

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	August 16, 2019
Time of Incident:	1:15 am
Location of Incident:	11133 South Emerald Avenue
Date of COPA Notification:	August 16, 2019
Time of COPA Notification:	4:04 am

On August 16, 2019, Officer Gary Claxton (Officer Claxton) unintentionally discharged his firearm while assisting officers in a stolen vehicle investigation. Initially, the discharge was reported as shots fired at police. Once officers realized the 9-millimeter shell casing recovered from the scene did not match the subject's .40 caliber firearm, Officer Claxton checked his firearm, discovered he was missing a bullet, and made the necessary notifications.

**II. INVOLVED PARTIES**

Involved Officer #1:	Gary Claxton, star #11299, employee ID# [REDACTED] Date of Appointment: April 25, 2016, PO, Unit 022, DOB: [REDACTED] 1992, Male, Black
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**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Gary Claxton	It is alleged by Lieutenant James O'Donnell that on or about August 16, 2019, at approximately 1:15 am, at or near 11133 South Emerald Avenue, Officer Gary Claxton, star #11299 committed misconduct through the following acts or omissions:	
	1. unintentionally discharging his firearm; and 2. failing to immediately make notifications.	Sustained Sustained

**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

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**General Orders**

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1. G03-02-03 Firearm Discharge Incidents Involving Sworn Members (Effective October 17, 2017 – February 28, 2020)

**V. INVESTIGATION<sup>1</sup>****a. Documentary Evidence**

**Department Reports** reveal on August 16, 2019, officers, including Officer Gary Claxton (Officer Claxton), were conducting a stolen vehicle investigation. The vehicle under observation attempted to flee, driving toward Officer Claxton. Officer Claxton exited his patrol car and accidentally discharged his weapon.<sup>2</sup> No person or property was struck. There were no injuries, complaints of injury, or requests for medical treatment. The individuals in the stolen vehicle fled on foot. Officers observed one of the individuals toss a firearm into a yard. Both individuals were later taken into custody and a firearm was recovered. Bureau of Internal Affairs was notified of Firearms Discharge Incident at 3:22 am.<sup>3</sup>

The **Tactical Response Report (TRR)** completed by Officer Claxton documents that officers observed two individuals enter a stolen vehicle, officers exited their police vehicle, and the individuals drove towards the officers. In fear of his life, Officer Claxton removed his gun from its holster, pointed the gun in a downward position, and the gun accidentally discharged one time. The approving lieutenant's comments indicate Officer Claxton exited the driver side door of the police vehicle, drew his firearm, stepped backward, and accidentally discharged his firearm.<sup>4</sup>

**b. Interviews**

In an **interview with COPA on August 17, 2020, Officer Gary Claxton (Officer Claxton)** stated on August 16, 2019, Beat 2206C<sup>5</sup> radioed for assistance after discovering a stolen vehicle (the "Audi")<sup>6</sup> in the east alley of Emerald Avenue, between 111th Street and 112th Street. The Audi's engine was running but the vehicle was unoccupied. Officer Claxton and his partner, Officer Anthony Hobbs, responded to the location and set up surveillance on the Audi. Officer Claxton parked his police vehicle on the north end of the alley, facing the Audi, while Beat 2206C parked on the south end of the alley.

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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> Preliminary information provided by Lieutenant James O'Donnell (Lt. O'Donnell) indicated Officer Claxton was not aware his firearm discharged. Lt. O'Donnell realized Officer Claxton's firearm discharged when a 9-millimeter shell casing was recovered from the scene, and he learned that Officer Claxton was armed with a 9-millimeter pistol. Attachment 49.

<sup>3</sup> Attachments 1-10.

<sup>4</sup> Attachment 10.

<sup>5</sup> Officer Sean McDermott (Officer McDermott) and Officer Matthew Palmer (Officer Palmer).

<sup>6</sup> Note: Officer Claxton referred to the stolen vehicle as an Infiniti in his interview, but reports indicated it was an Audi Q3.

Approximately thirty minutes later, Beat 2206C notified Officer Claxton that two individuals<sup>7</sup> were approaching the Audi. Officer Claxton exited his vehicle and used the vehicle's open door as a shield. He drew his Glock 17 pistol, placed both his hands on his firearm with his trigger finger on the slide, and pointed the weapon downward toward the ground, as he was trained. Officer Claxton denied pointing his firearm at the Audi, stating he is not supposed to shoot at a moving vehicle. As the Audi sped toward Officer Claxton, he moved to the left of his vehicle to avoid being struck. Officer Claxton's firearm discharged one time. At least two individuals then exited the Audi and fled on foot.

Initially, Officer Claxton and the other officers believed the individuals in the Audi shot at the police.<sup>8</sup> After the individuals were detained, officers searched the area and discovered a shell casing on Officer Claxton's side of the police vehicle. The shell casing appeared to be a 9-millimeter, but the firearm recovered by officers was a .45 caliber.<sup>9</sup> Since the shell casing was located on Officer Claxton's side of the vehicle, Officer Claxton checked his firearm for a missing round. He discovered he was missing one bullet, and he immediately notified the on-scene sergeant<sup>10</sup> and the street deputy<sup>11</sup>. Officer Claxton told COPA he did not recall pulling the trigger on his firearm and denied intentionally firing the weapon.<sup>12</sup> He believed his finger must have slipped onto the trigger, causing the weapon to accidentally discharge.

### c. Digital Evidence

**Body Worn Camera (BWC) video** shows officers' vehicles stopped on the north and south ends of the alley. The Audi begins accelerating towards Officer Claxton's vehicle, then stops.<sup>13</sup> Immediately after Officer Claxton and Officer Hobbs exit their vehicle, at approximately 1:14 am, there is the sound of a single gunshot.<sup>14</sup> Officer Claxton moves to his left and then behind his police vehicle. Officer McDermott calls over the radio, "shots fired at police." The individuals inside the Audi flee on foot, and Officer Claxton and the other officers engage them in a foot pursuit.<sup>15</sup> Officer Claxton tells several officers that the individuals shot in the direction of Officer Claxton's vehicle, indicating he heard a boom as he opened his door. Eventually, officers find a shell casing or bullet fragment behind a police vehicle. Another unit goes over the radio to report the recovery of a firearm.<sup>16</sup> There is no BWC video that captures the time when Officer Claxton checked his weapon or notified his superiors of his firearm discharge.<sup>17</sup>

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<sup>7</sup> Now known as [REDACTED] and [REDACTED]. Officers subsequently arrested both individuals and charged them with criminal trespass to vehicle. Attachments 5, 9, Case Notes.

<sup>8</sup> Officers radioed shots fired at police.

<sup>9</sup> Officer Claxton referred to the recovered weapon as a .45 caliber, but the inventory reports indicate it was actually a .40 caliber firearm.

<sup>10</sup> Officer Claxton did not know the sergeant, but indicated it was the same sergeant who told him to check his weapon for a missing round.

<sup>11</sup> Street Deputy or On-Scene Commander in Charge (OCIC).

<sup>12</sup> Officer Claxton stated, other than this incident, he has only fired his weapon during his annual firearms qualification with the Department, when he felt little to no recoil after his weapon discharged. He added, during this incident, he believed the adrenaline masked any possible recoil.

<sup>13</sup> Attachments 23-26.

<sup>14</sup> Attachment 22 at 2:00.

<sup>15</sup> Attachments 23, 24.

<sup>16</sup> Attachment 23 at 9:50-13:00.

<sup>17</sup> Attachments 23-35.

The **Office of Emergency Management and Communications (OEMC) radio transmissions** capture officers reporting shots fired and a “10-1”<sup>18</sup> between 12:01 am and 2:00 am on the date of the incident. There are no notifications of shots fired by police.<sup>19</sup> The Event Queries related to this incident document the Investigative Response Team was notified at 2:37 am.<sup>20</sup>

#### d. Physical Evidence

Officer McDermott recovered a .40 caliber pistol with an eleven-round capacity magazine from 11133 South Emerald Avenue. The magazine contained an unknown amount of live ammunition, and one .40 caliber S&W live round was recovered from the chamber of the firearm.<sup>21</sup>

One 9MM expended shell and one 9MM live round was recovered from Officer Claxton at 11133 South Emerald Avenue.<sup>22</sup> Officer Claxton’s firearm, a Glock 17, contained a magazine with a capacity of sixteen rounds. There were fourteen live rounds of ammunition recovered from the magazine and one live round recovered from the chamber.<sup>23</sup>

## 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 occurred and violated 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 misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

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<sup>18</sup> A 10-1 is a radio call indicating an officer in need of emergency assistance.

<sup>19</sup> Attachments 15-18.

<sup>20</sup> Attachments 11-12.

<sup>21</sup> Attachment 42.

<sup>22</sup> Attachments 39-41. After the incident, Officer Claxton reportedly ejected the live round from the chamber of his weapon in order to make the firearm safe.

<sup>23</sup> Attachment 49. CPD apparently did not document the type of ammunition, manufacturer, or headstamp on the live rounds in Officer Claxton’s pistol and magazine.

**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**

COPA’s investigation determined Officer Claxton unintentionally discharged his firearm during the incident. Officer Claxton denied he intended to pull the trigger but acknowledged he must have because the firearm discharged. The BWC video corroborates Officer Claxton’s account of the incident, and there is no evidence that Officer Claxton intentionally discharged his weapon or that the firearm malfunctioned. Therefore, COPA finds this allegation is **Sustained**.

Additionally, COPA’s investigation revealed Officer Claxton failed to make the required notifications following his firearm discharge. When an officer discharges his firearm, he must immediately notify the Office of Emergency Management and Communications (OEMC), provide all relevant information, and request additional resources.<sup>24</sup> Officer Claxton asserted he notified a supervisor as soon as he became aware he discharged his weapon. However, the evidence indicates Officer Claxton discharged his firearm at approximately 1:14 am. At 2:00 am, OEMC still had not been notified of the discharge. Officer Claxton knew or should have known that he discharged his firearm at the time it occurred. Officer Claxton’s delayed reporting violated Department policy following firearm discharge incidents, and COPA finds this allegation is **Sustained**.

**VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

Officer Claxton has received one 2019 crime reduction award, one emblem of recognition for physical fitness, and nine honorable mentions. He has no sustained disciplinary history.

COPA’s investigation uncovered no evidence that Officer Claxton intentionally concealed his firearm discharge, and COPA finds him credible when he indicated he was unaware of the discharge. However, COPA finds Officer Claxton’s lack of situational awareness to be extremely troubling, especially where there were civilians and other officers who could have been struck. Therefore, COPA recommends a suspension of 10 days.

**IX. CONCLUSION**

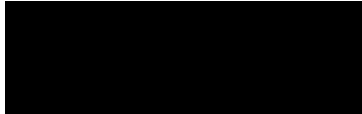
Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding / Recommendation
Officer Gary Claxton	It is alleged by Lieutenant James O’Donnell, that on or about August 16, 2019 at approximately 1:15 a.m. at or near 11133 South Emerald Avenue, Officer Gary Claxton, star #11299	

<sup>24</sup> General Order G03-02-03(IV)(A).

	committed misconduct through the following acts or omissions: 1. unintentionally discharging his firearm; and 2. failing to immediately make notifications.	Sustained/10 Day Suspension  Sustained/10 Day Suspension
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Approved:



January 20, 2021

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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>	Six
<b>Investigator:</b>	Elizabeth Brett
<b>Supervising Investigator:</b>	Steffany Hreno