

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	November 28, 2020 / 3:15 p.m. / 6220 N. Artesian Avenue, Chicago, IL
Date/Time of COPA Notification:	November 28, 2020 / 7:15 p.m.
Involved Officer #1:	Officer Peter Niznik; Star # 9182; Employee ID# [REDACTED]; Date of Appointment: June 27, 2016; Unit of Assignment: 24 th District; Male, White
Involved Officer #2:	Officer Daniel Vo: Star # 19931; Employee ID# [REDACTED]; Date of Appointment: December 14, 2015; Unit of Assignment: 24 th District; Male, Asian/Pacific Islander
Involved Individual #1:	[REDACTED] Male, White Hispanic
Case Type:	Officer-involved shooting

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, including those in which no allegations of misconduct are made, where a Chicago Police Department (CPD) member discharges their firearm. During its investigation of this incident, COPA did not find evidence of excessive force related to Officer Niznik’s firearm discharge. However, COPA determined that Officers Niznik and Vo committed the following violations of Department rules and policy:

Officer	Allegation	Finding
Officer Peter Niznik	It is alleged that on or about November 28, 2020 at approximately 3:15 pm in the vicinity of 6220 N Artesian Avenue, you failed to timely and/or accurately notify OEMC that you discharged your firearm, in violation of G03-06. ¹	Sustained
Officer Daniel Vo	It is alleged that on or about November 28, 2020 at approximately 3:15 pm in the vicinity of 6220 N Artesian Avenue, you: 1. Used disrespectful language towards [REDACTED] including words to the effect of, “stupid fuck;” 2. Failed to timely activate your body worn camera in violation of S03-14.	Sustained Sustained

¹ CPD 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; available at <http://directives.chicagopolice.org>.

II. SUMMARY OF EVIDENCE

At approximately 3:15 pm on November 28, 2020, Officers Niznik and Vo were on patrol in an unmarked squad car near N. Artesian Avenue and W. Rosemont Avenue. The officers observed a person, now known as ██████████ holding a green beverage can in his hand.² Officer Vo recognized ██████████ “right away”³ from prior interactions, and he noticed that the green can of Monaco in ██████████ hand was an open container of suspect alcohol.⁴ When the officers stopped and attempted to speak with ██████████ fled on foot southbound in the alley between N. Campbell Avenue and N. Artesian Avenue.⁵ Officer Niznik exited the squad car and followed ██████████ down the alley on foot.⁶ Officer Vo ran southbound on Artesian Avenue, parallel to the alley.⁷ While pursuing ██████████ in the alley, Officer Niznik saw ██████████ holding a firearm with an extended magazine in his right hand.⁸ Officer Niznik repeatedly told ██████████ to drop the gun, but ██████████ did not comply.⁹ Instead, ██████████ slowed down, turned, and looked back at Officer Niznik over his right shoulder. Simultaneously, ██████████ pointed his firearm towards Officer Niznik and fired two shots in the officer’s direction.¹⁰



Figure 1: Screenshot showing the approximate moment that ██████████ turned to look back at Officer Niznik, extended his right hand and firearm towards Officer Niznik, and fired two shots in the officer’s direction.¹¹

Officer Niznik saw the muzzle flash, heard two shots, and with no available cover at that moment, immediately discharged

² Att. 92; Att. 93 at pg. 11; Att. 95; Att. 96 at pgs. 10, 13 to 14; Att. 99 at pgs. 32, 36.

³ Att. 96 at pg. 17; Att. 99 at pg. 32, Officer Vo recognized ██████████ based on his two to three previous interactions with ██████████ stating that he was aware of ██████████ background and that ██████████ was a Latin King gang member. Att. 99 at pg. 37. Officer Niznik told COPA he had never seen ██████████ prior to the incident.

⁴ Att. 93 at pg. 11; Att. 96 at pgs. 10, 13.

⁵ Att. 93 at pgs. 11 to 12; Att. 99 at pg. 36.

⁶ Att. 27; Att. 93 at pgs. 12 to 13; Att. 99 at pg. 36.

⁷ Att. 96 at pgs. 11, 17 to 18. Officer Vo explained that he paralleled ██████████ because, in his experience, people who flee on foot tend to “double back to where they originally fled from.”

⁸ Att. 27; Att. 93 at pgs. 12 to 13; Att. 99 at pgs. 36 to 37.

⁹ Att. 27; Att. 93 at pg. 13.

¹⁰ Att. 27; Att. 93 at pg. 13; Att. 99 at pg. 37.

¹¹ Att. 27 at 2:24.

his firearm two times at ██████¹² He then concealed himself behind a garbage can and reported “shots fired”¹³ over the radio, before proceeding westbound on Granville Avenue.¹⁴ Officer Vo joined Officer Niznik and helped search the area for ██████ A bystander informed Officer Niznik that ██████ ran between two nearby homes.¹⁵ As Officer Niznik spoke to the bystander regarding ██████ location, Officer Vo activated his body worn camera (BWC). When asked, Officer Vo stated that he forgot to turn on his BWC earlier due to the “high level of stress”¹⁶ from the incident. Officer Vo stated that he activated his camera as soon as he looked down at his camera and realized it was not recording.¹⁷

Officers Vo and Niznik followed the bystander’s directions and located ██████ sitting on the ground near the basement door of the residence at 6204 N. Campbell Avenue.¹⁸ Officer Vo gave ██████ verbal commands to “get on your fucking stomach,” and “let me see your fucking hands.”¹⁹ As ██████ turned onto his stomach, Officer Vo handcuffed him and stated words to the effect of, “You fucking shoot at us?” and “You stupid fuck.”²⁰ When COPA investigators asked Officer Vo why he directed profanity towards ██████ Officer Vo replied that it was a “very stressful situation”²¹ and he thought ██████ had tried to murder his partner. Officer Vo admitted that he probably should have used different language, but his “adrenaline was going” and “a lot of emotions” were going through his mind.²²

Officer Vo, along with Officer Thomas Chester, then retraced ██████ path of flight.²³ Officer Chester located a black semi-automatic handgun with an extended clip in the bushes at 2450 W. Granville Avenue.²⁴ Responding officers also recovered a Monaco Tequila Lime Crush alcoholic beverage near the north end of the alley at 2445 W. Rosemont Avenue.²⁵

Neither ██████ nor the officers were struck by the gunfire. ██████ was subsequently transported to Area 3 Detective Division, where he waived his *Miranda* rights and gave a statement to detectives. ██████ initially denied having a gun during the incident, but he eventually admitted that he was carrying a gun for protection from rival gang members. According to ██████ he was walking westbound on Rosemont Avenue with five fellow Latin King gang members, drinking

¹² Att. 27; Att. 93 at pg. 13.

¹³ Att. 96 at pgs. 11 to 12, pgs. 19 to 20.

¹⁴ Att. 27; Att. 93 at pgs. 13 to 14.

¹⁵ Att. 93 at pg. 14.

¹⁶ Att. 26; Att. 96 at pg. 8.

¹⁷ Att. 26; Att. 96 at pg. 8.

¹⁸ Att. 2; Att. 26; Att. 27.

¹⁹ Att. 26 at 3:14 to 3:29.

²⁰ Att. 26 at 3:30 to 3:37; Att. 99 at pgs. 124 to 125; Att. 101 at pg. 2. ██████ was subsequently transported to Area 3 Detective Division, where a gunshot residue test was administered to ██████ right hand. The test results confirmed that ██████ “discharged a firearm, contacted a primer gunshot residue related item, or had the right hand in the environment of a discharged firearm.”

²¹ Att. 96 at pgs. 23 to 24.

²² Att. 96 at pgs. 23 to 24.

²³ Att. 99 at pg. 33.

²⁴ Att. 97; Att. 99 at pgs. 23 to 24, 33. The recovered firearm was a Glock Model 19 Gen 4, 9mm semi-automatic pistol, with one live round in the chamber and a 31-round capacity magazine containing an unknown number of live rounds.

²⁵ Att. 99 at pg. 85.

tequila from a red plastic cup, when an unmarked squad car “rolled up on him.”²⁶ The officers informed █████ that he could not drink alcohol on the public way. █████ responded, “What the fuck are you going to lock me up for some bullshit?”²⁷ and he started walking away from them. The officers yelled for █████ to stop, but he took off running because he was carrying a Glock 9mm firearm. As █████ ran down the alley, he heard two to three gunshots but did not know who fired them. █████ stated that he fired his weapon twice, so that the individual who was shooting at him would leave him alone. █████ then threw his gun away and hid in a nearby gangway, where two officers located and arrested him.²⁸

III. LEGAL STANDARD

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.²⁹ For example, 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.³⁰ 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.”³¹

²⁶ Att. 99 at pg. 35.

²⁷ Att. 99 at pg. 35.

²⁸ Att. 99 at pg. 35.

²⁹ 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.”).

³⁰ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

³¹ *Coan*, 2016 IL App (2d) 151036, ¶28.

IV. ANALYSIS

a. Applicable Department Policies

i. CPD Policy Regarding the Use of Force

CPD's stated highest priority is the sanctity of human life. In all aspects of their conduct, CPD expects that its members will act with the foremost regard for the preservation of human life and the safety of all persons involved.³² CPD members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.³³ CPD members will use only the amount of force required under the circumstances to serve a lawful purpose.³⁴ The amount and type of force used must be proportional to the threat, actions, and level of resistance offered by a subject.³⁵

When evaluating every use of force, the main issue is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on scene. Factors to be considered by the member include, but are not limited to, whether the subject poses an imminent threat to the member or others; the risk of harm, level of threat, or resistance presented by the subject; and the subject's proximity to weapons.³⁶

The force options that are authorized against a subject depend on the level of resistance being offered by the subject. The use of deadly force is authorized only on an "assailant" whose actions constitute an imminent threat of death or great bodily harm to the member or another person.³⁷ In contrast, when dealing with an "active resister," members are authorized to use only the following force options: stunning;³⁸ oleoresin capsicum spray;³⁹ takedowns; canines; and tasers.⁴⁰ An "active resister" is a person who attempts to create distance between themselves and the member, with the intent to avoid physical control and/or defeat arrest.⁴¹

ii. Use of Deadly Force⁴²

The discharge of a firearm in the direction of a person constitutes the use of deadly force under CPD policy.⁴³ The use of deadly force is subject to heightened standards under CPD policy and is permitted only as a "last resort" when "necessary to protect against an imminent threat to

³² Att. 107, G03-02, Use of Force(II)(A) (effective February 29, 2020 to April 15, 2021).

³³ Att. 107, G03-02(III)(B).

³⁴ Att. 107, G03-02(III)(B)(2).

³⁵ Att. 107, G03-02(III)(B)(3).

³⁶ Att. 107, G03-02(III)(B)(1).

³⁷ Att. 108, G03-02-01, Force Options (IV)(C)(2) (effective February 29, 2020 to April 15, 2021).

³⁸ Att. 108, G03-02-01(IV)(B)(2), Defined as "diffused-pressure striking or slapping."

³⁹ Also known as "pepper spray."

⁴⁰ Att. 108, G03-02-01(IV)(B)(2).

⁴¹ Att. 108, G03-02-01(IV)(B)(2).

⁴² 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 Officer Niznik complied with General Order 03-02. COPA cites case law solely for guidance on how to interpret common concepts or terms.

⁴³ Att. 107, G03-02(III)(C)(1).

life or to prevent great bodily harm to the member or another person.”⁴⁴ A CPD member may use deadly force “only when such force is necessary to prevent: (a) death or great bodily harm from an imminent threat posed to the sworn member or to another person; or (b) an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.”⁴⁵

A threat is considered imminent “when it is objectively reasonable to believe that: (a) the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (b) the subject has the means or instruments to cause death or great bodily harm; **and** (c) the subject has the opportunity and ability to cause death or great bodily harm.”⁴⁶ CPD policy places prohibitions on the use of deadly force in certain situations.⁴⁷ In pertinent part, this policy prohibits the use of deadly force “on a fleeing person unless the subject poses an imminent threat.”⁴⁸

During all use of force incidents, CPD members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so, based on the totality of the circumstances.⁴⁹ Members will continually assess the situation to determine:

- (1) if any use of force is necessary;
- (2) the authorized force option based on the totality of the circumstances;
- (3) if the seriousness of the situation requires an immediate response or whether the member can employ other force options or the Force Mitigation Principles; and
- (4) if the level of force employed should be modified based upon the subject’s actions or other changes in the circumstances.⁵⁰

These concepts of force mitigation include but are not limited to: establishing and maintaining verbal communication; using verbal control techniques and persuasion, advice, and warning prior to the use of physical force; using time, distance, and cover to isolate and contain a subject; and creating a zone of safety for the security of officers and the public.⁵¹

CPD policy recognizes that CPD members must make “split-second decisions” in “tense, uncertain, and rapidly evolving” circumstances.⁵² As such, their decisions must be “judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”⁵³

⁴⁴ Att. 107, G03-02(III)(C)(3).

⁴⁵ Att. 107, G03-02(III)(C)(3); *see* 720 ILCS 5/7-5 (effective prior to July 1, 2021).

⁴⁶ Att. 107, G03-02(III)(C)(2) (emphasis added).

⁴⁷ Att. 107, G03-02(III)(B)(5); G03-02(III)(C)(4).

⁴⁸ Att. 107, G03-02(III)(C)(4)(a).

⁴⁹ Att. 108, G03-02-01(II)(B).

⁵⁰ Att. 108, G03-02-01(II)(F).

⁵¹ Att. 108, G03-02-01(III).

⁵² Att. 107, G03-02(II)(D).

⁵³ Att. 107, G03-02(II)(D)(1).

iii. Notification to OEMC

CPD policy requires that, for all firearm discharge incidents and officer-involved deaths, the involved member “will immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources.”⁵⁴

iv. Body Worn Cameras

CPD is committed to protecting the safety and welfare of the public as well as its members. Audio and visual recordings from BWCs can improve the quality and reliability of investigations and increase transparency.⁵⁵ CPD members are required to activate their BWCs to event mode at the beginning of an incident and record the entire incident for all law-enforcement-related activities.⁵⁶ Law-enforcement-related activities include, but are not limited to: calls for service; investigatory stops; seizure of evidence; foot and vehicle pursuits; arrests; use of force incidents; high risk situations; and emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.⁵⁷ The recording of law-enforcement-related encounters is mandatory, not discretionary, except where specifically indicated.⁵⁸ If there are circumstances preventing the activation of the BWC at the beginning of an incident, the member will activate the BWC as soon as practical.⁵⁹

b. Officer Niznik’s Use of Deadly Force Complied with CPD Policy

Based on the available evidence, COPA finds that it is more likely than not that Officer Niznik’s use of force was objectively reasonable based on the totality of the circumstances. Here, Officers Niznik and Vo observed █████ holding a green beverage can, which Officer Vo suspected contained alcohol. When the officers attempted to speak to █████ fled on foot through an alley. Officer Niznik exited the squad car and pursued █████ on foot down the alley. Also on foot, Officer Vo proceeded in the same direction on the street parallel to the alley. While pursuing █████ Officer Niznik saw █████ holding a firearm with an extended magazine in his right hand. Officer Niznik repeatedly told █████ to drop the gun, but █████ did not comply. Instead, █████ slowed down, turned his head over his right shoulder towards Officer Niznik, extended his right hand backwards towards Officer Niznik, and fired two shots. At that point, █████ used deadly force against Officer Niznik, placing Officer Niznik in imminent threat of death or great bodily harm. In response, Officer Niznik reasonably fired two shots at █████ and took cover behind a garbage can. Based on the totality of these circumstances, COPA finds that Officer Niznik’s use of deadly force was **within policy**.

⁵⁴ Att. 109, G03-06, Firearm Discharge and Officer-Involved Death Incident Response and Investigation (V)(A) (effective February 29, 2020 to April 14, 2021).

⁵⁵ Att. 110, S03-14, Body Worn Cameras (II)(A) (effective April 30, 2018 to present).

⁵⁶ S03-14(III)(A).

⁵⁷ S03-14(III)(A)(2).

⁵⁸ S03-14(III)(A)(1).

⁵⁹ S03-14(III)(A)(2).

c. Officer Niznik Failed to Timely and/or Accurately Notify OEMC That He Discharged His Firearm

COPA finds that Officer Niznik failed to timely and/or accurately notify OEMC that he discharged his firearm. After returning fire at ██████ discharging his firearm twice, Officer Niznik reported “shots fired” over the radio and proceeded westbound on Granville Avenue. CPD policy, however, requires officers involved in a firearm discharge incident to “immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources.”⁶⁰ Officer Niznik failed to inform OEMC of all relevant information, including that both he and ██████ discharged their firearms, and he failed to specifically request additional resources. Notably, Officer Niznik did not inform OEMC that shots were fired by the police. Based on the totality of the circumstances, COPA finds that Officer Niznik’s failure to notify OEMC of his firearm discharge violated CPD policy and Rules 5, 6, and 10. Therefore, this allegation is **sustained**.

d. Officer Vo Used Disrespectful Language Towards ██████

COPA finds that Officer Vo used disrespectful language towards ██████ when he called ██████ a “stupid fuck” after the shooting. Rule 2 of the Rules and Regulations of the Chicago Police Department prohibits officers from engaging in “any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.” Additionally, Rule 8 prohibits the “[d]isrespect or maltreatment of any person,” and Rule 9 prohibits “verbal maltreatment of any citizen...” Here, BWC captured Officer Vo repeatedly using profanities as he ordered ██████ to get on his stomach after the shooting. As ██████ complied and submitted to handcuffing, Officer Vo referred to ██████ as, “You stupid fuck.”⁶¹ During his statement to COPA, Officer Vo admitted he made this remark and acknowledged, “It’s something I probably shouldn’t have said.”⁶² For these reasons, COPA finds Officer Vo’s verbal communication to ██████ was unjustified and violated Rules 2, 8, and 9. Therefore, this allegation is **sustained**.

e. Officer Vo Failed to Timely Activate His BWC

COPA finds that Officer Vo failed to timely activate his BWC at the beginning of this incident. CPD policy mandates that officers record all law-enforcement-related encounters, including investigatory stops, foot and vehicle pursuits, and use of force incidents. Officers must activate their BWCs at the beginning of an incident and record the entire incident. If there are circumstances preventing the activation of the BWC at the beginning of an incident, the officer “will activate the BWC as soon as practical.”⁶³ Here, Officer Vo activated his BWC as Officer Niznik spoke to a bystander about ██████ location, approximately three minutes *after* the officer-involved shooting. Officer Vo told COPA that he forgot to turn on his BWC due to the “high level of stress”⁶⁴ from the incident, and he activated his camera as soon as he realized it was not

⁶⁰ Att. 109, G03-06(V)(A) (Eff. February 29, 2020 to April 14, 2021).

⁶¹ Att. 26 at 3:30 to 3:37.

⁶² Att. 96, pg. 24, ln. 6.

⁶³ Att. 110, S03-14(III)(A)(2).

⁶⁴ Att. 26; Att. 96 at pg. 8.

recording. However, Officer Vo was required to activate his BWC when the officers initially stopped [REDACTED] for drinking on the public way, long before the “high level of stress” caused by the foot pursuit and officer-involved shooting. For these reasons, COPA finds that Officer Vo failed to activate his BWC at the beginning of the incident or as soon as practical. Therefore, this allegation is **sustained** as a violation of Rules 5, 6, and 10.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Peter Niznik

i. Complimentary and Disciplinary History⁶⁵

Officer Niznik has received 45 various awards and has no sustained disciplinary history in the past five years.

ii. Recommended Penalty

COPA has found that Officer Niznik violated Rules 5, 6, and 10 when he failed to timely notify OEMC that he discharged his firearm. Although Officer Niznik radioed “shots fired,” he did not immediately inform OEMC that both he and [REDACTED] had discharged their firearms. This lack of communication hindered OEMC’s ability to direct the appropriate resources and backup to the scene. However, COPA notes that the tense and rapidly evolving nature of the incident, combined with Officer Niznik’s announcement of “shots fired,” are mitigating factors in imposing discipline. It is for these reasons, combined with Officer Niznik’s complimentary and lack of disciplinary history, that COPA recommends he receive a **2-day suspension**.

b. Officer Daniel Vo

i. Complimentary and Disciplinary History⁶⁶

Officer Vo has received 40 various awards and has no sustained disciplinary history in the past five years.

ii. Recommended Penalty

COPA has found that Officer Vo violated Rules 2, 5, 6, 8, 9, and 10 when he used disrespectful language towards [REDACTED] and failed to timely activate his BWC. Officer Vo’s reference to [REDACTED] as a “stupid fuck” was disrespectful and brought discredit to CPD. Additionally, Officer Vo’s untimely BWC activation hindered COPA’s ability to evaluate his actions during the majority of the incident. However, COPA notes that Officer Vo accepted responsibility for his misconduct and acknowledged he should have used different language in his interactions with [REDACTED]. It is for these reasons, combined with Officer Vo’s complimentary and lack of disciplinary history, that COPA recommends he receive a **5-day suspension**.

APPROVED:

⁶⁵ Att. 111.

⁶⁶ Att. 112.



Date: 4/20/2023

Matthew Haynam
Deputy Chief Administrator



Date: 4/20/2023

Andrea Kersten
Chief Administrator