

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 2, 2016
Time of Incident:	Approximately 6:28 P.M.
Location of Incident:	Alleyway behind 3055 West Armitage Avenue
Date of COPA Notification:	February 2, 2016
Time of COPA Notification:	Approximately 9:59 P.M.

On February 2, 2016, approximately 6:30 P.M., off-duty Chicago Police Officer (PO) Timmie Deberry traveled to the Walgreens at 3110 West Armitage. While PO Deberry was inside the establishment, his minor children remained inside PO Deberry's vehicle, parked in the Walgreens lot. Prior to reaching the registers, PO Deberry heard a commotion break out at the front of the store, prompting him to investigate. Once at the front of Walgreens, PO Deberry spotted an individual fleeing the store, at which point PO Deberry chased after the individual. The fleeing man, later identified as [REDACTED] ran south from the store along North Albany Avenue, then headed eastbound down an alleyway. PO Deberry followed [REDACTED] into this alleyway, where PO Deberry observed [REDACTED] move toward his waistband. Concerned that [REDACTED] was reaching for a weapon, PO Deberry withdrew his firearm from its holster, then continued to pursue [REDACTED]

While in the alleyway, [REDACTED] attempted to jump a tall fence, but was unsuccessful in getting over the top. PO Deberry then approached [REDACTED] using both hands to grab [REDACTED] by the shoulders, in an effort to pull [REDACTED] from the fence. However, PO Deberry's firearm was still in his right hand as he pulled [REDACTED] causing the firearm to discharge into the air. PO Deberry succeeded in pulling [REDACTED] from the fence but lacked handcuffs to restrain [REDACTED]. A Cook County Sheriff's Deputy, who had been inside the Walgreens as [REDACTED] ran out, arrived on scene and assisted with [REDACTED] detention. As the deputy also lacked hand restraints, PO Deberry and the deputy held onto [REDACTED] and escorted him back toward the Walgreens. Once the three individuals had walked back to Armitage, PO Deberry returned his firearm to its holster. Inside the Walgreens, PO Deberry called for support officers, who arrived on scene and took custody of [REDACTED]

With his children still waiting in his parked vehicle, PO Deberry quickly left the scene, taking his family back home. During the trip, PO Deberry recalled that his firearm discharged, at which point he telephoned the 14th District and reported the incident. Although PO Deberry was instructed to come into the District for processing, his arrival was delayed for nearly an hour, as PO Deberry's [REDACTED] was not yet home to watch the children. Once his [REDACTED] was available to supervise, PO Deberry traveled to the District and completed his report.

II. INVOLVED PARTIES

Involved Officer #1:	Timmie Deberry; Star #5427; Employee # [REDACTED]; 10 Years on Force; Assigned to Unit 014; DOB: [REDACTED], 1970; Male, Black
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1982; Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Deberry	<ol style="list-style-type: none"> 1. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry negligently handled his firearm while placing [REDACTED] into custody, in violation of Rules 2, 10, 11, and 38; 2. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry accidentally discharged his firearm while placing [REDACTED] into custody, in violation of Rules 2, 10, 11, and 38; 3. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry failed to immediately report that he had discharged his firearm, in violation of Rules 3, 5, 6, 10, 11, and 39; 4. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against the back of [REDACTED] head, in violation of Rules 2 and 8; and, 5. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against [REDACTED] back, in violation of Rules 2 and 8. 	<ol style="list-style-type: none"> 1. Sustained 2. Sustained 3. Sustained 4. Not Sustained 5. Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 11:** Incompetency or inefficiency in the performance of duty.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.
- Rule 39:** Failure to immediately make an oral report to the desk sergeant at the District of occurrence and to follow such oral report with a written report on the prescribed form, whenever a firearm is discharged by a member.

General Orders

G03-02-02 "Force Options," Effective 01 January 2016 through 15 October 2017

G03-02-06 "Firearms Discharge Incidents Involving Sworn Members," Effective 30 October 2014 through 16 October 2017

V. INVESTIGATION

In order to fully investigate the allegations that form the basis of this Log number, a series of evidentiary steps were taken by IPRA—now COPA—investigators.¹ Interviews of the involved officer, victim, and witnesses were scheduled and conducted. To provide context and clarity to these interviews, documents relevant to this Log were identified and, if available, produced by the keepers of record. These evidentiary steps are detailed as follows.

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendations set forth herein are the recommendations of COPA.

On February 2, 2016, IPRA was notified by the Chicago Police Department (CPD) of a shooting incident that took place earlier in the day. This notification came by way of an **Initiation Report for Log 1079109**, authored by Sgt. Tracy Davies. Sgt. Davies' Initiation Report indicates that off-duty PO Deberry witnessed a robbery at Walgreens, at which point PO Deberry pursued the suspect. The suspect was detained by PO Deberry, during which time PO Deberry had his firearm out of its holster. As the suspect was being detained, PO Deberry's firearm accidentally discharged into the air. Once the suspect was in the custody of on-duty CPD officers, PO Deberry returned home with his children, who had been waiting for PO Deberry in a car. While at home, PO Deberry contacted District 014 to apprise Sgt. Davies of the accidental discharge. Although Sgt. Davies instructed PO Deberry to come in to the District, PO Deberry first waited for his [REDACTED] to return home, so that he could turn over childcare duties.²

a. Interviews

On August 8, 2016, an interview of PO Timmie Deberry was conducted at IPRA headquarters. In his statement, PO Deberry indicated that he was off-duty on February 2, 2016, during which time PO Deberry was running errands with his children. Around 6:33 P.M., PO Deberry stopped at the Walgreens at 3110 West Armitage to purchase foodstuffs. As PO Deberry shopped, the children waited in PO Deberry's parked vehicle. While inside the Walgreens, PO Deberry heard a commotion near the registers, prompting him to walk over and investigate. By the time PO Deberry reached the registers, he was able to see [REDACTED] fleeing the store. Before [REDACTED] was able to exit, PO Deberry saw an individual attempting to stop [REDACTED]. PO Deberry later learned this person was an off-duty Cook County deputy sheriff. After bypassing the deputy sheriff, [REDACTED] continued out the store door, with PO Deberry following behind. [REDACTED] ran south on the street outside of Walgreens, then east into an alleyway south of Armitage Avenue.

Once in this alleyway, PO Deberry came within eight or ten feet of [REDACTED] at which point PO Deberry observed [REDACTED] begin to remove his coat. Based on his experience on a robbery tactical team, PO Deberry interpreted [REDACTED] actions as an effort to change his appearance. Immediately after [REDACTED] removed his jacket, PO Deberry observed [REDACTED] reach for his waistband, causing PO Deberry to believe that [REDACTED] was reaching for a firearm. In response to this observation, PO Deberry removed his firearm from its holster and announced that he was a Chicago Police officer, whereupon [REDACTED] picked up speed and headed southbound into an adjacent alleyway. From PO Deberry's recollection, the adjacent alleyway was just south of an auto shop. [REDACTED] then turned toward a property on the east side of the alleyway, hopped a chain rope strung across a carport, and attempted to scale a six-and-a-half-foot chain link fence.

By the time PO Deberry reached the carport, [REDACTED] was nearly ready to crest the fence, so PO Deberry moved to grab [REDACTED] at the hips. As PO Deberry grabbed [REDACTED] and pulled him from the fence, PO Deberry's unholstered weapon remained in his right hand, pushed against [REDACTED] hip. At this time, PO Deberry's firearm discharged once into the air, whereby PO Deberry was able to pull [REDACTED] off the fence and onto the ground. Once [REDACTED] was on the ground, PO Deberry pointed his gun at [REDACTED] back and informed him that he was under arrest, to which [REDACTED] responded, "Don't shoot me." While PO Deberry pondered how he would place [REDACTED] into custody without any handcuffs, the deputy sheriff walked up and assisted with the arrest. The deputy sheriff and PO Deberry then walked [REDACTED] back toward Walgreens, during which time PO

² Attachment 4

Deberry's weapon was still unholstered. When asked, PO Deberry was unable to recall whether the weapon was in a low ready position or stowed in his pocket. However, by the time he reached Armitage Avenue, PO Deberry had re-holstered his weapon.

Although neither officer had any tools with which to restrain [REDACTED] hands, both officers attempted to control [REDACTED] hands as he was escorted back to Walgreens. Nevertheless, [REDACTED] managed to remove a cellphone from his clothing, then attempted to place a call. The officers regained control over [REDACTED] and brought him inside the Walgreens, at which point PO Deberry called the 14th District for support officers. After a few minutes support officers arrived on scene and PO Deberry transferred custody of [REDACTED] to the 14th District officers. PO Deberry provided the officers with a synopsis of the situation, then left the scene, as his children were still waiting in the parked vehicle. While on the way home with his children, PO Deberry recalled that his firearm discharged during the incident; subsequently, PO Deberry called the 14th District to report the incident. PO Deberry was instructed to come into the 14th District for reporting purposes, but this trip became delayed as there was no one available to watch PO Deberry's children. Within an hour of this instruction, PO Deberry's [REDACTED] returned home, affording PO Deberry the opportunity to leave for the 14th District.³

On April 25, 2016, an interview with victim [REDACTED] was conducted at the Cook County Jail. [REDACTED] provided an account of his involvement in the February 2, 2016 incident. According to [REDACTED] he was standing 10-15 yards inside an alleyway south of Armitage Avenue, when an unknown man approached him.⁴ This man pointed a firearm at [REDACTED] and stated, "Don't move, motherfucker," whereupon [REDACTED] fled eastward down the alleyway. Reaching a "T" intersection, [REDACTED] proceeded to the south, hopped a rope fence, and then attempted to jump a 9-10' chain link fence. However, as [REDACTED] was unable to secure a foothold on the chain link, he remained on the alleyway side of the fence. The armed man then approached [REDACTED] placing his left hand on [REDACTED] left shoulder, and his right hand near the right side of [REDACTED] head; the man's firearm remained in his right hand at this time. [REDACTED] was then pulled from the fence by the armed man, the firearm discharged next to [REDACTED] right ear. At the time the firearm discharged, [REDACTED] could see a flash go off, then smelled gunpowder.

After the firearm discharged, [REDACTED] was pulled to the ground and patted down by the armed man. A Hispanic woman, who [REDACTED] assumed worked at Walgreens, then arrived on scene and collected [REDACTED] coat and bag. Once [REDACTED] was off the ground, the man and woman escorted [REDACTED] toward a Walgreens.⁵ As they walked, the woman held [REDACTED] by the left arm, while the man held [REDACTED] coat hood and placed a firearm against the back of [REDACTED] head. Emerging from the alleyway, the man lowered his firearm from [REDACTED] head to [REDACTED] spine. Inside the Walgreens parking lot, the man put away his firearm, then grabbed hold of [REDACTED] right arm. The man then used a cellphone to contact the police, at which point [REDACTED] became aware that the man was a police officer. [REDACTED] noted, however, that from the point he was on the fence onward, he did not actually observe the officer using his firearm, as the officer was behind him.⁶

³ Attachment 49.

⁴ Although IPRA investigators specifically inquired how [REDACTED] came to be in the alleyway, [REDACTED] was unable to provide detail as to what occurred prior to his encounter with the armed man.

⁵ When investigators asked whether [REDACTED] was being brought back to the Walgreens, [REDACTED] demurred, indicating that such verbiage would suggest that he had been at that Walgreens earlier in the day.

⁶ Attachment 29.

On February 3, 2016, **an interview of** [REDACTED] was conducted at 3110 West Armitage Avenue, whereupon [REDACTED] recounted her involvement in the February 2, 2016 incident. At the time of the incident, [REDACTED] was working a register at the 3110 West Armitage Avenue Walgreens, during which time another cashier was robbed. [REDACTED] witnessed a female off-duty officer attempt to stop the offender, but the offender managed to get away and flee the store. The female officer then chased after the offender, who was eventually brought back to the store by the female officer and a male officer. These officers detained the offender inside Walgreens, waiting for support officers to arrive on scene.⁷

On February 10, 2016, **an interview with Cook County Deputy Sheriff Marylou Torres** was conducted at 5555 West Grand Avenue, whereupon Torres recounted her involvement in the February 2, 2016 incident. At that time, Torres was inside the Walgreens at 3110 West Armitage Avenue, when she observed a robbery take place. Torres attempted to detain the offender, but he was able to escape and exit the store. An unknown black male then chased after the offender, with Torres following behind both individuals. Torres followed the men south on Albany Avenue and across Armitage Avenue, at which point the men moved east into an alleyway. Once the men were in the alleyway, Torres lost sight of them; about 45 seconds later, Torres heard a single gunshot. After the gunshot, Torres heard someone identify himself as a Chicago Police officer, prompting her to proceed into the alleyway.

At a 'T' intersection within the alleyway, Torres encountered the offender from Walgreens, who was being detained by the black male—now known as PO Deberry. Once Torres identified herself as a deputy sheriff, PO Deberry instructed her to grab the offender's jacket and backpack, then both officers escorted the offender back to Walgreens. Back at the Walgreens, PO Deberry used Torres' cellular device to call for support officers; PO Deberry did not state that he had discharged his firearm. According to Torres, the support officers responded to the scene after one or two minutes, thereupon taking custody of the offender. Torres concluded her commercial activity at the Walgreens and proceeded home, but she was subsequently called to the 14th District to give a statement. While at the District office, Torres became aware that PO Deberry was calling the office, at which time PO Deberry informed CPD that he had discharged his weapon. However, Torres noted that she did not observe PO Deberry using or holding his firearm on the date of the incident.⁸

b. Digital Evidence

IPRA investigators recovered **surveillance video from the Walgreens at 3110 West Armitage**, recorded between 6 P.M. and 7 P.M. on February 2, 2016. The video begins at 6:25 P.M., when a man dressed in all black, later identified as [REDACTED] can be seen pushing the cashier and taking money from a checkout register. [REDACTED] is confronted by a woman dressed in street clothes, later identified as Deputy Mary Lou Torres, but [REDACTED] pushes past Deputy Torres and runs out of the store. Deputy Torres follows [REDACTED] out of the store, and an African American male in khakis, later identified as PO Deberry, follows them. Approximately five minutes later,

⁷ Attachment 8.

⁸ Attachment 17.

█████ is brought back into the store by PO Deberry and Deputy Torres, and they hold █████ for a few minutes until support officers arrive.⁹

IPRA Investigator Richard Delaney obtained **surveillance video from Zepeda Auto Repair**, located at 3061 West Armitage Avenue, near the February 2, 2016 incident location. At approximately 6:32 P.M., the video shows a male subject walking east in the alley on the south side of the business. As the first subject approaches a “T” in the alley, a second male subject follows, also heading east. The first subject begins running and turns south, out of the camera’s view, and the second subject follows. As the second subject turns south, he begins to raise his right arm in front of his body. Approximately thirty seconds later, a female subject follows the two male subjects into the alley, also running out of view of the camera. The video image is of low quality, and it cannot be determined if any of the subjects are holding weapons.¹⁰

CPD Detectives obtained **surveillance video from Elite Investment Group**, located at 3101 West Armitage Avenue, across the street from Walgreens. COPA obtained a copy of this video from CPD. This video depicts █████ running south from the Armitage Avenue entrance to the Walgreens parking lot, with PO Deberry and then Deputy Torres following. █████ runs east into the alley south of Armitage Avenue from North Albany Avenue, out of the camera’s view. PO Deberry appears to be running with an object in his right hand, consistent with the size of a small handgun, but the object is not clearly visible on the recording.¹¹

c. Documentary Evidence

Arrest Report for CB #19258802, pertaining to RD #HZ138197. Incident narrative indicates that when arresting officers arrived on scene, suspect █████ was being restrained by PO Deberry and an off duty Cook County Sheriff. █████ was then placed into CPD custody and taken to District 014.¹²

Original Case Incident Report for RD #HZ138197. Case narrative includes the statement of off-duty PO Deberry, who explained that, at the time of the incident, he had been inside Walgreens. While inside the store, PO Deberry “saw what happened” and then saw suspect █████ exit the store. PO Deberry then followed the offender, later identified as █████ out of the Walgreens, apprehended █████ and relocated █████ back to the store with the assistance of an off-duty Cook County Sheriff’s Deputy. The case narrative also states, “While RO’s were in the station completing above report when RO’s were notified that during the apprehension of

⁹ Attachment 21 (Cameras 1, 7, 16) & 22.

¹⁰ Upon review of the file received by COPA from IPRA, the digital media included as Attachment 15 and marked as the Zepeda video does not contain video footage from Zepeda’s Auto Repair. The video appears to be from an unrelated incident. COPA obtained a new copy of the Zepeda Auto Repair surveillance video from the CPD Evidence and Recovered Property Section, where it had been inventoried and stored by detectives. The video described by IPRA Investigator Delaney in his report from February 9, 2016, (Attachment 14) is consistent with the video received from CPD and reviewed by COPA. See Attachments 70 & 71.

¹¹ Attachments 68 & 70. CPD detectives also obtained surveillance video from a residence at █████ Avenue, and COPA obtained a copy of this video. However, the video from █████ did not capture this incident. *Id.*

¹² Attachment 5.

██████████ . . . off duty Police Officer Timmie Deberry . . . had accidentally discharged his weapon.”¹³

Case Supplementary Report for RD #HZ138197. CPD detectives interviewed off-duty Cook County Sherriff’s Deputy Marylou Torres, who said that she saw ██████████ push the Walgreens cashier and take money from the register. Torres described chasing ██████████ losing sight of him, and then finding ██████████ and PO Deberry in an alley, where she saw PO Deberry arresting ██████████ Officer Torres then walked ██████████ back to the Walgreens with PO Deberry.

CPD detectives interviewed ██████████ who waived his Miranda rights and agreed to speak with the detectives. Per the detective’s supplementary report, ██████████ admitted to taking money from the cash register and running out of the Walgreens.

CPD detectives interviewed PO Deberry by telephone after PO Deberry called the 14th District. PO Deberry told the detectives that he was off-duty and shopping in Walgreens while his children waited in his car. PO Deberry heard a commotion and the sound of coins falling on the floor, and then saw an offender, later identified as ██████████ running out of the store. PO Deberry did not witness the robbery, but he chased ██████████ south on Albany. PO Deberry described accidentally firing a shot that went straight into the air. PO Deberry took ██████████ into custody and walked him back to the Walgreens. PO Deberry told detectives that he would immediately call the on-duty sergeant at the 14th District to report the accidental discharge of his weapon.¹⁴

Original Case Incident Report and Case Supplementary Reports for RD #HZ138444. CPD detectives investigated PO Deberry’s unintentional firearm discharge under a separate RD number. Per the associated reports, detectives canvassed the 1900 block of North Albany Avenue following the reported robbery and accidental firearm discharge. Two witnesses reported hearing one gunshot and observing two males in an alley. One of the men had his hands in the air and was standing up against a fence, while the second man stood behind the first. The man with his hands in the air then placed his hands behind his back, and both men walked north towards Armitage Avenue. Another witness heard yelling and also heard one gunshot but did not see anything.

Detectives also reported conducting a systematic search of the alley near 1938 North Whipple Avenue, which is where PO Deberry ultimately apprehended ██████████ and where the accidental firearm discharge had reportedly taken place. The detectives documented that CPD personnel from the 14th District had found a live .380 cartridge in the alley at 3061 West Armitage Avenue. The cartridge was marked and recovered by an evidence technician. The report states, “It should be noted the firearm which was unintentionally discharged by Officer Deberry was chambered for a 9mm. At the time of this report the evidentiary value of the recovered live .380 cartridge is unknown.”

Detectives interviewed PO Deberry in the front office in the 14th District in the presence of Sgt. Perez. PO Deberry said that he had picked up his ██████████ from school and then drove to the Walgreens, along with another two of his minor children. PO Deberry left the children in his vehicle and went into the store. While shopping, PO Deberry heard someone yell, “Stop, help me, stop,” from the front of the store, followed by the sound of something crashing to the ground. PO

¹³ Attachment 58.

¹⁴ Attachment 60.

Deberry believed that a robbery was occurring, and he walked towards the front of the store, where he observed a subject later identified as ██████ engaged in a confrontation with several other people. ██████ ran out of the store and PO Deberry followed, with ██████ eventually running eastbound in the alley south of Armitage Avenue. PO Deberry observed ██████ start to remove his coat and reach towards his waist, and PO Deberry then yelled "Chicago Police" as he unzipped his sweater to expose the star on his belt. PO Deberry also pulled his firearm, which was holstered on his left side. ██████ turned around, looked in PO Deberry's direction, and then continued running. ██████ then climbed a chain-link fence situated to the east of a concrete parking pad at 1938 North Whipple. PO Deberry stated he reached up to grab onto ██████ coat and as he pulled ██████ down from the fence, he unintentionally discharged his firearm one time in the air.

After PO Deberry pulled ██████ to the ground, PO Deberry placed his knee on ██████ back; PO Deberry then realized that he did not have handcuffs and that he had left his cell phone in his vehicle. An off-duty Cook County Sheriff's Deputy then approached to assist PO Deberry, and they walked ██████ back to the Walgreens. Before walking back to Walgreens, PO Deberry recalled re-holstering his firearm, allowing him to hold ██████ coat with his left hand and ██████ right arm with his right hand. The off-duty sheriff's deputy told PO Deberry that ██████ was attempting to use a cell phone with his left hand, and PO Deberry attempted to retrieve ██████ phone. PO Deberry eventually gained control of ██████ by pushing ██████ against the wall to the north of the Walgreen's entry. PO Deberry recalled contacting the 14th District by telephone at that time, but PO Deberry did not recall if he spoke with anyone.

After on-duty CPD members arrived at the Walgreens, PO Deberry went back to his vehicle to check on his children. PO Deberry then drove to the location where he had apprehended ██████ because he needed to get the street address, which he then provided to the responding officers. PO Deberry then drove to McDonalds to buy food for his children. As PO Deberry drove home from McDonalds, he realized that he had not informed the responding officers about his accidental firearm discharge. PO Deberry proceeded home and called the 14th District desk at about 8:00 P.M., when he spoke with the detective assigned to investigate the robbery. At that time, PO Deberry told the detective about his accidental firearm discharge. The detective then instructed PO Deberry to immediately notify the 14th District supervisor, and PO Deberry did so at approximately 8:20 P.M. The supervisor ordered PO Deberry to come to the 14th District, but PO Deberry told the supervisor that he needed to wait for his ██████ to return home to watch the children. PO Deberry told detectives that he came to the district immediately after his ██████ arrived home.

Detectives also documented interviews with Cook County Sheriff's Deputy Marylou Torres and with suspect ██████. These statements were substantially the same as those documented under RD #HZ138197. Detectives documented recovering surveillance video recordings from surrounding buildings. These recordings are discussed elsewhere in this summary report.¹⁵

Tactical Response Report pertaining to RD #HZ138197, authored by PO Deberry. Location of Occurrence listed as 3055 West Armitage Avenue. The subject named as ██████. PO Deberry indicated that subject did not follow verbal direction, fled, and pulled away. In response, PO Deberry offered his presence, verbal commands, and escort holds, as well as his

¹⁵ Attachments 65–68. Additional Supplementary Reports were filed by CPD members who assisted the detectives with scene security and with the search for ballistic evidence. Attachments 61–63.

firearm. Specifically, PO Deberry observed [REDACTED] reach for his waistband, which caused PO Deberry to fear [REDACTED] was armed. PO Deberry noted that his firearm accidentally discharged as he attempted to apprehend [REDACTED]. The time of occurrence is listed as February 2, 2016 at 6:28 PM, and the Tactical Response Report (TRR) completion date is listed as February 3, 2016 at 1:00 AM.¹⁶

Chicago Police Department Crime Scene Processing Report 294690, pertaining to RD #HZ138444. Among the items inventoried under this case include a live round “recovered from the ground [*sic*] in alley,” PO Deberry’s handgun, and photographs of the scene of the discharge.¹⁷

PCAD printouts for events 1603311829, 1603311853, 1603311934, 1603314097, and 1603314824.

1603311829: Call of a robbery just occurred at 3110 West Armitage, February 2, 2016 at 6:27 PM. Remarks note that Walgreens was robbed; 1937 N Albany shots fired. A message logged in to this event at 9:53 PM reads “did u all know that an odpo discharged his weapon? We didn’t get a nfy.” At 10:21 PM a message was logged “off duty PO Deberry *5427 accidentally discharged weapon no one hit offender in custody.”

1603311853: Call of shots fired at 1937 North Albany, February 2, 2016 at 6:28 PM.

1603311934: Assignment of police assistance to 3110 West Armitage, recorded on February 2, 2016 at 6:33 PM. Remarks indicate that an off duty police officer has the robbery offender.

1603314097: Assignment of evidence technician to 3055 West Armitage, recorded on February 2, 2016 at 9:04 PM. Event message recorded at 9:52 PM “did u all know that an odpo discharged his weapon on this we never got a nfy.” Remarks indicate 1937 N Albany shots fired; Det Murphy *20915 accidental discharge of weapon/odpo Deberry *5427 recover casing¹⁸, photos of scene

1603314824: Notification created at 10:02 PM, regarding incident at 3055 West Armitage. Remarks indicate that Walgreens was robbed; 1937 North Albany shots fired; accidental discharge of weapon/odpo dewberry *5427 on robbery in progress 3110 West Armitage @ Walgreens recover casing¹⁹, photos of scene²⁰

Cook County Medical Records for [REDACTED] On February 3, 2016, [REDACTED] reported using \$100 of heroin daily, for the past 15 years. [REDACTED] also indicated that he took medication for mental health, and that he was experiencing vomiting and diarrhea. A diagnosis of heroin addiction and withdrawal was reached. [REDACTED] was also diagnosed with a series of renal issues including infected kidney stones. [REDACTED] later complained on April 13, 2016 that he could

¹⁶ Attachment 6.

¹⁷ Attachment 37.

¹⁸ This is believed to be a live round based on the crime scene processing report.

¹⁹ This is similarly believed to be a live round based on the crime scene processing report.

²⁰ Attachment 20.

barely hear in his right ear, which had been an issue for two months. According to ██████ his ear began ringing after an officer's gun went off near his head.²¹

Cook County Circuit Court Case Records for ██████ COPA obtained court records documenting ██████ plea of "guilty" to a single count of robbery on June 30, 2016. ██████ was sentenced to a minimum of 7 years' incarceration.²²

VI. ANALYSIS

During the course of this investigation, five allegations were brought against the involved CPD member, PO Timmie Deberry. COPA's recommended finding on each allegation follows, along with COPA's basis for reaching each recommended finding.

Officer Timmie Deberry

- a. **Allegation #1: It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry negligently handled his firearm while placing ██████ into custody, in violation of Rules 2, 10, 11, and 38.**

With regard to Allegation #1, COPA recommends a finding of **Sustained**. Had PO Deberry made a deliberate choice to fire his weapon, then the appropriate analysis would be under the Chicago Police Department's "Force Options" directive, G03-02-02.²³ However, COPA found no evidence to contradict PO Deberry's multiple statements that his gun discharged unintentionally while he was grabbing ██████ to pull him off the fence. Furthermore, PO Deberry does not claim that he would have been justified in using lethal force in the situation and a use of force analysis under the Fourth Amendment is not necessary.²⁴

The better question is whether PO Deberry was inattentive of his duty in violation of Rule 10, or incompetent or inefficient in performance of his duty in violation of Rule 11. Negligence is the appropriate legal standard for evaluating efficacy, attentiveness and competence. Negligence is the breach of a duty of care one person owes to another.²⁵ There are four factors that are helpful in determining whether someone owed a duty to another:

- (1) the reasonable foreseeability of the injury,
- (2) the likelihood of the injury,
- (3) the magnitude of the burden of guarding against the injury, and

²¹ Attachments 36, 51-54.

²² Attachment 69.

²³ CPD adopted new use of force policies in October 2017. As this incident occurred in February 2016, all references to the use of force policy in this report are to the version that was in effect between January 2016 and October 2017.

²⁴ In the moments leading up to the discharge of PO Deberry's firearm, ██████ is an "Active Resister" as defined by G03-02-02. ██████ fled from PO Deberry, failed to comply with verbal commands, and attempted to evade PO Deberry by scaling a fence. Furthermore, COPA does not dispute PO Deberry's statement that ██████ removed his coat while in flight and motioned toward his waistband, putting PO Deberry in fear that ██████ may have been armed, causing PO Deberry to remove his firearm from its holster.

²⁵ CPD policy expresses a duty of care within G03-02-02 "Force Options": "The goal of a Department member's response to all incidents is to resolve the incident with the foremost regard for the preservation of human life and the safety of all persons involved."

(4) the consequences of placing that burden on the defendant.²⁶

Here it was foreseeable that if PO Deberry tried to grasp the back of a fleeing suspect while his weapon was unholstered in his hand, the weapon could go off. It is fortunate that [REDACTED] was not injured, but that does not excuse PO Deberry's lack of care in handling his firearm. Given the Chicago Police Department's orders regulating the drawing, display, and use of a firearm²⁷, and the City of Chicago's ordinance requiring an investigation of all firearm discharges, even when no one is struck or injured²⁸, it is clearly a serious matter. The laws and regulations have an implicit understanding that each firearm discharge has the potential to cause lethal or serious injury. Thus, it was, or should have been, foreseeable to PO Deberry that had his weapon discharged and struck [REDACTED] it likely would have caused a serious, potentially fatal, injury. The magnitude of the burden on PO Deberry to not grab [REDACTED] while [REDACTED] was moving and while PO Deberry was holding a firearm was not great. Having his weapon out while trying to grab [REDACTED] off the fence did not aid PO Deberry, and it increased the likelihood of injuring himself and [REDACTED].

Furthermore, as described above, PO Deberry's lack of care in handling his firearm puts him at odds with the Department's goal of resolving incidents with the foremost regard for the preservation of human life and the safety of all persons involved, constituting a violation of Rule 2. Simply put, PO Deberry disregarded the goal of a Department member's response to all incidents: resolving an incident with the foremost regard for the preservation of human life and the safety of all persons involved.²⁹ PO Deberry's handling of his firearm while attempting to pull [REDACTED] off the fence was careless, which is further evidenced by the fact that PO Deberry's gun discharged when somewhere between [REDACTED] hip and head resulting in a very near miss. PO Deberry had the option to holster his weapon before attempting to physically detain the fleeing [REDACTED]. PO Deberry's failure to holster his weapon during his attempt to bring [REDACTED] into custody demonstrated an inattention to duty and incompetency and inefficiency in the performance of his duties relative to Rules 10 and 11, amounting to negligence. As such, the allegation should be **Sustained**.

b. Allegation #2: It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry accidentally discharged his firearm while placing [REDACTED] into custody, in violation of Rules 2, 10, 11, and 38.

With regard to Allegation #2, COPA recommends a finding of **Sustained**. In his August 8, 2016 statement to IPRA, PO Deberry indicated that he observed [REDACTED] attempt to scale a fence, at which time PO Deberry moved in to pull [REDACTED] off the fence. According to PO Deberry, his firearm was still in his hand as he pulled [REDACTED] during which time his firearm discharged. From [REDACTED] April 25, 2016 interview, [REDACTED] stated that he was pursued in a back alleyway by an armed man (PO Deberry), prompting [REDACTED] to attempt to scale a fence. As [REDACTED] was on the fence, PO Deberry pulled [REDACTED] down, whereupon PO Deberry's firearm discharged. After the incident, PO Deberry reported to CPD that he accidentally discharged his firearm, later

²⁶ *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 22 (citing *Simpkins*, 2012 IL 110662, ¶ 18.)

²⁷ Chicago Police Board Rule 39; CPD Directive G03-02-02 "Force Options."

²⁸ Municipal Code of Chicago, §2-78-120(c)

²⁹ *Id.* at (II)(A).

recorded under RD #HZ138197 and a Tactical Response Report. Considering the wealth of evidence supporting this allegation, Allegation #2 must be **Sustained**.

- c. Allegation #3: It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry failed to immediately report that he had discharged his firearm, in violation of Rules 3, 5, 6, 10, 11, and 39.**

With regard to Allegation #3, COPA recommends a finding of **Sustained**. As stated *supra*, a preponderance of the evidence shows that PO Deberry discharged his firearm on February 2, 2016. In situations where an officer discharges his firearm, the aftermath of the discharge is governed by General Order G03-02-06, "Firearms Discharge Incidents Involving Sworn Members." Under G03-02-06, "[W]hen a member unintentionally discharges a firearm or discharges a firearm to destroy an animal, the member will: 1. Notify OEMC, their immediate supervisor, and the station supervisor in the district of occurrence. 2. Complete a TRR, a case report, and any other appropriate report."³⁰ The timeliness of such notifications is delineated within CPD Rule 39, which prohibits "failure to immediately make an oral report to the desk sergeant at the District of occurrence and to follow such oral report with a written report on the prescribed form, whenever a firearm is discharged by a member."³¹

In his August 8, 2016 statement to IPRA, PO Deberry noted that he did not report the firearm discharge until he had returned home with his children, at which point he telephoned the 14th District. Based on the initiation report authored by Sgt. Tracy Davies of the 14th District, PO Deberry made his notification at 8:22 P.M., nearly two hours after the firearm discharge. Considering the passage of time between the discharge and notification, during which time PO Deberry managed to drive home and feed his children, it would be unreasonable to suggest that PO Deberry's notification was "immediate." As such, the allegation that PO Deberry failed to immediately report that he discharged his firearm should be **Sustained**.

- d. Allegation #4: It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against the back of [REDACTED] head, in violation of Rules 2 and 8.**

With regard to Allegation #4, COPA recommends a finding of **Not Sustained**. In his August 8, 2016 statement to IPRA, PO Deberry stated that he pulled [REDACTED] down from a fence, during which time PO Deberry's firearm was against [REDACTED] hip. Once [REDACTED] was off the fence, PO Deberry could not recall if he placed his firearm in his pocket, or if he held it in a "low ready position." PO Deberry then escorted [REDACTED] to Armitage Avenue, at which point PO Deberry returned his firearm to its holster.

From the account provided by [REDACTED] an armed man (PO Deberry) chased [REDACTED] down a back alleyway, during which time [REDACTED] attempted to scale a fence. As [REDACTED] was on the fence, PO

³⁰ G03-02-06 (X)(B)(2), "Firearms Discharge Incidents Involving Sworn Members," effective 30 October 2014 through 16 October 2017.

³¹ While Rule 39 does not include a definition of the term "immediate," Merriam-Webster defines the word as "occurring, acting, or accomplished without loss or interval of time." Merriam-Webster.com. Accessed February 20, 2018.

Deberry approached [REDACTED] and began to pull him down; PO Deberry's firearm remained in his hand as he pulled on [REDACTED]. The firearm was situated next to the right side of [REDACTED] head, at which point the firearm went off. PO Deberry pulled [REDACTED] from the fence, after which time [REDACTED] was escorted to a nearby Walgreens. During the walk toward Armitage, [REDACTED] describes PO Deberry as pointing his firearm to the back of [REDACTED] head. [REDACTED] statement was based on belief and perception, as he did not actually see PO Deberry pointing the firearm at his head.

Additionally, no independent witnesses provided any account of PO Deberry placing the barrel of his firearm against the back of [REDACTED] head after placing [REDACTED] into custody. Although Deputy Torres heard a gunshot in the alleyway, she did not observe PO Deberry utilizing his firearm during or after the incident. In consideration of the lack of a preponderance of the evidence to suggest that PO Deberry placed the barrel of his firearm against the back of [REDACTED] head after bringing him into custody, Allegation #4 must be **Not Sustained**.

- e. **Allegation #5: It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against [REDACTED] back, in violation of Rules 2 and 8.**

With regard to Allegation #5, COPA recommends a finding of **Not Sustained**. As indicated in the analysis of Allegation #4, PO Deberry did utilize his firearm during the arrest of [REDACTED] but PO Deberry provided no indication that he held the firearm against [REDACTED] head or back after placing him into custody. While [REDACTED] stated that PO Deberry held a gun against [REDACTED] spine as they crossed Armitage, this statement is not corroborated by Deputy Torres. Given the lack of a preponderance of the evidence to suggest that PO Deberry placed the barrel of his firearm against [REDACTED] back after taking [REDACTED] into custody, Allegation #5 must be **Not Sustained**.

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

Officer Timmie Deberry

a. Complimentary and Disciplinary History

PO Deberry has no previous disciplinary history. Nor does PO Deberry have any significant complimentary history.

b. Recommended Penalty (Allegations 1-3)

PO Deberry was negligent in the handling of his firearm, causing it to unintentionally discharge, while attempting to place a suspect into custody, which nearly resulted in death or serious injury to [REDACTED] and is aggravated by the fact that PO Deberry failed to immediately report that he had discharged his firearm, waiting nearly two hours before coming into the police station and drafting a TRR. PO Deberry's failure to immediately report negatively impacts the Department's ability, as well as an oversight body's ability, to timely and thoroughly investigate in the immediate aftermath on an incident. Although PO Deberry's intentions are admirable and he successfully brought the suspect of an on-view robbery into custody, his execution in doing so was flawed, as was subsequent failure to provide all relevant facts regarding the incident to

responding officers. As a result, COPA recommends a finding of 15-day suspension for each of the three sustained findings.

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer Deberry	1. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry negligently handled his firearm while placing ██████████ into custody, in violation of Rules 2, 10, 11, and 38;	1. Sustained—15 Day Suspension
	2. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry accidentally discharged his firearm while placing ██████████ into custody, in violation of Rules 2, 10, 11, and 38;	2. Sustained—15 Day Suspension
	3. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry failed to immediately report that he had discharged his firearm, in violation of Rules 3, 5, 6, 10, 11, and 39;	3. Sustained---15 Day Suspension
	4. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against the back of ██████████ head, in violation of Rules 2 and 8; and,	4. Not Sustained
	5. It is alleged that on February 2, 2016, at approximately 6:30 P.M., in the vicinity of 3055 West Armitage, accused Officer Timmie Deberry placed the barrel of his firearm against ██████████ ██████████ back, in violation of Rules 2 and 8.	5. Not Sustained

Approved:



Jay Westensee
Deputy Chief Administrator – Chief Investigator

Date 11/5/18

Appendix A

Assigned Investigative Staff

Squad#:	Fifteen
Investigator:	Rohrer, Masters
Supervising Investigator:	Becknek
Deputy Chief Administrator:	Westensee

