

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	December 28, 2018
Time of Incident:	05:33 am
Location of Incident:	2150 N. California, 14 th District Station
Date of COPA Notification:	December 28, 2018
Time of COPA Notification:	06:41 am

On December 28, 2019, Officers Rick Podgorny and Jesus Sanchez were in the 14th District Patrolman’s Locker Room preparing to start their tour of duty. Officer Sanchez asked to see Officer Podgorny’s new firearm. Officer Podgorny handed Officer Sanchez his new firearm unloaded without the gun magazine inside. Officer Sanchez took the firearm and racked the slide¹ several times to determine that the firearm was indeed unloaded. Officer Sanchez then dry fired the firearm to get a feel for the firearm, just in case he wanted to purchase a similar firearm. Officer Sanchez then took the gun magazine and reinserted it into the firearm to get a feel for the weight. Officer Sanchez held down the trigger and racked the slide which caused the firearm to discharge.

II. INVOLVED PARTIES

Involved Officer #1:	PODGORNY, RICK, star # 19770; Employee ID# [REDACTED]; Date of Appointment: May 6, 1996; Chicago Police Officer; Unit of Assignment: 014; DOB: [REDACTED], 1966; Male White.
Involved Officer #2:	SANCHEZ, Jesus, star # 18860; Employee ID# [REDACTED]; Date of Appointment: August 7, 1995; Chicago Police Officer; Unit of Assignment: 014; DOB: [REDACTED], 1970; Male Hispanic.

¹ Means to pull the slide of the gun back.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Rick Podgorny, #19770	1. Failed to adequately secure and care for his firearm when he handed it over to PO Sanchez, who accidentally discharged the firearm and caused damaged to city property.	Not Sustained
Officer Jesus Sanchez, #18860	1. Accidentally discharged PO Podgorny’s firearm. 2. Caused damaged to city property, locker #69, in the 14 th District Patrolman’s Locker Room. 3. Failed to immediately notify OEMC regarding the discharge of Officer Podgorny’s firearm.	Sustained Sustained Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6 - Disobedience of an order/directive whether written or oral.
2. Rule 10 - Inattention to duty.

General Orders

1. Firearms Discharge Incidents Involving Sworn Members, General Order G03-02-03, reads in part:

IV. IMMEDIATE NOTIFICATIONS

For any firearm-discharge incidents, including unintentional discharges and those involving the destruction of an animal:

- A. the discharging member will immediately notify the Office of Emergency Management and Communications (OEMC) of the firearms discharge providing all relevant information and requesting additional resources.

1. INVESTIGATION²

a. Interviews

In a statement with COPA on February 21, 2019, **Accused Officer Rick Podgorny**³ stated on the date of the incident he was getting dressed in the men's locker room and observed Officer Sanchez walk in. Officer Podgorny yelled to Officer Sanchez, "Manny, the gun I've been waiting for six months came in."⁴ Officer Podgorny stated the gun was a Sig Sauer P365.⁵ Officer Podgorny stated he had the gun in his locker, because he had qualified with the gun the week prior. Officer Sanchez asked Officer Podgorny if he could see the gun. Officer Podgorny stated that Officer Sanchez wanted to check the gun out because it was the "hottest conceal gun right now."⁶

Officer Podgorny walked over to Officer Sanchez's locker stall and put the gun, the magazine, and round⁷ down on a bench.⁸ Officer Sanchez took Officer Podgorny's gun out of the holster and checked the gun to make sure there was nothing in it. Officer Sanchez then dry fired the gun "about three, four times."⁹ Officer Podgorny and Officer Sanchez started to talk. Officer Sanchez was still sliding the gun and then Officer Podgorny heard a big boom. Officer Podgorny realized a round went off and struck a locker. Officer Podgorny stated he does not know when Officer Sanchez loaded the gun. Officer Podgorny stated he was either talking to Officer Sanchez or looking the other way when Officer Sanchez loaded and discharged the gun. Officer Podgorny stated that he would not have let Officer Sanchez load the gun because they were not in the range.

Officer Podgorny asked Officer Sanchez what happened, and Officer Sanchez stated he put the magazine in and racked it,¹⁰ because he wanted to see how it felt with the magazine in the gun. Officer Podgorny and Officer Sanchez then went to rollcall. After rollcall, Officers Podgorny and Sanchez told Sergeant O'Donnell what occurred. Officer Podgorny stated that it was about fifteen or twenty minutes between Officer Sanchez discharging the gun and Sergeant O'Donnell being notified. Officer Podgorny stated no one else besides him and Officer Sanchez were in area when Officer Sanchez discharged the gun. Officer Podgorny stated that he did adequately secure and care for his firearm when he handed it over to Officer Sanchez, because the gun was unloaded.

In a second statement with COPA on May 16, 2019, **Accused Officer Rick Podgorny**¹¹ stated the gun was in his locker for a week or so prior to the incident. He left it there because he did not have a holster for the gun. He brought a holster to work on the day of the incident because he was going to take the gun home. Officer Podgorny further stated the gun was secured in a gun

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Attachment 21

⁴ *Id.* at Page 6, Lines 21-23.

⁵ Officer Podgorny stated the gun was his off-duty weapon.

⁶ *Id.* at Page 9, Lines 11-12.

⁷ Bullet.

⁸ *Id.* at Page 7, Lines 6-7.

⁹ *Id.* at Page 10, Lines 12-13; Officer Podgorny initially stated that Officer Sanchez dry fired four to five times. *Id.* at Page 7, Line 10.

¹⁰ *Id.* at Page 12, Lines 21-22.

¹¹ Attachment 29.

box. The gun box did not have a lock, but the gun box was secured in Officer Podgorny's locker which was secured by a lock.

In a statement with COPA on May 16, 2019, **Accused Officer Jesus Sanchez**¹² stated that on the date of the incident he was getting dressed in the 14th District Patrolman's Locker Room. As Officer Sanchez was getting dressed, Officer Podgorny walked over to Officer Sanchez and told Officer Sanchez that he had a new gun.¹³ Officer Sanchez asked to check out Officer's Podgorny's gun because it was the same gun he wanted to buy. Officer Podgorny handed Officer Sanchez his unloaded gun and the gun's magazine. Officer Sanchez placed the gun's magazine down on a bench and looked at the gun, then racked the gun¹⁴ several times with his right hand to make sure the gun was not loaded. He held the gun with his left hand while pointing it downward at a 45-degree angle away from Officer Podgorny.¹⁵ Officer Sanchez stated there was no one else in the immediate area.¹⁶

After he ensured that the gun was safe, he wanted to check out the sensitivity of the gun's trigger squeeze, so he pulled the trigger several times, while still holding the gun in the same position. Officer Podgorny was approximately five to eight feet away from him, but not more than an arm's reach, while he was testing the trigger.¹⁷ Officer Sanchez then placed the gun's magazine in the firearm, because he wanted to feel how the gun felt with the gun's magazine in the gun. He placed the gun's magazine inside the gun and racked the slide. By racking the slide, he loaded the gun. He then pulled the trigger again and the gun discharged once. Officer Sanchez stated that after pulling the trigger so many times, being that the gun was unloaded, he inadvertently loaded the gun just to feel the trigger one more time with the full grip.¹⁸ Officer Sanchez stated he was within arm's reach of the locker, so the discharged round went into the bottom of a locker.¹⁹

Officer Sanchez was in shock after discharging Officer Podgorny's gun. He finished getting dressed and told Officer Podgorny that he was going to report the incident. Officer Sanchez then went to roll call, which had already started, but did not want to interrupt roll call, so he waited until the end of roll call to report the incident to Sergeant O'Donnell.²⁰ He could not recall how long roll call lasted, but it is usually ten or fifteen or twenty minutes long.²¹ Officer Sanchez stated that after he notified Sergeant O'Donnell, he called OEMC²² via telephone²³ to get an event number. Officer Sanchez did not know the time frame from the accidental discharge to the time he notified OEMC. No one was injured during the incident.

¹² Attachment 33.

¹³ Officer Sanchez stated that he believed the firearm was a Sig Sauer. *Id.* at Page 16, Line 2.

¹⁴ Officer Sanchez stated he pulled the slide back and then let it go forward to reset the trigger. *Id.* at Page 9, Lines 13-17.

¹⁵ *Id.* at Page 8, Lines 15-17.

¹⁶ *Id.* at Page 11, Line 13-22.

¹⁷ *Id.* at Page 21, Lines 8-18.

¹⁸ *Id.* at Page 10, Lines 17-22.

¹⁹ Officer Sanchez stated it struck locker #69. *Id.* at Page 25, Lines 20-23.

²⁰ Sergeant O'Donnell completed an Initiation Report, Attachment 4.

²¹ *Id.* at Page 30, Lines 14-18.

²² Office of Emergency Management and Communication.

²³ Officer Sanchez stated he used a telephone in the sergeant's room to contact OEMC. *Id.* at Page 42, Line 9.

In a statement with COPA on May 16, 2019, **Witness Sergeant Robert O'Donnell**²⁴ stated that on the date of the incident Officer Sanchez approached him after roll call and told him that he needed to show him something. Officer Sanchez led him into the men's locker room and showed him a bullet hole in a locker.²⁵ Officer Sanchez told Sergeant O'Donnell that Officer Podgorny had just brought a new Sig.²⁶ Officer Sanchez was interested in getting one so Officer Podgorny let him see the gun. Officer Sanchez stated that he took out the clip and that it was not loaded when he was looking at it. Officer Sanchez when on to state that he racked the slide and it felt good. Officer Sanchez told Sergeant O'Donnell that he then put in the clip, racked the slide, and the gun went off because his finger was on the trigger.

Sergeant O'Donnell also spoke to Officer Podgorny, who provided the same details as Officer Sanchez. Sergeant O'Donnell did not know if Officer Podgorny witnessed Officer Sanchez discharged the gun, but he was pretty sure Officer Podgorny was right there when the incident occurred.²⁷ Sergeant O'Donnell informed Officer Sanchez that he would have to obtain a CR²⁸ number. Sergeant O'Donnell then notified the acting watch operations Lieutenant Dany Helwink-Masters.

Sergeant O'Donnell recalled hearing something loud prior to rollcall, but did not know that it was a gunshot at the time. Sergeant O'Donnell stated he was in Lieutenant Helwink-Masters' office talking to her when he heard a loud noise. Sergeant O'Donnell could not recall when roll call started or how long it lasted on the date of the incident.

He did not know who else was in the locker room at the time of the incident, nor did not ask Officers Sanchez or Podgorny who was present. Sergeant O'Donnell stated that a case report for damage to the locker was not obtained, because Commander Fabian Saldana told him not to do it, as he did not believe one would be required.²⁹ Sergeant O'Donnell did not observe how Officer Podgorny's gun was secured in his locker. Sergeant O'Donnell stated that OEMC was notified after he started completing his Initiation Report and reading a general order which stated OEMC had to be notified.

b. Digital Evidence

Evidence Technician Photographs and Video³⁰ depict the Patrolman's Locker Room in the 14th District and Officer Podgorny's firearm.

²⁴ Attachment 25.

²⁵ Sergeant O'Donnell stated that the locker belonged to Officer Christopher Reyes. *Id.* at Page 31, Lines 20-22.

²⁶ Referring to a firearm, Sig Sauer. *Id.* at Page 11, Lines 13-16.

²⁷ *Id.* at Page 14, Lines 1-4.

²⁸ Complaint Register.

²⁹ *Id.* at Page 15, Lines 6-18.

³⁰ Attachments 22.

c. Physical Evidence

CPD Crime Scene Processing Report³¹ [REDACTED] documents that a fired cartridge case³² head stamped with Win 9mm Luger was recovered from Officer Sanchez and a metal fragment³³ was recovered inside a black backpack in the 14th District Patrolman's Locker Room, locker #69.

d. Documentary Evidence

A **Tactical Response Report (TRR)**³⁴ completed by Officer Jesus Sanchez, documents that he was on-duty and in uniform when he unintentionally discharged a firearm. Officer Sanchez discharged the firearm once. The TRR further documents that Officer Sanchez's negligent discharge into locker 69 cause the bullet to travel through the locker door and into a backpack. The bullet fragmented inside the backpack which cause damage to a raincoat that was inside the backpack.

Office of Emergency management and Communications Event Query Report³⁵ documents that Officer Sanchez accidentally discharged a firearm at 05:33 am in the locker room and Officer Sanchez reported the incident at 06:32 am.

A **Firearm Qualification Report**³⁶ documents that Officer Sanchez last qualified with his firearm on February 16, 2018.³⁷ Officer Sanchez's FOID card, # [REDACTED], expires April 1, 2022.

CPD's Bureau of Internal Affairs conducted an **alcohol and drug test**³⁸ of Officer Sanchez on December 28, 2018, beginning at approximately 8:10 am, and the tests reveal that there were no drugs or alcohol in his system.

An **Initiation Report**³⁹ completed by Sergeant Robert O'Donnell, #1958, on December 28, 2018, provides the same information in the summary of incident.

2. 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;

³¹ Attachment 8.

³² Inventory #14338761.

³³ Inventory #14338763.

³⁴ Attachment 5.

³⁵ Attachment 6 and 18.

³⁶ Attachment 9.

³⁷ Officers have to annually qualify with their firearms. Firearm qualifications are good for one year.

³⁸ Attachment 10.

³⁹ Attachment 4.

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.

3. ANALYSIS

COPA finds Allegation #1 against Officer Podgorny, that he failed to adequately secure and care for his firearm, when he handed it over to PO Sanchez, who accidentally discharged the firearm and caused damaged to city property, be **Not Sustained**. Officer Podgorny stated he handed Officer Sanchez an unloaded firearm, and Officer Sanchez corroborates this account. Officer Podgorny denied observing Officer Sanchez load his firearm and stated that he would not have let Officer Sanchez load the firearm, because they were not at the range. It is reasonable to believe Officer Podgorny was not anticipating Officer Sanchez to discharge the firearm inside the locker room. However, there is no evidence to corroborate or refute that Officer Podgorny would have actually prevented Officer Sanchez from loading the firearm. Therefore, there is insufficient evidence to prove or disprove the allegation.

COPA finds Allegation #1 against Officer Sanchez, that he accidentally discharged PO Podgorny's firearm, be **Sustained**. Officer Sanchez loaded Officer Podgorny's firearm then placed the gun's magazine in the firearm because he wanted to feel how the gun felt with the gun's magazine in the gun. Officer Sanchez admitted to pulling the trigger, which caused the firearm to discharge once. Therefore, COPA recommends this allegation be Sustained.

COPA finds Allegation #2 against Officer Sanchez that he caused damaged to city property, locker #69, in the 14th District Patrolman's Locker Room, be **Sustained**. Officer Sanchez stated that the discharged round went into the bottom of a locker. CPD Crime Scene Processing Report documented that a metal fragment was recovered inside a black backpack in the 14th District Patrolman's Locker Room, locker #69. The TRR documents that Officer Sanchez's negligent discharge into locker 69 caused the bullet to travel through the locker door and into a backpack. Therefore, COPA recommends this allegation be Sustained.

COPA finds Allegation #3 against Officer Sanchez that he failed to immediately notify OEMC regarding the discharge of Officer Podgorny's firearm, be **Sustained**. Officer Sanchez did not immediately notify OEMC after the accidental discharge. Officer Sanchez went to roll call and after roll told Sergeant O'Donnell what occurred. When Officer Sanchez told Sergeant O'Donnell what occurred, he still had not notified OEMC. Firearms Discharge Incidents Involving Sworn Members, General Order G03-02-03, states that a discharging member will immediately notify OEMC of the firearms discharge providing all relevant information and requesting additional resources. The OEMC Event Query documented that Officer Sanchez accidentally discharged a firearm at 05:33 am in the locker room and reported the incident at 06:32 am, which is approximately one hour after the incident. Therefore, COPA recommends this allegation be Sustained.

4. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Jesus Sanchez, #18860

i. Complimentary and Disciplinary History

- 1. Officer Sanchez previously received a Reprimand in 2019 for a "Preventable Accident"**
- 2. Officer Sanchez has 53 Honorable Mentions, 5 Department Commendations, 3 Complimentary Letters and 16 other Complimentary Awards**

ii. Recommended Penalty, by Allegation

- 1. Allegation No. 1 – One Day Suspension**
- 2. Allegation No. 2 – One Day Suspension**
- 3. Allegation No. 3 – One Day Suspension**

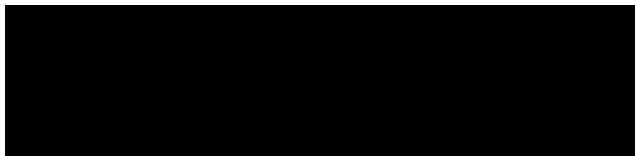
Officer Sanchez accidentally discharged his firearm, which resulted in him damaging city property. He also failed to notify OEMC immediately regarding the discharge of his firearm. A one day suspension is recommended for all allegations.

5. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Rick Podgorny, #19770	1. Failed to adequately secure and care for his firearm when he handed it over to PO Sanchez, who accidentally discharged the firearm and caused damaged to city property.	Not Sustained
Officer Jesus Sanchez, #18860	1. Accidentally discharged PO Podgorny’s firearm.	Sustained
	2. Caused damaged to city property, locker #69, in the 14 th District Patrolman’s Locker Room.	Sustained
	3. Failed to immediately notify OEMC regarding the discharge of Officer Podgorny’s firearm.	Sustained

Approved:



12-31-2020

 Angela Hearts-Glass
 Deputy Chief Investigator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Major Case Specialist:	LaKenya White
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass
Attorney:	