



Log # 2023-0000368

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On January 27, 2023, the Civilian Office of Police Accountability (COPA) received an Initiation Report from Chicago Police Department (CPD) member, Sgt. Niki Tews, of the 025th District, regarding the accidental discharge of a firearm by Probationary Police Officer (PPO) Javier Magdaleno that occurred on January 26, 2023, at [REDACTED], inside PPO Magdaleno's second-floor bedroom. Upon review of the evidence, COPA served additional allegations that PPO Magdaleno failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his firearm. Following its investigation, COPA reached sustained findings for both allegations.

II. SUMMARY OF EVIDENCE²

On January 26, 2023, at approximately 10:30 pm, PPO Magdaleno was alone in his second-floor bedroom, changing from his work clothes.³ PPO Magdaleno removed and placed on his bed, his bulletproof vest, CPD shirt and turtleneck, and his prescribed duty weapon that was holstered through loops on his belt. PPO Magdaleno described his prescribed duty weapon as a third generation Glock 17, containing 18 rounds of CPD approved 9mm ammunition, one of which was in the chamber. Prior to placing the firearm in a safe, PPO Magdaleno stood beside his bed and attempted to clear the firearm using his CPD academy training.⁴

PPO Magdaleno unholstered his firearm, pressed the magazine release lever, and pulled the slide back twice. A cartridge ejected from the chamber and the firearm locked. PPO Magdaleno placed the ejected cartridge in the safe. He conducted a visual and physical inspection of the firearm to ensure that no cartridge was present by looking down the chamber and then by placing his pinky finger inside the chamber. Assuming that the chamber was empty, PPO Magdaleno released the lock. The slide moved forward. PPO Magdaleno re-inserted the magazine and pulled the trigger with his right shooting hand to release the trigger pressure, and the firearm discharged once. The bullet went through PPO Magdaleno's mattress and then penetrated through the floor

¹ Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

² The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including officer interviews, police reports and OEMC transmissions.

³ Immediately prior, PPO Magdaleno worked the third cycle of his training with other PPOs on the 3rd Watch, at the 012th District Station.

⁴ PPO Magdaleno had no weapons training prior to entering the CPD academy on April 25, 2022.

and ceiling of the first-floor tenants' residence, the ██████████ family.⁵ PPO Magdaleno immediately felt the loud ringing to his ears but was not injured. Prior to the date and time of the incident, PPO Magdaleno methodically went through the same process of clearing his firearm without incident.

Following the discharge, PPO Magdaleno secured his firearm in the safe and ran downstairs to check on the ██████████ family. He repeatedly knocked on their door and called out to them. When no one answered, PPO Magdaleno looked out the front door and observed the lease owner/the father⁶ and his wife approaching. The lease owner informed PPO Magdaleno that his daughter, ██████████ (██████████) texted him and told him that something had entered through the ceiling, but that everyone was okay. PPO Magdaleno explained that his firearm had accidentally discharged. ██████████ entered the vestibule and said that she was going to call the police. PPO Magdaleno remained in the vestibule and waited for the responding officers to arrive and explained what had occurred. PPO Magdaleno did not enter the ██████████ residence to view the structural damage caused by the bullet. PPO Magdaleno was more concerned about whether any member of the ██████████ family had sustained injury or needed medical treatment, which none had been injured.

PPO Magdaleno identified himself as a CPD officer to the responding officers and Sgt. Tews. PPO Magdaleno told them what happened and informed them that no one was injured. Sgt. Tews talked to the ██████████ family and then relocated to the second-floor apartment with PPO Magdaleno to continue their conversation. PPO Magdaleno told Sgt. Tews that his firearm accidentally discharged while he was clearing it. Sgt. Tews took possession of PPO Magdaleno's firearm.

PPO Magdaleno denied the allegations under direct questioning. PPO Magdaleno stated that he was embarrassed and felt bad about the incident and would never have pulled the trigger if he could do it all over again.⁷

The Initiation Report of Sgt. Tews documented that she responded to the scene regarding a call of Shots Fired and met with the involved parties. ██████████ informed Sgt. Tews that she heard what she thought was a single gunshot, went to a rear bedroom to investigate, and discovered a hole in the ceiling and the mattress and a metal fragment on the floor. ██████████ ██████████ brothers, ██████████ and ██████████ spoke to Sgt. Tews. The brothers related that they were seated together on another bed, when the bullet entered through their ceiling and struck the other bed across from them. The fragment landed on the floor. PPO Magdaleno told Sgt. Tews that he had just returned from working his tour in the 012th District. He was in his bedroom, unloading his duty weapon to place it in a locked safe, when the firearm accidentally discharged, with one round going through the floor. He immediately went downstairs to check on the ██████████ family and was informed that the police had already been called. PPO Magdaleno waited on scene

⁵ The ██████████ family is a family of six – the two parents who are the lease owners, a daughter, and three sons. They have lived in the building for approximately three years. PPO Magdaleno had a good relationship with them prior to the incident and listed the father as a reference when he applied to become a Chicago Police Officer. Since the incident, PPO Magdaleno has avoided the ██████████ family because he thinks they no longer like him.

⁶ PPO Magdaleno did not remember the name of the father or his wife.

⁷ Att. #39, Att. #41

to speak with the responding officers in person. Sgt. Tews ensured that no one was injured or in need of medical treatment, recovered PPO Magdaleno's firearm and magazine, which contained 17 rounds of ammunition, and inventoried the same. PPO Magdaleno accompanied Sgt. Tews to the 025th District Station for further investigation, following which, PPO Magdaleno's firearm and magazine were returned to him.⁸

The Tactical Response Report (TRR), the Original Case Incident Report and the related Supplementary Report, RD#JG130941, corroborated the information that was documented in Sgt. Tews' Initiation Report. The TRR additionally documented that the actions of PPO Magdaleno surrounding the discharge were not in compliance with Department Policy and Directives.⁹

The OEMC records documented that ██████████ called "911" and reported that her neighbor, whom she identified as "Javier," accidentally fired one shot from a gun from his second-floor apartment that resulted in a hole through the ceiling of a bedroom of her first-floor apartment. ██████████ further reported that the bullet landed on the bedroom floor and that no one was injured.¹⁰

III. ALLEGATIONS

PPO Javier Magdaleno:

1. Was inattentive to duty, causing his firearm to accidentally discharge.
- Sustained, Violation of Rule 2, 3, and 10.
2. Failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his firearm.
- Sustained, Violation of Rule 2 and 3, and General Order G03-06, V.

IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any evidence that caused COPA to question the credibility of any of the individuals who provided statements or information.

V. ANALYSIS¹¹

COPA finds that **Allegation #1 against PPO Javier Magdaleno**, that he was inattentive to duty, causing his firearm to accidentally discharge be **Sustained**. PPO Magdaleno denied the allegation under direct questioning by COPA. However, earlier in his statement, PPO Magdaleno

⁸ Att. #2.

⁹ Att. #32, Att. #3, Att. #4, Att. #5.

¹⁰ Att. #24.

¹¹ For a definition of COPA's findings and standards of proof, *see* Appendix B.

told COPA that the accidental discharge occurred when he assumed that he had cleared the chamber and intentionally pulled the trigger to release the trigger pressure. PPO Magdaleno told Sgt. Tews that he accidentally discharged his firearm while attempting to clear it. PPO Magdaleno's statements of embarrassment and avoidance of the [REDACTED] family and his presumption that they no longer liked him are further evidence that PPO Magdaleno was inattentive to duty when he caused his firearm to accidentally discharge. PPO Magdaleno violated Rules 2, 3, and 10.

COPA finds that **Allegation #2 against PPO Javier Magdaleno**, that he failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his firearm be **Sustained**. During earlier questioning, PPO Magdaleno told COPA that he failed to notify OEMC that he discharged his firearm. However, under direct questioning, PPO Magdaleno denied the allegation, stating that he informed the officers of the discharge in person, following their arrival. General Order G03-06, V requires that CPD officers immediately notify OEMC whenever there is a discharge of a firearm, provide all relevant information, and request additional resources. PPO Magdaleno did not do this. PPO Magdaleno, by his own admission, stated that he did not notify OEMC of the discharge – that he intentionally waited until officers arrived at the scene to inform them of the discharge. PPO Magdaleno violated Rule 2 and 3 and General Order G03-06, V.

VI. DISCIPLINARY RECOMMENDATION

a. PPO Javier Magdaleno

i. Complimentary and Disciplinary History¹²

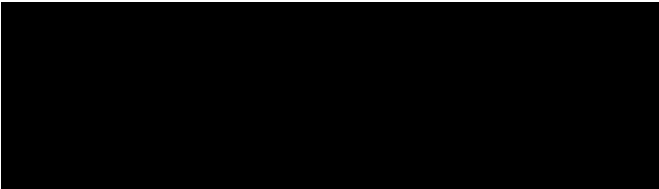
PPO Javier Magdaleno has yet to receive any awards but has received a reprimand for tardiness. He has no sustained disciplinary history since his date of appointment of April 25, 2022.

ii. Recommended Discipline

Here, COPA found that PPO Magdaleno was inattentive to duty, causing his firearm to accidentally discharge and failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his firearm, violating Rules 2, 3, and 10. Because of his lack of disciplinary history, COPA recommends that PPO Magdaleno be 1 to 5 Suspension Days.

¹² Attachment ___.

Approved:



Angela Hearts-Glass
Deputy Chief Investigator

3-31-2023

Date

Appendix A**Case Details**

Date/Time/Location of Incident:	January 26, 2023/10:30pm/[REDACTED] (second floor)
Date/Time of COPA Notification:	January 27, 2023
Involved Member #1:	PPO Javier Magdaleno, Star #18930, Employee ID # [REDACTED], Date of Appointment, April 25, 2022, Unit: 012 th District, Gender: Male, Race: White Hispanic

Applicable 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 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.
- Rule __:** *[Insert text of any additional rule(s) violated]*

Applicable Policies and Laws

- General Order G03-06, Firearm Discharge and Officer-Involved Death Incident Response and Investigation, V. (effective April 15, 2021 to present).

Appendix B

Definition of COPA’s Findings and Standards 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** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.¹³ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”¹⁴

¹³ 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 is found to be more probably true than not).

¹⁴ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

Appendix C

Transparency and Publication Categories

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation