



Log # 2020-2098

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On May 31, 2020, the Chicago Police Department's (CPD) Crime Prevention and Information Center (CPIC) notified the Civilian Office of Police Accountability (COPA) of a weapon discharge incident by on-duty Police Officer Andres Cuenca, at approximately 9:25 pm, at 4014 W. North Avenue.² In the hours following the shooting, COPA learned that Officer Andres Cuenca unintentionally discharged his firearm while responding to a call of people looting.³ Upon review of the evidence, COPA served and Sustained the allegation that Officer Cuenca was inattentive to duty in that his weapon unintentionally discharged.

II. SUMMARY OF EVIDENCE⁴

On May 31, 2023, Officer Cuenca was called into work on his regular day off due to ongoing protests and massive looting around the city.⁵ Officer Cuenca was in uniform and riding in a marked squad vehicle.⁶ Officer Cuenca was partnered with Officer Felix Batista.⁷ Neither officer was wearing a body worn camera (BWC)⁸ on the date of the incident.⁹ Officers Cuenca and Batista heard a call over the radio that more officers were needed on North Avenue and Pulaski Road. As the officers drove in that direction, they noticed looters coming out of Foot Locker with merchandise in their hands.¹⁰ When Officers Cuenca and Batista exited their squad vehicle, they observed a dark-colored SUV with two unidentified females attempting to jump inside that vehicle. The unidentified females took off running eastbound when they saw the officers.¹¹ Officer Cuenca

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 Att. 17 – CPIC email.

³ Pursuant to § 2-78-120 of the Chicago Municipal Code, COPA has a duty to investigate all incidents in which a Chicago Police Department member discharges their firearm. Therefore, COPA determined it would be the primary administrative investigative agency in this matter.

⁴ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including officers' interviews, TRR, and event queries.

⁵ Att. 43, pg. 7, lns. 2 – 6.

⁶ Att. 43, pg. 7, lns. 11 – 18.

⁷ Att. 43, pg. 8, lns. 20 – 22; Officer Batista resigned from the CPD, effective June 15, 2023 (Att. 44).

⁸ Att. 43, pg. 9, lns. 12 – 19 and Att. 42, pg. 8, lns. 9 – 20.

⁹ There was also no In-Car Camera (ICC) video (Att. 35) or third-party video footage that captured the discharge.

¹⁰ Att. 43, pg. 13, lns. 18 – 23 and Att. 42, pg. 10, lns. 3 – 8.

¹¹ Att. 42, pg. 13, lns. 21 – 24, pg. 14, lns. 3 – 13.

observed a white¹² unknown vehicle on the scene with three occupants inside, one male and two females, and that vehicle was full of merchandise.¹³

The white vehicle attempted to drive away from the scene.¹⁴ Officer Cuenca ordered the driver of the white vehicle to turn the vehicle off. Officer Cuenca believed at that moment, he unholstered his firearm and placed it in the low ready position.¹⁵ The driver made a motion as if he turned the vehicle off and Officer Cuenca holstered his weapon. Officer Cuenca proceeded to walk toward the driver's side of the vehicle and the driver lunged the vehicle toward Officer Cuenca as if he was going to strike him.¹⁶

Officer Cuenca unholstered his weapon a second time, pointed it toward the ground, and ordered the driver again to turn the vehicle off.¹⁷ The driver lunged the vehicle at Officer Cuenca again, and Officer Cuenca attempted to create distance from the vehicle by moving toward the driver's side door.¹⁸ The driver of the vehicle floored the vehicle. Officer Cuenca felt a sharp pain in his foot and heard a bang simultaneously.¹⁹ According to Officer Cuenca, the driver²⁰ had clipped Officer Cuenca's left foot/big toe, and Officer Cuenca unintentionally pulled the trigger of his firearm.²¹ Officer Cuenca admitted that he unintentionally discharged his firearm²² during the incident.²³

III. ALLEGATIONS

Officer Andres Cuenca:

Was inattentive to duty in that his weapon, a Springfield Armory M1A, 9mm, semiautomatic pistol, serial number [REDACTED], unintentionally discharged.

- Sustained, Violation of Rules 2 and 10.

¹² While Officer Cuenca referred to the second vehicle as white in color during his interview (Att. 43, pg.14, lns. 6-7), his TRR referred to the vehicle as silver (att. 5), and Officer Batista also referred to the vehicle as silver (Att. 42, pg. 14, lns. 19-20).

¹³ Att. 43, pg. 14, lns. 5 – 9.

¹⁴ Att. 43, pg. 22, lns. 21 – 23.

¹⁵ Att. 43, pg. 14, lns. 11 – 14.

¹⁶ Att. 43, pg. 14, lns. 17 – 24, pg. 15, ln. 1.

¹⁷ Att. 43, pg. 15, lns. 3 – 6, pg. 29, lns. 11 - 14.

¹⁸ Att. 43, pg. 29, ln. 19, pg. 30, lns. 2 – 20.

¹⁹ Att. 43, pg. 30, lns. 15 – 16, pg. 31, lns. 6 – 11.

²⁰ The driver of the vehicle was never arrested or identified.

²¹ Att. 43, pg. 31, lns. 14 – 23.

²² Att. 45 – Crime Scene Processing Report, Officer Cuenca's firearm was a Springfield Armory Model XD, 9mm, semi-automatic pistol, Serial # [REDACTED]. Evidence Technicians (ETs) recovered one live round from the chamber and eighteen live rounds from the magazine, all Win 9mm Luger.

²³ Att. 43, pg. 44, lns. 18 – 21.

IV. CREDIBILITY ASSESSMENT

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

V. ANALYSIS²⁴

COPA finds Allegation #1 against Officer Cuenca, in that he was inattentive to duty when he unintentionally discharged his weapon, **Sustained**. Officer Cuenca had his firearm in his hand when he tried to create distance from the driver of the white vehicle. The driver of the vehicle ran over Officer Cuenca's foot/toe, causing him to unintentionally discharge his firearm. There was no one reportedly injured during the incident, no video footage that captured the incident, and no independent witnesses to the incident. While this was an unintentional incident, it still violated Rules 2 and 10 of the CPD. Therefore, COPA finds this allegation Sustained.

VI. DISCIPLINARY RECOMMENDATION

a. Officer Andres Cuenca

i. Complimentary and Disciplinary History²⁵

Officer Cuenca has received 57 awards and two Spars in 2023, one for Inattention to Duty and the other for Equipment Violation.

ii. Recommended Discipline

COPA found that Officer Cuenca violated Rules 2 and 10 when he unintentionally discharged his weapon. For these reasons, combined with the officer's complimentary history and disciplinary history, COPA recommends Violation Noted and Retraining.

²⁴ For a definition of COPA's findings and standards of proof, *see* Appendix B.

²⁵ Att.46.

Approved:



11-30-2023

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Case Details

Date/Time/Location of Incident:	May 31, 2020/ 9:25 p.m./ 4014 W. North Avenue
Date/Time of COPA Notification:	May 31, 2020/ 10:27 p.m.
Involved Member #1:	Andres Cuenca, star# 14877, emp.# [REDACTED], Date of Appointment: October 27, 2014, 025, Male, White Hispanic
Involved Individual #1:	Unknown

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

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.²⁶ 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.”²⁷

²⁶ 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).

²⁷ *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