

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	April 17, 2015
Time of Incident:	Approximately 10:55 P.M.
Location of Incident:	██████████, Melrose Park, Illinois
Date of COPA ¹ Notification:	April 18, 2015
Time of COPA Notification:	Approximately 12:53 A.M.

Officer Ediberto Diaz joined the Chicago Police Department (CPD) on October 5, 2012 and was assigned to the 007th District at the time of his arrest. On April 17, 2015, around 2255 hours, at ██████████ Melrose Park, Illinois, Officer Diaz was arrested for discharging his duty weapon and charged with Reckless Discharge of a Firearm. Officer Diaz owns the apartment building located at ██████████, Melrose Park, Illinois. Prior to his arrest, he was inside the garage working on his personal car. Officer Diaz said he accidentally discharged his weapon while adjusting his firearm belt holster.

Melrose Park Police Department (MPPD) Officer Leslie Shankle was in the area responding to another call when she heard nearby gunfire. Officer Shankle approached the direction of the gunfire and saw Officer Diaz enter a red pickup truck, start the engine and pull forward. Officer Shankle pointed her weapon at Officer Diaz and ordered him to stop. Officer Diaz complied. Officer Shankle asked Officer Diaz if he had fired a weapon. Officer Diaz replied “Yes.” He said the gun was inside the garage. Officer Shankle noticed a strong odor of alcohol on Officer Diaz’ breath and that his speech was slurred. Officer Diaz was arrested and transported to MPPD. CPD was notified. CPD members went to MPPD to investigate the incident. Officer Diaz was later charged with Reckless Discharge but was found not guilty after a bench trial on March 17, 2017.

II. INVOLVED PARTIES

Involved Officer:	Ediberto Diaz; Star #10299; Employee # ██████████ DOA: October 5, 2012; Police Officer; Assigned to Unit 007/376; DOB: ██████████, 1979; Male Hispanic
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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.

III. ALLEGATIONS²:

It is alleged that on April 17, 2015, around 2255 hours, at or near 1 [REDACTED] [REDACTED], Melrose Park, Illinois, **Officer Ediberto Diaz, Star #10299, Unit 007/376**, while off duty:

- 1) Drove his vehicle while under the influence of alcohol; in violation of Rule #1.
- 2) Had a blood-alcohol concentration (BAC) over the legal limit and was therefore legally intoxicated; in violation of Rule #15.
- 3) Was in possession of a firearm knowing there was a likelihood of consuming alcoholic beverages; in violation of Rule #6.
- 4) Discharged his weapon without justification; in violation of Rule 38.
- 5) Failed to properly secure his weapon; in violation of Rule #6 and #U04-02, Sections II and X of the Uniform and Property Order, and
- 6) Was arrested and charged with Reckless Discharge of a Firearm, in violation of Rule #1 and Rule #2.

IV. APPLICABLE RULES AND LAW:

Rules

1. **Rule 1:** Violation of any law or ordinance.
2. **Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the department.
3. **Rule 6:** Disobedience of an order or directive, whether written or oral.
4. **Rule 15:** Intoxication on or off duty.
5. **Rule 38:** Unlawful or unnecessary use or display of a weapon.

General Orders

1. **Uniform and Property 04-02:** Department approved weapons and ammunition.

State Laws

1. **625 ILCS 5/11-501-**Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.
2. **720 ILCS 5.0/24-1.5-A-**Reckless Discharge of a Firearm

² On April 18., 2015, at 0300 hours, CPD Deputy Chief Berscott Ruiz (Star #382) initiated this complaint.

V. INVESTIGATION:

CPD Deputy Chief Berscott Ruiz's **Initiation Report** indicated CPD Operations Command notified him of a firearm discharged by the accused, Officer Ediberto Diaz, in Melrose Park. Deputy Ruiz went to Melrose Park and spoke with the arresting Melrose Park police officer, Leslie Shankle. Officer Shankle said on April 17, 2015 around 2255 hours near 24th Avenue and Thomas Street, she heard three-gun shots. Officer Shankle immediately searched the area and saw Officer Diaz exit a yard at [REDACTED] [REDACTED]. Officer Diaz entered a parked vehicle in the alley. Officer Shankle stopped Officer Diaz and asked him to exit the vehicle. She also asked whether he fired a weapon. Officer Diaz replied "Yes" and said the gun was inside the garage. Officer Diaz identified himself as a Chicago police officer. Officer Shankle stated she detected a strong odor of alcohol on Officer Diaz' breath and that his speech was slurred. A search of the garage revealed a black Buick Grand National³ parked inside. Two spent casings were found on the floor of the vehicle and a gun on the driver's front seat. Officer Shankle also observed what appeared to be two bullet holes in a purple Chrysler PT Cruiser⁴ parked on the garage's apron. On April 18, 2015, at 0440 hours, CPD Sergeant Assaf administered a breathalyzer test to Officer Diaz. It registered a .185 Blood Alcohol Content (BAC).⁵ Per Chief Rivera, Officer Diaz was relieved of his police powers.⁶

a. Interviews

In a **statement to IPRA** Investigators Vasquez and Jones on May 15, 2015, [REDACTED] [REDACTED] said he and his brother, [REDACTED] rent the basement apartment at 1210 N. 23rd Ave. and half of the garage from Officer Diaz. Mr. [REDACTED] said he was inside his apartment watching television when he heard gunfire. A short time later, Mr. [REDACTED] went outside to smoke a cigarette and was approached by a Melrose Park police officer. The officer asked Mr. [REDACTED] whether he owned the car parked next to the garage. He confirmed ownership. Mr. [REDACTED] said the officer pointed out two apparent bullet holes in the car. Mr. [REDACTED] did not know who fired into his car and told the officers, "I don't want to know, I don't want trouble." Mr. [REDACTED] did not state that, prior to this incident, there were no bullet holes in his vehicle. He signed a paper stating he did not want to press charges. Mr. [REDACTED] said the police searched his car and photographed the holes.⁷

³ The vehicle was owned by Officer Diaz.

⁴ The vehicle was later identified as the property of [REDACTED] a resident of [REDACTED] [REDACTED]

⁵ 625 ILCS 5/11-501 limits a person's blood alcohol concentration to under 0.08 when driving or controlling a vehicle.

⁶ Attachment 4.

⁷ Attachments 28-30.

In a **statement to IPRA**⁸ Investigators Roberto Soto and James Lukas on April 28, 2017, the **accused, Officer Ediberto Diaz**, stated he became a police officer on October 5, 2012 and was relieved of his police powers after his arrest on April 17, 2015. Officer Diaz was charged with Reckless Discharge Firearm-Endangerment and his duty weapon was confiscated and inventoried by the Melrose Park police officers.

Officer Diaz owned an apartment building in Melrose Park. He acknowledged that [REDACTED] and Blanca Estela Calleros were both his tenants. On April 17, 2015, while off duty, Officer Diaz went to the building to work on his car inside the garage. Officer Diaz could not recall the time he arrived, or whether there were any witnesses to the incident. Officer Diaz said he drank a lot beer and could not recall how much he drank because he was intoxicated.

Officer Diaz admitted he brought beer with him to the garage with the intention of drinking it. Officer Diaz could not recall many details surrounding the incident because of his intoxication that night. Officer Diaz was shown a Melrose Park police report, regarding the incident, that documented him driving a truck while he was intoxicated. Officer Diaz said he could not recall driving the truck because he was intoxicated at the time. Officer Diaz was asked, "Why did you discharge your weapon?" and he replied, "I don't know how it went off, it was an accident."⁹ Officer Diaz recalled adjusting his waistband holster, but not when his gun discharged. Officer Diaz discovered through the criminal proceeding that he discharged his gun twice. Officer Diaz said he could not recall if his gun was inside the holster when it discharged. Officer Diaz further stated he did not recall shooting the gun into the Chrysler PT Cruiser. Officer Diaz was unsure but believed he put his gun inside his Buick, which was parked in the garage.

While at the police station, Officer Diaz said he was administered a breathalyzer test but did not know the results. Officer Diaz was shown the results of that test. It indicated that on April 18, 2015, at 0347 hours, his BAC was .185, which is over the legal limit. However, Officer Diaz was informed that his arrest was on April 17, 2015, around 2355 hours, approximately four hours and fifty-five minutes earlier. Officer Diaz was informed that the Illinois State Police had performed a Backward Extrapolation which indicated his BAC was between .233 and .282 at the time of his arrest.¹⁰

b. Digital Evidence

MPPD photographs, taken on April 17, 2015, show the outside and inside of the garage located at [REDACTED]. The photographs depict bullet casings on the ground, Officer Diaz' Springfield Arms XDM 9mm semi-automatic pistol on the driver's seat of the black Buick

⁸ Officer Diaz' criminal case, 15CR9291, was pending from April 17, 2015 until March 16, 2017. Officer Diaz could not be interviewed prior to the conclusion of that matter.

⁹ Attachment 82 at Page 22, Lines 2-3.

¹⁰ Attachments 81-82.

Grand National, two bullet holes in the purple Chrysler PT Cruiser, open cases of Modelo and Miller Lite beer in the bed of the red Toyota Tacoma driven by Officer Diaz, an open case of Bud Lite beer and two empty cans of Miller Lite on the floor of the garage.

c. Physical Evidence

Illinois State Police laboratory reports indicate Officer Ediberto Diaz' latent prints were found on the Springfield Arms XDM 9mm semi-automatic pistol and a magazine. Officer Diaz' gun holster was examined for Primer Gunshot Residue (PGSR). The results were negative.

A **Synoptic Report**, dated April 20, 2015, written by CPD Sgt. Majed Assaf states on April 18, 2015, at 0115 hours, Sgt. Assaf was notified of Officer Ediberto Diaz' arrest. At 0300 hours, Sgt. Assaf arrived at MPPD and conducted a twenty-minute observation of Officer Diaz. He reported in an **Alcohol/Drug Influence Report** that Officer Diaz had a moderate odor of alcohol, lazy eye, bloodshot eyes, a lack of convergence, belched, was apologetic and cooperative. Officer Diaz also participated in field sobriety tests. He failed the Horizontal Gaze Nystagmus test. During the One-Leg Stand test, Officer Diaz swayed, used his arms to balance and placed his foot down. In the Walk-and-Turn test, Officer Diaz lost his balance while walking and used his arms to balance.¹¹ A "Backward Extrapolation"¹² was conducted by Illinois State Police which showed Officer Diaz' BAC, at the time of his arrest, was between .233 and .282 BAC. Sgt. Assaf served Officer Diaz with Notification of Charges/Allegations.¹³

d. Documentary Evidence

MPPD Incident reports state that on April 17, 2015, at about 2255 hours, CPD Officer Ediberto Diaz was arrested and charged with Reckless Discharge of a Firearm. Melrose Park Police Officers Shankle and Graziani were near 24th Avenue and Thomas Street when they heard three close range gunshots. Officer Shankle walked near [REDACTED] [REDACTED] and observed Officer Diaz quickly walk out of a yard, open the door of a red pickup truck and place something inside. Officer Diaz began to drive away, but Officer Shankle ordered him to stop. He complied. The report describes Officer Diaz as having slurred speech and emitting a strong odor of alcohol. Officer Diaz identified himself as a Chicago police officer and admitted to accidentally discharging his gun (a Springfield Armory-Springfield XDM 9mm) and leaving it inside the garage. Officer Shankle located a black Buick parked in the garage of [REDACTED] [REDACTED] and observed the driver's side window to be rolled down and a gun on the driver's seat. A search of the garage

¹¹ Attachments 12, 17 and 18.

¹² Attachments 37-38.

¹³ Attachments 13-15

discovered shell casings and apparent bullet holes in a purple Chrysler PT Cruiser, owned by ██████████ ██████████ parked directly behind the garage.

MPPD Officer J. Tejada translated for Officer Shankle when she interviewed Mr. ██████████ ██████████ Mr. ██████████ said he was Officer Diaz' tenant. Mr. ██████████ was inside his apartment when he heard gunshots. He had no prior issues with Officer Diaz. Mr. ██████████ also signed a "Refusal to Prosecute"¹⁴ form despite the damage to his Chrysler PT Cruiser. Also interviewed were tenants Trujillo and Villareal. They were in their apartments when they heard gunshots but had no further knowledge about the incident. A canvass did not produce any witnesses and no cameras were observed in the area. Warrants were obtained to search the garage, a 2010 Toyota Tacoma and the Buick Grand National. No additional evidence was found.¹⁵

e. Additional Evidence

A **canvass conducted** on June 10, 2015 by IPRA Investigators Aurora Vasquez and Vincent Jones did not produce any witnesses.¹⁶

VI. ANALYSIS

COPA issues a **Sustained** finding for the allegation that Officers Diaz violated Rule 1, which proscribes "Violation of any law or ordinance."¹⁷ Officer Shankle observed Officer Diaz enter a vehicle and drive it. Upon ordering Officer Diaz to stop and exit the vehicle, Officer Shankle smelled a strong odor of alcoholic beverage and noticed his speech was slurred.¹⁸ Officer Diaz later failed several of the field sobriety tests he performed, which were conducted by Chicago Police Sergeant Majed Assaf #1778¹⁹ and had a blood alcohol level of .185 approximately four hours after his arrest.²⁰

Additionally, Officer Diaz violated Rule 15, in that he was intoxicated while off duty. Specifically, officers are directed to conduct themselves in a manner "beyond reproach," whether on or off duty. At all times, officers may be called upon to respond to an emergency. Consequently, off duty alcohol consumption must "be moderate to allow the mental and physical requirements for immediate response. An off-duty member under the influence of any intoxicant represents a danger to himself and to others and cannot, therefore, be permitted."²¹ For that reason, Rule 15 expressly prohibits "Intoxication on or off duty." Officer Diaz went far beyond moderate alcohol consumption. He drank so much he could not recall the details surrounding the night in question. Officer Diaz' intoxication left him mentally and physically incapacitated, as evidenced by his: 1)

¹⁴ Attachment 32 at Page 32.

¹⁵ Attachments 8-11.

¹⁶ Attachment 33.

¹⁷ *Rules and Regulations of the Chicago Police Department* (Effective April 16, 2015).

¹⁸ Attachment 47 at Page 11.

¹⁹ Attachment 17.

²⁰ Attachment 18.

²¹ *Rules and Regulations of the Chicago Police Department (I)(B)(17)*.

failing of several field sobriety tests, 2) admitting to being drunk²² and 3) a “Backward Extrapolation” BAC of .233 and .282 at the time of his arrest and an actual BAC of .185 four hours after his arrest.

Moreover, Officer Diaz violated CPD’s policy prohibiting off duty officers from carrying firearms when there is a likelihood they will consume alcohol.²³ Here, Officer Diaz undoubtedly knew there was a likelihood he would consume alcohol on the night in question. He purchased cases of beer for that purpose. Nevertheless, he carried his firearm despite the inherent risks of mixing alcohol and firearms. Despite Mr. ██████ reluctance to cooperate, the totality of the circumstances shows by a preponderance of the evidence Officer Diaz caused the vehicle’s damage: 1) His high level of intoxication, 2) the firearm and casings were recovered in close proximity to the PT Cruiser, and 3) Officer Shankle hearing gunfire moments before Officer Diaz’ attempted flight. Further, Officer Diaz’ damage to the PT Cruiser violated Rule 38. Rule 38 prohibits “Unlawful or unnecessary use or display of a weapon.” Here, there is no indication that Officer Diaz’ firearm discharges into the PT Cruiser were either lawful or necessary.

Also, Officer Diaz told Officer Shankle he left the firearm in the garage, which she subsequently located in the Buick, on the driver’s seat. Officer Diaz’ decision to leave his firearm there unattended or secured violated CPD policy.²⁴ He was required to secure his firearm “in a manner that a reasonable person would believe would prohibit access by unapproved individuals, theft, or loss.” Officer Diaz failed to do that. His actions led to his arrest for Reckless Discharge of Firearm.²⁵ Applying a preponderance of the evidence standard, Officer Diaz violated the law; thereby violating Rule 1 which prohibits “Violation of any law or ordinance.” Ultimately, Officer Diaz’ actions and arrest violated Rule 2 which prohibits “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.”

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Ediberto Diaz, Star #10299, Unit 007/376

i. Officer Diaz’ Complimentary History includes, among other awards, 1 Department Commendation, 2 Complimentary Letters, 2 Emblems of Recognition-Physical Fitness and 3 Honorable Mentions. He has no Disciplinary History.

ii. Recommended Penalty by Allegation

1. Allegation No. 1

Aggravating factors include Officer Diaz’ BAC level was .185 four hours after the incident and estimated to have been between .233 and .282, more than four times the legal limit, at the time of

²² Attachment 81 at Page 13.

²³ *Chicago Police Department Uniform and Property 04-02(II)(P)*.

²⁴ *Id.* At 04-02(II)(M).

²⁵ 720 ILCS 5/24-1.5-A.

his arrest. Officer Shankle observed Officer Diaz driving a vehicle seconds prior to her placing him under arrest.

2. Allegation No. 2

See Allegation No. 1.

3. Allegation No. 3

Officer Diaz consumed enough alcoholic beverages to raise his BAC to more than four times the legal limit while armed with a weapon.

4. Allegation No. 4

Officer Diaz fired his weapon two times in a residential neighborhood and striking a tenant’s personal property, while under the influence of alcohol.

5. Allegation No. 5

Officer Diaz left his firearm on the front seat of his vehicle, with the window rolled down, in a garage accessible to building tenants.

6. Allegation No. 6

See Allegation No. 1.

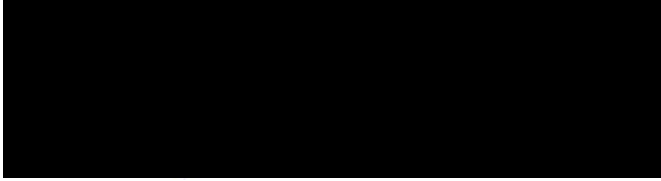
VIII. CONCLUSION:

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

Officer	Allegation	Finding / Recommendation
Officer Ediberto Diaz, Star #10299, Unit 007/376	1. Violation of Rule 1 , “Violation of any law or ordinance,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, violated Illinois Compiled Statute 625 ILCS 5/11-501(a)(1) in that he drove his vehicle while he had a blood alcohol concentration of 0.08 or more.	Sustained/Separation
	2. Violation of Rule 15 , “Intoxication on or off duty,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, had a Blood-Alcohol Concentration (BAC) over the	Sustained/Separation

	legal limit and therefore was legally intoxicated.	
	3. Violation of Rule 6 , “Disobedience of an order, whether written or oral,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, violated Uniform and Property 04-02, Section II (M), in that he was in possession of a firearm knowing there was a likelihood of consuming alcoholic beverages.	Sustained/Separation
	4. Violation of Rule 38 , “Unlawful or unnecessary use or display of a weapon,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, discharged his weapon without justification.	Sustained/Separation
	5. Violation of Rule 6 , “Disobedience of an order, whether written or oral,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, violated Uniform and Property 04-02, Section II (M), in that he failed to properly secure his weapon when it was not on his person.	Sustained/Separation
	6. Violation of Rule 1 , “Violation of any law or ordinance,” in that on April 17, 2015, at about 2255 hours, Officer Ediberto Diaz, Star #10299, Unit #376, was arrested and charged with Reckless Discharge of Firearm (720 ILCS 5.0/24-1.5-A).	Sustained/Separation

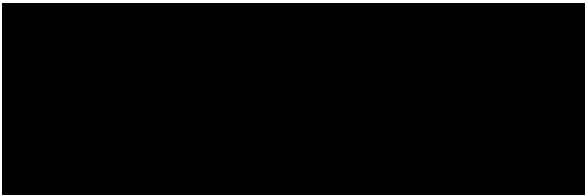
Approved:



Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

January 16, 2019

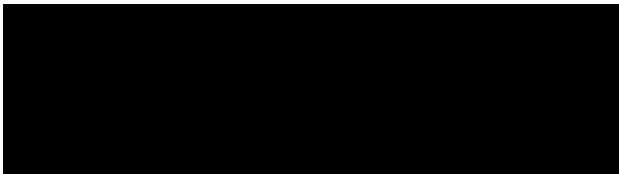
Date



Tracie Smith
1st Deputy Chief Administrator

January 16, 2019

Date



Sydney Roberts
Chief Administrator

January 16, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:	12
Investigator:	Andrew Dalkin
Supervising Investigator:	Andrew Dalkin
Deputy Chief Administrator:	Angela Hearts-Glass