The City of New York

POLICE DEPARTMENT

December 15, 2023

In the Matter of the Charges and Specifications - against -	:	
Police Officer Anthony Carolei Tax Registry No. 961670 70 Precinct	:	Case No. 2022-25369
Police Officer Mateusz Wybraniec Tax Registry No. 966402 70 Precinct	:	Case No. 2022-25370

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Dwayne Bentley, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondents, Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-25369

1. Police Officer Anthony Carolei, on or about May 30, 2020, at approximately 1725 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, wrongfully used force in that he used pepper spray against individuals without police necessity.

   P.G. 221-07, Page 1 — USE OF O.C. PEPPER SPRAY DEVICE

2. Police Officer Anthony Carolei, on or about May 30, 2020, at approximately 1725 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, wrongfully used force in that he pushed a handcuffed [redacted] to the ground without police necessity.

   P.G. 221-02, Page 2, Prohibition 11 — USE OF FORCE

3. Police Officer Anthony Carolei, on or about May 30, 2020, at approximately 1725 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, wrongfully used force, in that he used a chokehold against [redacted]

   P.G. 221-02, Page 2, Prohibition 11 — USE OF FORCE

4. Police Officer Anthony Carolei, on or about May 30, 2020, at approximately 1725 hours, while assigned to the 70 Precinct and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for [redacted]

   P.G. 210-04, Page 1, Paragraph 1 — MEDICAL TREATMENT OF PRISONERS

5. Police Officer Anthony Carolei, on or about March 26, 2021, at approximately 0922 hours, while assigned to the 70 Precinct and on duty, in the vicinity of 100 Church Street, New York County, provided a false official statement to the CCRB in that he denied placing [redacted] in a chokehold and/or contacting [redacted] neck in any way.

   P.G. 212-11, Page 5, Paragraph 23 — INVESTIGATIVE ENCOUNTERS

Disciplinary Case No. 2022-25370

1. Police Officer Mateusz Wybraniec, on or about May 30, 2020, at approximately 1725 hours, while assigned to the Brooklyn Court Section and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, wrongfully used force in that he pushed a handcuffed Person A to the ground without police necessity.

   P.G. 221-02, Page 2, Prohibition 11 — USE OF FORCE

2. Police Officer Mateusz Wybraniec, on or about May 30, 2020, at approximately 1725 hours, while assigned to the Brooklyn Court Section and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for Person A

   P.G. 212-11, Page 4, Paragraph 16 — INVESTIGATIVE ENCOUNTERS

3. Police Officer Mateusz Wybraniec, on or about May 30, 2020, at approximately 1725 hours, while assigned to the Brooklyn Court Section and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he threatened Person A with the use of force by stating in sum and substance, "You want to go back on the ground?" without police necessity.

   P.G. 203-10, Page 1, Paragraph 5 (*now encompassed by* A.G. 304-06) — PUBLIC CONTACT -- PROHIBITED CONDUCT

4. Police Officer Mateusz Wybraniec, on or about May 30, 2020, at approximately 1725 hours, while assigned to the Brooklyn Court Section and on duty, in the vicinity of Bedford Avenue and Tilden Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he refused to provide his shield number to Person A

   P.G. 203-09, Page 1, Paragraph 1 (*now encompassed by* A.G. 304-11) — PUBLIC CONTACT -- COMPLIANCE WITH NYC RIGHT TO KNOW ACT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 4, 2023. Respondents Carolei and Wybraniec, through their counsel, entered pleas of Not Guilty to the charged misconduct. The Civilian Complaint Review Board (hereinafter "CCRB") presented a hearsay case, entering video recordings of the incident, a photo of [redacted] and recordings of Respondents' CCRB interviews. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find as follows:

Respondent Carolei:

Specification 1 (Unlawful Use of Pepper Spray): Guilty In Part.

Specifications 2 and 3 (Excessive Use of Force): Not Guilty

Specification 4 (Failure to Obtain Medical Treatment): Not Guilty

Specification 5 (False Official Statement): Not Guilty

Recommended penalty for Respondent Carolei: Ten (10) vacation days.

Respondent Wybraniec:

Specification 1 (Excessive Use of Force): Not Guilty

Specification 2 (Failure to Obtain Medical Treatment): Not Guilty

Specification 3 (Threatened Use of Force): Not Guilty

Specification 4: (Refusal to Provide Shield Number): Guilty

Recommended penalty for Respondent Wybraniec: Three (3) vacation days.

ANALYSIS

It is undisputed that from late May to early June 2020, New York City was in the midst of the George Floyd protests. During this period, the City experienced an outpouring of citizens

who took to the streets to express outrage over Mr. Floyd's murder at the hands of a Minneapolis police officer. These unprecedented protests resulted in large crowds, often unplanned and mobile in nature, which spread across every borough of this City. In addition, the protests were occurring amidst the 2020 COVID pandemic. This resulted in longer work hours and fatigue for the Members of Service assigned to these details. Adding to the difficulty of those days was the fact that legitimate First Amendment expression occurred simultaneously with criminal behavior, including firebombing, looting and violence toward the police.

In this case, CCRB alleges that Respondents committed acts of misconduct while responding to protests in Brooklyn on May 30, 2020. First, Respondent Carolei is alleged to have wrongfully deployed his Department issued pepper spray against protesters. Hours later, while both Respondents were tasked with transporting an arrestee, Person A they were charged with multiple specifications including excessive force. The events will be discussed chronologically, rather than in the order of the numbered specifications.

The evidence presented to support CCRB's version of events were the Body Worn Camera (hereinafter "BWC") footage from each of Respondents' BWCs and that of Officer Fernandez's BWC, as well as recordings of Respondents' respective CCRB interview transcripts. None of the protesters captured on video testified. Additionally, Mr. Person A the arrestee who was allegedly subjected to excessive force by Respondents, did not testify.

Respondent Carolei's Testimony:

Respondent Carolei testified that he and Respondent Wybraniec both worked in the confines of the 70 precinct on the date of the incident and were assigned to conduct patrol together in sector David. They received a "10-85" over the radio, which means an officer in need of assistance, at Tilden and Bedford Avenues. When they responded to that location in their

RMP, Respondent Carolei testified that he observed a "chaotic scene" with over 700 people in the street for what appeared to be a "George Floyd protest." Upon arrival, he could not immediately see the officer in need of assistance so they had to make their way through a raucous crowd to find the officer. (Tr. 39-41)

At some point as they were walking through the large crowd of protesters, Respondent Carolei testified that he observed, "[b]osses arrive and start giving directions to form a line and clear the protesters on the sidewalk." This was Respondent Carolei's first time responding to a protest in his career; however, he understood that his job at that time was to usher the protesters onto the sidewalk for a peaceful protest. Respondent Carolei testified that as he and other officers were telling the crowd to "step back," the individuals were not complying. He further stated that the crowd "became aggressive, some threw punches and glass bottles and rocks at him and other officers... Individuals were screaming, cursing, and basically just acting irrational towards [the officers], when . . . giv[en] the lawful orders to step back." (Tr. 43)

According to Respondent Carolei, when he was directing the unruly crowd to get back on the sidewalk, he noticed many individuals become increasingly aggressive toward him and his fellow officers and were in his "zone of safety." He testified that he felt threatened and needed to use "less than lethal force," and so he decided to administer his Oleoresin Capsicum ("OC") spray to gain compliance of the individuals surrounding him. Respondent Carolei claimed that he did not deploy the O.C. spray indiscriminately into the crowd, but rather targeted those individuals in the crowd by whom he felt threatened. (Tr. 44)

Later that same day, after an extensive period of assisting with crowd control, Respondent Carolei testified that a supervisor brought a prisoner (Mr. Person A in handcuffs to him and his partner, Respondent Wybraniec. The supervisor directed them to take

Person A to a transport van. Respondent Carolei described Person A demeanor as "very recalcitrant" and unwilling to follow directives. Despite the fact that Person A was in handcuffs, according to Respondent Carolei's testimony, he attempted to walk away from the officers and back into the crowd of protesters. Respondent Carolei testified that Person A 's actions gave him the impression that he was attempting to escape from custody. (Tr. 46-47)

Respondent Carolei recalled that prior to the supervisor bringing Person A to him, he had his asp in his hand. He further testified that because Person A was taller than he was, he used the asp on Person A's shoulder as a "fulcrum" to escort him to the van. Respondent Carolei asserted that he was "taught in the Academy" to use his asp in this manner for "escorting for security." He described that he applied pressure to Person A's shoulder with the asp and that at no point did he roll the asp into his neck or restrict his breathing in any way. (Tr. 47-48)

Respondent Carolei remembered warning Person A several times to stop moving and that he was "tensing up and jostling his arms and shoulders." (Tr. 49) Although directed to escort Person A to the transport van, it took some time before Respondent Carolei was able to locate said van. After giving Person A several directives and him failing to comply, Respondent Carolei made the decision to "guide him down to the floor." Respondent Carolei acknowledged forcibly bringing him to the ground, but asserted that he did not slam Person A to the ground and that once he was on the ground, he made sure to turn him on his side so Person A could breathe unobstructed. (Tr. 51)

While Person A was still in handcuffs, lying on the ground, face up, Respondent Carolei observed him kick his partner, Respondent Wybraniec, in the face. Believing that Person A was going to attempt to escape, Respondent Carolei testified that he placed pressure on Person A's trapezius muscle to prevent give from leaving. He then proceeded along with his

partner to escort Person A to the transport van once it arrived. While walking with Person A to the transport van, Respondent Carolei testified that Person A repeatedly requested medical attention. However, given Person A's continued hostility, the protest conditions surrounding the officers and the fact that Person A's injuries did not appear life threatening, Respondent Carolei did not deem it safe to obtain medical attention at that time. Respondent Carolei testified that Person A was able to walk, speak coherently and continue his abrasive behavior even while he requesting medical attention. (Tr. 52-53, 55-56)

At trial, Respondent Carolei was questioned about his March 2021 CCRB interview. He testified that when asked about his use of force and whether he placed Person A in a chokehold at the CCRB interview, he denied it. He indicated that he even simulated the actions he took against Person A at the virtual CCRB interview to show that he did not employ a chokehold on the date in question. Respondent Carolei adamantly denied placing Person A in a chokehold both on direct examination and again during cross-examination. (Tr. 54-55, 66)

Respondent Wybraniec's testimony:

Respondent Wybraniec's testimony and version of events was substantially similar to Respondent Carolei's with a few notable additions. He described Person A's demeanor as hostile and aggressive throughout his encounter. He also recalled that Person A mentioned being a member of the Crips and that he was not compliant when repeatedly instructed to walk in a certain direction or to stop flailing his body. (Tr. 80-81) Respondent Wybraniec testified that he and his partner guided Person A to the ground by his shoulders and once on the ground, immediately turned him over from his stomach to his side to avoid any obstruction to his breathing. It was at that point that Respondent Wybraniec recalled being kicked in the face by

Person A causing him pain and momentary disorientation. After regaining his composure, Respondent Wybraniec resumed helping his partner to regain control of Person A (Tr. 81-84)

Once they reclaimed control of Person A and were escorting him to the transport van, Respondent Wybraniec testified that [redacted] began doing the same thing he was doing before they initially brought him to the ground. Specifically, he was "tensing up, he was walking in the opposite direction, he was not complying with the orders that we were giving to him." Respondent Wybraniec acknowledged that he stated to Person A "Do you want to go back on the ground?" to gain compliance. According to Respondent Wybraniec's testimony, after he made that statement to Person A he did not have to take him down again. (Tr. 85)

During direct examination, Respondent Wybraniec was asked if he recalled Person A asking him for his shield number on the date in question; he responded that he did not remember. (Tr. 86) CCRB confronted Respondent Wybraniec on cross-examination with BWC footage (CCRB Ex. 6) which shows Person A asking Respondent Wybraniec for his badge number, twice. Respondent Wybraniec was then asked why he did not give Person A his badge number on the night in question and he responded: "Well it was visible, I told him to read it." (Tr. 94-95)

Disciplinary Case No. 2022-25369, Specification 1 (Respondent Carolei):
Unlawful Use of Pepper Spray

It is undisputed by the parties that Respondent Carolei used O.C. pepper spray on the date in question. Department-issued pepper spray constitutes a non-deadly, intermediate level of force. Patrol Guide 221-01 – "Use of Force" - states that members of service are to "use only the reasonable force necessary to gain control or custody of a subject." The determination of reasonableness relies on a case-specific analysis in which multiple factors are considered, some of which may include: (1) the nature and severity of the crimes/circumstances, (2) the duration of the action, (3) whether the subject is actively resisting custody, (4) the number of subjects in

comparison to the number of MOS and (5) the presence of hostile crowd or agitators. Patrol Guide 221-07 – "Use of Oleoresin Capsicum Pepper Spray Devices" - authorizes the use of O.C. pepper spray when "used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service or other persons." It may not be used upon a person who is merely "passively resisting"[1] or in situations that do not require the use of physical force. The Patrol Guide further instructs: "In many cases, O.C. pepper spray will reduce or eliminate the need for physical force to effect an arrest or gain custody. It will often reduce the potential for injuries to members and suspects that may result from physical restraint and it should be regarded as a possible alternative to such force or restraint, where practical.

The BWC footage (specifically CCRB Exs. 1 & 2) depicts four separate instances in which Respondent Carolei deployed his O.C. pepper spray. The first time Respondent Carolei uses his O.C. pepper spray was during a brief confrontation between him and a group of protesters within arms-length of him, who were failing to comply with directives and yelling at the officers. (CCRB Ex. 1 at 6:56) The second time Respondent Carolei deploys his O.C. pepper spray was captured on CCRB's Exhibit 1 at 7:00. He sprays a woman with red hair who is several feet away from him and not engaging with Respondent Carolei. A few seconds later, at 7:03, Respondent uses the pepper spray for a third time and sprays a single male protester (wearing a red bandana around his neck) who is a further distance away, and not engaging with Respondent Carolei or any other officer. Respondent Carolei can then be seen on CCRB's

[1] Passive resistance is defined in the Patrol Guide as "Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with lawful commands and stands motionless and/or a subject going limp when being taken into custody." (P.G. 221-07) Active resistance is defined as "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing or verbally signaling an intention to avoid or prevent being taken into or retained in custody" (*Id.*)

Exhibit 1 at 7:10 using the O.C. pepper spray a fourth time to spray a female protester, who is also further away from him, in the face. The video shows Respondent Carolei walking toward her and as he gets closer to her, he sprays this female protester in the face.

Preliminarily, it should be noted that CCRB's Exhibit 1 shows that the group of protesters outnumbered the officers and that they issued continuous warnings to clear the streets. The video evidence further established that the scene became increasingly chaotic as the protesters were blocking vehicular and pedestrian traffic, yelling at the officers and moving closer to them as they were trying to disperse the crowd. Respondent Carolei credibly testified that he also observed physical confrontations between officers and protesters.

Respondent Carolei explained that when he first deployed his pepper spray he did so because he noticed many protesters were becoming increasingly aggressive toward him and his fellow officers and were in his "zone of safety." He decided to administer his pepper spray to gain compliance of the individuals surrounding him. Under these circumstances and in that moment, it was not unreasonable for Respondent to deploy his pepper spray to prevent the protesters from physically engaging with him and other officers. The video captures this group of protesters closing in on the officers and creating a potential risk of harm to them. Therefore, the use of O.C. pepper spray in the first instance was justified.

In contrast, Respondent's decision to spray the other three individual protesters does not follow the same logic. Respondent Carolei claimed that he did not deploy the O.C. spray indiscriminately into the crowd, but rather targeted those individuals in the crowd by whom he felt threatened. (Tr. 44) The video evidence does not support this claim as it relates to the other three protesters that Respondent Carolei sprayed. Based upon a review of the video footage, it does not appear that these three protesters were actively resisting arrest or acting in an aggressive

or hostile manner toward Respondent Carolei at the time they were sprayed. Respondent Carolei's use of the O.C. pepper spray at that point was no longer purposeful and targeted to prevent a physical confrontation, but rather a poor exercise of judgment. The Tribunal therefore finds that CCRB has proven by a preponderance of the evidence that Respondent Carolei's use of pepper spray was without legitimate police necessity when he sprayed the two individual protesters and he is therefore guilty, in part, of Specification 1.

Disciplinary Case No. 2022-25369, Specification 2 (Respondent Carolei):
Disciplinary Case No. 2022-25370, Specification 1 (Respondent Wybraniec):
Pushing Person A *to the Ground*

The Patrol Guide sets forth the parameters for determining whether the push was authorized. As previously stated, P.G. 221-01 and 221-02 state that force may be used to ensure the safety of the MOS or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape. The force used must be "only the reasonable force necessary" under the circumstances. Legal precedent establishes that the reasonableness of an officer's actions must be judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Koeiman v. City of New York*, 36 A.D.3d 451 (1st. Dept. 2007), quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989). Furthermore, the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments --in circumstances that are tense, uncertain, and rapidly evolving --about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97.

The evidence at trial failed to establish that, under these particular circumstances, the force used constituted sanctionable misconduct. First, the video in evidence (CCRB Ex. 4) confirms Respondent Carolei and Respondent Wybraniec's testimony that [redacted] was

verbally aggressive and non-compliant with police directives while he was being held awaiting transport. In CCRB's Exhibit 4 from approximately 3:00-5:51, Respondent Carolei directs Person A to "please stop moving" several times, as he is trying to secure him for transport. The video further shows that there is a large crowd of protesters nearby and Person A is attempting to move closer to the crowd while he is in handcuffs, flanked by the Respondents, who are waiting to escort him to a transport van. At trial, Respondent Carolei testified that Person A was tensing his body and verbally signaling an intention to not be retained in custody. It was a hectic scene and despite numerous verbal directives and a warning by Respondent Carolei, that if he did not stop moving he would have to bring him down to the ground, Person A did not follow instructions. The controlled takedown to the ground was necessary to secure Person A while he was in custody.

Under these specific circumstances, the tribunal finds that Respondents' actions were rationally related to the important police function of securing a resistant detainee. Respondent Carolei and Respondent Wybraniec reasonably used a low level of force to ensure the safe retention of Person A Accordingly, I find Respondents Not Guilty of the charged misconduct with regard to the takedown of Person A

Disciplinary Case No. 2022-25369, Specification 3 (Respondent Carolei):
Use of Chokehold

I find that CCRB has failed to meet their burden of proof by a preponderance of the credible, relevant evidence that Respondent Carolei used a chokehold.

Patrol Guide procedure 221-01 states, "Members of the service **SHALL NOT** … use a chokehold" (emphasis in original). It defines a chokehold as follows: "A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which *may* prevent or hinder

breathing or reduce intake of air" (emphasis added) (P.G. § 221-01). Evidence that a Member of Service's hand made contact with a suspect's neck does not *ipso facto* establish the use of a chokehold. Absent proof of the elements mentioned above, this Tribunal cannot make a finding that a chokehold occurred.

This Tribunal must determine, therefore, whether Respondent made contact with Person A's [redacted] throat or windpipe in a manner that may have prevented or hindered his breathing. A close review of the footage entered into evidence and the still photograph of the video footage does not establish that Respondent used a chokehold against Person A Respondent Carolei testified that after Person A kicked Respondent Wybraniec in the face, he believed that Person A [redacted] was going to try to escape, so with his right hand on his wrist, he put his left hand on his trapezius muscle to prevent him from leaving. When shown the still photograph of the alleged chokehold, Respondent Carolei reiterated that his hand was not on Person A's neck but on his trapezius muscle between his collarbone and his shoulder. (Tr. 52-53) He reaffirmed during cross-examination that his hand was not of Person A's neck. (Tr. 66)

Person A was unavailable to explain, either in testimony before the Tribunal or in a hearsay statement, his version of the events that transpired on the date of the incident. Moreover, there is no circumstantial evidence that Respondent used a chokehold. CCRB's video evidence does not augment the assertion that Respondent Carolei applied a chokehold. Based upon this record, this Tribunal cannot draw a reasonable inference that Respondent Carolei applied pressure to Person A's throat or windpipe, which may have prevented or hindered his breathing without independent, credible evidence to support such a conclusion.

Furthermore, not only did Respondent categorically deny using a chokehold on Person A [redacted] but also the video evidence corroborated his testimony. CCRB's Exhibits 3 and 4 show

Respondent Carolei holding Person A by the arms (along with Respondent Wybraniec) while he is handcuffed. Respondent Carolei can be seen using his asp by resting it vertically on [redacted]. Person A's collarbone between his shoulder and neck. Neither Respondent Carolei's asp nor his hand are depicted making contact with Person A's throat or windpipe during the course of this encounter. I therefore found Respondent Carolei's testimony on this issue reliable. Having analyzed the video and still photo carefully, this Tribunal cannot reasonably conclude that the hold depicted made contact with the throat or windpipe in a manner that may have restricted Person A's breathing or reduced air intake.

Since establishing the application of such force is essential to proving a chokehold, CCRB has failed to meet its burden. I therefore, find Respondent Carolei Not Guilty of Specification 3.

Disciplinary Case No. 2022-25369, Specification 5 (Respondent Carolei):
Providing False Official Statement to CCRB

I find that the CCRB has not met its burden of proof that Respondent Carolei intentionally made false statements during his CCRB interview on March 26, 2021 when he denied placing Person A in a chokehold an/or contacting his neck in any way. As previously stated, Respondent Carolei's version of events both during his CCRB interview and at trial comports with the BWC footage that he did not place Person A in a chokehold. Accordingly, I find Respondent Carolei Not Guilty of Specification 5.

Disciplinary Case No. 2022-25369, Specification 4 (Respondent Carolei):
Disciplinary Case No. 2022-25370, Specification 2 (Respondent Wybraniec)
Failure to Obtain Medical Treatment for Person A

Each Respondent is charged with failing to secure medical treatment for Person A at the scene. Pursuant to Patrol Guide Section 210-04, when a prisoner in custody requires medical or psychiatric treatment. Members of Service must request an ambulance and remove a prisoner to a hospital directly from the place of arrest. The Patrol Guide describes stringent guidelines that must be followed when a MOS is addressing the needs of a prisoner experiencing a life-threatening emergency; it does not, however provide similar protocols for non-emergency situations.

Both Respondents acknowledged, as confirmed in the video evidence, that as they were escorting Person A to the transport van, he requested medical attention numerous times. Respondent Carolei also testified that there was no reason to believe that Person A was experiencing a life-threatening injury at the time that he was making such requests given the fact that he was able to walk on his own, his breathing and speech were normal and he was coherent. When questioned about why they did not immediately bring Person A to an ambulance when he requested medical treatment, Respondent Carolei responded: "[H]e was so hostile at the time and also the conditions that were going on around is with the protesters. I deemed it was not safe and his injuries were not life threatening at the time." He further elaborated: "I was afraid he could be a hazard to himself, a hazard to others, as well as other officers." (Tr. 56)

Based upon a review of the video footage and the collective testimony of the Respondents, this Tribunal finds that they exercised appropriate judgment in this situation. This was not a routine transport of a cooperative detainee, but rather a situation in which removing Person A from the scene expeditiously was imperative. Under these specific circumstances, the officers' decision to escort Person A to the transport van rather than immediately address his

request for medical attention was prudent to ensure everyone's safety. Accordingly, I find both Respondents Not Guilty of this specification.

Disciplinary Case No. 2022-25370, Specification 3 (Respondent Wybraniec)
Threatening Use of Force without Sufficient Legal Authority

Based upon Respondent Wybraniec's admission under oath, as well as the video recordings entered into evidence as CCRB Exhibit 6, I find that he did warn Person A that he may need to use of force by saying: "You want to go back on the ground." Respondent Wybraniec testified that the use of this warning was a calculated attempt to gain compliance of Person A who was continuing to "tense up . . . . walk [in] the opposite direction and wasn't complying with orders. . . ." (Tr. 85) I find under all the circumstances presented, that his use of this warning was objectively reasonable and was not prejudicial to good order, efficiency or discipline. In this case, the credible evidence in the record supports a finding that Person A was willfully defying the officers' reasonable and lawful directives while he was being escorted to a police van for transportation.

As depicted in CCRB's Exhibit 6, Person A was threatening, cursing and aggressive in his interactions with the officers. On CCRB Ex. 6 at 13:27, Person A can be heard saying: "Bitch ass, Nigger," and Respondent Wybraniec states: "Are you trying to bite me?" Respondent Wybraniec then states: "You want to go back on the ground." (*Id.* at 13:30) Under these circumstances, it was objectively reasonable for Respondent Wybraniec to be concerned about Person A's behavior. It was also prudent of Respondent Wybraniec to employ additional warnings to refrain from having to use force against Person A Based upon the foregoing, I find Respondent Wybraniec Not Guilty of Specification 3.

Disciplinary Case No. 2022-25370, Specification 4 (Respondent Wybraniec)
Specification 4: Failure to Provide Shield Number

Respondent Wybraniec is charged with failing to provide his shield number to Person A upon request. While Respondent Wybraniec did not deny that he failed to give his shield to Person A he asserted at trial that, "it was visible and he told Person A to read it." (Tr. 94-95) This interaction between Respondent Wybraniec and Person A was captured on CCRB's Exhibit 6 at 17:30, so there is no disputing the fact that he did not provide his shield number to Napier despite multiple requests. Although Respondent Wybraniec testified that his shield was visible, it may have been obscured from Person A's line of sight while he was being detained in handcuffs. Respondent Wybraniec may have felt his shield being prominently displayed, coupled with his declaration to Person A that he should "read it," was sufficient, but it was not.

Administrative Guide 304-11 and its predecessor, Patrol Guide 203-09, both clearly direct officers to, "Courteously and clearly state your rank, name, shield number and command...to anyone who requests you to do so." In the instant case, Person A asked for Respondent Wybraniec's shield number while he was in custody and waiting to be moved into a transport van. There was no reason for Respondent Wybraniec to ignore Person A's request while they were already engaged in verbal interaction. Based on the totality of these factors, I find the Respondent Guilty of Specification 4.

PENALTY

In order to determine appropriate penalties for each Respondent, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondents' employment histories were examined. *See* 38 RCNY § 15-07. Information from

Respondents' personnel records that was considered in making this penalty recommendation is contained in attached memoranda.

Respondent Carolei

Respondent Carolei, who was appointed to the Department on July 13, 2016, has been found guilty, in part, of Specification 1: wrongfully using pepper spray against individuals without police necessity. The Disciplinary Guidelines defines less lethal force/device as: "the application of a significant intermediate use of force option including O.C. spray, conducted electrical weapon or impact weapon against a person." The presumptive penalty for the wrongful use of less lethal force/device against another resulting in no injury is twenty penalty days, and the mitigated penalty is ten days.

As discussed above, Respondent Carolei's initial use of pepper spray to prevent the protesters from physically engaging with him and other officers was reasonable. However, a few seconds later, Respondent re-deployed his pepper spray at individual protesters who had not engaged with Respondent Carolei. Respondent Carolei's use of the O.C. spray at that juncture was not targeted to prevent a physical confrontation with them and it was therefore unwarranted.

However, under the unique circumstances presented here, where Respondent Carolei was dealing with a large and unruly crowd in a challenging environment, I find that mitigation is warranted. This incident occurred in the midst of a series of protests, where Respondent Carolei was required to work long hours under extraordinarily stressful circumstances. This context, together with Respondent's otherwise commendable record with the Department, supports a mitigated penalty for his use of pepper spray. Taking into account the totality of the facts and issues in this matter, I recommend that Respondent Carolei forfeit ten (10) vacation days.

Respondent Wybraniec

Respondent Wybraniec, who was appointed on July 2, 2018, has been found guilty of failing to provide his shield number to Person A This was a request which could have been easily satisfied had Respondent addressed Person A's reasonable demand, rather than ignoring it. It appears, however, that the struggles with Person A that preceded his request contributed to Respondent Wybraniec's lapse in judgement. Nonetheless, providing a member of the public with requested identifying information such as a shield number when requested is essential to retaining public trust and maintaining transparency. It is imperative that Respondent Wybraniec not repeat this conduct in the future and a sanction aimed at deterring such misconduct is appropriate. I therefore, recommend that the Respondent Wybraniec forfeit three (3) vacation days, the presumptive penalty under the Disciplinary Guidelines for an officer's failure or refusal to provide his shield number.

Respectfully submitted,

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED
MAR 11 2024
EDWARD A. CABAN
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANTHONY CAROLEI
TAX REGISTRY NO. 961670
DISCIPLINARY CASE NO. 2022-25369

Respondent was appointed to the Department on July 13, 2016. On his three most recent annual performance evaluations, he was rated "Exceptional" for 2022 and "Exceeds Expectations" for 2020 and 2021. Respondent has been awarded two medals for Meritorious Police Duty and 10 medals for Excellent Police Duty.

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring in February 2023; monitoring remains ongoing

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MATEUSZ WYBRANIEC
TAX REGISTRY NO. 966402
DISCIPLINARY CASE NO. 2022-25370

Respondent was appointed to the Department on July 2, 2018. On his three most recent annual performance evaluations, he was twice rated "Exceeds Expectations" for 2021 and 2022, and once rated "Meets Standards" for 2020.

In August 2021, Respondent negotiated a penalty of 30 suspension days, 20 vacation days and was placed on one-year dismissal probation after pleading guilty to (i) failing to comply with on-duty law enforcement when he refused to leave a bar/sidewalk after being repeatedly instructed, (ii) engaging in disorderly conduct, and (iii) resisting arrest during a 2020 off-duty incident.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials