

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 24, 2019
Time of Incident:	8:15 a.m.
Location of Incident:	1330 E. 53 rd Street
Date of COPA Notification:	March 24, 2019
Time of COPA Notification:	8:46 a.m.

Officer James Davoren was participating in the surveillance of the vehicle of a suspect, [REDACTED] who was wanted for the homicide of a CPD officer. When [REDACTED] appeared on the scene in the vicinity of 54th Street and Kenwood Avenue, Officer Davoren, along with other officers, attempted to arrest [REDACTED] but [REDACTED] fled northbound. [REDACTED] ran inside the lobby of a residential building at the above address and entered an elevator car. Officer Mark Nash placed his foot inside the elevator door and SWAT Officer Trung Nguyen entered the elevator car first. Additional officers entered the elevator car and surrounded [REDACTED] who then lied on the floor and was placed in custody. As the group of officers moved back and forth inside the elevator car, Officer Davoren attempted to reholster his firearm and the firearm discharged one time, striking the left wall of the elevator car.

II. INVOLVED PARTIES

Involved Officer #1:	DAVOREN, James; Star # 19446; Employee ID# [REDACTED] Date of Appointment: October 23, 1995; Police Officer; Unit 193 (Gang Investigation Division); Date of Birth: [REDACTED] 1972; Male; White.
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED] 1995; Male; Black.

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer James Davoren	1. It is alleged that on March 24, 2019, at approximately 8:15 a.m., at 1330 E. 53 rd Street, Officer Davoren unintentionally discharged his weapon.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 10, Inattention to Duty.

General Orders

1. General Order G03-02-03, Firearms Discharge Incidents Involving Sworn Members.

V. INVESTIGATION¹**a. Interviews**

In a **statement to COPA** on April 10, 2019, the **witness, Officer Mark Nash #4836**, stated that he is assigned to Gang Investigations, in the Bureau of Organized Crime, and was summoned to Area Central to assist detectives in their investigation into the homicide of CPD Officer John Rivera.² The team received information from the Cook County Jail that an inmate had discussed with his mother that the father of his sister's child had shot and killed Officer Rivera. The officers were able to obtain that individual's name, now known to be [REDACTED] and a background check revealed that [REDACTED] owned a white Ford F-150, which matched the description of a vehicle leaving the scene of the homicide. The officers then conducted a license plate reader of that vehicle and located it on the 5400 block of South Kenwood. The team of officers relocated to that area at approximately 8 or 9 p.m. on March 23, and one officer was able to locate the vehicle parked at approximately 5421 S. Kenwood Avenue. The officers began to surveil the area. Officer Nash initially positioned himself at Kimbark Avenue and then relocated to a cul-de-sac on 54th Street. In the morning, Officer Charles Honore observed [REDACTED] walking southbound on Kenwood, with his dog, and informed the other officers over the radio. Two SWAT officers attempted to stop him just south of his vehicle, but [REDACTED] fled northbound on Kenwood. [REDACTED] ran through Nichols Park, across 53rd Street and into the building at 1330 E. 53rd Street. Officer Nash followed [REDACTED] into the building. As he entered the vestibule, Officer Nash observed [REDACTED] inside an elevator car attempting to close the elevator door. Officer Nash placed his foot in the door and ordered [REDACTED] to get on the ground. [REDACTED] stated words to the effect of, "I don't know why, I don't

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

² The homicide of Officer John Rivera occurred on March 23, 2019, at 3:28 a.m.

know why.”³ Other officers entered the elevator car and placed [REDACTED] on the floor of the elevator car. Officer Nash stated that he grabbed one of [REDACTED] arms and assisted in the handcuffing; however, Officer Nash did not know which officer actually handcuffed [REDACTED]. As Officer Nash was assisting in the handcuffing, he heard one shot fired to his left side. The officer did not observe the firearm discharge. After [REDACTED] was escorted out of the elevator car, Officer Davoren, who is also assigned to Gang Investigations, told the other officers that due to the number of individuals inside the elevator car, he was pushed to the side of the wall and, as he “hit the wall, as he was attempting to holster his weapon, he discharged his weapon.”⁴ Officer Nash noted that the fired bullet had entered the side wall of the elevator car. After speaking to detectives at the scene, Officer Nash proceeded to Area Central where he wrote [REDACTED] arrest report.⁵

In a **statement to COPA** on April 17, 2019, the **witness, Sergeant Andrew Schoeff #1249**, stated that he and his team had located [REDACTED] vehicle on March 23, 2019 and had set up covert surveillance of the vehicle at approximately 10 or 11 p.m. The officers stayed up during the night. In the morning, Officer Charles Honore communicated over the radio that he observed [REDACTED] walking a dog toward the location of his vehicle. As the officers moved toward [REDACTED] he ran northbound on Kenwood. Sgt. Schoeff stated that he was inside his vehicle at the time and heard over the radio that [REDACTED] was heading toward the Target store on 53rd Street.⁶ The sergeant drove his vehicle to 53rd Street, parked across from the Target building and followed the other officers through the entrance of the apartment building at 1330 E. 53rd Street. Sgt. Schoeff observed that one elevator door was open and other officers were in the process of handcuffing [REDACTED] on the floor of the elevator car. As the sergeant stood in the doorway of the elevator car, he heard a firearm discharge one time, but did not observe the discharge. Officer Davoren was standing to the left of the sergeant and Sgt. Schoeff asked Officer Davoren if he was all right. The sergeant stated that the officer made a facial expression and Sgt. Schoeff realized that it was Officer Davoren who discharged his firearm. The sergeant was not able to observe how Officer Davoren was holding his firearm because the officer was left-handed and was standing to the left of the sergeant. After [REDACTED] was handcuffed and escorted out of the elevator car, Sgt. Schoeff observed a hole in the elevator car wall. Sgt. Schoeff stated he did not ask Officer Davoren how the discharge occurred. The sergeant stated he believed that Officer Davoren’s finger was on the trigger or “some obstruction got caught in there.”⁷ The sergeant then made the notifications regarding the firearm discharge and wrote an initiation report alleging that Officer Davoren unintentionally discharged his firearm.⁸

In a **statement to COPA** on May 2, 2019, the **witness, Officer Trung Nguyen #7888**, stated that he is assigned to SWAT⁹ and was dispatched on March 23, 2019, at approximately 10 p.m., to “provide perimeter” around [REDACTED] vehicle.¹⁰ He and his partner, Officer Joseph Ferenzi, remained inside a marked squad car that was parked in the parking lot of a bank, south of [REDACTED] vehicle. In the morning, the officers heard a radio transmission stating that [REDACTED] had

³ Att. #34, Page 14, Lines 14-15.

⁴ Id, Page 19, Lines 6-8.

⁵ Att. #'s 24, 34.

⁶ The address of the Target store is listed as 1346 E. 53rd Street.

⁷ Att. #35, Page 18, Lines 5-6.

⁸ Att. #'s 26, 35.

⁹ Unit 353.

¹⁰ Att. #36, Page 5, Lines 21-22.

been sighted walking his dog southbound toward his vehicle. Officers Ferenzi and Nguyen drove northbound on Kenwood Avenue and Officer Nguyen observed [REDACTED] walking his dog in the park. Officer Nguyen exited the vehicle and approached [REDACTED]. At a distance of three to five feet, Officer Nguyen announced his office, pointed his rifle at [REDACTED] and ordered him to get on the ground. The officer stated that he pointed his rifle in case [REDACTED] carried a firearm in his waistband. [REDACTED] turned and fled northbound through the park. Officer Nguyen pursued [REDACTED] through the park and followed him into the building at 1330 E. 53rd Street. A second officer, now known to be Officer Nash, entered the building lobby right before Officer Nguyen. Officer Nash placed his foot at the entrance to the elevator car and Officer Nguyen entered the elevator car. As Officer Nguyen placed his hand on [REDACTED] he felt a “rush of police officers” behind him.¹¹ Officer Nguyen released his hold on [REDACTED] and stepped to his left. As the other officers were placing [REDACTED] in custody, Officer Nguyen heard a loud bang. The officer, who had been facing northward, turned around and looked where the sound came from. Officer Nguyen observed a hole in the wall of the elevator car. An officer by the elevator car doors asked Officer Nguyen if he was all right and Officer Nguyen responded in the affirmative. Officer Nguyen stated that he then realized that the officer by the doors may have been the individual who discharged his firearm. Officer Nguyen stated that he did not observe how the officer, now known to be Officer Davoren, was holding his firearm.¹²

In a **statement to COPA** on May 21, 2019, the **involved officer, Officer James Davoren**, stated that he is assigned to Gang Investigations and started work at approximately 9:00 a.m. on March 23, 2019. Officer Davoren was wearing a pullover sweatshirt, cargo pants and a bulletproof vest with “Police” emblazoned on the back. The officer stated that his team had received information from the Area Central Detective Division that [REDACTED] was wanted for the homicide of Officer Rivera from the night before. The team relocated to the vicinity of 54th and Kenwood and conducted surveillance on [REDACTED] pickup truck, in case [REDACTED] returned to his vehicle. Officer Davoren remained awake during the night and at approximately 8:10 a.m., Officer Honore informed the other officers that he had spotted [REDACTED] walking a dog through the park.¹³ Officers Davoren and Nash were sitting inside a covert vehicle which was parked on 54th Street, west of the park. Two SWAT officers approached [REDACTED] in their police vehicle and exited. Upon seeing them, [REDACTED] let go of the dog and fled northbound through the park. Officer Davoren exited his vehicle, unholstered his firearm and joined other officers in pursuing [REDACTED]. The officer stated that although he had stayed up the entire night, he was “pretty alert” at that point.¹⁴ Officer Davoren stated that he was equipped with his auxiliary firearm, a Glock 26 9 mm, because he was working in an undercover capacity.¹⁵ [REDACTED] ran across 53rd Street and entered the residential building at 1330 E. 53rd Street. Officer Davoren was approximately fifty feet behind [REDACTED] and observed him enter one elevator car and press the button. As [REDACTED] waited for the doors to close, Officer Nash and one of the SWAT officers were the first officers to enter the elevator car. Officer Davoren believed he was the sixth or seventh officer to enter the building. The officer entered the elevator car, along with a few other officers, and moved to the left side as other officers had surrounded [REDACTED] in the right back corner of the elevator car. The officers

¹¹ Att. #36, Page 9, Lines 23-24.

¹² Att. #'s 28, 36.

¹³ The park is now known to be Nichols Park.

¹⁴ Att. #37, Page 31, Lines 15-16.

¹⁵ The officer’s primary weapon, a Glock 19, was inside the covert vehicle. (Att. #37, Page 18, Lines 10-18)

ordered [REDACTED] several times to get on the ground and he eventually complied; however, as he did so, the officers surrounding [REDACTED] moved backward. Officer Davoren stated, “The officers, when they moved back, I was kind of getting jostled, and I was trying to put my gun away at the same time, and the gun went off.”¹⁶ The officer stated that to the best of his recollection, his finger was off the trigger at the time of the discharge and did not recall if some part of his clothing got caught up in his holster. After the discharge, Officer Davoren successfully re-holstered his firearm and then checked to make sure that everyone was all right. The officer observed a hold in the left wall of the elevator car and one casing on the floor. The other officers handcuffed [REDACTED] and escorted him out of the elevator car, while Officer Davoren remained inside to ensure that nobody disturbed the scene. In response to the allegation that he unintentionally discharged his firearm, Officer Davoren admitted that the discharge was unintentional and added, “I’m not sure if it got caught on clothing or if my finger depressed the trigger or, you know, my arm or elbow had hit the wall, but obviously the gun went off.”¹⁷

b. Digital Evidence

A **Video Recording**, labeled “Elevator 1” and starting at “07:57:47” on March 24, 2019, depicts the inside of an elevator car at the location of incident at 1330 E. 53rd Street.¹⁸ At approximately 7:58 a.m., a black male, now known to be [REDACTED] enters the elevator car at the 4th floor holding a dog by its leash and carrying a backpack. [REDACTED] arrives at the lobby and exits the elevator car. At approximately 8:04 a.m., the elevator door opens, and [REDACTED] runs inside with the dog and presses a button. A white male officer, now known to be Officer Mark Nash, appears in the frame, pointing a gun at [REDACTED] and holding open the door with his foot. The dog exits the elevator and a SWAT officer, now known to be Officer Trung Nguyen, points his rifle at [REDACTED] enters the elevator car and places his left hand on [REDACTED] head. [REDACTED] then lies on the floor as additional officers enter the elevator car. The officer now known to be Officer Davoren is the fifth officer to enter the elevator car and attempts to holster his firearm on his left side,¹⁹ while the other officers attempt to handcuff [REDACTED]. Debris then appears in the air and Officer Davoren looks at the firearm in his left hand. [REDACTED] is lifted off the floor and escorted outside, while Officer Davoren remains inside the elevator car. A hole appears on the lower part of elevator car’s left wall.²⁰

c. Physical Evidence

Inventory Sheets document the evidence that was collected at the scene. Officer Davoren’s firearm, a Glock 26 (Serial # [REDACTED]) 9mm, was inventoried under #14406349. Eleven (11) live rounds were recovered from the magazine and one (1) live round was recovered from the

¹⁶ Att. #37, Page 12, Line 23 to Page 13, Line 2.

¹⁷ Id, Page 30, Lines 20-23.

¹⁸ The camera appears to be positioned in the top northeastern corner of the elevator car and captures the right side of the passengers as they enter the elevator car.

¹⁹ The elevator car camera is to the right of Officer Davoren and the camera’s view of the firearm at that time is obscured by the officer’s torso.

²⁰ Att. #6.

chamber.²¹ Moreover, the fired cartridge case that was recovered from the scene was inventoried under #14406343.²²

Crime Scene Processing Report (CSPR) #395674 documents the evidence that was recovered at the scene and at Area Central Detective Division. Evidence Technician Stephen O'Connell #14403 recovered a fired cartridge case from the elevator car floor, which was recorded as Crime Scene Marker #1. Also, a fired bullet, recorded as Crime Scene Marker #2, was recovered from the wall of the elevator car wall. The officer's firearm was determined to contain one (1) live round in the chamber and eleven (11) live rounds in the magazine.²³

Crime Scene Processing Report (CSPR) #396028 documents that the Chicago Police Department Forensic Firearms Lab received Officer Davoren's firearm. The firearm was test-fired, and it was determined that the fired cartridge case, inventoried under #14406343, was fired from the officer's firearm.²⁴

d. Documentary Evidence

In an **Initiation Report**, Sgt. Schoeff alleged that Officer Davoren, while effecting the arrest of an offender, unintentionally discharged his firearm one time.²⁵

According to the narrative in his **Tactical Response Report (TRR)**, Officer Davoren was working undercover in a covert vehicle, along with team members and CPD SWAT members, when he observed [REDACTED] who was wanted for the first-degree murder of a CPD officer. As SWAT and other officers approached him, [REDACTED] fled, and the officers pursued him into the lobby of 1330 E. 53rd St. Officer Davoren unholstered his firearm during the pursuit. [REDACTED] ran into an elevator and the officers followed him. The officers then attempted to place [REDACTED] into custody and Officer Davoren's firearm accidentally discharged as he was re-holstering it. The TRR further indicates that Officer Davoren fired one shot and that [REDACTED] was not injured as a result of the officer's use of force.²⁶

The **Arrest Report** of [REDACTED] indicates that a Gang Investigation team was advised that [REDACTED] was wanted for the murder of CPD Officer John Rivera and the aggravated battery of [REDACTED]. The officers set up surveillance of [REDACTED] vehicle that was parked at approximately 5421 S. Kenwood Avenue. [REDACTED] was observed walking southbound on Kenwood Avenue. At approximately 5441 S. Kenwood, the officers attempted to stop [REDACTED] but, upon seeing the officers, [REDACTED] fled. After a short foot chase, [REDACTED] was taken into custody at 1330 E. 53rd Street and transported to Area Central for processing.²⁷

Detective Supplemental Reports document the progress of the CPD investigation into the Interference with Public Officer/Obstructing Justice charge against [REDACTED] (recorded

²¹ Att. #16.

²² Att. #14.

²³ Att. #19.

²⁴ Att. #20.

²⁵ Att. #4.

²⁶ Att. #13.

²⁷ Att. #5.

under RD# [REDACTED]). CPD detectives interviewed Officer Davoren on March 24, 2019. The officer provided a statement consistent with the statement he made to COPA.²⁸ A second CPD investigation was initiated under RD# [REDACTED] into the incident regarding “Law Enforcement / Non-Fatal Firearm Discharge – Unintentional Discharge / No Injury.” The second investigation was suspended effective July 26, 2019, pending the findings of the COPA investigation.²⁹

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

COPA finds that Allegation #1 against Officer Davoren that he unintentionally discharged the firearm is **Sustained**. In his statement to COPA, Officer Davoren admitted that the discharge of his firearm was unintentional, but did not know what caused the discharge. Officer Davoren speculated that he may have been jostled by the other officers in the elevator car as he was trying to holster his firearm and his firearm discharged. The officer stated that, to the best of his recollection, his finger was off the trigger at the time of the discharge and he did not recall if his clothing got caught up in the holster or whether his elbow struck the wall of the elevator car. None of the other officers who were interviewed for this investigation observed the discharge. Officer

²⁸ Att. #40.

²⁹ Att. #43.

Davoren's supervisor, Sergeant Schoeff, stated that he did not ask the officer how the discharge occurred, and speculated that Officer Davoren's finger was on the trigger or an obstruction got caught in the trigger. Finally, the video recording from the elevator car depicts Officer Davoren's attempt to holster his weapon; however, due to its position, the camera does not capture the left side of the officer's torso where his holster was located. Although the investigation cannot conclusively determine what caused the discharge, the evidence indicates that Officer Davoren attempted to holster his firearm inside a crowded elevator car during the apprehension of a suspect. Moreover, the accused officer admitted to the alleged action that his firearm discharged one round without intending so. Based on the preponderance of evidence, it is more likely than not that Officer Davoren did, in fact, discharge his firearm unintentionally while attempting to holster it. As a result, there is sufficient evidence to find the allegation against Officer Davoren to be **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer James Davoren

i. Complimentary and Disciplinary History

As of November 25, 2020, Officer Davoren's Complimentary History comprises of ninety-four (94) awards, including ten (10) Department Commendations and fifty-three (53) Honorable Mentions. As of November 23, 2020, Officer Davoren has zero (0) sustained complaints against him.

ii. Recommended Penalty, by Allegation

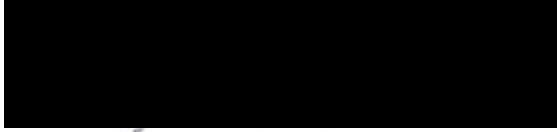
1. Allegation No. 1-5 Days Suspension

IX. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer James Davoren	1. It is alleged that on March 24, 2019, at approximately 8:15 a.m., at 1330 E. 53 rd Street, Officer Davoren unintentionally discharged his weapon.	Sustained/5 Days Suspension

Approved:



12-29-2020

Angela Hearts-Glass
Deputy Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Major Case Specialist:	Tom Kalantzis
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass