

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	April 30, 2021 / 8:40pm / 10300 S Halsted ST Chicago IL 60628.
Date/Time of COPA Notification:	April 30, 2021 / 11:23pm
Involved Officer #1:	Hernandez, Kevin Star # 17585, Employee ID # [REDACTED] Date of Appointment: 24/11/14, Rank: PO, Unit of Assignment: 022, DOB: [REDACTED]/92, Male, White.
Involved Officer #2:	Butler, Kevin Star #19525, Employee ID # [REDACTED] Date of Appointment: 6/25/2018, Rank: PO, Unit of Assignment: 022, DOB: [REDACTED]/81, Male, White.
Involved Individual #1:	[REDACTED] DOB: [REDACTED]/91, Male, Black
Case Type:	Improper Search / Improper Protective Pat Down

I. ALLEGATIONS¹

Officer	Allegation	Finding/ Recommendation
Officer Hernandez	It is alleged that on April 30, 2021 at approximately 8:40pm, at or around 10300 S Halsted ST, Officer Hernandez:	Exonerated
	<ol style="list-style-type: none"> Removed [REDACTED] from his vehicle, without justification. 	Exonerated
	It is alleged that on April 30, 2021 at approximately 8:40pm, at or around 10300 S Halsted ST, Officer Hernandez:	
	<ol style="list-style-type: none"> Performed a pat down on [REDACTED] without justification. 	

¹ Formal allegations were not served.

II. SUMMARY OF EVIDENCE

In an **interview with COPA**, on May 3, 2021, the complainant [REDACTED] [REDACTED] ([REDACTED]), alleged that Officer Hernandez, Kevin had removed [REDACTED] from his vehicle and performed a protective pat down without justification. [REDACTED] told COPA investigators that Officer Hernandez instructed him to step out of the vehicle and performed a weapon pat down on the bulging pocket area of his hoody.² [REDACTED] stated that when he asked Officer Hernandez for his badge number, Officer Hernandez became angry and gave him two traffic tickets.³ [REDACTED] stated that Officer Butler confirmed that his vehicle lights were functioning properly⁴ and handed him envelopes so that he could mail his citations.⁵ [REDACTED] stated that he had to ask both of the officers for their badge numbers numerous times before the officers wrote their names down and issued their names to the complainant.⁶

Body Worn Camera (BWC) of Officer Hernandez showed that Officer Hernandez approached the complainant's vehicle. The rear vehicle lights and license plate lights were off.⁷ Officer Hernandez began his interaction with the [REDACTED] by informing him that his license plate lights and taillights were off.⁸ Officer Hernandez identifies an open container of alcohol next to the [REDACTED] and asked if he had been drinking, and [REDACTED] replied no.⁹ Officer Hernandez asked [REDACTED] if he had anything in the vehicle that was not supposed to have. When Officer Hernandez asked about the bottle of alcohol next to [REDACTED] the complainant lifted the alcohol container and indicated that it was old. Officer Hernandez instructed [REDACTED] to step out of the vehicle. [REDACTED] then exited the vehicle.¹⁰ Officer Hernandez performed a protective pat down on the bulging front pocket area of [REDACTED] hoodie.¹¹ The [REDACTED] asked Officer Hernandez for his badge number, Officer Hernandez replied, "Yeah man, its right here". [REDACTED] stated that he did not understand why he was being pulled out of the vehicle. Officer Hernandez explained to [REDACTED] that he was pulled out of the vehicle because it was illegal to have his lights were off and that he would be receiving a ticket.¹²

Officer Hernandez then showed [REDACTED] that his taillights and license plate lights were off. [REDACTED] informed Officer Hernandez that he did not understand why his lights were not functioning correctly and Officer Hernandez explained that regardless, it was illegal.¹³ The [REDACTED] asked Officer Hernandez for a copy of both officers' badges. In response, Officer Hernandez wrote down his name, badge, and gave it to [REDACTED]¹⁴ Officer Butler instructed [REDACTED] to turn his lights on.

² Att. 4 Timestamp 07:00 - 07:41

³ Att. 4 Timestamp 08:01 - 08:17

⁴ Att. 4 Timestamp 08:24 - 08:46

⁵ Att. 4 Timestamp 34:53 - 35:10

⁶ Att. 4 Timestamp 37:10 - 37:33

⁷ Att. 8 Timestamp 01:59 - 02:01

⁸ Att. 8 Timestamp 02:12 - 02:17

⁹ Att. 8 Timestamp 02:18 - 02:21

¹⁰ Att. 8 Timestamp 03:03 - 03:09

¹¹ Att. 8 Timestamp 03:17 - 03:23

¹² Att. 8 Timestamp 03:28 - 03:50

¹³ Att. 8 Timestamp 03:57 - 04:37

¹⁴ Att. 8 Timestamp 05:55 - 07:13

█████ stated that he tried to do so, and the lights were not operating. Officer Butler then gave his badge number to █████¹⁵

III. ANALYSIS AND CONCLUSION

During a valid traffic stop, an officer may order the driver and passengers out of the vehicle without violating the Fourth Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106, 112 n. 6, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977);¹⁶ *Maryland v. Wilson*, 519 U.S. 408, 412, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997). In addition, in the course of his investigation, an officer may also legally conduct a productive pat-down for weapons to ensure the safety of all parties. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889(1968). When an officer fears for their safety during a consensual encounter, they can order a civilian to submit to a protective pat-down to search for a weapon. A protective pat down is a limited search during an investigatory stop, such as the one conducted in this incident, in which an officer conducts a pat down of the outer clothing of a person for weapons for the protection of the sworn member or others in the area. If, during a protective pat-down of the outer clothing, the officer touches an object which he/she reasonably believes is a weapon, the officer may reach into that area of the clothing and retrieve the object.¹⁷

While █████ argues that the Officer Hernandez improperly searched him, based upon the BWC Hernandez conducted a protective pat-down of █████ when he observed a bulge in the front pocket of █████ sweatshirt. Furthermore, in his interview with COPA investigators, █████ voluntarily admitted that there was a bulge in his sweatshirt pocket.¹⁸ Based upon this observation, Officer Hernandez was justified in performing a protective pat down of Plaintiff's garments to ensure he was unarmed. Thus, just as the stop of █████ vehicle was justified, so was Hernandez' pat down of the █████

Based upon the facts and evidence, including the BWC footage, statement offered by the complainant █████ █████ and the citations issued, COPA finds by clear and convincing evidence that Officer Hernandez actions were within policy. Officer Hernandez explained the reason for the traffic stop to the complainant. Officer Hernandez additionally explained to the complainant the reason for the citations the complainant received. Officer Hernandez and Officer Butler provided their name and badge number upon request. In addition, both officers had their badge numbers clearly displayed at all times. Furthermore, Hernandez pat-down of █████ was reasonable based on the circumstances. Finally, both officers remained professional throughout the duration of the traffic stop with no misconduct.

Therefore, COPA finds Officer Hernandez **Exonerated**.

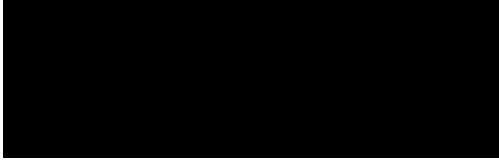
¹⁵ Att. 6 Timestamp 08:41 – 09:10

¹⁶ In *Mimms*, the State freely conceded the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior. It was apparently his practice to order all drivers out of their vehicles as a matter of course whenever they had been stopped for a traffic violation. The State argued that this practice was adopted as a precautionary measure to afford a degree of protection to the officer and that it may be justified on that ground. Establishing a face-to-face confrontation diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault. *Id.* at 333.

¹⁷ Special Order S04-13-09

¹⁸ Att. 4 Timestamp 15:15; 16:33

Approved:



7/26/2021

Matthew Haynam
Deputy Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	7
Investigator:	Kenneth Cabell
Supervising Investigator:	Dortricia Penn
Deputy Chief Administrator:	Matthew Haynam