

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	August 3, 2014
Time of Incident:	12:19 a.m.
Location of Incident:	██
Date of IPRA Notification:	August 3, 2014
Time of IPRA Notification:	12:50 a.m.

On August 3, 2014, Officer Marco Torres was the passenger and Officer Paul Gentile was the driver in a marked police vehicle on patrol in the 7th District. At approximately 12:15 a.m., they observed a large gathering of people west of 71st and Justine streets. Officer Torres observed a male, now known to be ██████████ with a hard object in his pocket, which Officer Torres believed to be a gun, and informed Officer Gentile that there was a person with a gun.

Officer Gentile stopped and Officer Torres exited the vehicle to approach ██████████. Officer Torres told ██████████ “Hey, stop. Come here.” ██████████ turned to face Officer Torres and reached into his pocket. Officer Torres then drew his weapon. ██████████ retrieved what appeared to be a semi-automatic gun from his pocket, held it with two fingers, and dropped it on the ground.

Officer Torres went over the radio, and informed Officer Gentile, that the person had dropped the weapon and began to pursue ██████████ to apprehend him. According to Officer Torres, ██████████ then stopped, causing them to collide with one another. Upon contact, Officer Torres’ weapon discharged and both Officer Torres and ██████████ fell to the ground and engaged in a struggle for control over Officer Torres’ weapon. Officer Gentile intervened, gained control over ██████████ and handcuffed him.

After ██████████ was handcuffed, Officer Gentile radioed for emergency back-up due to a growing crowd and announced there had been shots fired. Both officers attempted to recover ██████████ weapon, but they were unable to locate it. Officer Torres believed it was possible that a female dressed in white, who he had seen near the gun when it was dropped, had picked up the weapon and left the area.

██████████ was arrested, transported by ambulance to Holy Cross Hospital, where he was treated and released for a laceration to his head as a result of the fall. ██████████ was charged with attempting to disarm a peace officer.

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. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

II. INVOLVED PARTIES

Involved Officer #1:	TORRES, Marco, star # 3561, employee ID# [REDACTED], Date of Appointment: December 16, 2009, Police Officer, District 007, Date of Birth: [REDACTED], 1984, male, Hispanic
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED] 1979, male, black

III. ALLEGATIONS

Officer	Allegations	<u>Finding/ Recommendation</u>
Officer Marco Torres	1. On August 3, 2014, at approximately 12:19 a.m. at 7049 S. Justine Street, while attempting to place [REDACTED] in custody, Officer Torres accidentally discharged his firearm.	Sustained/15-days
	2. On August 3, 2014, at approximately 12:19 a.m. at 7049 S. Justine Street, during the apprehension of [REDACTED] Officer Torres failed to secure a weapon [REDACTED] allegedly dropped.	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2- Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department
2. Rule 3- Any failure to promote the Department’s efforts to implement its policy or accomplish its goals
3. Rule 10-Inattention to Duty
4. Rule 13-Failure adequately to secure and care for Department property.
5. Rule 38- Unlawful or unnecessary use or display of a weapon

General Orders

1. G03-02-06- Weapon Discharge Involving Sworn Members

V. INVESTIGATION²

a. Interviews³

On April 7, 2015, ██████████ mailed a letter to IPRA.⁴ In his letter, ██████████ stated that the officers who arrested him shot him in the back of the head. He added that he sustained injuries to his right eye and left arm during his arrest. ██████████ denied having a firearm. He explained that the officer could not have accidentally discharged his weapon during a struggle because he was shot in the back of the head.

On November 1, 2016⁵, IPRA interviewed ██████████⁶ He stated that on August 3, 2014, at approximately 12:15 a.m., he was visiting friends, including ██████████ near 70th and Justine streets. He was standing outside drinking and listening to music with approximately fifteen to twenty other people. The police drove by and ██████████ and the people he was with began to walk away.

██████████ heard the police tell them to stop, but he continued walking, explaining that the police were harassing them as they had not done anything wrong. He continued walking when one of the officers told him to, “Freeze.”⁷

As ██████████ kept walking, a taller Hispanic officer, who was about ten feet away, discharged his firearm. ██████████ said that he heard the shot, the back of his head was grazed, then he fell and fainted. When asked if he collided with any of the officers, ██████████ stated, “He [the officer] jumped on top of me. After I fell, he jumped on top of me. I was down and blacked out already.”⁸ He stated three officers jumped on him, and by the time he was aware of what was going on around him, an ambulance had arrived. During this interview, he made no mention of being hit with an A.S.P, commonly referred to as a baton or being kicked in the face.

██████████ denied that he had a gun on him or that he dropped a gun and attempted to flee from the police. He also denied attempting to disarm an officer or colliding with an officer. ██████████ said that he did not recall seeing an African American female wearing all white near the time of the incident.

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

³ The case was submitted for mediation on September 10, 2014 but retrieved on March 17, 2015 with no resolution. The case was then again sent to mediation on May 22, 2015 and retrieved a second time and assigned to a new investigative team on October 8, 2015. Att. 50.

⁴ Att. 27. This letter was the first time that ██████████ informed IPRA that he had been shot in this incident.

⁵ On March 25, 2015, IPRA attempted to interview ██████████ but the request was rejected by chief counsel of the Cook County Public Defenders’ Office. Att. 28.

⁶ Att. 57, 59

⁷ Att. 59, page 5, line 21.

⁸ *Id.*, page 7, lines 17-22.

On March 11, 2015, ██████████ mailed a letter to IPRA filing his own complaint for excessive force stemming from this incident.⁹ In that letter he said he was at a party on 70th and Justine because rappers were filming a music video. When police came and shut it down, he started walking towards Ashland to get food. He heard a gunshot and turned to make sure his friends were ok. He then returned and “somebody” said a person got shot by police with a graze wound to the head. When he tried to see if the person was ok, police pushed him back. His letter explains that ██████████ was charged with trying to disarm a police officer but “they said he had a gun, but they never recovered it, so they charged him with disarming a police officer and they said the gun went off and grazed him [██████████] in the head.” He speculated that he was arrested because he stuck up for ██████████ and the police are “dirty and sticking together.”¹⁰

On November 3, 2016¹¹, IPRA interviewed witness ██████████¹² ██████████ said that on August 3, 2014, he was attending a block party near 70th and Justine. He started walking west on 70th Street towards Ashland Avenue with a friend, ██████████ to leave the party and go to a restaurant. ██████████ added that he and ██████████ have been friends since childhood.

██████████ did not initially notice a police presence. He heard one gunshot and turned around and walked back toward the block party. ██████████ did not know how the encounter between ██████████ and Officer Torres started, but he saw ██████████ on the ground in handcuffs. He did not have an opportunity to see if ██████████ and Officer Torres collided. He did not see Officer Torres’ gun when it fired. He also didn’t see if ██████████ had a gun at any time.

██████████ said he attempted to check on ██████████ when a Caucasian officer kept telling him, “Get back.”¹³ He described the officer as aggressive, repeatedly pushing him for no reason. ██████████ said he was arrested for either fighting or resisting. He was handcuffed and taken to a police station.

██████████ later spoke to ██████████ at the police station. According to ██████████ told him, “The officers almost shot him, ██████████ stated that he ducked and had he not done that, he would have been killed.”

██████████ had no knowledge of ██████████ having a gun on the night of the incident and did not recall seeing an African-American female wearing all white on the night of the incident.

⁹ Att. 86. This matter was investigated by IPRA under Log 1074176 and was administratively closed due to no affidavit on April 30, 2015.

¹⁰ In his letter, ██████████ says that the charges were dropped in 2014, but according to the Clerk’s System, he was indicted under case number 14CR14337 and pled guilty to one count of Aggravated Battery of a Police Officer, 720 ILCS 5/12-3.05(d)(4) on November 16, 2015.

¹¹ IPRA attempted to interview ██████████ at Cook County Jail on March 31, 2015, but the request was denied by the Cook County Public Defender’s Office, which was representing ██████████ at the time. ATTACH 28 OF 1074176, NEEDS TO BE ADDED TO THIS CASE.

¹² Att. 62, 66.

¹³ Att.. 66, page 8, line 2.

IPRA also attempted to interview potential eyewitness [REDACTED] who was also arrested for aggravated battery of a police officer stemming from this incident. However, [REDACTED] attorney denied IPRA's request to interview him.¹⁴

On October 29, 2015, IPRA interviewed witness Officer Paul Gentile, #4916.¹⁵ On August 3, 2014, Officer Gentile was assigned to the 7th District, in uniform, and the driver of a marked police vehicle. Officer Marco Torres was his partner at the time of the incident.

Officer Gentile said that earlier in his tour of duty that day, he and Officer Torres observed a large party near 71st and Justine Street. He explained that later he and Officer Torres went back to the same location to see if more people had either arrived or left the party.

Officer Gentile stated that he slowly drove northbound onto Justine Street coming from 71st Street. He was traveling down the street the wrong way on a one-way street because hundreds of people had gathered in the street and there was no other route available. They were approaching an alley that runs east to west when Officer Torres said, "Paul that guy has a gun."¹⁶ The two agreed that Officer Torres would get out of the vehicle.

Officer Torres exited the vehicle with his weapon drawn. Officer Gentile stayed in the vehicle, drove in reverse, and continued to observe the crowd. He heard Officer Torres over the radio saying, "Paul, he's got a gun. He just threw the gun down."¹⁷ Officer Gentile exited the vehicle and observed a male, now known to be [REDACTED] running westbound in a diagonal direction across Justine Street. Officer Torres was already chasing [REDACTED] Officer Gentile joined the chase, but his partner caught up to [REDACTED] first. [REDACTED] was running, suddenly stopped running, faced Officer Torres, and the two collided. Officer Torres grabbed [REDACTED] and attempted to place him into custody as Officer Gentile approached them to assist in cuffing [REDACTED] Officer Gentile recounted, "[T]hey're [Officer Torres and [REDACTED] both standing up. They're both, uh, holding each other. At that time, I observed one gunshot go off in the air."¹⁸ He saw a muzzle flash. He did not see the gun because he was more focused on Officer Torres and [REDACTED] than the gun. Nor could he see where [REDACTED] hand was. Officer Gentile said the gunshot occurred a second or two after Officer Torres collided with [REDACTED] Immediately after the gunshot, both Officer Torres and [REDACTED] fell to the ground.

Officer Gentile ran over to Officer Torres to make sure he was not hurt. Officer Torres was yelling, "He's trying to get my gun."¹⁹ Officer Gentile said Officer Torres was trying to handcuff [REDACTED] Officer Torres repeated that [REDACTED] was attempting to get his gun. Officer Gentile was trying to grab [REDACTED] hands to move them away from Officer Torres's gun. Officer Gentile stated he had "no clue" where the gun was, he was just trying to get [REDACTED] hand out of there.²⁰ Officer Gentile was ultimately able to handcuff [REDACTED] During that time, Officer Torres

¹⁴ Att. 68, 69.

¹⁵ Att. 43, 46

¹⁶ Att.46, page 5, lines 22-23.

¹⁷ *Id.*, page 6, lines 8-9.

¹⁸ *Id.*, page 6, lines 19-21.

¹⁹ *Id.*, page 7, line 1.

²⁰ *Id.*, page 32, lines 4-13.

went over the radio and yelled, “10-1,” signaling that he needed assistance from other officers.²¹ Officer Gentile also went over the radio and requested backup.²² While he was in the process of handcuffing ██████ he observed that ██████ was bleeding from his head.

Officer Gentile said that as the nearby crowd of approximately three hundred people approached them, he drew his weapon. Officer Torres also had his weapon drawn and was telling the crowd, “Get back. Get back. Get back.”²³ Other officers arrived quickly and cleared a path through the crowd. Officer Gentile never saw ██████ with a gun. An unidentified person from the crowd told him that ██████ threw the gun on the ground and a female picked it up and put it in her purse.

Officer Gentile thought when they initially fell that someone had been shot, since both Officer Torres and ██████ fell simultaneous to hearing the gun shot. However, since ██████ was talking and seemed fine after they cuffed him, and since he saw a rock where he had been “tackled”, he assumed ██████ had hit his head on the rock.²⁴ Officer Gentile observed a large rock on the ground with blood on it in the location where Officer Torres collided with ██████. Officer Gentile concluded that when ██████ fell to the ground, he hit his head on the rock.

On October 23, 2015, IPRA interviewed Accused Officer Marco Torres, #3561.²⁵ Officer Torres said that on August 3, 2014, he was assigned to the 7th District in uniform and in a marked vehicle with his partner, Officer Paul Gentile.

While patrolling near 71st Street, Officer Torres and his partner observed a large group of people gathered on both sides of the sidewalk. They slowly headed north on Justine Street, so the group would know they were there. He observed ██████ separate himself from the group and walk south. As ██████ walked past their vehicle, and was at least 20 feet away, Officer Torres observed what he believed to be “a hard-shaped object, like a gun in his [█████] right pocket.”²⁶ Officer Torres stated that as ██████ continued walking he observed him for four to five steps and remembered, “seeing the pocket with the gun shape in it and it didn’t change. It stayed the shape of a gun.”²⁷

Officer Torres informed Officer Gentile that there was a man with a gun in his pocket. He told Officer Gentile to reverse the car, so that it would be easier to apprehend ██████ in the event that he ran southbound across 71st Street. Officer Torres then exited the vehicle and started walking toward ██████. He told ██████ “Hey, stop. Come here.”²⁸ ██████ then turned around and faced Officer Torres. ██████ then backed up, reached into his pocket and retrieved a black semi-automatic gun with two fingers before he dropped the gun on the ground “like it was on fire.”²⁹

²¹ *Id.*, page 7, line 7.

²² *Id.*, page 7, line 8.

²³ *Id.*, page 28, line 16.

²⁴ *Id.* page 33, line 8 to page 34 line 2.

²⁵ Att. 37, 45

²⁶ Att. 45, page 7, lines 20-21.

²⁷ *Id.*, page 9, lines 18-20.

²⁸ *Id.*, page 11, line 12.

²⁹ *Id.*, page 11 lines 13-15.

Officer Torres stated that when ██████ dropped the gun, a skinny female wearing all white was nearby.

Officer Torres initially did not draw his weapon but as soon as ██████ put his hand into his pocket, Officer Torres drew his weapon. He did not re-holster his firearm after ██████ dropped his firearm, because he was not sure if ██████ may be carrying another weapon³⁰ and everything happened so fast. He had his weapon in a “low ready”³¹ position. He explained that his finger was not on the trigger of the gun, but rather on the slide.

Officer Torres said that when ██████ dropped the gun, he immediately went over the radio and said, “He tossed the gun.”³² Officer Torres then proceeded to walk toward ██████. At this point, he told ██████ “Get on the ground. You’re under arrest. Don’t move. Don’t do it. Don’t do anything.”³³ Officer Torres said that ██████ was still facing him and ran at full speed east to west and slightly northbound across the street. Officer Torres believed ██████ was running to try to “split the difference,”³⁴ between himself and his partner. He stated that he tried to “cut him [█████] off”³⁵ and collided with ██████

Officer Torres stated, “[A]s soon as he [█████] makes contact with me, on impact my gun goes off.”³⁶ He believes that prior to impact with ██████ he still had his finger off the trigger, but he acknowledged that it’s possible that the impact from colliding with ██████ may have cause his finger to slide onto the trigger. Just before the collision, he held his gun pointing upward because he thought that was a safe direction to point it due to the crowd. He believes that the front of ██████ body probably came in contact with his firearm.

Officer Torres said the impact of the collision with ██████ caused both to fall to the ground. Officer Torres was on top of ██████ who was on his back. Officer Torres explained that he was in the street when he collided with ██████ and his weapon discharged, but that the two fell on the grass. Officer Torres could not recall if he or his partner called in “Shots fired.”³⁷ Officer Torres said ██████ was pulling his vest and his arms. His gun was still out and when ██████ pulled his arms, it moved his gun. ██████ never had his hand on Officer Torres’s gun. Officer Torres was concerned ██████ might disarm him, so used his left hand to pull his right hand away from ██████

Officer Torres said that, while on the ground, he saw Officer Gentile’s feet. When Officer Gentile approached, ██████ stopped fighting and Officer Gentile placed ██████ in handcuffs. Officer Torres then went back to the sidewalk where ██████ dropped the gun and saw that, “the gun and the girl are gone.”³⁸ He did not initially pick up the discarded firearm because he was

³⁰ He said that he was taught at Academy “when there’s one gun, there’s two guns”, so he thought ██████ may have another weapon. *Id.*, page 28, line 4-5.

³¹ *Id.*, page 13, line 4.

³² *Id.*, page 11, line 22.

³³ *Id.*, pages 11-12, lines 23-23, line 1.

³⁴ *Id.*, page 14, line 7.

³⁵ *Id.*, page 14, line 10.

³⁶ *Id.*, page 14, lines 10-12.

³⁷ *Id.*, page 16, line 10.

³⁸ *Id.*, page 19, line 5.

focused on apprehending [REDACTED] and in his experience, when someone drops a gun it usually stays where they last threw it. He has never had a case where someone came up and took the gun.

When asked to respond to the allegation that he accidentally discharged his firearm Officer Torres responded, “In the course of trying to make an arrest to a person that was not obeying verbal commands...because he’s running, sprinting and we collide the gun did discharge.”³⁹ Officer Torres said he did not consider re-holstering his weapon, mostly because he was concerned that [REDACTED] might have had another weapon.

On October 20, 2016, IPRA interviewed Accused Officer Marco Torres a second time.⁴⁰ During this interview Officer Torres responded to the allegation that he failed to secure [REDACTED] weapon. Officer Torres stated that immediately after [REDACTED] dropped the gun he ran across the street. Officer Torres said he made the decision to instantaneously attempt to apprehend [REDACTED] instead of securing the weapon. Officer Torres stated he did not secure the weapon, because he did not want to turn his back on [REDACTED]. He would have had to go out of his way by about ten feet to get the weapon prior to going after [REDACTED] and he thought he had a better angle to cut [REDACTED] off if he went directly after him.

Officer Torres said he was not sure if [REDACTED] remained a threat once he dropped the gun and explained that he believed [REDACTED] might have had another weapon. Officer Torres stated he was trained to believe “when there is one gun, there are two.”⁴¹ Officer Torres said that in his previous experience he had not encountered a situation where another person retrieved a weapon during an “ongoing thing.”⁴² Officer Torres did not have any communication with his partner about who would retrieve the gun after [REDACTED] dropped it, because there was not any time. He did, however, alert his partner and communicate over the radio that the gun had been dropped.

Officer Torres stated he did not know if anyone located the female wearing all white (who he mentioned in his initial interview) following this incident. Officer Torres was also not aware of [REDACTED] weapon having been recovered following this incident.

b. Digital Evidence

CPD Radio Transmissions⁴³ document a male voice, now known as Officer Torres, saying, “Black shirt [inaudible] and Justine just threw a gun. Get on the ground. Get on the ground. Right here.”⁴⁴ The operator then requests that anyone near 61st Street and Justine Street to respond. While the operator is making the request, the male voice says, “Shots fired.”⁴⁵ Approximately four seconds elapsed between him yelling get on the ground and announcing shots fired. The operator asks if shots were fired at or by the police. The male voice calls for a “10-1.”⁴⁶ The operator requests that anyone available responds to 61st Street and Justine. The male voice yells, “More

³⁹ *Id.*, page 22, lines 11-16.

⁴⁰ Atts. 53, 54

⁴¹ Att. 54., page 8, lines 16-17.

⁴² *Id.*, page 8, line 6.

⁴³ Att. 38-41.

⁴⁴ *Id.*, at 0:01.

⁴⁵ *Id.*, at 0:10.

⁴⁶ *Id.*,

cars,”⁴⁷ and corrects the operator that additional units are needed at 71st Street and Justine Street. A male voice says, “10-1. Get back.”⁴⁸ A male voice says, “[Someone] threw the gun in front of me. Someone came behind me and took it [the gun] as I was attempting to handcuff this guy [REDACTED] he went for my gun Squad.”⁴⁹

The operator asks Unit 706BR for their status. Unit 706BR responds that they are “ok, just a lot of crowd control.”⁵⁰ The operator asks Unit 706BR if the shots were fired at or by the police and after a few seconds 706BR responds, “by.”⁵¹ Unit 726R requested an ambulance for the offender and stated, “He got hit in the head pretty good.”⁵²

Evidence Technician Photographs⁵³ document the CPD vehicles⁵⁴, the scene, Officer Torres, and the evidence recovered. The photos include photographs of a small bloody rock in proximity to one spent shell casing.⁵⁵ COPA did not receive ET photos depicting [REDACTED] injuries. Below are photographs of the bloody rock and the injuries sustained by Officer Torres:



Figure 1-Attachement 32, page 18.

⁴⁷ *Id.*, at 0:36.

⁴⁸ *Id.*, at 1:03.

⁴⁹ *Id.*, at 1:29.

⁵⁰ *Id.*, at 3:08.

⁵¹ *Id.*, at 7:24.

⁵² *Id.*, at 7:54.

⁵³ Att. 32, Att. 44.

⁵⁴ Officer Gentile said that the photos do not accurately depict where he parked the car, because someone else must have moved his vehicle. He left it about two car lengths from an alley. (Att. 46, P. 13).

⁵⁵ Att. 32, pp. 15-41.



Figure 2 – Attachment 44, page 5.

Central Booking Photos for ██████████, show his front and profile headshots and tattoos on his forearms and stomach. His head injury is not depicted in either headshot, and there are no visible injuries to his arms or stomach. His left cheek appears to be red and possibly swollen.

c. Physical Evidence

Medical Records for ██████████ from Holy Cross Hospital⁵⁷ document that ██████████ was admitted to the emergency room on August 13, 2014, at 1:15 am. The reason for the hospital visit is listed as a head laceration. ██████████ told the medical professionals that he was walking with friends when the police stopped him. ██████████ said that he heard a gunshot, felt “something”⁵⁸ on the back of his head, fell to the ground and then was kicked in the face. He was discharged from the hospital on August 13, 2014, at 3:12 am. Nursing reports document that ██████████ denied any loss of consciousness.⁵⁹

On January 27, 2017 IPRA Investigators went to Holy Cross Hospital and spoke to ██████████, the Charge Nurse for Emergency Room Services. ██████████ reviewed ██████████ medical records and informed the IPRA Investigators that if ██████████ had sustained a gunshot wound, the medical records would refer to the injury as a gunshot wound and not a laceration. ██████████ explained that a graze wound would be referred to as a gunshot wound and not a laceration.

⁵⁶ Att. 5.

⁵⁷ Att. 29

⁵⁸ *Id.*, page 4.

⁵⁹ Att. 29, p. 12.

The **Chicago Fire Department's Ambulance Report**⁶⁰ documents that Ambulance 58 was dispatched to 1530 W. 71st Street/7099 S. Justine Street at 12:24 am on August 3, 2014. The ambulance arrived on scene at 12:29 am and departed the scene at 12:37 am. The ambulance arrived at Holy Cross Emergency Room at 12:41 am. The patient is listed as [REDACTED] and was found walking at the scene, alert and orientated x 3. The patient was in police custody when the ambulance arrived. The paramedics documented that the patient had a small laceration to the head with minimal bleeding noted. The report stated, "PT [patient] allegedly had a gun and threw it, and then allegedly attempted to grab a CPD Officers weapon. PT was involved in a struggle with CPD Officers and was hit on the head with an A.S.P. (CPD issued equipment)."⁶¹

d. Documentary Evidence

The **Original Case Incident Report**⁶² lists Officer Torres as the victim, Officer Gentile as a witness and [REDACTED] as the suspect. The nature of the incident is documented as Interference with Public Officer-Resist/Obstruct/Disarm Officer. [REDACTED] is reported as having a gang affiliation with the Gangster Disciples and having possessed a 9-millimeter black semi-automatic handgun⁶³, which was not recovered. The report documents a canvass conducted by CPD Detectives which did not produce any witnesses.

The **Case Supplementary Report**⁶⁴ summarizes detective interviews with Officer Torres and Officer Gentile. Both officers provide an account of events consistent with the interviews conducted by IPRA. [REDACTED] requested an attorney and chose to remain silent.

The **Arrest Report**⁶⁵ for [REDACTED] documents that [REDACTED] was arrested on August 3, 2014, and charged with "Attempt Disarm PC Off/Corr Inst Emp."

The **Cook County Clerk's computer system**⁶⁶ shows that [REDACTED] was indicted on August 29, 2014 on one Class 2 felony count for Attempt to Disarm a Peace Officer, 720 ILCS 5/31-1A(B), four Class 2 felony counts for Aggravated Battery of a Peace Officer, 720 ILCS 5/12-3.05(D)(4), and one Class 4 felony count for Resisting a Peace Officer, 720 ILCS 5/31-1(A-7). He pled guilty on December 1, 2015 to the one Class 4 felony count for Resisting a Peace Officer, was sentenced to three years' incarceration with IDOC with one-year mandatory supervised release and was credited with 486 days for time served.

⁶⁰ Att. 65

⁶¹ *Id.*, page 1. On June 6, 2018, COPA conducted an interview with CFD employee, Paramedic Elizabeth Michna. Michna did not remember this incident and did not prepare the Ambulance Report. Michna explained that as a Fire Paramedic she rarely spoke to the patients (Att. 77). On February 25, 2019, COPA conducted an interview with CFD Paramedic In Charge, Daniel Nestor. Nestor stated that he authored the report but has no direct recollection of the incident. (Att. 84)

⁶² Att. 6

⁶³ During his first interview with IPRA, Officer Torres, unprompted, said that he was "99% sure" he would never guess the caliber of a gun, so that portion may be inaccurate, but he was certain about his assessment that it was black and semi-automatic. (Att. 45, page 24, lines 13-22).

⁶⁴ Att. 7

⁶⁵ Att. 9

⁶⁶ Att. 88

The **Arrest Report**⁶⁷ for ██████████ documents that ██████████ was arrested on August 3, 2014 and charged with two counts of “Agg Battery/Peace Officer” and two counts of “Resisting/Obstruct/PC Officer/FRFTR.”

Per the **Cook County Clerk’s Mainframe System**, ██████████ plead guilty and was found guilty of one count of aggravated battery against a peace officer.

The **Tactical Response Report**⁶⁸ completed by Officer Gentile lists ██████████ as the subject and classifies him as a passive resister who did not respond to verbal direction and stiffened and as an active resister who fled and pulled away. Officer Gentile documented that he responded with member presence, verbal commands, and take down/emergency handcuffing.

The **Tactical Response Report**⁶⁹ completed by Officer Torres lists ██████████ as a passive resister who did not follow verbal direction and stiffened, an active resister who fled and pulled away, an assailant committing an assault by presenting an imminent threat of a battery, an assailant committing a battery engaging in an attack without a weapon and an assailant using deadly force by attempting to disarm an officer. The report indicates that one shot was fired. Officer Torres completed the section of the TRR detailing a weapon discharge incident and listed the person/object struck as unknown. The Watch Commander, Carlos Velez, determined that additional investigation was required and made a preliminary determination that Officer Torres accidentally discharged his weapon. The report indicated that ██████████ denied the request to be interviewed.

The **Officer’s Battery Report**⁷⁰ completed by Officer Torres lists the manner of attack as “other,” and the type of weapon or threat as a semi-automatic firearm of an unknown caliber, hands and fists, that the offender ran directly into the officer “attempting to knock down,”⁷¹ and that the offender attempted to obtain the officer’s weapon. In the section detailing unusual circumstances regarding officer control tactics and safety Officer Torres stated, “Attempted to secure and retain weapon from Offender’s hand during the struggle.”⁷²

The **Chicago Police Department Inventory Sheets**⁷³ document the items recovered and inventoried pertaining to this incident including:

- **Inventory Sheet #13236730** documents that one expended shell, Winchester 9-millimeter Luger, was recovered from the parkway grass near the tree at 7048 S. Justine Street.
- **Inventory Sheet #13236736** documents that one bloodstained rock was recovered from the parkway grass at 7048 S. Justine Street.

⁶⁷ Att. 67

⁶⁸ Att. 11

⁶⁹ Att. 12

⁷⁰ Att. 13

⁷¹ Att. 13

⁷² Att. 13

⁷³ Att. 30

The Crime Scene Processing Report⁷⁴ documents the evidence recovered from the scene. Forensic Investigators that responded to the scene were directed by Deputy Velez, #211 to examine Officer Torres' weapon. The examination determined the weapon contained a sixteen-round capacity magazine, with fifteen cartridges found in the magazine and one cartridge recovered from the chamber. The weapon was not swabbed and returned to Officer Torres on the scene.

A search of the **State and Federal Online Clerk Systems** conducted on November 7, 2019 revealed that there do not appear to be any Northern District of Illinois or Circuit Court of Cook County, Law Division, cases stemming from this incident.

VI. LEGAL STANDARD

a. Accidental Discharge

Allegations of Accidental Discharge are evaluated under Chicago Police Department Rules 13 and 38. Rule 13 prohibits a failure to adequately secure or care for Department property. Rule 38 prohibits an unlawful or unnecessary use or display of a weapon. An accident in this case would be an occurrence beyond the officer's control that resulted in the discharge of his service weapon. A malfunction is the only case in which an accidental discharge of an officer's service weapon is acceptable. Even if a discharge of a weapon was not the officer's intention, negligent handling of a weapon is an unlawful use and a violation of Department policy.

b. Standard of Proof

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** is evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has been found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

⁷⁴ Att. 31. The relevant evidence documented in the Crime Scene Processing Report is consistent with the evidence documented by the Inventory Sheets (Att. 30).

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 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." *Id.* at ¶ 28

VII. LEGAL ANALYSIS

A. The Preponderance of the Evidence Shows that Officer Torres Accidentally Discharged his Weapon Due to His Negligence in Securing His Firearm.

First, COPA finds that Officer Torres did not fire his weapon at ██████ from a distance as alleged by ██████ but that the weapon was fired during the collision. ██████ says that Officer Torres fired from about ten feet away, after ██████ ignored his order to "freeze," and that he was hit by the gunshot causing him to fall. On the other hand, both Officer Torres and Officer Gentile describe that the shot was fired during the collision.

COPA finds the statements of the two officers to be more credible than ██████ did not make a contemporaneous report that he had been shot. The report made to the EMTs made no correlation between the gunshot and his injuries.⁷⁵ The report to emergency room staff also does not indicate that ██████ believed he was shot, instead making no claim that the gunshot was the "something" that hit his head. Indeed, staff did not treat him for a gunshot wound, nor diagnose it as such (or at least they made no such notation in his file). It was not until eight months later that he wrote a letter to IPRA, and for the first time said that he had been shot by the officer. The officers, on the other hand, were consistent, from immediately after the incident through their statements to IPRA, that the shot had been fired as Officer Torres and Barret were struggling after the two had collided.

Moreover, the evidence from the scene supports the officers' statements. The discarded shell casing was found in very close proximity to the bloody rock and what appears to be ██████ discarded hat. This suggests that the shot was fired as Officer Torres was struggling with ██████ not from afar as ██████ suggested.

Second, COPA finds that Officer Torres did not fire the weapon intentionally. Officer Torres provided a credible explanation for how the gun fired, saying that the weapon discharged by mistake when he collided with ██████ and they began to struggle. He also acknowledged that his finger could have been pushed onto the trigger causing the gun to fire, even though he believed his finger was on the side of the firearm prior to the collision. This explanation is more plausible than ██████ suggestion that Officer Torres fired at him for failing to "freeze."

Moreover, the fact that ██████ was apparently not struck by the bullet suggests that the shot was not intentional. It is unlikely that Officer Torres would have intentionally shot at ██████ from such close range and merely inflicted a graze wound to the head. It is more likely that, when the two men collided, while Officer Torres was holding his gun pointed upward, the gun unintentionally discharged into the air.

⁷⁵ It is not clear from the EMTs' report who provided the narrative to the responding paramedics.

Additionally, the fact that Officer Torres fired only once is more consistent with an unintentional discharge. All of the evidence, including the statements of both officers and ██████ the casing found on scene, and the bullets remaining in Officer Torres' weapon, support the fact that there was only one shot fired. Had Officer Torres shot intentionally, he likely would have fired more than once, based upon his training.

Third, COPA finds that there is insufficient evidence to demonstrate that ██████ was hit by the bullet. Holy Cross Hospital treated him for a scalp laceration from being struck, not for a gunshot wound. Later, an ER staff member informed IPRA that, if medical staff believed at the time that ██████ had suffered a gunshot wound, even a graze wound, it would have been noted in the file. Moreover, it is unlikely that the hospital had overlooked the possibility that ██████ had been shot, since he informed them that he had heard a gunshot, then felt something on his head. Additionally, the EMTs did not indicate that the wound was from a gunshot, instead writing in their report that ██████ had been stuck by a CPD A.S.P.

OEMC recordings also provide a contemporaneous statement from Beat 726R that ██████ had "hit his head pretty good." While this officer was not on scene when the shot was fired, it serves as another observer who believed the injuries were caused by blunt force, not by a graze wound.

These contemporaneous medical records and police statements, coupled with the bloody rock found where ██████ and Officer Torres fell, support the factual finding that it is more likely than not that the wound was caused by ██████ striking his head on the rock (or merely the ground) when he fell.

Based upon those findings, COPA finds that Officer Torres was negligent in allowing his firearm to unintentionally discharge. Typically, semiautomatic weapons do not fire from contact alone, in that pressure need be applied to the trigger. Moreover, Officer Torres did not suggest, nor did the Crime Scene Processing Report indicate, that there was any malfunction of the firearm. Thus, it is more likely than not that the trigger was pulled. Officer Torres acknowledged that this likely occurred by his finger slipping off the slide and onto the trigger when he and ██████ collided. Officers have a duty to secure their firearms and to ensure that they are not fired without justification, even unintentionally. Unintentional discharges of firearms inherently carry more danger than intentional discharges, due to the lack of control of the firearm and risk of deadly unintentional consequences. Officer Torres was negligent in allowing his firearm to unintentionally discharge, in violation of his duty to secure his firearm under Rule 13.

For the foregoing reasons COPA finds that Allegation 1 is SUSTAINED.

B. COPA Does Not Find that Officer Torres Was Inattentive to Any Duty in Failing to Pick Up the Discarded Weapon.

To support a finding on this allegation COPA must first find that ██████ did in fact possess, and discard, a weapon. While this is a close call, COPA finds that the preponderance of the

evidence shows that ██████ did possess a weapon.⁷⁶ Both officers were consistent in their statement that they saw ██████ remove the weapon from his pocket, in addition to Officer Torres' comment to Officer Gentile while they were still in the police vehicle that he saw what he believed to be a weapon in ██████ pocket. The contemporaneous statement of the officers on OEMC radio captured the officers ordering ██████ to drop the gun, prior to any gunshots being reported. Then, after a few minutes, Officer Torres explained over OEMC that someone must have picked up the firearm that ██████ had dropped. While ██████ denies this, there is sufficient evidence from the officers that he did possess, but drop, a weapon.

However, the evidence does not sufficiently support that Officer Torres was inattentive to duty in failing to secure this discarded firearm. Officer Torres was faced with a difficult decision between two important options. He could either secure the firearm that ██████ had dropped, or he could pursue and arrest ██████ who by that time was known to be possessing a weapon, but he could not do both. There was strong circumstantial evidence that ██████ firearm possession was illegal, based upon his actions in discarding the weapon. There are clearly reasons to pick up the weapon first, most significantly of which is securing evidence and ensuring that a firearm does not remain on the street in a large crowd where it could be picked up by a bystander, as appears to be the case here. However, there are equally important reasons to pursue ██████ in order to prevent a gun offender from escaping, especially considering that the large crowd made it more likely he could do so.

It was a challenging but reasonable decision for Officer Torres to decide that he should pursue ██████. He had radioed that ██████ dropped the firearm, so it was reasonable to assume that Officer Gentile would attempt to secure the weapon. The fact that Officer Torres had never encountered a situation where a bystander picked up a discarded weapon made it more reasonable for him to first pursue ██████ and to pick up the discarded firearm later. The ultimate result that the weapon was never recovered, most likely because Officer Gentile was forced to assist Officer Torres after his firearm accidentally discharged, does not retroactively render Officer Torres' decision as improper or objectively unreasonable.

While Officer Torres' articulation (that "where there's one gun there's two guns") of why he pursued ██████ as opposed to picking up ██████ firearm is questionable, it does not invalidate his actions. Officer Torres' subjective rationale, much less his articulation of his subjective rationale, does not dictate whether his actions were reasonable. Considering the totality of the circumstances in this case, an objectively reasonable officer in Officer Torres' position would be justified in pursuing ██████ in order to prevent a gun offender from escaping. The potential that ██████ had an additional weapon also supports this split-second decision.

COPA does not find that it is determined by clear and convincing evidence that Officer Torres was completely justified in failing to secure the firearm, and, therefore will not make a finding of Exonerated. However, COPA does not find by a preponderance of the evidence that Officer Torres

⁷⁶ The evidence in this case did not present any Fourth Amendment violations by the officers. Due to ██████ walking away from the group, which was gathered in a known gang area, upon seeing the officers and Officer Torres' observation of what he believed to be a firearm in ██████ pocket, the officers had at least a reasonable articulable suspicion that he was armed, which permitted the officers to approach him for a *Terry* stop. Prior to the officers even engaging in such a stop, ██████ removed the gun from his pocket in view of the officers, thereby providing them probable cause to seize him prior to Officer Torres chasing and subsequently seizing ██████

was inattentive to duty by failing to secure the firearm that [REDACTED] discarded. Therefore, Allegation 2 is NOT SUSTAINED.

C. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Marco Torres

i. Complimentary and Disciplinary History

1. Complimentary: None

2. Disciplinary: None

ii. Recommended Penalty, by Allegation

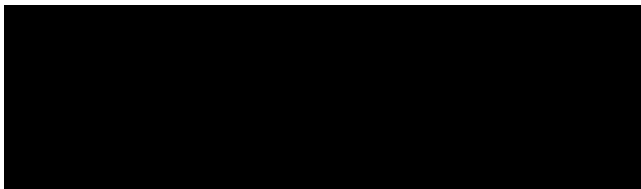
Officer Torres' inattention to duty led to the discharge of his firearm during an attempted apprehension. This is a serious infraction and COPA recommends a 15-day suspension and related re-training.

CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Marco Torres	1. On August 3, 2014, at approximately 12:19 am at 7049 S. Justine Street, while attempting to place ██████████ in custody, Officer Torres accidentally discharged his firearm.	Sustained/15
	2. On August 3, 2014, at approximately 12:19 am at 7049 S. Justine Street, during the apprehension of ██████████ Officer Torres failed to secure a weapon ██████████ allegedly dropped.	Not Sustained

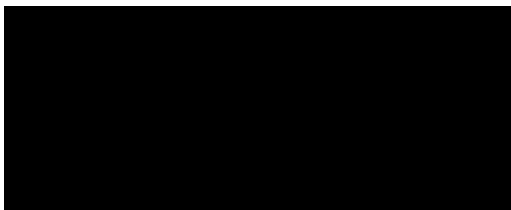
Approved:



12-24-19

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date



12-24-19

Sydney R. Roberts
Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	8
Major Case Specialist:	Ramona Hendricks
Supervising Investigator:	Bob Coleman
Deputy Chief Administrator:	Angela Hearts-Glass