



POLICE DEPARTMENT

September 4, 2024

In the Matter of the Charges and Specifications

- against -

Inspector John O'Connell
Tax Registry No. 937204
Forensic Investigations Division

Case No.
2021-24094

Police Officer Yuriy Demchenko
Tax Registry No. 946912
Strategic Response Group 3

Case No.
2021-24092

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

Before:
Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For Respondent O'Connell:
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To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
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NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2021-24094

1. Captain John O'Connell¹, on or about May 28, 2020, at approximately 1618 hours, while assigned to the 109 Precinct, and on duty, in the vicinity of Union Square Park, New York County, wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

Disciplinary Case No. 2021-24092

1. Police Officer Yuriy Demchenko, on or about May 28, 2020, at approximately 1618 hours, while assigned to SRG 3 and on duty, in the vicinity of Union Square Park, New York County, wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity.

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USE OF FORCE

2. Police Officer Yuriy Demchenko, on or about May 28, 2020, at approximately 1618 hours, while assigned to SRG 3 and on duty, in the vicinity of Union Square Park, New York County, wrongfully used force, in that he struck individuals with a police bicycle without police necessity.

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USE OF FORCE

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on July 29, 2024.

Respondents, through their respective counsel, entered pleas of Not Guilty to the charged misconduct. The Civilian Complainant Review Board (hereinafter "CCRB") called § 87(2)(b) (hereinafter "Complainant"). Respondents called retired Deputy Chief Michelle Irizarry, and 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

¹ Respondent was promoted to Deputy Inspector in March 2021, and to his current rank, Inspector, in August 2023.

evidence in this matter, the Tribunal finds both Respondents Not Guilty of the charged misconduct.

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 civilians 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. The incident which was the subject of this hearing, was one of the first "pop-up" protests in the City.

In this case, CCRB alleges that, during this protest, Respondents pushed Complainant and other unidentified protesters using a police bicycle without police necessity. At trial, Respondent Demchenko acknowledged that he used a bicycle to prevent Complainant and other protesters from blocking vehicular traffic. Respondent O'Connell, however, affirmed that he was only assisting Respondent Demchenko when it appeared that he might lose control of the bike to the crowd. Accordingly, the sole issue in dispute is whether the force Respondents admittedly used was reasonable. For the reasons set forth below, I find that it was.

Complainant appeared before the Tribunal and informed all parties present that "they/them" are Complainant's pronouns. The terms "complainant" and "they/them" will be used interchangeably when referring to § 87(2)(b) ██████████ Complainant testified that on May 28, 2020, at approximately 4:00 p.m., they were dropping off their son to his father at the Union Square subway station. As they were walking back to the train, Complainant observed a small group of young people assembled in Union Square protesting. Complainant noticed that there seemed to

be a fairly large police presence given the size of the protest. Complainant decided to join the protest. (Tr. 25-26)

Complainant stood “near the Gandhi statute across the street from the Whole Foods.” (Tr. 26) Initially there were about 20-30 people protesting, matched by an equal number of police officers. Complainant was then shown CCRB’s Exhibit 2 and they identified themselves in the video as the person wearing denim overalls and a pink bandana on their face. Complainant recalled that as the march started east across the park, the police instructed protesters to stay on the sidewalk so that the bicycle lane was not obstructed. At this point in the protest, Complainant did not observe any objects being thrown at the officers, and testified that they did not curse at the officers. (Tr. 28)

Complainant claims that the protesters were complying with instructions issued over the LRAD (Long Range Acoustic Device) to remain on the sidewalk. According to Complainant, there were protesters expressing their sentiments about police violence and chanting “general protest chants.” (Tr. 29) Complainant estimated that they were protesting for about 30 to 45 minutes without having any direct interaction with any police officers, other than the officers being physically present in front of the protesters. Eventually, Complainant decided to sit at the edge of the curb while the officers remained approximately ten feet in front of them.

While Complainant was sitting on the curb, they observed a “violent arrest” occurring to the left. According to Complainant, the crowd began moving toward that police encounter with a protester. As Complainant walked toward the “commotion,” they observed, the following: “Officer Demchenko picked up his bike and rammed it into me and the crowd around me several times. And I was pushed backwards over a stone barrier and the bike ended up on top of me and

my head.” Complainant further asserted that, at the time this occurred, they were not “rushing” or moving toward Officer Demchenko or any other officer present. (Tr. 36-37)

At trial, Complainant was then shown CCRB’s Exhibit 4 at 00:26, and asked to describe what was happening at that moment in the video. Complainant first identified themselves and Respondents Demchenko and O’Connell in the still image. They then testified that they had just gotten up after falling backwards over a stone barrier and Respondents Demchenko, O’Connell and other officers had taken their bikes back and were moving away from the crowd. (Tr. 40) Complainant recalled that their instinctual reaction when Officer Demchenko’s bicycle was going towards them was to “protect my head,” so they “threw one arm up over my head and the crowd behind me caught the bicycle.” (Tr. 40) Complainant then stood back up, regrouped and stayed at the protest for about another thirty minutes before deciding to go home. (Tr. 41)

Complainant claims to have sustained some bruising and a few scrapes as a result of the above-mentioned incident with Respondents Demchenko and O’Connell. Specifically, the back of Complainant’s right arm was bruised and there were scrapes on the back of their leg. CCRB’s Exhibits 5 and 6 corroborate Complainant’s description of the injuries they sustained. They did not seek medical attention because they do not have insurance and the injuries were not serious enough to warrant a hospital visit. (Tr. 42-43)

On cross examination, Complainant reiterated that they were “concerned” about the protester who was being arrested “based on the fact that most of the people in the crowd were young people of color” and “given the political climate at the time and the amount of tension that I was observing between the protesters and the NYPD, yes, it was an instinctual concern of mine.” (Tr. 54-55) Complainant further admitted that they wanted to get a better look at what

was happening between the arresting officer and the protester, so they “stepped off the curb briefly” despite being instructed by officers to keep the bike lane clear. (Tr. 59)

Complainant also testified that upon joining the protest, they felt “instinctually compelled to protect” the young protesters, as a “mother, and someone older and more responsible.”

Although Complainant had no specific plan, they intended to protect the protesters by “putting my physical body in front of the bodies of the other protesters.” Complainant further acknowledged putting their physical body in front of the police bicycle. (Tr. 66-68)

Deputy Chief Michele Irizarry testified that she retired from the Department in March of 2022, but at the time of the above-mentioned incident she was assigned to Special Projects in Patrol Borough Manhattan South. On the date of the incident, Chief Irizarry was informed that there would be a “pop-up protest” at Union Square Park. She testified that because it was a pop-up protest, they had very little information in terms of how many people were expected to participate. This made it difficult to deploy and coordinate resources. Chief Irizarry stated that although many similar demonstrations followed in the days, weeks and months after May 28, this protest was one of the first of the “George Floyd protests” in the city. (Tr. 73-74, 79)

Upon her arrival at Union Square Park, Chief Irizarry recalled that there were “a couple hundred protesters” gathered there that were acting in a hostile manner towards the police officers. (Tr. 73-74) Initially, Chief Irizarry observed that the protesters were at the southern end of the park and the officers were attempting to keep them on the sidewalk to ensure vehicular traffic was not impeded. Chief Irizarry explained that because this was a pop-up protest, they were not equipped with things like barriers to maintain a separation between protesters and traffic. (Tr. 75)

At some point during the protest, a decision was made to bring in the Strategic Response Group (hereinafter “SRG”) with their bicycles to create a barrier in order to keep traffic flowing. The SRG bicycles were assembled tire to tire, creating a mobile fence line. Chief Irizarry testified that she has seen this type of formation used by SRG at protests when physical barriers were not available. (Tr. 77)

Chief Irizarry testified that when the bicycle barrier was assembled, she observed water bottles and other objects being thrown at the officers. She also noticed several skirmishes develop. Chief Irizarry stated that while she did not personally observe the interaction between Complainant and Respondents, she did see the initial skirmish from her vantage point and then others occurred in a “chain reaction” after that. Chief Irizarry testified that as the protesters rushed to the location where an incident occurred between protesters and officers, the line of SRG bicycles was compromised. (Tr. 78)

Respondent Demchenko testified that he has been assigned to SRG since about 2018. When he was first transferred to SRG, he received approximately two months of specialized training. According to Respondent Demchenko, part of this training included crowd control tactics using bicycles. Respondent Demchenko described that one of the tactics commonly used by SRG, particularly when responding to protests, is creating a line or barrier with bicycles to move protesters from the streets to the sidewalk, if necessary. He stated:

We were trained to use the bicycle pretty much as a baton, sort of, to push the people away from us. So just lift the bicycle, push them, put it down... So you lift it, you push it, bring it back and put it down. You don't use it as a weapon. You just push the crowd. (Tr. 88-89)

Respondent Demchenko further explained that they use this tactic when a crowd is becoming disorderly and compromising the bicycle barrier. He added that they are not necessarily required

to wait for an order or directive from a supervisor to set the barrier and can use their own judgment depending on the situation. (Tr. 90)

On the date of the above-mentioned incident, Respondent Demchenko recalled that he and his team of approximately twenty-five other officers were deployed to Union Square for an “unscheduled protest.” Upon arrival, Respondent Demchenko noticed a large group of protesters holding signs, yelling and cursing at the police officers. He also recalled that the protesters were throwing objects at the officers including bottles and bricks. (Tr. 91-93)

Respondent Demchenko testified that at some point after his arrival on scene, he was ordered to “make a line.” He explained that this is a type of formation whereby the SRG officers stand shoulder to shoulder, with the bicycles in front of them wheel to wheel and create a physical barrier. Respondent Demchenko emphasized that this tactic is used to prevent protesters from getting on the street and obstructing traffic. (Tr. 94-95)

According to Respondent Demchenko, when he made the line, the response from the protesters was that they became more aggressive and started pushing the officers. He also observed protesters fighting with police officers, which resulted in protesters being arrested. Although Respondent Demchenko could not recall who gave the order, he stated that he heard a directive from a supervisor behind him to “push the crowd.” He and the other SRG officers proceeded to employ the technique learned in their SRG training and pushed the crowd of protesters with their bicycles. As Respondent Demchenko did this, he lost control of his bicycle. (Tr. 95-97)

Respondent Demchenko alleged that as he tried pushing the crowd with his bicycle, the crowd began pushing his bicycle back toward them. He then became concerned, when he was losing control of his bike, that the protesters would use it as a weapon or breach the barrier

created by the bicycles. After a brief struggle with the protesters, Respondent Demchenko was ultimately able to regain control of his bicycle and “kept holding the line.” He also recalled, after viewing video footage from the event, that Respondent O’Connell came to his aid when he was losing control of his bike. Respondent Demchenko denied using his bike as a weapon or intentionally striking anyone, including Complainant, with it. (Tr. 97-98, 101)

On cross-examination, Respondent Demchenko was asked whether Complainant presented a physical threat to him at the time he used his bicycle to push them back. Respondent Demchenko reiterated that he was trying to prevent the protesters, which included Complainant, from compromising the barrier. Respondent Demchenko asserted that the protesters had been instructed to remain on the sidewalk and when they failed to comply by entering the bike lane, he used his bicycle to guide them back onto the sidewalk. (Tr. 106-09)

Respondent O’Connell testified that on May 28, 2020, he was the Commanding Officer of the 9 precinct in Manhattan. He recalled that Patrol Borough Manhattan South notified him to respond to a “pop-up” protest relating to the George Floyd/Black Lives Matter movement. Respondent O’Connell, along with other executives from Manhattan South, met at Union Square Park. Upon arrival, Respondent O’Connell was confronted with approximately fifty hostile protesters who immediately began yelling, cursing and threatening the officers on scene. (Tr. 113)

According to Respondent O’Connell’s testimony, the crowd of protesters grew in size from about 50 to roughly 200, and became increasingly hostile as the day went on. Along with the verbal threats, Respondent O’Connell recalled that the protesters were throwing various objects at the officers. He further described that there was a “large contingent that was there hell

bent on just causing chaos...It was just a very hostile crowd that we could just not get control of." (Tr. 114)

Respondent O'Connell testified that at some point during this protest, SRG was called in to assist. He explained:

When you have a pop-up demonstration, we don't have the ability to properly prepare utilizing barriers, have barricades or know who the community leader is going to be that we can coordinate with. So in absence of that, we're using members of service to form barrier lines and try to direct people where they can and cannot go. (Tr. 115)

He further stated that when SRG arrived with their bicycles, a decision was made that they would form a line using their bicycles to create a barrier between the protesters and the bike lane and street to maintain the flow of traffic while the demonstration continued. (Tr. 116)

Respondent O'Connell remembered seeing protesters "clashing" with SRG officers and other members of service. According to his recollection, protesters were throwing bottles and spitting on officers while verbally threatening them. Respondent O'Connell also testified that although some arrests were made, there were other protesters who were not arrested despite the fact that there was probable cause to do so. (Tr. 117, 120-21)

Respondent O'Connell testified that at some point during this protest, he observed a member of SRG struggling to maintain custody and control of his bicycle so he proceeded to assist this officer (later identified as Respondent Demchenko) in regaining control of his bicycle. When asked to elaborate on why he engaged with protesters in this way, Respondent O'Connell replied: "I saw a bike in custody and control of a member of service about to be taken from him. That bike could have been used in number of ways. But one is being used as a weapon against us." (Tr. 122)

Respondent O'Connell was shown video footage of the incident in which Complainant can be seen with a bicycle on top of them. After viewing the video, Respondent O'Connell was

asked whether Complainant should have been arrested on the date of this incident and he responded in the affirmative. He then expounded that Complainant was not complying with the directives of officers over the LRAD to stay on the sidewalk and was interfering with officers' attempts to control the crowd of protesters. (Tr. 123)

CCRB Exhibit 2: NYPD Argus Camera

CCRB's Exhibit 2 is footage from an NYPD surveillance camera, capturing the incident area and depicting the encounter between Respondents and Complainant. This footage contains no audio. The following is a summary of the relevant portions of the video:

05:50-05:58: The video begins with a crowd of protesters standing on the sidewalk, holding various signs. Several uniformed members of service, including supervisors with white shirts, are seen guiding those in the crowd who enter the bicycle lane back onto the sidewalk. Suddenly, officers and protesters begin pushing and shoving each other. Complainant enters the frame from the left side of the screen. Complainant is Caucasian, with blonde hair, wearing denim overalls and what appears to be a bright pink face covering. Complainant is seen walking in the bicycle lane, which is distinguished by green paint on the ground. Complainant is walking towards the center of the camera's view and is pushed back onto the sidewalk.

05:59-08:24: Complainant is seen putting up what appears to be their index finger as two officers are pushing Complainant back onto the sidewalk. Complainant continues to push against the officers and is seen extending an arm out towards the officers. Complainant and another protester begin pointing and making head gestures towards an officer who is standing directly in front of them. At this moment, Complainant is on the sidewalk.

08:25-08:50: Members of SRG (wearing neon green shirts) ride in on bicycles and create a barrier along the bike lane in front of the protesters.

08:51-18:12: During this timeframe, Complainant is observed standing, then sitting on the curb, holding a sign, but remains in the sidewalk area.

18:13-18:37: An off-screen incident seems to capture the attention of protesters including Complainant. Complainant leaves the sidewalk, enters

the bicycle lane, and begins walking to the left towards the middle of the crowd of protesters. Respondent Demchenko and other members of SRG lift their bicycles off the ground and push them toward the crowd (including Complainant) surging toward the street. Complainant's right arm appears to be extended and pushing against Respondent Demchenko's bicycle multiple times.

Respondent Demchenko is seen pushing his bicycle into Complainant and other protesters, moving them back onto the sidewalk. Respondent Demchenko is then pushed back towards the bicycle lane by some protesters. Respondent O'Connell then runs over toward Respondent Demchenko and attempts to grab his bicycle while pushing protesters back. The protesters and Respondents are on the sidewalk pushing and shoving each other. Respondent O'Connell is then seen stepping back into the bicycle lane once the pushing and shoving between Respondent Demchenko and protesters is over.

CCRB Exhibit 4: New York Times Video

CCRB's Exhibit 4 captures Respondents' interaction with Complainant from a close-up vantage point. The following is a summary of the relevant portions of the video:

00:22-00:34: Respondent Demchenko is seen with his bicycle in hand, pushing against protesters. Some protesters' hands are on Respondent Demchenko's arm and some protesters' hands are on his bicycle. Complainant's right hand is visible and is grabbing Respondent's bicycle. Complainant is also seen pushing the bicycle as they back into a stone barrier and stumble to the ground. Respondent O'Connell is seen running to assist Respondent Demchenko as he continues struggling with protesters. Respondent Demchenko continues to utilize his bicycle to push protesters further back on the sidewalk.

00:35-00:51: Several protesters' hands are seen on Respondent Demchenko's bicycle. Respondent Demchenko then steps back and pushes his bicycle forward toward the protesters. Respondent Demchenko seems to momentarily lose his balance, but then picks up his bicycle and retreats back to the bike lane with the aid of Respondent O'Connell. Complainant is also visible at this time, but Respondent Demchenko is not interacting with them.

Respondent Demchenko- Specifications 1 and 2: Wrongful Use of Force

Respondent Demchenko is charged with wrongfully using force against Complainant and other civilians by striking them with a bicycle at the incident location in violation of Patrol Guide section 221-02. Respondent Demchenko maintains that he used a permissible police tactic to contain and control a raucous group of protesters (including Complainant) from obstructing traffic. Thus, the issue before the Tribunal is whether Respondent's use of force was justified by the circumstances attendant at the protest. For the reasons set forth below, the Tribunal finds that Respondent's use of force in this case was warranted. The Tribunal will analyze these two specifications together because the alleged misconduct occurred simultaneously.

Patrol Guide section 221-02, Paragraph 11 specifically directs that members of the service must, "Apply no more than the reasonable force necessary to gain control." Further, on the issue of reasonable force, courts have held that "In determining whether the use of force was reasonable, the trier of fact must allow for police officers' frequent need to make 'split-second' judgments about how much force is necessary 'in circumstances that are tense, uncertain, and rapidly evolving.'" *Pacheco v. City of New York*, 104 A.D.3d 548 (1st Dept. 2013), quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Respondent Demchenko credibly testified that as a member of SRG, he received specialized training on the use of bicycles for crowd control. He explained, in detail, the different ways in which he was taught to use his bicycle during a protest or in a situation where crowd control is necessary. On the date of this incident, he was responding to an unscheduled protest at Union Square Park. Respondent Demchenko and the other members of the SRG team were instructed to create a barrier with bicycles between the protesters and the bike lane to maintain the steady flow of traffic during the demonstration.

There were announcements made on the LRAD directing the protesters to remain on the sidewalk and not impede traffic. Complainant admitted that they heard the directive and complied with it until there was a scuffle between a protester and an officer. That is when, according to Complainant's testimony, the crowd of protesters spilled onto the street to witness the scuffle. When this happened, Respondent Demchenko and other members of SRG did precisely what they were trained to do. They used their bicycles to push the protesters (including Complainant) back onto the sidewalk.

This encounter is captured by CCRB's Exhibit 2 at 18:13, which shows Complainant step into the bike lane and attempt to walk past the SRG officers toward the off-screen encounter. Respondent Demchenko and the other SRG officers can then be seen picking up their bicycles to chest level and using them to push the protesters back onto the sidewalk. At 18:16, Complainant pushes Respondent Demchenko, while he is holding his bicycle, multiple times as he is continuing to push Complainant and other protesters back. Moreover, CCRB's Exhibit 4, provides a different view of this same interaction. In CCRB Ex. 4, it is clear that as Respondent Demchenko is pushing Complainant back with his bicycle, Complainant grabs hold of the bicycle and pushes it away from them as Complainant stumbles over a stone barrier.

The evidence presented at trial failed to establish that, under these particular circumstances, the force used constituted sanctionable misconduct. Using a bicycle to push a crowd of protesters surging into the street, an action which was limited in scope and duration, was reasonable force given the volatile nature of the situation. The fact that Complainant sustained minor injuries as a result of that interaction does not mean that the force used was excessive or unreasonable. Accordingly, I find Respondent Demchenko not guilty of Specifications 1 and 2.

Respondent O'Connell- Specification 1: Wrongful Use of Force

Respondent O'Connell is also charged with wrongfully striking Complainant with a bicycle in violation of Patrol Guide section 221-02. The evidence presented at trial failed to establish that Respondent O'Connell engaged in sanctionable misconduct. CCRB Ex. 4 shows Respondent O'Connell attempting to grab Respondent Demchenko's bicycle while pushing the protesters back. Respondent Demchenko simultaneously uses the bicycle to push Complainant and other protesters. However, this video clip only tells part of the story because it captures Respondent O'Connell's actions for less than 30 seconds and it is devoid of the context needed to appropriately and fully assess his conduct. Even Complainant's testimony did not corroborate CCRB's theory that Respondent O'Connell committed any wrongdoing because all they could testify to was the fact that he was present and positioned behind the SRG officers during their interaction. Complainant did not attribute any specific action, beyond what is depicted in the video footage, to Respondent O'Connell.

This Tribunal found Respondent O'Connell to be a straightforward and credible witness. Respondent O'Connell testified that he was one of the executives on scene that day assigned to monitor and supervise the protest. Respondent O'Connell expressed earnest concern for the safety of Respondent Demchenko, who he observed was struggling to maintain control of his bicycle from the protesters rushing toward him. Respondent O'Connell quickly reacted by assisting Respondent Demchenko in regaining control of his bicycle. He was not attempting to use the bicycle to push or strike any protester, rather he was trying to prevent a fellow member of service from losing custody and control of his bike to the protesters. Under these specific circumstances, this Tribunal finds that Respondent O'Connell's actions were objectively

reasonable. Accordingly, I find Respondent O'Connell not guilty of the misconduct alleged in Specification 1.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

OCT 02 2024



THOMAS G. DONLON
INTERIM POLICE COMMISSIONER



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ERIC L. ADAMS
MAYOR

ARVA RICE
INTERIM CHAIR

September 3, 2024

The Honorable Edward A. Caban Police Commissioner
New York City Police Department One Police Plaza
New York, New York 10038

Re: Inspector John O'Connell & Police Officer Yuriy Demchenko
Disciplinary Case Nos. 2021-24094 & 2021-24092

Commissioner, Caban:

The above-referenced case was tried on July 29, 2024, by Administrative Prosecutor Dwayne Bentley for the New York City Civilian Complaint Review Board (hereinafter "CCRB"), pursuant to the Memorandum of Understanding between the CCRB and the New York City Police Department.

Vanessa Facio-Lince draft decision of Assistant Deputy Commissioner of Trials ("ADCT"), Vanessa Facio-Lince, dated August 16, 2024. We respectfully submit the following comments regarding that draft decision pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dept. 1975).

Respondent, Inspector John O'Connell, was charged with the following:

1. Captain John O'Connell, on or about May 28, 2020, at approximately 1618 hours, while assigned to the 109 Precinct, an on duty, in the vicinity of Union Square Park, New York county, wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

Respondent, Police Officer Yuriy Demchenko, was charged with the following:

1. Police Officer Yuriy Demchenko, on or about May 28, 2020, at approximately 1618 hours, while assigned to SEG 3 and on duty, in the vicinity of Union Square Park, New York County, wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity.

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USE OF FORCE

2. Police Officer Yuriy Demchenko, on or about May 28, 2020, at approximately 1618 hours, while assigned to SRG 3 and on duty, in the vicinity of Union Square Park, New York County, wrongfully used force, in that he struck individuals.

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USE OF FORCE

The Court found Inspector O' Connell not guilty of Specification One. Also, the Court found Police Officer Demchenko, not guilty of Specifications One and Two. It is respectfully requested that you reject ADCT Facio-Lince's not Guilty findings of Specification One for Inspector O'Connell. Further, CCRB requests that you find Inspector O'Connell guilty of Specification One and impose the CCRB recommended penalty of the forfeiture of Ten (10) vacation days.

With regard to PO Demchenko, it is respectfully requested that you reject ADCT's Facio-Lince's not Guilty findings of Specifications One and Two and find PO Demchenko guilty of Specifications One and Two. Further, CCRB requests that you find PO Demchenko guilty of each of the Charges and Specifications and impose the CCRB recommended penalty of the forfeiture of Twenty (20) vacation days.

STATEMENTS OF FACTS

CCRB adopts the statements of facts articulated in ADCT Facio-Lince's Draft Decision.

ARGUMENT

Inspector John O'Connell

CCRB disagrees with the Court's finding that Inspector John O'Connell is not guilty of Specification One (1) in that he wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity. Further, CCRB disagrees with the Court's conclusion that "Under these specific circumstances, this Tribunal finds that Respondent O'Connell's actions were objectively reasonable. Accordingly, I find Respondent O'Connell not guilty of the misconduct alleged in Specification 1." (Draft Decision, Page 16). The evidence submitted by CCRB clearly shows that Inspector O'Connell wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity.

The NYPD Patrol Guide procedure paragraph 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 4) Size, age, and condition of the subject in comparison to the MOS and 5) Presence of hostile crowd or agitators.

In this case the force used by Inspector O'Connell on the Complainant § 87(2)(b) was unreasonable. § 87(2)(b) was asked "Did you throw any water bottles at Inspector O'Connell". § 87(2)(b) § 87(2)(b) answered "No." Next, § 87(2)(b) was asked "Did you throw any bricks at Inspector O'Connell?" § 87(2)(b) answered "No". (Transcript, page 38). Next, § 87(2)(b) was asked "And what is § 87(2)(b) approximate weight?" Next, § 87(2)(b) answered "I weight about 130 pounds." (Transcript page 25). Inspector O'Connell was asked "What's your approximate weight?" And Inspector O'Connell answered "230 pounds." (Transcript page 126). § 87(2)(b) did not throw any water bottles or bricks at Inspector O'Connell and her weight was 130 pounds and Inspector O'Connell weighed

over 90 pounds more than § 87(2)(b) Thus, based on NYPD Patrol Guide paragraph 221-01 it was not reasonable for Inspector O'Connell to use force on § 87(2)(b) because she did not throw anything at him and her size is comparatively smaller than Inspector O'Connell.

Police Officer Yuriy Demchenko

CCRB disagrees with the Court's finding that Police Officer is not guilty of Specification One (1) in that he wrongfully used force, in that he struck § 87(2)(b) with a police bicycle without police necessity. Also, CCRB disagrees with the Court's finding that Police Officer is not guilty of Specification Two (2) in that he wrongfully used force, in that he struck individuals. Further, CCRB disagrees with the Court's conclusion that "Using a bicycle to push a crowd of protesters surging into the street, an action which was limited in scope and duration was reasonable force given the volatile nature of the situation. The fact that Complainant sustained minor injuries as a result of that interaction does not mean that the force used was excessive or unreasonable. Accordingly, I find Respondent Demchenko not guilty of Specifications 1 and 2." (Draft Decision, page 14).

In this case the force used by Police Officer Demchenko on the Complainant § 87(2)(b) and individuals was unreasonable. § 87(2)(b) was asked "Did you throw any water bottles at PO Demchenko". § 87(2)(b) answered "No." Next, § 87(2)(b) was asked "Did you throw any bricks at PO Demchenko?" § 87(2)(b) answered "No". (Transcript, page 38). Next, § 87(2)(b) was asked "And what is § 87(2)(b) approximate weight?" Next, § 87(2)(b) answered "I weight about 130 pounds." (Transcript page 25). PO Demchenko was asked "What's your approximate weight?" And Inspector O'Connell answered "185 pounds." (Transcript page 105). § 87(2)(b) did not throw any water bottles or bricks at PO Demchenko and her weight was 130 pounds and PO Demchenko weighed over 50 pounds more than § 87(2)(b). Thus, based on NYPD Patrol Guide paragraph 221-01 it was not reasonable for PO Demchenko to use force on § 87(2)(b) and individuals because they did not throw anything at him and § 87(2)(b) size is comparatively smaller than PO Demchenko.

Thus, due to the fact that § 87(2)(b) didn't throw any bottles or bricks towards Inspector O'Connell and PO Demchenko, their use of force against § 87(2)(b) was unreasonable. Therefore, Inspector O'Connell must be found guilty of Specification One (1) and PO Demchenko must be found guilty of Specifications One (1) and Two (2).

CCRB's penalty recommendation of the forfeiture of ten (10) vacation days for Inspector O'Connell and for PO Demchenko the forfeiture of twenty (20) vacation days should be imposed.

CONCLUSION

For the aforementioned reasons, CCRB requests that you reject ADCT Facio-Lince's Not Guilty findings and find Inspector O'Connell and PO Demchenko Guilty of all the charges against them. CCRB requests that you accept these recommended penalties for Inspector O'Connell a forfeiture of ten (10) vacation days for Specifications One (1).

For PO Demchenko, CCRB requests that you accept these recommended penalties for PO Demchenko: 1. Forfeiture of ten (10) vacation days for Specifications One and 2. Forfeiture of ten (10) vacation days for Specification Two to be served consecutively. CCRB recommends that you impose a penalty of a total forfeiture of Twenty (20) vacation days for PO Demchenko.

Respectfully submitted by,

Dwayne L. Bentley

Dwayne L. Bentley

Prosecutor

NYC Civilian Complaint Review Board
Administration Prosecution Unit

Cc: Louis LaPeta
Craig Hayes