

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	November 5, 2019
Time of Incident:	8:52 a.m.
Location of Incident:	5701 W. Madison Street (015 <sup>th</sup> District Station)
Date/Time of COPA Notification:	November 5, 2019 / 9:05 a.m.

On November 9, 2019, at approximately 8:52 a.m., inside the 015<sup>th</sup> District Station located at 5701 W. Madison Street, Field Training Officer (FTO) Nicole Velazquez #13385 was working in the computer area on the first floor of the building when Officer Tone Trujillo #16247 walked by. FTO Velazquez had previously asked Officer Trujillo about his firearm because she had been considering upgrading from her current firearm to Officer Trujillo’s type of firearm. After confirming with FTO Velazquez that she was still interested in his firearm, Officer Trujillo cleared his firearm, placed it on the desk where FTO Velazquez was working, and walked down the hallway to retrieve items from the printer on behalf of FTO Velazquez. FTO Velazquez picked up the firearm and inserted the magazine back into the firearm. Believing that the firearm had been cleared by Officer Trujillo, FTO Velazquez squeezed the trigger and the firearm discharged one live round.

Any firearm discharge by the CPD results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. COPA’s investigation shows that FTO Velazquez unintentionally discharged a firearm. The FTO admitted the alleged action but claimed that she believed that the firearm had been cleared; however, FTO Velazquez also admitted to inserting the magazine, which likely injected a live round in the chamber. Consequently, COPA recommends that this allegation be Sustained. Additional allegations against FTO Velazquez and Officer Trujillo are also recommended to be Sustained. COPA recommends that the allegation that Officer Trujillo failed to secure his firearm be Unfounded.

**II. INVOLVED PARTIES**

Involved Officer #1:	VELAZQUEZ, Nicole; star #13385; employee ID# [REDACTED]; Date of Appointment: February 21, 2006; Field Training Officer; Unit 015; DOB: [REDACTED], 1982; Female; Hispanic.
Involved Officer #2:	TRUJILLO, Tone; star #16247; employee ID# [REDACTED]; Date of Appointment: June 29, 2015; Police Officer; Unit

024 (detailed to Unit 015); DOB: ██████, 1977; Male; Hispanic.

**III. ALLEGATIONS**

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Field Training Officer Nicole Velazquez #13385	1. Unintentionally discharged a firearm.	Sustained
	2. Failed to obey CPD Directive U04-02, II, O (Department Approved Weapons and Ammunition) by possessing or carrying a firearm registered to another person.	Sustained
	3. Failed to use the ballistic clearing station to load or unload a firearm as directed.	Sustained
Officer Tone Trujillo #16247	1. Failed to secure his weapon by leaving his firearm on a desk in the 015 <sup>th</sup> District Station.	Unfounded
	2. Failed to obey CPD Directive U04-02, II, O (Department Approved Weapons and Ammunition) by lending his firearm to Field Training Officer Nicole Velazquez.	Sustained
	3. Failed to obey CPD Directive U04-02, IX, B, 2 (Department Approved Weapons and Ammunition) by failing to use the ballistic clearing station as directed.	Sustained

**IV. APPLICABLE RULES AND LAWS**

Rules

1. Rule 10, Inattention to Duty
2. Rule 6, Disobedience of an order or directive, whether written or oral

General Orders

1. U04-02, Department Approved Weapons and Ammunition (eff. 6/2/2017-2/28/2020).
2. G03-02-03, Firearms Discharge Incidents Involving Sworn Members (eff. 10/16/2017-2/28/2020).

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

### a. Interviews

In his **statement to COPA, Sergeant Theophilos Kerkeres #1314** stated that he was standing outside the watch commander's office when he heard a gunshot coming from down the hallway. The sergeant followed Officer Tone Trujillo toward a computer workstation that is off the hallway. FTO Velazquez told him words to the effect that she thought that the gun had been cleared. Officer Tone Trujillo then informed the sergeant that the firearm belonged to him. FTO Velazquez explained to the sergeant that she had asked Officer Trujillo to handle his firearm because it was a striker fired gun and she was thinking of taking the class to transition from her firearm, which is hammer fired, to a striker fired weapon. FTO Velazquez added that she wanted to feel the trigger pull and that is when the firearm discharged. Officer Trujillo told the sergeant that he had downloaded<sup>2</sup> the firearm and showed him the live round that he had placed in his pocket. The sergeant observed that the fired bullet struck and damaged the floor and a surge protector. According to the sergeant, the incident occurred outside the view of the district station surveillance cameras and there were no witnesses to the discharge. The sergeant stated that he named FTO Velazquez as an accused officer for unintentionally discharging a firearm. Sgt. Kerkeres also named Officer Trujillo as an accused officer for failing to secure his firearm by leaving it on a desk; the sergeant stated that if an officer downloads a firearm, it should be done in front of a barrel. The sergeant believed that there is one barrel in the roll call room and one in the stairwell of the district station.<sup>3</sup>

In his **statement to COPA, Officer Trujillo** stated that he was carrying his alternate firearm because he was planning on going to a private gun range after his tour. The firearm, a Smith & Wesson 9 mm, was fully loaded with fifteen rounds in the magazine and one round in the chamber. Officer Trujillo was on his way to a printer when FTO Velazquez, who was working at the computer station, asked him to see his firearm. Officer Trujillo unholstered it, "stripped the mag, cleared the chamber round, cycle, cycle a few times, visual and physical inspection and I left it right in front of her."<sup>4</sup> The officer also placed the magazine next to the firearm and walked to the printer, holding the chamber round in his hand. On his way back, he stopped to talk to Sgt. Kerkeres when he heard the gunshot. The officer and the sergeant walked to the computer station where FTO Velazquez was holding his firearm in her hand. The field training officer told Officer Trujillo, "I can't believe you gave me a fucking loaded weapon."<sup>5</sup> Officer Trujillo denied that he had done so. Sgt. Kerkeres instructed FTO Velazquez to put down the firearm and she complied. The officer observed that the magazine had been inserted into the firearm and there was a live

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<sup>1</sup>COPA conducted a full and complete investigation of this matter, including the interview of all pertinent civilian and officer witnesses, and the collection and review of digital, documentary, and forensic evidence. As part of COPA's ongoing efforts to increase case closure capacity, certain cases opened under IPRA are summarized more succinctly in a Modified Summary Report of Investigation, pursuant to COPA Guideline Modified Summary Report of Investigation Template and Approvals, effective February 13, 2019.

<sup>2</sup> According to Sgt. Kerkeres, "downloading" a weapon is a military term meaning "eject the magazine, cycle the slide so that the round comes out ...you are required to do a visual and physical inspection of the weapon to make sure there isn't a round in the chamber." (Att. #11, Page 37, Lines 17-21).

<sup>3</sup> Att. #'s 6, 11.

<sup>4</sup> Att. #21, Page 7, Lines 13-17.

<sup>5</sup> Att. #21, Page 11, Lines 12-13.

round in the chamber. Officer Trujillo also observed about four loose live rounds on the desk. Officer Trujillo then picked up the firearm, cleared it and placed it back on the desk. After evidence technicians had photographed the scene, the officer received authorization to take his firearm and he left the station to begin his tour. Officer Trujillo stated that Sgt. Kerkeres informed him that a CR investigation will be initiated and that he will be an accused officer, but he did not know what the allegations would be against him. In response to Allegation #1, Officer Trujillo denied that he left his firearm unsecured on a desk; the officer responded that he had left it unloaded and with FTO Velazquez. Regarding Allegation #2, Officer Trujillo denied that he lent the firearm to FTO Velazquez, that he only handed it to her, but acknowledge that “if that constitutes lending under our general order, I guess that’s lending.”<sup>6</sup> After a short break, he stated that his understanding is that “lending” means for a long period of time and/or to use in the field. Finally, Officer Trujillo admitted that he failed to use the ballistic clearing station, as alleged in Allegation #3, although he stated that he had previously used the clearing station. The officer added that he felt that he had cleared his firearm in a safe manner.<sup>7</sup>

In her **statement to COPA, FTO Velazquez** stated that she had been working at the computer station after roll call when Officer Trujillo approached her. One day earlier, FTO Velazquez had spoken to Officer Trujillo about upgrading to a striker fired firearm and she had asked if she could handle his firearm. Officer Trujillo asked FTO Velazquez if she wanted to see his firearm and she replied in the affirmative. As FTO Velazquez continued working on the computer, she observed from her peripheral vision Officer Trujillo clear the firearm and set the firearm and the magazine on the desk. FTO Velazquez asked Officer Trujillo to retrieve some copies for her from the printer and the officer complied. FTO Velazquez stated that she observed Officer Trujillo walk away from the computer station holding the chamber round. While Officer Trujillo was away, FTO Velazquez picked up the firearm and then inserted the magazine into the firearm. She later clarified that she assumed the magazine was also empty. FTO Velazquez felt the weight of the gun in her hand and pointed the firearm down. FTO Velazquez stated that she wanted to feel the trigger pull and, thinking that the firearm was empty, pulled the trigger and a round was discharged. FTO Velazquez stated that she did not conduct her own visual and physical inspection of the firearm. She stated that with her firearm, she had to cycle in order to chamber a round, and she stated that she did not cycle Officer Trujillo’s firearm. She admitted that she did not know Officer Trujillo’s firearm would spring-load a round into the chamber. After the discharge, FTO Velazquez placed it on the desk and Officer Trujillo picked it up. Sgt. Kerkeres told the officer to put the gun down so the scene could be processed. FTO Velazquez did not observe whether Officer Trujillo took out the magazine after the discharge. FTO Velazquez was summoned to Lieutenant Allen Lee’s office to write a Tactical Response Report and to undergo a sobriety test. In response to the allegations against her, FTO Velazquez admitted to unintentionally discharging a firearm and to failing to use a ballistic clearing station to load or unload a firearm. She denied Allegation #2 that she failed to obey CPD Directive U04-02 by possessing or carrying a firearm registered to another person, because she did not borrow the weapon, she merely visually inspected it for the possibility of upgrading her service weapon.<sup>8</sup>

## **b. Digital Evidence**

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<sup>6</sup> *Id.* Page 29, Lines 3-6.

<sup>7</sup> Att. #'s 13, 21.

<sup>8</sup> Att. #23.

N/A<sup>9</sup>

**c. Documentary Evidence**

In an **Initiation Report** dated November 5, 2019, Sgt. Kerkeres related that he was standing outside the Watch Lieutenant's office in the 015<sup>th</sup> District Station when he heard a gunshot inside the building. The sergeant relocated down the hall and observed FTO Velazquez holding a firearm. The firearm was in slide lock and a large plume of smoke was around the FTO. The Sergeant later initiated this Log number. FTO Velazquez told the sergeant that the firearm belonged to Officer Trujillo and she had asked him permission to handle it and thought that the firearm had been properly unloaded when Officer Trujillo handed it to her. According to the initiation report, FTO Velazquez squeezed the trigger and discharged the firearm toward the floor. The discharged round did not injure the FTO or any other individual but caused minor damage to the floor.<sup>10</sup>

According to the narrative in her **Tactical Response Report (TRR)**, FTO Velazquez was interested in upgrading her current duty firearm and Officer Trujillo handed her his firearm so the FTO could handle it. Officer Trujillo cleared the firearm and proceeded to the printer with what FTO Velazquez had seen was the chambered round in his hand. FTO Velazquez, believing that the weapon was clear, began to handle the firearm and pulled the trigger. The firearm was not cleared, and a round hit the floor.<sup>11</sup>

**VI. LEGAL ANALYSIS**

**a. Standard of Review**

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.

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<sup>9</sup> Evidence Technician photographs indicate that the computer workstation where the discharge occurred is out of view of the hallway surveillance camera. (Att. #4)

<sup>10</sup> Att. #1.

<sup>11</sup> Att. #15.

A **preponderance of evidence** is evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy.<sup>12</sup> 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.<sup>13</sup> Clear and Convincing is 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."<sup>14</sup>

**b. The Preponderance of the Evidence shows that Officer Trujillo Lent, and FTO Velazquez Possessed, Officer Trujillo's Firearm in Violation of U04-02.**

Directive U04-02, II, O states that:

"[a] sworn member will not lend his firearm to any other person nor will a sworn member possess or carry a firearm registered to another person except as authorized by the Deputy Chief, Education and Training Division. During an emergency situation, however, a sworn member may lend his firearm to another sworn member or person who has been summoned to assist him in the performance of his official duty."<sup>15</sup>

Both officers provide a consistent account of the incident to establish the facts of what occurred. In short, FTO Velazquez was exploring the possibility of switching to a striker-fired firearm similar to Officer Trujillo's, and she asked Officer Trujillo if she could look at his firearm. Knowing that FTO Velazquez wanted to test the firearm, Officer Trujillo placed it on the desk, after first ensuring it was unloaded, so that FTO Velazquez could hold the firearm and get a feel for it. Officer Trujillo then walked away to get copies from the printer, leaving FTO Velazquez alone with his firearm. While these facts are not disputed, the officers contend that Officer Trujillo did not "lend" the firearm to FTO Velazquez, and that she did not "possess" it, because their intent was for FTO Velazquez to only hold it briefly to get a feel for the firearm's weight and trigger pull. However, COPA finds that Officer Trujillo giving the firearm to FTO Velazquez, despite the intent for it to be brief, violated policy.

COPA finds that Officer Trujillo's actions constituted lending of the firearm. The term lend means "to give for temporary use on condition [it] be returned or to put at another's temporary disposal."<sup>16</sup> The preponderance of the evidence establishes that Officer Trujillo gave his firearm

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<sup>12</sup> 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).

<sup>13</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>14</sup> *Id.* at ¶ 28.

<sup>15</sup> Att. #24, U04-02, II, O

<sup>16</sup> MERRIAM-WEBSTER DICTIONARY, Definitions 1(a)(1) and (2) available at <https://www.merriam-webster.com/dictionary/lend>.

to FTO Velazquez for her to look at and feel, and they both indicated that she was to return it to him. Thus, Officer Trujillo lent the firearm to FTO Velazquez.

As to FTO Velazquez, COPA finds that her actions constituted possession. Under Illinois law, someone “possesses” a firearm where they exercise dominion and control over it.<sup>17</sup> By her own admission, FTO Velazquez clearly exercised control over the firearm by holding it, loading the clip, and pulling the trigger. Thus, the preponderance of the evidence establishes that she “possessed” the firearm.

The officers attempted to excuse their conduct based on the belief that the policy’s prohibition only applied to more long-term possession and use of a firearm. However, the officers’ subjective belief of what they policy means does not overcome the objective definitions of the words articulated in the directive. In fact, the policy leaves room for officers to loan firearms to each other for testing or training; however, they must be authorized by the Deputy Chief, and these officers did not obtain such approval.<sup>18</sup> Moreover, this case is a prime example of why even short-term lending can be a major problem, as FTO Velazquez’s unfamiliarity with Officer Trujillo’s firearm had significant unintended consequences. Therefore, COPA finds that Allegation 2 against Officer Trujillo and FTO Velazquez are **Sustained**.

However, the evidence is clear and convincing that Officer Trujillo did not fail to secure the firearm by leaving it on the desk for FTO Velazquez. Policy requires members to secure their firearms “in a manner that a reasonable person would believe will prohibit access by *unapproved* individuals, theft, or loss.”<sup>19</sup> The uncontradicted statements from both officers is that Officer Trujillo unloaded and cleared the firearm, then set it directly next to FTO Velazquez on the computer desk. He stated that he did not leave it unsecured, but in the care of FTO Velazquez. COPA finds that it was reasonable for Officer Trujillo to believe his firearm was not unsecured because he left the firearm in the care of FTO Velazquez, with his permission, and in a manner that no unauthorized individuals would access it. Therefore, Allegation 1 against Officer Trujillo is **Unfounded**.

**c. FTO Velazquez was Inattentive to Duty by Unintentionally Discharging Officer Trujillo’s Firearm.**

In her statement to COPA, FTO Velazquez admitted to unintentionally discharging Officer Trujillo’s firearm. She said that she inserted the magazine into the firearm after Officer Trujillo had removed it, and also admitted that she pulled the trigger, thinking that the gun was unloaded. There is no evidence that she knew the firearm was loaded, and therefore COPA finds that the preponderance of the evidence establishes that the discharge was in fact unintentional.

FTO Velazquez’s unintentional discharge stemmed from her inattention to duty, in violation of Rule 10. She stated that she loaded the magazine *assuming* it was unloaded, and admittedly was unaware that the magazine was spring-loaded, and would automatically load a live round into the chamber. FTO Velazquez then failed to confirm that the firearm was unloaded prior

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<sup>17</sup> See, e.g. *People v. Davis*, 2017 IL App (1st) 142264 ¶ 39; *People v. Faulkner*, 2017 IL App (1st) 132884 ¶ 39.

<sup>18</sup> The policy also contains an exception for emergency situations, which clearly does not apply here.

<sup>19</sup> Directive U04-02, II, M (emphasis added).

to pulling the trigger. Therefore, the preponderance of the evidence establishes that she unintentionally discharged her firearm, while inattentive to duty in violation of Rule 10, and Allegation 1 against FTO Velazquez is **Sustained**.

d. **Officer Trujillo and FTO Velazquez Violated Department Policy by Failing to Use the Ballistic Clearing Station.**

Finally, COPA finds that both FTO Velazquez and Officer Trujillo failed to use the ballistic clearing station as directed by CPD Directive U04-02, IX, B, 2. The directive states that the ballistic clearing station will be utilized “whenever it becomes necessary for a member to load or unload his or her personal duty firearm while in a police facility equipped with a ballistic clearing station.”<sup>20</sup> Officer Trujillo admitted that he unloaded the firearm, and FTO Velazquez admitted she reloaded it, both while not at the proper clearing station. Both members admitted they were familiar with the location of the ballistic clearing station. Therefore, the preponderance of the evidence establishes that Allegation 3 against Officer Trujillo and FTO Velazquez are **Sustained**.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. FTO Velazquez \_\_\_\_\_

i. Complimentary and Disciplinary History

FTO Velazquez has received twenty-one (21) awards, including twelve (12) honorable mentions.<sup>21</sup> FTO Velazquez has no sustained complaints in her disciplinary history.<sup>22</sup>

ii. Recommended Penalty, by Allegation

1. Allegation No. 1: Sustained/15 Days Suspension
2. Allegation No. 2: Sustained/1 Day Suspension
3. Allegation No. 3: Sustained/1 Day Suspension\_

b. Officer Trujillo

i. Complimentary and Disciplinary History

Officer Trujillo has received thirty-three (33) awards, including twenty-seven (27) honorable mentions.<sup>23</sup> Officer Trujillo has no sustained complaints in his disciplinary history.<sup>24</sup>

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<sup>20</sup> Att. #24, U04-02, IX, B, 2

<sup>21</sup> Att. #26

<sup>22</sup> Att. #24

<sup>23</sup> Att. #25

<sup>24</sup> Att. #24

ii. Recommended Penalty, by Allegation

1. Allegation No. 1: Unfounded
2. Allegation No. 2: Sustained/1 Day Suspension
3. Allegation No. 3: Sustained/1 Day Suspension

**VIII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding/ Recommendation</b>
Field Training Officer Nicole Velazquez #13385	1. Unintentionally discharged a firearm.  2. Failed to obey CPD Directive U04-02, II, O (Department Approved Weapons and Ammunition) by possessing or carrying a firearm registered to another person.  3. Failed to use the ballistic clearing station to load or unload a firearm as directed.	Sustained/15 Days Suspension  Sustained/1 Day Suspension  Sustained/1 Day Suspension
Officer Tone Trujillo #16247	1. Failed to secure his weapon by leaving his firearm on a desk in the 015 <sup>th</sup> District Station.  2. Failed to obey CPD Directive U04-02, II, O (Department Approved Weapons and Ammunition) by lending his firearm to Field Training Officer Nicole Velazquez.  3. Failed to obey CPD Directive U04-02, IX, B, 2 (Department Approved Weapons and Ammunition) by failing to use the ballistic clearing station as directed.	Unfounded  Sustained/1 Day Suspension  Sustained/1 Day Suspension.

Approved:



Angela Hearts-Glass  
Deputy Chief Investigator

5-27-2021

Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	12
<b>Major Case Specialist:</b>	Thomas Kalantzis #36
<b>Supervising Investigator:</b>	Andrew Dalkin #25
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass