

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	July 29, 2022 / 3:09 A.M. / 6400 W. Higgins Avenue
Date/Time of COPA Notification:	July 29, 2022 / 3:43 A.M.
Involved Officer #1:	Sammy Encarnacion, Star No. 11790, Employee No. [REDACTED] Date of Appointment: June 29, 2015, Rank: Police Officer, Unit of Assignment: 016/376, DOB: [REDACTED] 1989, Male, White Hispanic
Involved Officer #2:	Daniel Mersch, Star No. 14653, ¹ Employee No. [REDACTED] Date of Appointment: June 29, 2015, Rank: Police Officer, Unit of Assignment: 016, DOB: [REDACTED] 1989, Male, White
Involved Individual #1:	[REDACTED] DOB: [REDACTED] 1995, Male, White Hispanic
Involved Individual #2:	[REDACTED] DOB: [REDACTED] 1993, Male, White Hispanic
Case Type:	OIS – No Hits

I. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department (CPD) member discharges their firearm. As a result of its investigation, COPA made the following allegations and findings:

Officer	Allegation	Finding
Officer Sammy Encarnacion	It is alleged by the Civilian Office of Police Accountability that on or about July 29, 2022, at approximately 3:09 A.M., at or near 6400 W. Higgins Avenue, Officer Sammy Encarnacion committed misconduct through the following acts or omissions, by: 1. Discharging his firearm at or in the direction of [REDACTED] without justification, in violation of General Order G03-02.	Sustained

¹ At the time of the incident, Daniel Mersch held the rank of Police Officer. He has since been promoted to Sergeant and has been assigned a new star number, 2089.

2. Discharging his firearm at or in the direction of [REDACTED] without justification, in violation of General Order G03-02.	Sustained
3. Failing to comply with Special Order S03-14 by failing to timely activate his body worn camera.	Sustained

II. APPLICABLE RULES AND LAWS

Rules²

1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 5: Failure to perform any duty.
3. Rule 6: Disobedience of an order or directive, whether written or oral.
4. Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
5. Rule 10: Inattention to duty.
6. Rule 38: Unlawful or unnecessary use or display of a weapon.

General Orders³

1. G03-02: De-Escalation, Response to Resistance, and Use of Force (effective April 01, 2021 to present)
2. G03-02-01: Response to Resistance and Force Options (effective April 01, 2021 to present)
3. G03-02-03: Firearm Discharge Incidents- Authorized Use and Post-Discharge Administrative Procedures (effective April 15, 2021 to present)
4. G03-06: Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021 to present)

Special Orders

1. S03-14: Body Worn Cameras (effective April 30, 2018 to present)

² Police Board of Chicago, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 1, 2010) <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

³ Department general and special orders, also known as directives, "are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police." Department Directives System, General Order G01-03; *see also* Chicago Police Department Directives System, *available at* <http://directives.chicagopolice.org/#directive> (last accessed Nov. 21, 2022).

III. SUMMARY OF EVIDENCE⁴

On July 29, 2022, at approximately 4:31 A.M., COPA Investigators responded to the scene of an officer involved shooting in the vicinity of 6400 W. Higgins Avenue. Based on its investigation, COPA alleges that Officer Sammy Encarnacion (Officer Encarnacion) fired his firearm without justification at or in the direction of ██████████ (██████████ and ██████████ (██████████ who had just been involved in a traffic crash, and that he failed to timely activate his body worn camera (BWC) during the incident. In reaching its factual findings, COPA reviewed numerous BWC videos including those of Officers Encarnacion⁵ and his partner, Officer Daniel Mersch (Officer Mersch),⁶ an In-Car Camera (ICC) video from the officers' CPD vehicle,⁷ third-party videos capturing the incident,⁸ the statements of Officers Encarnacion⁹ and Mersch,¹⁰ the CPD Arrest Report of ██████████¹¹ an Original Case Incident Report (OCIR),¹² Officer Encarnacion's Tactical Response Report (TRR),¹³ Bureau of Internal Affairs (BIA) Synoptic Reports,¹⁴ Office of Emergency Management and Communications (OEMC) Event Query reports,¹⁵ CPD Attendance and Assignment reports,¹⁶ and multiple other documents related to the incident.

On July 29, 2022, at approximately 3:08 A.M., Officers Encarnacion and Mersch were on duty in the 16th District, taking a meal break in the Subway restaurant located at 5232 N. Nagle Avenue, in the Higgins Point Plaza strip mall (strip mall). At the same time, ██████████ and passenger ██████████ drove a black Dodge Charger (the Charger) in circular "doughnut" maneuvers in the parking lot of PNC Bank located at 6360 W. Higgins Avenue, located across Nagle Avenue from the Subway. The maneuvers caused the Charger's tires to emit very loud screeching sounds, which the officers heard while across the street in the Subway.

The officers exited the Subway, entered their police vehicle, and began exiting the strip mall parking lot. ██████████ and ██████████ drove very briefly westbound on Higgins Avenue before turning northbound on Nagle Avenue;¹⁷ the officers drove very briefly eastbound on Higgins Avenue before turning northbound on Nagle Avenue, after the Charger. The Charger began losing control and crashed, its passenger side striking a large streetlight post before coming to a halt a few feet further, next to the mouth of an alley that runs along the north side of PNC Bank. Upon

⁴ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁵ Att. 1.

⁶ Att. 2.

⁷ Att. 3.

⁸ Att. 14, 62.

⁹ Att. 73.

¹⁰ Att. 74.

¹¹ Att. 4.

¹² Att. 5.

¹³ Att. 6.

¹⁴ Atts. 15, 16.

¹⁵ Atts. 17 to 27.

¹⁶ Att. 64.

¹⁷ Att. 3, 14.

the crash, the Charger's trunk popped open, and a child car seat was thrown from the trunk onto the street behind the Charger.¹⁸

The officers pulled up next to the Charger's rear driver's side. [REDACTED] exited the Charger from the passenger's side and ran eastbound in the alley behind PNC Bank. As the officers began exiting their police vehicle, the streetlight's lamp head fell from its mount, striking the Charger's open trunk and the street below before coming to rest behind the Charger. As the lamp head struck the trunk and then the street, it emitted in very quick succession two loud crashing or banging sounds.¹⁹ Officer Encarnacion then yelled, "Oh, shots fired! Shots fired!"²⁰ He immediately ran to the rear of the police vehicle; [REDACTED] still running eastbound, turned partially around at the sound.²¹ As Officer Encarnacion reached the rear of the police vehicle, he fired his first shot in the direction of [REDACTED] (see Figures 1 & 2).²² As Officer Encarnacion discharged his weapon, [REDACTED] exited and ran from the driver's side of the Charger into the alley off of Nagle.



Figure 1: Screenshot of the moment Officer Encarnacion fired his first shot at 03:09:05 A.M. (from Jay's Food & Liquor Surveillance Video - Att. 14).

¹⁸ Att. 3 ICC at 00:00 to 01:07.

¹⁹ Att. 11 Synced 3 Videos, ICC and Officers Encarnacion and Mersch BWC, at 02:00 to 02:03

²⁰ *Id.* at 02:02 – 02:06.

²¹ Officer Encarnacion told COPA that he did not see a weapon in [REDACTED] hands or see him turn around. Att. 73, pgs. 15 to 16; lines 12 to 24, 1 to 5. Officer Encarnacion said his attention was focused on the individual running north ([REDACTED] Att. 73, pg. 15, lines 18 to 22.

²² Officer Encarnacion told COPA that he fired his weapon in the direction that he believed shots were being fired at him. Att. 73, Pgs. 9 to 10; lines 24, 1 to 4. He then saw an individual ([REDACTED] fleeing north and saw a weapon in the individual's hands. Att. 73, pg. 10, lines 5 to 10. Officer Encarnacion told COPA that he never fired at [REDACTED] Att. 73, pg. 19, line 24; pg. 22, lines 1 to 5. 16 to 18.



Figure 2: Zoomed in screenshot of Officer Encarnacion's first shot at 03:09:05 A.M. (from Att. 14), showing him firing in the direction of [REDACTED] running eastbound in the alley.

Officer Mersch, located near the rear passenger's side of the police vehicle, took several steps backward as Officer Encarnacion fired past him.²³ Officer Encarnacion turned back to the north, and he and Officer Mersch began chasing after [REDACTED] who was running northbound on the sidewalk next to the strip mall, toward the alley. As [REDACTED] came within a few feet of the alley, Officer Encarnacion fired a shot at him. Just as or after [REDACTED] turned the corner into the alley, Officer Encarnacion fired another shot at him (see Figure 3).²⁴ Neither shot hit [REDACTED]

²³ Att. 2 Officer Mersch BWC Video at 02:05 to 02:10.

²⁴ Att. 11 at 02:06 to 02:15.



Figure 3. Screenshot depicting BWC of Officer Encarnacion (bottom left), Officer Mersch (bottom right), and squad ICC immediately prior to Officer Encarnacion’s last shot at 03:09:13 A.M. at ██████ (from Att. 11 at 2:13). ██████ no longer visible on Officer Encarnacion’s or Officer Mersch’s BWC. Rectangles depict the entrance to the alley where ██████ was last seen.

As the officers reached the mouth of the alley, Officer Encarnacion ran southbound around the front of the strip mall to Higgins Avenue, calling for other units to assist and attempting to intercept ██████. Multiple other units soon began to arrive, search for ██████ and secure the scene. At approximately, 4:13 A.M., SWAT officers with the assistance of a Canine Unit located and apprehended ██████ on top of the strip mall roof. ██████ was found several blocks east in Austin Foster Park. Neither ██████ nor ██████ were shot, nor was either found in possession of a firearm, although a firearm was later located in a bag behind the driver’s seat of the Charger.²⁵ Neither ██████ nor ██████ was charged with possession or use of any firearm; however, ██████ was charged with driving offenses, leaving the scene of an accident, and narcotics possession,²⁶ and ██████ was released without charging.

CPD records show that on the morning of July 29, 2022, following the incident, Officer Encarnacion was tested for alcohol and drug intoxication, per CPD policy. He tested negative.²⁷ CPD records show he last completed a CPD firearm qualification on June 02, 2022.²⁸

In his statement to COPA Investigators, Officer Encarnacion stated that he exited the police vehicle to render aid following the crash.²⁹ As he exited and moved toward the rear of his police

²⁵ Att. 94: eTrack Inventory No. 15144119.

²⁶ Att. 4: Arrest Report of ██████

²⁷ Att. 66 Test Results for Officer Encarnacion.

²⁸ Att. 65 Qualification Records - Encarnacion, Sammy.

²⁹ Att. 73 Officer Encarnacion Statement Transcript at pg. 14, lines 9 to 10.

vehicle, he believed someone fired two gunshots at him.³⁰ He stated he fired one gunshot in the direction of the threat.³¹ He stated he did not fire at ██████ running eastbound in the alley,³² and that the shot was not directed toward a specific individual.³³

Officer Encarnacion stated that, seconds later, he saw ██████ running northbound. He gave verbal commands and ran after him.³⁴ As he gave chase, he saw a black handgun in ██████ right hand and saw ██████ turn toward him.³⁵ Believing ██████ was going to shoot at him, Officer Encarnacion then fired two shots at ██████³⁶ ██████ then turned and ran down the alley, and Officer Encarnacion ran around the front of the strip mall in attempts to intercept him, calling over his radio for more units to respond.³⁷

In his statement to COPA Investigators, Officer Mersch stated that at the time he exited his vehicle, the lamp head from the light pole had already fallen and struck the ground.³⁸ He then heard two gunshots from an unknown direction.³⁹ He did not see a muzzle flash because the subject vehicle had dark window tints and its trunk was open, obscuring his view.⁴⁰ He heard Officer Encarnacion say, "Shots fired,"⁴¹ and saw he had his weapon drawn.⁴² Officer Encarnacion fired his weapon, but Officer Mersch did not recall in what direction he fired.⁴³ The officers then ran after ██████ and Officer Encarnacion fired two shots at ██████. Officer Mersch did not know whether ██████ had anything in his hands or if he turned toward the officers, because ██████ was far away.⁴⁴

IV. LEGAL STANDARD

b. Standard 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;

³⁰ *Id.* at pg. 14, lines 10 to 11.

³¹ *Id.* at pg. 24, lines 13 to 15.

³² *Id.* at pg. 21, lines 22 to 24 & pg. 22, lines 1 to 18.

³³ *Id.* at pg. 24, lines 11 to 18.

³⁴ *Id.* at pg. 10, lines 5 to 7.

³⁵ *Id.* at pg. 10, lines 8 to 13; pg. 16, lines 17 to 24 & pg. 17, lines 1 to 7.

³⁶ *Id.* at pg. 10, lines 14 to 15.

³⁷ *Id.* at pg. 10, lines 17 to 24.

³⁸ Att. 74 Officer Mersch Statement Transcript at pg. 15, lines 1 to 11.

³⁹ *Id.* at pg. 15, lines 12 to 15.

⁴⁰ *Id.* at pg. 15, lines 16 to 24, pg. 16, lines 1 to 7.

⁴¹ *Id.* at pg. 19, lines 17 to 18.

⁴² *Id.* at pg. 20, lines 13 to 14.

⁴³ *Id.* at pg. 21, lines 4 to 8.

⁴⁴ *Id.* at pg. 23, lines 6 to 14.

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.⁴⁵ If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department 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.⁴⁶ 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.”⁴⁷

V. ANALYSIS AND CONCLUSION

a. Credibility assessment of Officer Encarnacion.

COPA finds Officer Encarnacion’s account of the shooting is contradicted by the available evidence. Although COPA does not have sufficient evidence to conclude that Officer Encarnacion’s account of the incident was intentionally false, COPA finds that his ability to accurately perceive the events at the time of the incident and then accurately recall the events from memory were compromised. COPA therefore finds by a preponderance of the evidence that Officer Encarnacion’s account of the incident is unreliable. The credibility of an individual relies primarily on two factors: 1) the individual’s truthfulness and 2) the reliability of the individual’s account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual’s ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory. Here, as will be discussed further below, the evidence contradicts material claims made by Officer Encarnacion regarding his observations immediately prior to and during his firearm discharge, undermining the reliability of his account.

b. Allegation #1, that Officer Encarnacion discharged his firearm at or in the direction of ██████████ without justification, is Sustained.

COPA finds by a preponderance of the evidence that, despite Officer Encarnacion’s claims to the contrary, he did fire his weapon at, or in the direction of, ██████████. In addition, COPA finds

⁴⁵ 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 has found to be more probably true than not).

⁴⁶ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016) (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

⁴⁷ *Id.* at ¶ 28.

by a preponderance of the evidence that Officer Encarnacion's firearm discharge at ██████ was not objectively reasonable, necessary, or proportional.⁴⁸ Allegation #1 is therefore Sustained.

First, despite Officer Encarnacion's claim that he was not aiming at ██████ when he fired his first shot, the video footage shows by a preponderance of the evidence that he was firing in that direction. Officer Encarnacion stated that he fired the first shot towards the passenger side of the Charger. The evidence contradicts this claim. COPA finds by a preponderance of the evidence that it would have been very difficult if not nearly impossible for Officer Encarnacion to fire his weapon in a northern direction towards the Charger's passenger side where ██████ exited. The evidence shows that Officer Encarnacion stood at the back driver's side of the police vehicle and was facing east, towards Officer Mersch, ██████ and the eastbound alley through which ██████ was fleeing. The police vehicle, a large SUV, was located between Officer Encarnacion and the Charger. Had Officer Encarnacion attempted to fire towards the passenger side of the Charger in ██████ direction, he would have had to fire north through the police vehicle's back windshield.

However, that is not what happened. Rather, the evidence shows that Officer Encarnacion fired his first shot east towards ██████. Although Officer Encarnacion's weapon cannot be seen on his BWC at the moment he discharged it, the video footage depicts Officer Mersch reacting to the shot by moving backwards in a southern direction and, most likely, out of the line of fire. Officer Mersch's movement corroborates the conclusion that Officer Encarnacion was firing towards ██████ who was farther east and slightly north of Officer Mersch. Thus, the totality of the evidence shows that Officer Encarnacion's first shot was directed at or near ██████. Officer Encarnacion's BWC footage in combination with third party footage show by a preponderance of the evidence that Officer Encarnacion was facing ██████ and fired in his direction.

Second, the preponderance of the evidence shows that Officer Encarnacion's firearm discharge was not objectively reasonable, necessary, or proportional.⁴⁹ CPD's stated highest priority is the sanctity of human life. In all aspects of their conduct, CPD expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.⁵⁰ CPD members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or a third person, stop an attack, make an arrest, control a subject, or prevent escape.⁵¹ This means CPD members may use only the amount of force necessary to serve a lawful purpose. The amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.⁵²

Here, the totality of the circumstances indicates that Officer Encarnacion's use of deadly force was not objectively reasonable because the evidence shows that ██████ was fleeing, unarmed, and posed no imminent threat and that Officer Encarnacion did not have a specific target when he discharged his weapon. A threat is considered imminent "when it is objectively reasonable

⁴⁸ On October 16, 2017, CPD materially modified its Use of Force policy. CPD's current Use of Force policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA's analysis focuses solely on whether there has been a violation of the CPD's general orders regarding use of force.

⁴⁹ G03-02(III)(B).

⁵⁰ G03-02(II)(A).

⁵¹ G03-02(III)(B).

⁵² G03-02(III)(B)(3).

to believe that: (a) the person's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (b) the person has the means or instruments to cause death or great bodily harm; **and** (c) the person has the opportunity and ability to cause death or great bodily harm."⁵³ Officer Encarnacion admitted that ██████ posed no imminent threat. Officer Encarnacion stated that he did not see ██████ doing anything but running,⁵⁴ that he did not see ██████ turning towards him,⁵⁵ or pointing anything at him.⁵⁶ Moreover, there is no evidence that ██████ was armed, as no weapon was recovered from him, and the GSR test administered to him was negative.⁵⁷

Rather, he heard gunshots and then fired in the direction of where he believed the shots came from. This also appears to be in the direction where ██████ is running. Therefore, he did not have a target of an imminent threat and should not have fired his weapon. The definition of imminent threat would require Encarnacion to believe that a person's actions are immediately likely to cause death or great bodily harm, the person has the means, as well as the opportunity to cause death or great bodily harm. Firing in the direction of gunshots without having a specific person as the target violates this policy. Furthermore, the evidence shows that Officer Mersch was dangerously close to Officer Encarnacion's line of fire. In fact, had Officer Mersch stepped forward, he likely would have been hit by Officer Encarnacion's bullet. The evidence shows that a reasonable officer in similar circumstances would not have fired his weapon.

Officer Encarnacion's use of deadly force was also not necessary or proportional considering the totality of the circumstances facing him. ██████ was merely the fleeing passenger of a crashed car. There was no evidence that he posed any type of threat to anyone in the vicinity. And although Officer Encarnacion may have believed that a shot or shots had been fired from an unknown direction, his decision to fire directly violated CPD policy.⁵⁸ Here, Officer Encarnacion did not use any lesser force before using deadly force. He did not issue verbal commands, use time as a tactic, take cover, or request assistance, all options available to him at the time. Instead, he fired his weapon within approximately three seconds of exiting the squad car, before engaging in any force mitigation tactics or even fully understanding the circumstances.

Altogether, Officer Encarnacion's decision to use deadly force against a fleeing person violated CPD policy, was objectively unreasonable, unnecessary, and not proportional. Allegation #1 is Sustained.

c. Allegation #2, that Officer Encarnacion discharged his firearm at or in the direction of ██████ without justification, is Sustained.

COPA finds by a preponderance of the evidence that ██████ was fleeing, unarmed, and posed no imminent threat when Officer Encarnacion discharged his firearm in his direction. COPA

⁵³ G03-02 (IV)(B) (emphasis added)

⁵⁴ Att. 73, pg. 15, lines 12 to 17.

⁵⁵ Att. 73, pg. 15, lines 23 to 24; pg. 16, lines 1 to 2.

⁵⁶ Att. 73, pg. 16, lines 3 to 5.

⁵⁷ Att. 97, pg.2.

⁵⁸ CPD has placed several prohibitions on the officers' use of firearms, including a prohibition against firing on a fleeing person unless the person poses an imminent threat. G03-02 (IV)(D)(1).

therefore finds by a preponderance of the evidence that Officer Encarnacion's firearm discharge at ██████ was not objectively reasonable, necessary, or proportional. Allegation #2 is Sustained.

The totality of the circumstances indicates that Officer Encarnacion's use of deadly force against ██████ was not objectively reasonable. First, there is no evidence that ██████ was armed. Although Officer Encarnacion claimed that ██████ had a gun in his hand and pointed it towards him, the evidence does not support his claim. The police vehicle ICC video footage shows ██████ getting out of the Charger where both of his hands were visible at various times, and it is apparent that both of his hands were empty. Although there is a short period of time during which ██████ is not visible on either BWC or ICC video, this is not the period of time during which Officer Encarnacion fired the two shots at ██████. Once ██████ is again visible on Officer Encarnacion's BWC, he appears to be in headlong flight towards the alley. In addition, there is no evidence that ██████ was armed. He tested negative for GSR.⁵⁹ Numerous units, including a canine unit, combed the area and found no guns. Moreover, Officer Encarnacion's instructions to ██████ to "Let me see your hands! Let me see your fucking hands!"⁶⁰ undermine Officer Encarnacion's claim that he saw ██████ pointing a firearm in his direction prior to firing his weapon. Rather, the instructions Officer Encarnacion gave to ██████ suggest that he could not see ██████ hands. Based on the totality of the circumstances, COPA concludes by a preponderance of the evidence that Officer Encarnacion's claim that ██████ had a gun has been contradicted by the evidence and lacks reliability.

Second, there is no evidence that ██████ posed an imminent threat. Not only was ██████ not armed, but there is also no evidence that ██████ turned towards Officer Encarnacion and posed a threat to him while fleeing. Officer Encarnacion's BWC shows that ██████ turned away from the officers and fled.

Third, it was not objectively unreasonable for Officer Encarnacion to fire his weapon at ██████ after ██████ was no longer visible. When Officer Encarnacion fired his third shot, the evidence suggests that ██████ was no longer visible to Officer Encarnacion because he had turned west into the alley.⁶¹ For these reasons, Officer Encarnacion's decision to discharge his firearm twice at or in the direction of ██████ was objectively unreasonable.

Officer Encarnacion's use of deadly force was also not necessary or proportional considering the totality of the circumstances facing him. ██████ was fleeing the scene of a property crash. There was no evidence that he posed any type of threat to anyone in the vicinity. And although Officer Encarnacion may have believed that a shot or shots had been fired from an unknown direction, his decision to fire at a fleeing person who posed no known imminent threat to him directly violated CPD policy.⁶²

Likewise, Officer Encarnacion's use of deadly force was not necessary to apprehend ██████ was not proportional to ██████ actions, and did not constitute an option of last resort. Officer Encarnacion was required to use the minimum amount of force under the circumstances. Here, Officer Encarnacion did not use sufficient de-escalation tactics. Although force mitigation was

⁵⁹ Att. 97, pg.2.

⁶⁰ Att. 11 at 2:12 minutes.

⁶¹ Att. 11 at 2:13 minutes.

⁶² The CPD has placed several prohibitions on the officers' use of firearms, including a prohibition against firing on a fleeing person unless the person poses an imminent threat. G03-02 (IV)(D)(1).

available under the circumstances, Officer Encarnacion did not use time as a tactic, take cover, or request assistance. Instead, he fired his weapon twice after telling ██████ to show his hands.⁶³ However, as previously discussed, ██████ was engaged in headlong flight, was unarmed, and posed no imminent threat. Under these circumstances, the use of deadly force was prohibited under CPD policy. Altogether, Officer Encarnacion's decision to use deadly force against a fleeing person violated CPD policy, was objectively unreasonable, unnecessary, and not proportional.

For all these reasons, COPA finds by a preponderance of the evidence that Officer Encarnacion's firearm discharge violated Department policy. Allegation #2 is Sustained.

d. Allegation #3, that Officer Encarnacion failed to comply with Special Order S03-14 by failing to timely activate his body worn camera, is Sustained.

The allegation that Officer Encarnacion violated CPD policy by failing to timely activate his BWC is Sustained. To increase transparency and improve the quality and reliability of investigations, CPD policy mandates all law-enforcement-related encounters to be electronically recorded on the officers' BWC. The policy requires officers to activate their camera at the beginning of an incident and to record the entire incident for all "law enforcement related activities," including, but not limited to calls for service, investigatory stops, traffic stops, traffic control, foot and vehicle pursuits, arrests, use of force incidents, high risk situations, statements made by individuals during the course of an investigation, searches, requests for consent to search, any encounter with the public that becomes adversarial after the initial contact, and any other instance when enforcing the law.⁶⁴ The recording of law-enforcement-related encounters is mandatory.⁶⁵ If there are circumstances preventing the activation of the BWC at the beginning of the incident, the officer "will activate the BWC as soon as practical."⁶⁶

This incident involved multiple law-enforcement-related activities that CPD policy identifies as requiring the activation of BWC.⁶⁷ Officer Encarnacion did not activate his BWC until after he had fired his weapon three times at two different individuals. His activation was untimely. Officer Encarnacion decided to engage in a law-enforcement-related encounter when he exited the Subway, entered the squad car, drove towards the Charger, turned on the emergency lights and observed the car crash. He had opportunities to activate his BWC during this time but did not do so. There were no circumstances preventing his activation of the BWC. Officer Encarnacion stated that he did not activate his BWC because of how quickly the incident unfolded. COPA, however, finds that between the time that Officer Encarnacion exited the Subway and arrived on scene, 30 seconds elapsed, giving him sufficient time to turn on his BWC. At the latest, he should have activated his BWC when he exited his squad car. Instead, he waited until after the incident concluded to activate the camera. Officer Encarnacion's failure to activate his BWC timely is highly concerning due to his status as the shooting officer. His BWC would have been able to capture some of the most comprehensive audio of the events. Officer Encarnacion's failure to timely activate his BWC violated CPD policy. Allegation #3 is Sustained.

⁶³ Att. 11 at 2:12 minutes.

⁶⁴ Att. 48; S03-14 (III)(A)(2)

⁶⁵ S03-14 (III)(1)

⁶⁶ S03.14 (III)(2)

⁶⁷ Att. 48; S03-14 (III)(A)(2)

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

i. Complimentary and Disciplinary History

Officer Encarnacion has received 40 awards and recognitions. He has one 1-day suspension from 2019 for excessive force.

ii. Recommended Penalty

COPA has considered Officer Encarnacion’s disciplinary and complimentary histories, among other factors, in making its disciplinary recommendation. In this case, Officer Encarnacion discharged his weapon multiple times in the direction of fleeing unarmed individuals who posed no imminent threat to the safety of officers or civilians. Officer Encarnacion’s use of force was not permissible under Department polices. Furthermore, this misconduct was of the most egregious nature, that which jeopardized the safety of individuals and may have resulted in physical injury or loss of life. Furthermore, Officer Encarnacion did not engage in any meaningful accountability for his conduct. COPA’s findings in this case are such that seriously undermine public trust in the Department and its credibility. Therefore, COPA recommends that Officer Encarnacion be separated from the Department.

Approved:

[Redacted Signature]

Sharday Jackson
Deputy Chief Administrator – Chief Investigator

April 26, 2023

Date

[Redacted Signature]

Andrea Kersten
Chief Administrator

April 26, 2023

Date