manner as PO Pagan did. PO Gabler learned the next day that ██████ had overdosed. He said it is possible for prisoners to sneak contraband into lockup.

On January 9, 2020, **Sergeant (“Sgt.”) Brian Schnier<sup>13</sup>** provided a statement to COPA. Sgt. Schnier provided an account of the arrest consistent with what that of the other officers. When asked why he did not activate his body camera during the arrest of ██████ on January 20, 2019, Sgt. Schnier responded “either I simply forgot or I was not involved in the chase or arrest and did nothing of any evidentiary value so either it was an oversight on my part or I didn’t do anything I thought would need me to have my camera on.”<sup>14</sup> Sgt. Schnier went on to explain that he is required to turn on his camera when he has any interaction with the public. Sgt. Schnier said that he didn’t talk to ██████ so didn’t run his camera.

On June 14, 2019, **Detention Aide Charles Barry<sup>15</sup>** provided a statement to COPA. DA Barry reported that he does not recall searching ██████ and further he could not recall ██████ at all. DA Barry described the process by which he searches arrestees as they arrive in the 11<sup>th</sup> District Lockup, which includes searching pockets, shoes, socks, and hair. He does not search the mouth unless he observes something sticking out of it. DA Barry also stated they do not strip searches. He said he searches everything the prisoner brings into the lockup, including jackets, which lays flat to search. Regarding undergarments, DA Barry reported they pat the waistband down but do not usually remove it.<sup>16</sup> DA Barry stated that there are ways for prisoners to get drugs into lockup and gave an example of an inmate who taped heroin under his “manboobs”<sup>17</sup> and did drugs all day. DA Barry stated that the police officers who make the arrest typically search their prisoners.

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<sup>12</sup> Att. 37, pg. 14, line 7. PO Gabler defined this as a protective putdown but said it could be considered a custodial search at this point.

<sup>13</sup> Audio Att. 45, transcript Att. 49.

<sup>14</sup> Att. 45, Audio at 0:51.

<sup>15</sup> Audio Att. 28, transcript Att. 36.

<sup>16</sup> Att. 36, pg. 13, line 5, DA Barry reports “every now and then we’ll stretch it out.”

<sup>17</sup> Att. 36, page 19, line 7.

On January 10, 2020, **Detention Aide Andrew McGuire**,<sup>18</sup> provided a statement to COPA. DA McGuire said on January 20, 2019, he and his partner, Detention Aide Jonathan Errum,<sup>19</sup> were working at the 11<sup>th</sup> District cell block. One of the arrestees in their care was [REDACTED] who was awake and responsive when they fed him dinner around 7 pm. Just before they finished their shift at 9 pm, DA Errum did an in-person check on the arrestees in the cells and found [REDACTED] unresponsive. DA Errum then performed CPR and they called for an ambulance. The ambulance came and they took [REDACTED] to Mt. Sinai.

### b. Digital Evidence

The **Body Worn Camera**<sup>20</sup> (“BWC”) footage of PO Gabler begins with PO Gabler riding passenger in the police car and attempting to speak to someone on the street (now known to be [REDACTED]) then begins running and PO Gabler runs after him. PO Pagan is seen intercepting [REDACTED] PO Gabler handcuffs him. PO Pagan can be seen searching [REDACTED] jacket pockets. PO Gabler then continues searching [REDACTED] pockets with PO Pagan’s assistance. Sgt. Schneir is visible as PO Pagan and Gabler search [REDACTED]. PO Gabler then deactivates his BWC.

The **BWC of PO Robles**<sup>21</sup> captures PO Robles searching for an item he witnessed [REDACTED] throw out. He searched for a few minutes and eventually finds a small black baggie.

The **11<sup>th</sup> District Lockup Footage**<sup>22</sup> of this incident captures the lockup keeper entering the cell at 9:04 pm and attempting what appears to be CPR at 9:06 pm. At 9:13 pm, EMTs arrive and remove [REDACTED] It does not appear that any lockup personnel conducted any physical checks of the cells from 8:00 pm to 9:00 pm.<sup>23</sup>

### c. Physical Evidence

The **Ambulance Report**<sup>24</sup> shows that on January 20, 2019, at 9:05 pm, Ambulance 8 was dispatched to District 011 Lockup for an overdose. The patient is reported as [REDACTED] The paramedics found [REDACTED] with snoring respirations<sup>25</sup> laying on his back in the bed in his cell. [REDACTED] was breathing was shallow and he was responsive to pain. He had no noted trauma, nor was any reported. Per lockup staff, he was found in that condition within the last 10 minutes. Lockup staff reported that a small bag was found near [REDACTED] The paramedics brought [REDACTED] to the ambulance for further care. He had signs of heroin use (snoring respirations, pinpoint

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<sup>18</sup> Audio att. 46, Transcript att. 51.

<sup>19</sup> Att. 48 COPA attempted to interview DA Errum. DA Errum was on medical leave due to an injury.

<sup>20</sup> Att. 24.

<sup>21</sup> Att. 24.

<sup>22</sup> Att. 7.

<sup>23</sup> COPA asked DA McGuire about this in his interview. He stated that lockup staff is permitted to use the monitors at their desk to do the checks rather than conducting them physically. COPA notes that S06-01-02: Detention Facilities General Procedures and Responsibilities, specifically subsection III. B. 32., requires that lockup staff “complete a visual check of each arrestee every fifteen (15) minutes.” There is no indication about whether the checks should be conducted by physically going to the cell or via the monitor. See Att. 12.

<sup>24</sup> Att. 11.

<sup>25</sup> Labored breathing.

pupils and decreased response). His breathing dropped below 10 respirations per minute. Ambulance staff administered Narcan and Dextrose to [REDACTED]. He showed minimal improvement from the medication. The paramedics administered an additional dose of Narcan, and respirations began to increase. A third dose of Narcan was administered when [REDACTED] breathing decreased again, which helped. He was transported to Mt. Sinai without further incident.

The **Medical Records**<sup>26</sup> obtained from Mt. Sinai hospital report that [REDACTED] was admitted January 20, 2019, at 9:51 pm. [REDACTED] was admitted to the hospital unresponsive with altered mental status - coma. His drug screen was positive for PCP and cannabinoids. His diagnosis was acute kidney injury, PCP intoxication, aspiration into the respiratory tract, hypoglycemia, cerebral edema, and altered mental state – coma. [REDACTED] was discharged on January 23, 2019.

#### d. Documentary Evidence

In his **Initiation Report**,<sup>27</sup> Lt. Kevin Bruno reported [REDACTED] was discovered unconscious in cell “E1” in the 11th District lock-up. Detention Aide Jon Errum rolled [REDACTED] over and a black zip-lock baggie with white residue fell from the arrestee's hand. They immediately requested an ambulance, which transported [REDACTED] to Mt. Sinai Hospital. [REDACTED] was stabilized but intubated and unable to be interviewed. At the time of the report, it is not known if the black zip-lock bag was hidden on [REDACTED] person or somewhere in his body or if he found at some point while in custody.

The **Arrest Report**<sup>28</sup> shows [REDACTED] was arrested on January 20, 2019, at 8:52 am, at 4231 West Madison Avenue for possession of a controlled substance and for walking along the roadway. The arresting officers are reported as POs Gabler and Pagan. [REDACTED] was received by District 011 lockup at 11:48 am and searched by Detention Aide Charles Barry. The narrative section reports that POs Pagan and Gabler were working a gang and narcotics suppression mission in the area of Madison and Keeler when they observed [REDACTED] conduct a hand-to-hand transaction with an unknown male. POs Gabler and Pagan then approached [REDACTED] who fled across Keeler and Madison, disregarding verbal direction and traffic. PO Robles observed [REDACTED] reach into his right jacket pocket and drop one black bag containing a white powdery substance suspected to be heroin where [REDACTED] was placed in custody. The movement log reports [REDACTED] went to St. Anthony Hospital on January 20, 2019, at 12:19 pm for medical attention<sup>29</sup> before returning to lockup at 2:48 pm. At 9:26 pm, he was transferred by Ambulance 80 to Mt. Sinai.

The **Case Report**<sup>30</sup> reiterates the information from the arrest report.

The **Daily Prisoner Log Record**<sup>31</sup> reports at 9:00 pm on January 20, 2019, [REDACTED] was found unresponsive. The log is signed by “A.M. Emp. # [REDACTED].”<sup>32</sup>

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<sup>26</sup> Att. 27.

<sup>27</sup> Att. 32.

<sup>28</sup> Att. 4.

<sup>29</sup> [REDACTED] received treatment for a preexisting kidney condition.

<sup>30</sup> Att. 6.

<sup>31</sup> Att. 9.

<sup>32</sup> Detention Aide Andrew McGuire.

## 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.

## VII. ANALYSIS

### A. Allegation of Failure to Adequately Search

During the arrest, black baggies of contraband suspected to be heroin were allegedly dropped by [REDACTED] and inventoried at the scene. [REDACTED] was later found unresponsive in his cell at District 011 Lockup with a black baggie in his hand. Per G06-01-03(II)(A)(5)(g), "No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant; any warrant authorizing a body cavity search shall specify that the search must be performed under sanitary conditions and conducted either by a or under the supervision of a physician licensed to practice medicine in all of its branches in this State." POs Pagan and Gabler described what they recalled of this incident and the typical more thorough searches officers conduct at the station prior to bringing an arrestee to lockup. DA Barry, who did not recall the specifics of this incident, also explained his normal process for searching someone when they arrive at lockup. In this case, it is not clear whether the baggie later found in [REDACTED] hand

was in his clothing or hidden in a body cavity of [REDACTED] therefore undiscoverable in routine custodial search. Since COPA cannot determine the origin of the contraband or whether it was overlooked in the searches performed by the POs, this allegation is **Not Sustained** for **PO Gabler, PO Pagan, and DA Barry**.

#### B. Allegation of Failure to Activate Body Worn Camera

Per S03-14(III)(A)(2), “The Department member will activate the system to event mode at the beginning of an incident and will record the entire incident for all law-enforcement-related activities. If circumstances prevent activating the BWC at the beginning of an incident, the member will activate the BWC as soon as practical.”

When asked why he did not activate his body camera during the arrest of [REDACTED] on January 20, 2019, PO Pagan responded he “may have forgotten to activate it.”<sup>33</sup> Therefore, this allegation is **Sustained** against **PO Pagan**.

Sgt. Schnier’s response to the same question was that he either forgot or was not involved in the arrest. Sgt. Schnier’s understanding is that he is required to turn on his camera when he has any interaction with the public, which he explained as talking to a member of the public. Sgt. Schnier can be seen on scene as officers place [REDACTED] into custody and is in close proximity as they searched him,<sup>34</sup> which COPA finds to be engaging in the arrest. Therefore, this allegation is **Sustained** against **Sgt. Schneir**.

### VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

#### a. Officer Jason Pagan

##### i. Complimentary and Disciplinary History

PO Pagan has been a member of the Chicago Police Department since February 29, 2016. In that time, he has received 29 Honorable Mentions, 2 Department Commendations, and 2 Complimentary Letters. In that same time, he received SPARs for a court violation and two preventable accidents.

##### ii. Recommended Penalty, by Allegation

COPA recommends a Reprimand. PO Pagan acknowledged his error in failing to activate his body-worn camera during this incident, which appears to be an oversight.

#### b. Sergeant Brian Schnier

##### i. Complimentary and Disciplinary History

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<sup>33</sup> Att. 42, Audio at 6:29.

<sup>34</sup> Screen capture of BWC of PO Pagan showing Sgt. Schneir



Sgt. Schnier has been a member of the Chicago Police Department since November 30, 1998. In that time, he has received 144 Honorable Mentions, 12 Department Commendations, 2 Complimentary Letters, 1 Police Officer of the Month Award, 1 Honorable Mention Ribbon Award, and 1 Special Commendation. In the last seven years, he received a 15-day suspension for a domestic violence-related incident and a SPAR for failure to perform assigned tasks.

**ii. Recommended Penalty, by Allegation**

COPA recommends a Reprimand and retraining on Special Order 03-14. Sgt. Schnier expressed a lack of clear understanding about when he should activate his body-worn camera. COPA believes that retraining on this issue could prevent further violations of the order.

**IX. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer Michael Gabler	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED]	Not Sustained
Officer Jason Pagan	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED] 2. It is alleged that on January 20, 2019, at approximately 8:51 A.M., at or near 4231 West Madison Street, Chicago, Illinois 60624, PO Jason Pagan failed to comply with S03-14 by failing to activate his body worn camera.	Not Sustained  Sustained/ Reprimand
Detention Aide Charles Barry	1. It is alleged that on January 20, 2019, at or near 3151 W. Harrison St., the accused officer failed to adequately search [REDACTED]	Not Sustained
Sergeant Brian Schnier	1. It is alleged that on January 20, 2019, at approximately 8:51 A.M., at or near 4231 West Madison Street, Chicago, Illinois 60624, Sgt. Brian Schnier failed to comply with S03-14 by failing to activate his body worn camera.	Sustained/ Reprimand

Approved:

[REDACTED]

July 30, 2020

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Andrea Kersten  
Chief of Investigative Operations

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Date



Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	1
<b>Major Case Specialist:</b>	Emily Pierce
<b>Supervising Investigator:</b>	Shannon Hayes
<b>Deputy Chief Administrator:</b>	Andrea Kersten