

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	March 6, 2020
Time of Incident:	7:57 p.m.
Location of Incident:	2706 W. 51 <sup>st</sup> Street
Date of COPA Notification:	March 6, 2020
Time of COPA Notification:	8:35 p.m.

On March 6, 2020, Officer Hernandez, off-duty at the time, left Home Depot with his [REDACTED] and [REDACTED]. They were traveling in a Ford Taurus to the area of 53rd Street and Washtenaw Avenue to drop off his sister at her boyfriend’s house. En route to the location, they observed a dark-colored SUV following behind. When they reached 53rd Street and Washtenaw Avenue, Officer Hernandez saw that the SUV was still following them. Concerned, Officer Hernandez drove away from the area, making several turns and finally driving into the Citgo station at 51st Street and Washtenaw Avenue, where the area was better lit. As Officer Hernandez drove into the gas station, the dark-colored SUV continued to drive east on 51st Street when the rear driver occupant of the vehicle fired approximately six shots in the direction of the officer’s vehicle. Officer Hernandez returned fire while seated inside his vehicle. Officer Hernandez then proceeded west on 51st Street, where he saw police lights flashing ahead. At about 51<sup>st</sup> Street and Kedzie Avenue, Officer Hernandez exited his vehicle and reported the incident to an officer who was conducting a traffic stop.

**II. INVOLVED PARTIES**

Involved Officer #1:	Kevin HERNANDEZ, Star #17585 Employee ID # [REDACTED] Date of Appointment: November 24, 2014, Police Officer, Unit of Assignment: 022, Date of Birth: [REDACTED], 1992, male, Hispanic
Involved Individual #1:	Unknown

**III. ALLEGATIONS**

Pursuant to Section 2-78-120(c) of the Municipal Code of the City of Chicago, the Civilian Office of Police Accountability (COPA) conducts investigations into all incidents, including those in which no allegation of misconduct is made, in which a Department member discharges a firearm

in a manner that potentially could strike another individual.<sup>1</sup> In connection with this investigation, COPA did not find evidence to support any allegations against Officer Hernandez.

#### IV. APPLICABLE RULES AND LAWS

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##### General Orders

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1. General Order 03-02: Use of Force; effective February 29, 2020
2. General Order 03-06: Firearm Discharge and Officer Involved Death Incident Response and Investigation; effective February 29, 2020
3. General Order G03-02-03: Firearm Discharge Incidents-Authorized Use and Post-Discharge Administrative Procedures; effective February 29, 2020

#### V. INVESTIGATION<sup>2</sup>

##### a. Interviews

In a statement to COPA on March 23, 2020, Officer Hernandez, #17585, stated that on the incident date, he was off-duty,<sup>3</sup> dressed in jeans, a sweater, and a construction type of jacket.<sup>4</sup> According to Officer Hernandez, he drove his father's black Ford Taurus to Home Depot, near 47<sup>th</sup> Street and Western Avenue, with his [REDACTED], [REDACTED], and [REDACTED], [REDACTED], to purchase paint.<sup>5</sup> Officer Hernandez explained that once they left the store, his brother was seated in the rear, behind the driver's seat, and his sister was in the front passenger seat. Upon leaving the parking lot, Officer Hernandez drove southbound on Western and westbound on 51<sup>st</sup> Street, at which point he noticed the subject vehicle, a black SUV, less than one car length behind him, but he did not think anything of it at the time. Officer Hernandez continued to travel westbound until he reached Washtenaw Avenue. Officer Hernandez then made a southbound turn on Washtenaw to 53<sup>rd</sup> Street with plans to drop off his [REDACTED] at her boyfriend, [REDACTED] house.

Officer Hernandez stated that once he turned southbound on Washtenaw, he looked to see if the vehicle was still behind him. He noticed that the SUV was, in fact, behind him, which placed him on high alert. According to Officer Hernandez, the SUV would tailgate him then, create distance then tailgate him again. Officer Hernandez stated that he informed his siblings to stay alert as the SUV followed them. Once Officer Hernandez reached 53<sup>rd</sup> Street, he turned eastbound and stopped his vehicle at the corner of 53<sup>rd</sup> and Washtenaw Avenue. The subject SUV continued southbound on Washtenaw Avenue and stopped about a house south of the corner on 53<sup>rd</sup> Street. Officer Hernandez asked his sister if the vehicle was familiar to the area, and she informed him that it was not. Officer Hernandez said he tried to look inside the vehicle with negative results.

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<sup>1</sup> General Order G03-06 (IV)(B), effective February 29, 2020

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

<sup>3</sup> Officer Hernandez stated that he was on vacation from work, which started on March 1, 2020.

<sup>4</sup> Attachments 30, 32.

<sup>5</sup> COPA made multiple attempts to interview [REDACTED] that were not successful.

Officer Hernandez stated that he created distance by driving southbound down the alley between Washtenaw and Talman Avenues from 53<sup>rd</sup> to 54<sup>th</sup> Street. As he was driving down the alley, Officer Hernandez looked in the rearview mirror and saw the SUV driving directly behind him, approximately three to four feet apart. At that moment, the vehicle's lights were disengaged. Officer Hernandez continued to 54<sup>th</sup> Street and engaged his turn signal to show that he was a law-abiding citizen. He continued westbound on 54<sup>th</sup> Street to Fairfield Avenue, turned northbound to 53<sup>rd</sup> Street, westbound on 53<sup>rd</sup> Street, then northbound again in the alley between Fairfield Street and California Avenue. According to Officer Hernandez, he lost sight of the vehicle once he turned northbound on Fairfield Avenue. According to Officer Hernandez, he saw the subject SUV again near 52<sup>nd</sup> Street and California Avenue. Officer Hernandez stated that the SUV's lights were again disengaged at that moment.

At that point, he looked back to attempt to get the vehicle's plate number, and he told his [REDACTED] to call 911, but she was unsuccessful because the events unfolded very quickly. Officer Hernandez stated that they were near 51<sup>st</sup> Street and California Avenue. The vehicle began to tailgate Officer Hernandez again, at which point he saw a well-lit gas station at the corner of 51<sup>st</sup> and Washtenaw Avenue, and he had knowledge that there was a police camera located on that corner. Officer Hernandez stated that he drove into the gas station since it was well-lit and wanted to avoid confrontation. At that time, he put his weapon on his lap. Officer Hernandez lowered his window to show his face so they would not mistake him for somebody else. Officer Hernandez described that he saw the driver's side window was lowered approximately four inches, then the rear driver's side passenger completely lowered the window. At that point, Officer Hernandez saw three Hispanic males inside the vehicle.

According to Officer Hernandez, the rear passenger stuck an item he perceived as a firearm out of the window. Officer Hernandez heard a gunshot and saw a muzzle flash. Officer Hernandez immediately told his siblings to take cover, and he looked down and heard what appeared to be gunshots striking his vehicle. Officer Hernandez stated that he looked back out of his window and saw the subject still firing in his direction. Fearing for his life and that of his family, Officer Hernandez discharged his firearm approximately three to four times<sup>6</sup> at the subject to eliminate the threat. Officer Hernandez stated that the vehicle slowly continued eastbound on 51<sup>st</sup> Street and then turned southbound on Washtenaw Avenue. Officer Hernandez stated that his brother informed him that he had been shot in the leg. Officer Hernandez explained that he wanted to get his [REDACTED] to safety and create distance from the subject SUV, so he drove westbound on 51<sup>st</sup> Street, where he saw police lights in the distance.

Officer Hernandez said he drove to 51<sup>st</sup> and Kedzie Avenue, where he saw a marked Department SUV with its lights activated. Just before he reached Kedzie Avenue, Officer Hernandez told his sister to call 911 to report the incident. He then pulled up to the police SUV and reported the incident to the officer, now identified as Officer Tewelde Tesfai, #14119, and asked him to call an ambulance for his brother's injury.

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<sup>6</sup> Officer Hernandez stated that he believed he discharged his off-duty firearm, a Glock 26 9mm pistol, 4 times. He added that he had his firearm fully loaded on the date of incident. The magazine holds 10 live rounds plus one in the chamber.

In a statement to COPA on June 12, 2020, Officer Tesfai stated that he worked an overtime traffic detail in the 009th District on the date of the incident.<sup>7</sup> Officer Tesfai explained that he was conducting a traffic stop at 51<sup>st</sup> Street and Kedzie Avenue when an off-duty police officer pulled up behind him and informed him that he had just been shot near 51<sup>st</sup> Street and Washtenaw Avenue. Officer Hernandez also told him that his brother was injured. Officer Tesfai called for an ambulance and reported the incident over the radio.

#### b. Digital Evidence<sup>8</sup>

**Multiple 3rd Party Videos** show security footage from the addresses surrounding the incident. The footage captures Officer Hernandez's path of travel from Home Depot<sup>9</sup> to the Citgo Gas Station.<sup>10,11</sup> Video obtained from Home Depot depicts Officer Hernandez and his siblings arriving. Officer Hernandez and his siblings exit the store and enter his vehicle. The vehicle leaves the Home Depot parking lot and travels southbound on Western Boulevard. A dark-colored SUV travels behind Officer Hernandez's vehicle as they travel southbound on Western.

**POD 7398 video**, located at 5101 S. Washtenaw Avenue, shows that at approx. 7:53:40 depicts a black sedan turning south onto Washtenaw<sup>12</sup> as a black SUV follows closely behind. At approx. 7:57:53, a dark-colored sedan, driving eastbound, enters the Citgo gas station. A dark-colored SUV drives behind the vehicle, and several muzzle flashes are seen coming from the SUV (it appears the rear driver window is rolled down). The SUV then turns south onto Washtenaw. The black sedan exits the Citgo and drives back westbound.

**Office of Emergency Management and Communications (OEMC) records** capture multiple calls to 911 of shots fired around 51<sup>st</sup> Street, between California and Washtenaw Avenues.<sup>13</sup> Included in these 911 calls is a call from a female,<sup>14</sup> [REDACTED], who reported that she was driving with her [REDACTED] near 51st Street and Kedzie Avenue, and someone shot at them from a black truck. [REDACTED] stated that her [REDACTED] is a Department officer. She also related that her [REDACTED], seated in the rear, was shot in the leg. [REDACTED] reported that the shooting occurred at 51st Street and Washtenaw Avenue. She also provided Officer Hernandez's name and district of assignment, and star number.

The radio transmissions document Beat 3287, now identified as Officer Tesfai, reported an emergency. Officer Tesfai informed dispatch that he had a person shot with a graze wound at 51st Street & Kedzie Avenue. Additionally, Officer Tesfai informed dispatch that the person was off-duty, and the officer also returned fire.<sup>15</sup> Officer Tesfai requested an ambulance for the person grazed in the left leg. Officer Tesfai informed dispatch that the address of occurrence was 51<sup>st</sup>

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<sup>7</sup> Attachments 27, 38.

<sup>8</sup> COPA reviewed body worn camera footage of responding officers. Since the BWCs were of responding officers, the police involved shooting was not captured.

<sup>9</sup> Home Depot located at 4555 S. Western Boulevard in Chicago, Illinois.

<sup>10</sup> Citgo Gas Station located at 2700 W. 51<sup>st</sup> Street.

<sup>11</sup> Attachments 2, 3, 8-16.

<sup>12</sup> Attachment 19.

<sup>13</sup> Attachments 25.

<sup>14</sup> Captured under [REDACTED] 2006614790, attachments 23 and 25.

<sup>15</sup> See Att. 25 – OEMC Dispatch Communication

Street and Washtenaw Avenue. An unidentified officer informed dispatch that a GMC Acadia was reported traveling southbound on 51<sup>st</sup> Street and Washtenaw Avenue.<sup>16</sup>

### c. Physical Evidence

The **Crime Scene Processing Report** documents that Evidence Technicians (ETs) were assigned to process the two scenes of this incident,<sup>17</sup> which consisted of taking digital photographs<sup>18</sup> and video of the scenes and photographs of the identified evidence.<sup>19</sup> Additional evidence, ETs recovered six fired cartridge casings head stamped Sig 9mm Luger from the street and sidewalk (Crime Scene Marker 1-6), two bullet fragments from the gas station lot pavement (Crime Scene Marker 7-8), two fired cartridge casings head stamped WIN 9mm Luger +P recovered from the Gas station lot pavement (Crime Scene Marker 9-10), and one fired cartridge casing head stamped WIN 9 mm Luger +P recovered under front wiper blade of Officer Hernandez's vehicle (Crime Scene Marker 11).

A breakdown of Officer Hernandez's Glock 26, 9mm semi-automatic pistol, serial number [REDACTED] was conducted. The firearm had one live cartridge in the chamber and six live cartridges in the magazine.<sup>20</sup> All the head stamps matched "WIN 9MM LUGER + P."

The **Chicago Police Department Forensic Firearms Lab** received the evidence listed above.<sup>21</sup> The Crime Scene Processing Report, number [REDACTED], documents that the lab test fired the Glock Model 26, 9mm firearm belonging to Officer Hernandez and compared the results to the fired cartridge casings assigned Crime Scene Markers 9-11. A preliminary evaluation of the three (3) fired cartridge cases determined to be fired by Officer Hernandez's firearm. The fired cartridge casings assigned Crime Scene Markers 1-6 were determined to be fired from a second firearm.

### d. Documentary Evidence

The **COPA Preliminary Report**<sup>22</sup> and **Major Incident Notification Report**<sup>23</sup> contain the information identified and obtained in the preliminary stages of the investigation, which is consistent with information gathered throughout the investigation.

The **Tactical Response Report of Officer Kevin Hernandez**<sup>24</sup> documents that on March 6, 2020, at 7:57 p.m.<sup>25</sup> Officer Hernandez was off-duty when an unknown subject used force likely to cause death or great bodily harm. The subject fired at Officer Hernandez with a semi-automatic

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<sup>16</sup> Captured under attachment 25, Z6 @ 1:50-5:38.

<sup>17</sup> OIS Scene / Officer Hernandez's vehicle scene.

<sup>18</sup> Attachment 52.

<sup>19</sup> Attachment 39.

<sup>20</sup> The magazine was noted to have a 10-round capacity.

<sup>21</sup> Attachment 41.

<sup>22</sup> Attachment 1.

<sup>23</sup> Attachment 46.

<sup>24</sup> In his statement to COPA, Officer Hernandez made three verbal changes to his TRR. He stated that he discharged his firearm three to four times but was unsure at the time of the incident. Additionally, Officer Hernandez stated that he also made movements to avoid attack and he clarified that he discharged at the person shooting from inside of the vehicle and not at the vehicle itself.

<sup>25</sup> Attachments. 21, 31.

pistol. In self-defense, Officer Hernandez responded by creating a zone of safety and discharging his firearm three times at the subject.

The Chicago Police Department's Detective Division provided a copy of their **detective file**.<sup>26</sup> The documents in the file contained information consistent with the information gathered throughout COPA's investigation.

## VI. LEGAL STANDARD

### a. Standard of Proof.

COPA applies a preponderance of the evidence standard to determine whether allegations of excessive force are warranted or well-founded.<sup>27</sup> A **preponderance of evidence** is evidence indicating that it is more likely than not that the alleged conduct occurred.<sup>28</sup> If the evidence COPA gathers in an investigation establishes that it is more likely than not that misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

### b. Applicable Department Policy.

#### 1. Use of Force

Department Policy states that the "Department's highest priority is the sanctity of life."<sup>29</sup> Department members are expected to act with the utmost regard for preserving human life and must comply with Department use of force orders.<sup>30</sup> Department policy in place on the date of the incident provides that a Department member's use of force must be evaluated based on the totality of the circumstances known by the member at the time of the incident, from the perspective of a reasonable Department member in the same or similar circumstances, and without the benefit of 20/20 hindsight.<sup>31</sup> Department policy recognizes that Department members must "make split-

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<sup>26</sup> Attachment 45.

<sup>27</sup> See Municipal Code of Chicago, Ch. 2-78-110

<sup>28</sup> *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.").

<sup>29</sup> General Order G03-02 (effective February 28, 2020) (hereinafter the "Use of Force Order").

<sup>30</sup> Questions as to the propriety of a police officer's use of force, including excessive or deadly force, are also typically evaluated under state law as well as the 4<sup>th</sup> Amendments to the United States Constitution and Illinois state Constitution. However, CPD policy in place at the time of the incident in this case prohibited the use of deadly force under circumstances that would have been permissible under state law and 4<sup>th</sup> amendment law, meaning that CPD policy is *more* restrictive than state law and federal 4<sup>th</sup> amendment law. COPA's analysis therefore focuses solely on whether Officer Hernandez's use of deadly force complied with CPD policy in place at the time of the incident, March 6, 2020. To the extent COPA cites to judicial decisions in its analysis, it does so solely as an aide to interpretation of common concepts or terms (such as the meaning of "objectively reasonable").

<sup>31</sup> Use of Force Order, section II.D.

second decisions – in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”<sup>32</sup>

Department General Order entitled “Use of Force” provides that a member’s use of force must be “objectively reasonable, necessary, and proportional.”<sup>33</sup> Each of these elements is further explained in Department policy, as follows:

- Objectively Reasonable: In evaluating use of force, Department policy provides that the critical issue is whether the Department member’s use of force was objectively reasonable under the totality of the circumstances at the time force is used. Although “reasonableness” cannot be precisely defined, Department policy states the following non-exclusive list of factors can be considered:
  - “whether the subject is posing an imminent threat;
  - the risk of harm, level of threat, or resistance presented by the subject; and
  - the subject’s proximity or access to weapons.”<sup>34</sup>
- Necessary. Department members are limited to using “only the amount of force required under the circumstances to serve a lawful purpose.”<sup>35</sup>
- Proportional. A Department member’s use of force must be proportional to the “threat, actions, and level of resistance offered by a subject.”<sup>36</sup>

To reduce or avoid the need for use of force, Department policy directs members to use de-escalation techniques known as “Principles of Force Mitigation” when it is safe and feasible under the circumstances.<sup>37</sup> These techniques include:

- “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force. This includes using persuasion, advice, instruction, and warning prior to any use of force;
- “Tactical Positioning,” which involves use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and
- Using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time

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<sup>32</sup> Use of Force Order, section II.D.

<sup>33</sup> Use of Force Order, section III.B.

<sup>34</sup> Use of Force Order, section III.B.1(a)-(c).

<sup>35</sup> Use of Force Order, section III.B.2.

<sup>36</sup> Use of Force Order, section III.B.3.

<sup>37</sup> Use of Force Order, section III.B.4; *see also* G03-02-01(III) (the “Force Options Order”).

for continued communication, and allow for the arrival of additional members or special units and equipment.<sup>38</sup>

While attempting to de-escalate an encounter, Department members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.<sup>39</sup>

## **2. Use of Deadly Force.**

A Department member's use of deadly force, which includes the discharge of a weapon at or in the direction of a person subject to arrest, is controlled by Department policy restrictions in addition to those described above. In particular, Department members may only use deadly force as a "last resort" when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.<sup>40</sup> A threat is defined as "imminent" when it is objectively reasonable to believe that:

- the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken;
- the subject has the means or instruments to cause death or great bodily harm; and
- the subject has the opportunity and ability to cause death or great bodily harm."

The Department's definition of "last resort" re-enforces the principle that a Department member may only use deadly force when presented with an "imminent threat."<sup>41</sup>

The Force Options Order outlines the force options available to Department members when met with resistance or threats.<sup>42</sup> The Force Options Order authorizes the use of deadly force in situations involving an "assailant," which is defined as a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.<sup>43</sup>

## **3. Firing at, into, or from a moving vehicle.**

Department policy restricts members from firing at, into, or from a moving vehicle unless such force is a last resort and necessary based on specific circumstances confronting the officer to protect against an imminent threat to life or to prevent great bodily harm to the officer or another person.<sup>44</sup>

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<sup>38</sup> Force Options Order, section III.

<sup>39</sup> Use of Force Order, section III.B.4.

<sup>40</sup> Use of Force Order, section III.C.3.

<sup>41</sup> *Id.*

<sup>42</sup> Use of Force Order, section III.C.

<sup>43</sup> Force Options Order, section IV.C.2.

<sup>44</sup> General Order G03-02-03 (effective February 29, 2020).



#### **4. Required Notifications.**

Department members involved in a firearms discharge are required to immediately notify the Office of Emergency Management, provide all relevant information, and request additional resources.<sup>45</sup>

### **VII. LEGAL ANALYSIS**

#### **a. Officer Kevin Hernandez's use of force was authorized under Department policy.**

As noted above, COPA has completed its investigation and determined that the available evidence did not support allegations of excessive force against Officer Hernandez. In making the determination, COPA weighed the credibility and reliability of all available statements and evidence discussed above.

##### **1. Officer Hernandez attempted to de-escalate the situation.**

In the instant case, once Officer Hernandez observed that the subject vehicle was following him, he took measures to distance his vehicle to create a zone of safety. He then pulled into a well-lit area to avoid a confrontation. Officer Hernandez informed COPA during his interview that he also lowered his window to show his face to the suspect vehicle in case they had mistaken him for someone else. COPA finds Officer Hernandez appropriately attempted to avoid the use of force in this instance.

##### **2. Officer Hernandez faced an assailant whose actions constituted an imminent threat of death or great bodily harm.**

COPA finds that the person who fired his weapon at Officer Hernandez was an assailant whose actions constituted an imminent threat. First, the unknown person's actions, firing on Officer Hernandez and his family, were immediately likely to cause death or great bodily harm unless Officer Hernandez took action. Second, video and physical evidence establish that the person had a weapon and fired that weapon from the rear of the SUV. Finally, the unknown person had the opportunity and ability to cause death or great bodily harm by firing their weapon into an occupied vehicle. Officer Hernandez was authorized to use deadly force because he faced an imminent threat.

##### **3. Officer Hernandez's use of force was objectively reasonable, necessary, and proportional.**

Officer Hernandez did not discharge his weapon until after his vehicle was fired upon. Furthermore, he stopped firing and attempted to flee the encounter. Officer Hernandez fired three times in response to the six shots fired in his direction. Based on these facts and the fact that he faced an imminent threat, COPA finds that Officer Hernandez's firearm discharge was objectively reasonable, necessary, and proportional to the threat he faced.

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<sup>45</sup> General Order G03-06.

**4. Officer Hernandez’s firing from and into a vehicle was authorized under Department policy.**

As discussed above, COPA finds that Officer Hernandez faced an imminent threat. For that reason, COPA finds that his firearm discharge from and into a vehicle was authorized under Department policy.

**b. Officer Hernandez’s notifications were adequate.**

Officer Hernandez informed COPA that he instructed his [REDACTED] to call 911 twice during the incident. The records obtained from the Office of Emergency Management and Communications reveal multiple 911 calls of shots fired related to the incident, including a call from [REDACTED], Officer Hernandez’s [REDACTED]. During the call, she provides details relating to the shooting in addition to Officer Hernandez’s star number and district of assignment. Officer Hernandez also sought out an on-duty officer to tell him of the incident and that he fired his weapon. COPA finds Officer Hernandez’s notifications in this instance reasonable and adequate under the circumstances.

Approved:

[REDACTED]

*Sharday Jackson*  
*Deputy Chief Administrator – Chief Investigator*

January 30, 2023

Date

[REDACTED]

*Andrea Kersten*  
*Chief Administrator*

January 30, 2023

Date