

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	July 21, 2020 / 8:45 pm / ██████ Floor (West Stairwell), Chicago, IL, 60654
Date/Time of COPA Notification:	July 22, 2020 / 12:27 am
Involved Officer #1:	Nicholas Schneider / Star#7000 / Employee ID# ██████ / DOA: June 25, 2018 / Unit: 018 / DOB: ██████, 1987 / Male / White
Involved Individual #1:	██████████ / DOB: ██████, 1996 / Male / Asian
Case Type:	Excessive Force, Improper Use of Taser

I. ALLEGATIONS

Officer	Allegation	Finding
Nicholas Schneider	It is alleged by COPA that on or about July 21, 2020, at approximately 8:42PM at or near ██████ Chicago, IL, 60654, Officer Nicholas Schneider committed misconduct through the following acts or omissions, by:	
	1. Discharging your Taser probes at or in the direction of ██████ without justification.	Sustained
	2. Failed to timely activate body worn camera, in violation of Special Order 03-14.	Sustained

II. SUMMARY OF EVIDENCE

On July 21, 2020, Department members, including Officer Nicholas Schneider, responded to a service call about a fire on the ██████ floor of ██████ Upon arriving, Officer Schneider initiated his body worn camera (BWC) as he and his partner, Officer Robert Magrowski, were mid-conversation with several residents of ██████ who witnessed smoke in the hallway.¹ On-scene Chicago Fire Department (CFD) members then directed Officers Schneider and Magrowski to accompany fire personnel to the ██████ floor of the building. When the doors opened on the ██████ floor, the officers observed what appeared to be a hazy hallway, which a CFD member explained was the result of discharged ANSULs (Anhydrous Sulfur Dioxide), commonly referred to as fire extinguishers.² Officers Schneider and Magrowski then got back in the elevator and

¹ Att. 1 – PO Schneider BWC at 0m0s

² *Id.* at 5m45s

headed down to the 20th floor. While in the elevator with a CFD member, Officers Schneider and Magrowski heard confirmation there was “no fire” over the Fire Department’s radio.³ Officers were now equipped with the knowledge that there was no fire and that an individual was discharging fire extinguishers between the ■■■ and ■■■ floors. As the doors opened on the ■■■ floor, Officers Schneider and Magrowski proceeded to the stairwell where an individual was reportedly discharging fire extinguishers.⁴

Once in the stairwell, the officers descended the to the ■■■ floor before turning around and working their way back upstairs.⁵ As they reached the ■■■ floor, a white male wearing a black shirt and black pants, now known as ■■■ entered the stairwell and proceeded directly to the fire extinguisher.⁶ Officer Schneider announced his office, “Hey Chicago Police,” and pointed his Taser at Mr. ■■■ back as Mr. ■■■ broke the glass to access the fire extinguisher.⁷ Mr. ■■■ appeared to hear Officer Schneider’s announcement and started to slowly turn around with the fire extinguisher in one hand at his side.⁸ Officer Schneider then warned, “Taser, Taser, Taser” as he continued to point his Taser directly at Mr. ■■■ midsection.⁹ Mr. ■■■ turned to face Officer Schneider with the fire extinguisher in his right hand, down by his side.¹⁰ Mr. ■■■ did not appear to move in the direction of Officer Schneider, nor was the extinguisher in a ready-to-use position. Officer Schneider, without providing further verbal direction, discharged his Taser in the direction of Mr. ■■■ striking him in the midsection even though he appeared to be compliant.¹¹

Mr. ■■■ dropped the fire extinguisher approximately two seconds into being tased, then stated words to the effect of, “I’ll stop, I’ll stop, I’ll stop, I’m on the ground.”¹² Mr. ■■■ continued to comply as Officer Schneider instructed him to lay face down on the ground and Officer Magrowski approached to apply handcuffs.¹³ After Mr. ■■■ was detained, the officers sat him upright and called for Emergency Medical Services, as required by Department guidelines.¹⁴ Officer Schneider also completed a Tactical Response Report (TRR) and alerted OEMC of a Taser use incident.¹⁵ Because this incident involved a Taser discharge, it was reviewed by Lt. Joseph Schuler, the 18th District Watch Lieutenant, whose preliminary investigation indicated Officer Schneider’s use of force did not comply with Department policy. Lt. Schuler then obtained a log number and referred this incident to COPA.¹⁶

³ *Id.* at 6m45s

⁴ *Id.* at 7m52s

⁵ *Id.* at 8m12s

⁶ *Id.* at 9m28s

⁷ *Id.* at 9m33s

⁸ *Id.* at 9m38s

⁹ *Id.* at 9m40s

¹⁰ *Id.* at 9m42s

¹¹ *Id.* at 9m42s

¹² *Id.* at 9m44s

¹³ *Id.* at 9m48s

¹⁴ See Att. 2 – G03-02-04, Taser Use Incidents, effective February 29, 2020 to April 15, 2021. Mr. ■■■ was transported via ambulance to ■■■, where he was admitted for a psychiatric evaluation due to his erratic behavior. Att. 14 – Case report

¹⁵ Att. 22 – PO Schneider TRR

¹⁶ Att. 6 – Initiation Report

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 the conduct occurred and violated Department policy.¹⁷ If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”¹⁸

IV. ANALYSIS AND CONCLUSION

a. Unjustified Use of a Taser

COPA finds Allegation #1 against Officer Schneider is **sustained**. A Department member’s use of a Taser must be objectively reasonable, necessary, and proportional to the threat, actions, and level of resistance offered by a subject.¹⁹ Department policy further defines the requisite level of resistance, noting that members are only authorized to use a Taser on a subject who is an active resister²⁰ or assailant²¹, and only for the purpose of gaining control of and

¹⁷ 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).

¹⁸ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

¹⁹ Att. 2 – G03-02-04(II)(C)

²⁰ The Department defines an “active resister” as “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid physical control and/or defeat the arrest.” Att. 3 – G03-02-01(IV)(B)(2), Force Options, effective February 29, 2020 to April 15, 2021.

²¹ An “assailant” is defined as “a subject who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury.” There are two categories of assailants: “(1) a subject whose actions are aggressively offensive with or without weapons and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department members or to another person.” Att. 3 – G03-02-01 (IV)(C).

restraining the subject.²² Department members are not permitted to use a Taser against a cooperative individual or a passive resister.²³ In this case, Mr. [REDACTED] actions clearly did not rise to the level of an active resister or an assailant. When Officer Schneider announced, “Chicago Police,” Mr. [REDACTED] turned around casually and faced the officer, but he received no further verbal commands.²⁴ Mr. [REDACTED] did not take a step towards or away from the officers. He did not raise the fire extinguisher, nor did he make any threatening actions towards the officers. Importantly, at no point did Officer Schneider direct Mr. [REDACTED] to drop the extinguisher, put his hands up, or get on the ground. Instead, after Officer Schneider announced his office, he immediately discharged his Taser without further commands.²⁵

In his statement to COPA, Officer Schneider told Investigators he believed Mr. [REDACTED] was not complying, and Mr. [REDACTED] “physically” approached the officers “with a fire extinguisher raised at his side.”²⁶ It is clear on Officer Schneider’s BWC, however, that this did not happen. When pressed by Investigators to describe what compliance would look like, Officer Schneider said, “Setting down the fire extinguisher, stopping what he’s doing with his hand, putting his hands up.”²⁷ It is impossible to know if Mr. [REDACTED] would meet this subjective standard for compliance, because Officer Schneider also admitted he provided none of those instructions to Mr. [REDACTED].²⁸

Even if Office Schneider perceived Mr. [REDACTED] actions as resisting, the preponderance of the evidence shows that Mr. [REDACTED] was neither an active resister nor an assailant under the Department’s guidelines. Mr. [REDACTED] did not attempt to create distance between himself and Officer Schneider, nor did he make any efforts to avoid physical control or defeat arrest. Indeed, in reviewing the incident, even Lt. Schuler concluded that Mr. [REDACTED] was not “actively resisting, attacking the officer or anyone else, or engaging in any other behavior which would justify the deployment of a Taser.”²⁹ Therefore, it is clear Officer Schneider’s use of a Taser was not objectively reasonable, necessary, or proportional under the circumstances. As a result, COPA finds Allegation #1, that Officer Schneider discharged his Taser in the direction of Mr. [REDACTED] without justification, is **Sustained** as a violation of Rules 2, 3, 6, and 9.

b. Failed to Timely Activate BWC

COPA finds Allegation #2 against Officer Schneider is **Sustained**. Department policy requires members to activate their BWC “at the beginning of an incident and...record the entire incident for all law-enforcement related activities.”³⁰ Law-enforcement related activities include, but are not limited to, calls for service, arrests, use of force incidents, searches, and high-risk situations.³¹ In this case, Officer Schneider was responding to a call for service and did not activate

²² Att. 2 – G03-02-04(II)(C)(1).

²³ Att. 3 – G03-02-01(IV)(A)-(B)(1), *see* “Cooperative Subject” and “Passive Resister”

²⁴ Att. 1 – PO Schneider BWC at 9m33s

²⁵ *Id.* at 9m42s

²⁶ Att. 4 – Officer Schneider COPA Statement, Transcript, Pg. 15, Ln 12-13

²⁷ *Id.* at Pg. 15, Ln. 16-18

²⁸ *Id.* at Pg. 15, Ln. 19-21

²⁹ Att. 6 - Initiation Report, Pgs. 1-2

³⁰ Att. 5 – S03-14(III)(A), Body Worn Cameras, effective April 30, 2018 to present

³¹ *Id.*

his BWC until he was already interacting with civilians outside the location. Therefore, COPA finds Officer Schneider failed to timely activate his BWC. Accordingly, Allegation #2 is **Sustained** as a violation of Rules 5 and 6.

V. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. PO Nicholas Schneider

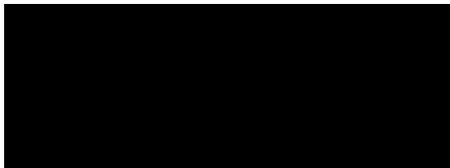
i. Complimentary and Disciplinary History

In considering disciplinary recommendations for sustained findings, COPA reviewed Officer Schneider's disciplinary and complimentary histories.³² Officer Schneider has no sustained complaints and two SPARS for preventable traffic accidents in 2021. He received reprimands as a result of both incidents. Officer Schneider has received 13 awards, including one crime reduction award, one complimentary letter, and 11 honorable mentions.

ii. Recommended Penalty

COPA has found that Officer Schneider violated Rules 2, 3, 5, 6, and 9 when he discharged his Taser at Mr. [REDACTED] without justification and failed to timely activate his BWC. Officer Schneider's actions violated Department policy and undermined its efforts to build trust and confidence in the community that officers will not escalate situations with unnecessary and unjustified physical force. Additionally, Officer Schneider failed to accept responsibility for his conduct during his COPA statement. Given Officer Schneider's inexperience as an officer and minimal disciplinary history, COPA recommends he receive a **minimum 45-day suspension**. Additionally, COPA encourages the Department to provide Officer Schneider additional training on the Department's Use of Force policy.

Approved:



Matthew Haynam
Deputy Chief Investigator

2/18/2022

Date

³² Att. 7 – Officer Schneider's complimentary and disciplinary history