



POLICE DEPARTMENT

December 7, 2023

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In the Matter of the Charges and Specifications

- against -

Police Officer Liosmely Holguin

Tax Registry No. 966628

Patrol Services Bureau

Case No.

2022-25367

Police Officer Katherine Osipowich

Tax Registry No. 961046

Midtown North

Case No.

2022-25366
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For Respondents: Michael Martinez, Esq.
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To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-25367

1. Police Officer Liosmely Holguin, on or about June 1, 2020, at approximately 2045, while assigned to Midtown North and on duty, in the vicinity of West 55th Street and 6th Avenue, New York County, wrongfully used force, in that she struck Andrea Parejo with a baton without police necessity.

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

USE OF FORCE

2. Police Officer Liosmely Holguin, on or about October 6, 2020, at approximately 0933, while assigned to Midtown North and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB regarding her actions and use of force on June 1, 2020.

A.G. 304-10

MAKING FALSE STATEMENTS

Disciplinary Case No. 2022-25366

1. Police Officer Katherine Osipowich, on or about October 14, 2020, at approximately 1540, while assigned to Midtown North and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB by refusing to identify herself in a video which was material to CCRB's investigation.

A.G. 304-10

MAKING FALSE STATEMENTS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 25, 2023.

Respondents Holguin and Osipowich, through their counsel, each entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board called Andrea Parejo, Liam Hanafée-Arecas, and Sergeant George Kalogeropoulos as witnesses, and introduced into evidence video footage taken from a phone. 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 both Respondents Not Guilty of the charges against them.

ANALYSIS

On the afternoon of June 1, 2020, Sergeant George Kalogeropoulos was assigned as the desk officer at the Manhattan North Precinct. He testified that he heard multiple calls from officers in need of assistance come over the radio, in connection with the George Floyd protests that were occurring throughout the city. According to the sergeant, the situation out on the street was chaotic and violent, as protesters were throwing items at police officers who were attempting to make arrests, and people were breaking into stores and stealing. (Tr. 108-11)

After hearing these repeated calls for assistance, Sergeant Kalogeropoulos arranged for a post change, to offer cover for his fellow officers. He brought along Respondents Osipowich and Holguin, as well as one additional officer, and the four of them drove from location to location in a marked RMP in response to officers' calls for assistance. Sergeant Kalogeropoulos testified that they were not, themselves, making arrests, but were providing back-up to others. It is alleged that sometime after 2000 hours, at one of the 20-to-30 locations where these officers stopped to assist that evening, Respondent Holguin wrongfully struck one of the protesters, Andrea Parejo, in the face with her baton. Both Respondents also are charged with making misleading statements at their CCRB interviews, which took place approximately four months later. (Tr. 101, 109-13, 119)

Andrea Parejo testified that she and her husband, Liam Hanafée-Areces, were marching from Union Square toward Trump Tower as part of the protest. Along the way, things became "a little more violent," and there was some looting occurring. At the intersection of West 55th Street and 6th Avenue, she observed that police officers had formed a line across 6th Avenue. Ms. Parejo estimated that there were 60 or more police officers in the vicinity, male and female, wearing similar looking uniforms. She also saw emergency vehicles with sirens on driving through a barricade of orange and white cones that someone had erected in the street. Ms. Parejo

was walking on the sidewalk behind her husband, who was recording with his phone. (Tr. 68-71, 78-79, 82-84)

As she was walking, Ms. Parejo noticed that there was a female protester on the ground. Three or four police officers, who had recently hopped out of a van, were running toward the protester with batons in their hands. There were six or seven civilians around the woman. Ms. Parejo testified that she did not know what, if anything, the woman had done just before going to the ground. Nevertheless, Ms. Parejo stepped forward and placed her body between the woman and the officers, “hoping to de-escalate the situation” by preventing the officers from reaching the woman. She testified that as she did so, “I remember seeing a baton in the air. And when I looked up at it, it was coming down and hitting me in the face.” Ms. Parejo agreed that the matter happened rather quickly, and it was hard to know when, in the sequence of events, the actual blow occurred. When asked, “As you sit here today, you’re not sure, even watching the video, when it occurred?” she answered, “No, I don’t.” (Tr. 71-72, 87-92, 96)

After being hit, Ms. Parejo was in shock, and she and her husband moved away from the crowd. She told her husband what had happened. Ms. Parejo testified that while still at the scene, she and her husband tried to identify the officer who struck her by capturing her on video. (CCRB Ex. 2) When asked at trial whether she saw the person who struck her with the baton in the courtroom, Ms. Parejo answered, “I believe so,” and pointed to Respondent Holguin who was seated at the defense table. Ms. Parejo conceded, however, that she was aware that the accused officer would be in the courtroom, which made her identification of Respondent Holguin easier, and she could not say with absolute certainty that her in-court identification was accurate. (Tr. 72-73, 76-77, 96-97)

As a result of being hit, Ms. Parejo went to see a dentist, since she had sustained one chipped tooth, another tooth was dislodged, and her lip was split. Ms. Parejo testified that she made a complaint to the CCRB, but did not file a lawsuit. (Tr. 73-75)

Liam Hanafée-Areces testified that he started filming at the location at about the time the emergency vehicles drove through the barricade. He also recorded Respondent Osipowich walking in the street “waving her baton around;” he did not observe her swinging the baton at anyone in particular, and the video footage confirms that she is waving it toward the people on the sidewalk but not striking anyone with it. (CCRB Ex. 1) Mr. Hanafée-Areces then noticed a scuffle by the sidewalk, where four or five police officers who had exited a vehicle were moving toward a group of 10-15 people, some of whom were on the ground. He also realized his wife was no longer by his side. Mr. Hanafée-Areces did not see Ms. Parejo in that crowd, but was pretty sure she was there. He placed his phone in his pocket and rushed toward the group of people, and first saw his wife in the crowd about 20-30 seconds after noticing the commotion. Mr. Hanafée-Areces testified that he did not see his wife being struck with a baton, nor did he capture it on video. His wife informed him what had occurred, and within five minutes he recorded the police officer whom Ms. Parejo stated struck her with a baton, who was Respondent Holguin. (CCRB Ex. 2; Tr. 26-29, 33-35, 45, 51-65)

At trial, Mr. Hanafée-Areces made an in-court identification of Respondent Holguin as the officer whom his wife had indicated was the one who struck her, and whom he captured on his second video (CCRB Ex. 2). He also identified Respondent Osipowich as the officer he initially saw waving her baton in the street. Mr. Hanafée-Areces testified, however, that he knew they would both be in the courtroom at the time he was asked to identify them, and that he

probably would not have been able to recognize them if he were to see them outside the courtroom. (Tr. 37-38, 41-42, 64-65)

Sergeant George Kalogeropoulos testified that he and his colleagues responded to the location after hearing a call for additional units. As they were driving, someone threw an orange construction barrier at their vehicle. They exited their car, and in response to a call for help behind them, were trying to keep people back from the street, and “mak[ing] sure that cops don’t get hurt.” Sergeant Kalogeropoulos did not see either Respondent strike anyone with a baton, nor did he receive any complaints from any civilians that they had been struck. While on the witness stand, the sergeant was shown the two videos recorded by Mr. Hanafée-Arecés (CCRB Exs. 1 & 2). In CCRB Exhibit 1, Sergeant Kalogeropoulos identified the officer seen at the 0:50 and 1:11 marks, with the number 28793 on her helmet, as Respondent Osipowich. In CCRB Exhibit 2, he identified Respondent Holguin as the officer standing in profile to the right of Respondent Osipowich at the 0:14 mark; Respondent Holguin then has her back to the camera at 0:15. (Tr. 103-07, 114, 117-20)

On October 6, 2020, Respondent Holguin was interviewed virtually by the CCRB. An audio recording of that interview, along with the accompanying transcript, were admitted into evidence. (CCRB Exs. 4 & 4A) In that interview, Respondent Holguin was asked what occurred at the West 55th Street and 6th Avenue location on the evening of June 1, 2020. She repeatedly stated that it was “chaotic” all over midtown, and she could not recall what specifically happened at that location. She explained that she responded to multiple situations, where she was involved in pushing people back who were fighting with police officers. Respondent Holguin was shown a screenshot of Ms. Parejo and Mr. Hanafée-Arecés, but said she could not recall seeing either of them that evening. When shown the video footage recorded by Mr. Hanafée-Arecés (CCRB Ex.

2), Respondent Holguin stated that a female officer depicted on the screen looked like it could be her, and she identified Respondent Osipowich and Sergeant Kalogeropoulos as well. However, she still could not recall anything specific that happened at that location, as opposed to the multiple other scenes to which she responded throughout that month. Near the conclusion of the interview, Respondent Holguin stated that she could not recall hitting a civilian in the face with her baton that evening, nor did she witness anyone else do so. She also stated that most likely she did push someone at the scene, though given the commotion she could not say for sure. (CCRB Ex. 4A at 21-22, 24, 27, 28, 40-43, 50, 52, 57-58)

At trial, Respondent Holguin testified that the period of the protests in 2020 were “the worst time of [her] career.” She described a very unsafe and chaotic time, where protesters were throwing and burning things, cars were set on fire, and stores were looted. On the night of June 1, 2020, she and her colleagues worked 13-16 hours, responded to over 30 calls for help that day, and assisted fellow police officers who were making arrests amidst the “mayhem” that was going on. Respondent Holguin testified that during the course of that evening she did use her baton, holding it with both hands to push people back when necessary. She did not, however, use it to strike anyone in the face, nor could she recall seeing Ms. Parejo that night. Respondent Holguin stated that based on her training, when an officer uses a baton to strike an individual it should be on the lower body. She agreed that striking someone in the face with a baton would generally be a memorable event. (Tr. 127-32, 136-39, 143, 146-47)

According to Respondent Holguin, when she was interviewed virtually by the CCRB on October 6, 2020, she had difficulty recalling this particular matter. During that interview, Respondent Holguin was shown the video footage and asked to identify various people. She testified that she did her best, but there were portions of the video where she could not be sure

who was being shown. She noted that there were also a lot of other officers present, including many female officers, which made it difficult to identify people in the video, including herself. In parts of the video, she did say that one of the officers looked like her, but there were other times where the face on the screen was not clear and she could not be sure. By the time of this trial, after having the opportunity to review the video footage, she was able to recall more of the details. (Tr. 133-35, 140-41, 144-46)

On October 14, 2020, Respondent Osipowich was interviewed virtually by the CCRB. An audio recording of that interview, and the accompanying transcript, were introduced into evidence. (CCRB Exs. 3 & 3A) In that interview, Respondent Osipowich confirmed that she was at the scene, one of many calls she and her colleagues handled that night, where they assisted other units and tried to “make a safe environment for everybody.” She recalled being hit by a thrown water bottle, but explained that she could not recall precise details in response to some of the questions since this matter occurred in the midst of a 14-day stretch where she was regularly doing 12-hour tours. Respondent Osipowich was shown video from the scene, including the two videos taken by Mr. Hanafée-Arecés, and asked if she could identify herself in the footage. Respondent Osipowich answered that the video was blurry on her end, and she could not clearly see the face of the person on the screen, who was wearing a helmet. The investigator questioning her acknowledged that portions of the video were blurry. Respondent Osipowich was shown different angles of the officers present, and she was able to identify Sergeant Kalogeropoulos, who was not wearing a helmet. She never denied being at the scene, and at two separate points in the questioning, Respondent Osipowich stated that the officer in the footage did look like her, though the shield number on the officer’s helmet did not match her shield. (CCRB Ex. 3A at 10-11, 16, 28, 31, 33-34, 37, 40-42, 46-47, 52-54, 58)

At trial, Respondent Osipowich testified that the night of June 1, 2020 was “utter chaos.” There were multiple calls coming over the radio with police officers screaming for assistance. She and her colleagues went out in a police vehicle, driving from scene-to-scene to assist fellow officers engaged in enforcement action, trying to keep everybody safe. She did not recall seeing Ms. Parejo or Mr. Hanafée-Areces that night. Respondent Osipowich testified that she did not strike Ms. Parejo with her baton, nor did she see Respondent Holguin do so. (Tr. 151-54, 163, 166-67)

Respondent Osipowich further testified that when she was interviewed virtually by the CCRB on October 14, 2020, she was shown the video footage on a tiny computer screen and asked if she could identify herself. She confirmed that she was at the location, and stated that one of the officers in the footage did look like her. However, she could not be one hundred percent sure that she was the officer depicted, and told that to the investigator interviewing her. There were many officers present at the scene, including other female officers, and with the riot helmets they were wearing it was difficult to distinguish them in the “grainy” video footage. Her uncertainty also stemmed, in part, from the video showing her in profile, and the shield number that appeared on her helmet (No. 28793) did not match her actual shield; Respondent Osipowich testified that she now realizes that she must have inadvertently grabbed someone else’s helmet as they were rushing out. Since the time of the interview, she has viewed the video in depth multiple times, and is now more confident identifying herself as the officer seen walking with a nightstick in her hand on the video. Respondent Osipowich insisted that she was not trying to trick anyone, or impede their investigation, and that she answered the questions to the best of her ability at the time. (Tr. 151-52, 156-62, 165, 167-68)

We now turn to the specifications against each Respondent, which will be considered separately.

Respondent Holguin

Specification 1 charges Respondent Holguin with wrongfully using force, in that she struck Ms. Parejo in the face with her baton without police necessity. Ms. Parejo credibly testified that she was struck, and there was nothing in the record to call that assertion into question. At issue is whether the record has established, by a preponderance of the credible evidence, that Respondent Holguin was the officer who struck Ms. Parejo, and if so, whether the evidence also has proven that her use of force was wrongful under the circumstances.

Ms. Parejo was the only individual who claimed to have seen Respondent Holguin strike her with the baton. Mr. Hanafée-Areces did not witness his wife being struck, nor did he capture it on video. They testified, however, that immediately after the incident, Ms. Parejo informed her husband what had occurred, and at Ms. Parejo's direction he recorded a second video which captured the officer who Ms. Parejo said was responsible: Respondent Holguin. (CCRB Ex. 2) This video is the main evidence on the issue of identification.¹

After observing Ms. Parejo on the witness stand, and considering her testimony in conjunction with the other evidence, I am persuaded as to the reliability of her identification. She described the officer who struck her as one of three or four officers who had recently hopped out of a police vehicle, and we know from the testimony of Sergeant Kalogeropoulos and Respondents that these officers had, in fact, just emerged from their vehicle after someone had thrown a portion of a barricade at it. This was not a situation where the witness was identifying

¹ Although both Ms. Parejo and Mr. Hanafée-Areces pointed out Respondent Holguin in court, these identifications were of minimal probative value since, by their own admissions, they each expected the accused to be sitting in the courtroom, which played a large part in their in-court identifications.

someone that might not even have been at the scene; we know that Respondent Holguin was present in the immediate area where this occurred. Moreover, it is telling that within minutes of being struck, Ms. Parejo, with the help of her husband, made a conscious effort to capture on video the officer responsible. Although there were other uniformed officers at the location, including other female officers, Ms. Parejo specifically identified this particular officer as the one she saw strike her. Additionally, Ms. Parejo and her husband did not file a lawsuit against the Department as a result of this matter, and there was nothing to suggest that they had a motive to fabricate an accusation against Respondent Holguin. As such, the record has established, by a preponderance of the credible evidence, that Respondent Holguin did strike Ms. Parejo in the face with her baton.

There is, however, a second issue to address, which is whether it has been proven that Respondent Holguin's use of force was wrongful in the context of what was happening here. Consistent with both the Patrol Guide and the Disciplinary Guidelines, a determination as to the reasonableness of the use of force in this case must be based upon careful consideration of the totality of the circumstances. These police officers were racing from scene to scene in response to violence that was erupting throughout midtown north. In this particular situation, they responded to a call for assistance, and were trying to keep people back from the street and make sure their fellow officers did not get hurt. In the midst of this, Ms. Parejo dangerously chose to place herself in between police officers and a protester on the ground, even though she was unaware why the protester was on the ground, and what the protester may have done to draw the attention of the onrushing officers. This is not to say that Ms. Parejo deserved to be struck because she interjected herself between the police and a protester, if that is what happened, but it

is a factor to consider when viewing the totality of what occurred. This was a rapidly unfolding event involving a crowd of people at the location.

Moreover, there was minimal evidence presented regarding the moment when Ms. Parejo was struck. Respondent Holguin credibly testified that she could not recall any interaction with Ms. Parejo, and so she did not provide any additional details other than describing how she was rushing from scene to scene that night, and that she used her baton only to push people back who were fighting with police officers. Neither Sergeant Kalogeropoulos nor Respondent Osipowich testified that they observed Ms. Parejo being struck. Mr. Hanafée-Areces observed a scuffle involving multiple police officers and 10-15 civilians, some of whom were on the ground. He could not initially see Ms. Parejo in that crowd, did not see her struck by a baton, and only afterward learned what happened. He can be heard on the video yelling at the police officers not to touch his wife, but he did not provide any testimony as to what he observed that prompted him to say that, nor did he capture his wife being struck on video.

Ms. Parejo did testify that she was struck by Respondent Holguin, but otherwise provided little detail regarding the moment she was hit. Nothing was elicited as to the relative body positions of the various parties involved, such as whether Ms. Parejo was standing upright or was closer to the ground when she was hit. Similarly, there was no testimony as to whether she was stationary or moving before the impact. It is unknown whether Ms. Parejo was struck the second she got between the protester and the officers, or sometime after that. It was unclear from the testimony whether Ms. Parejo observed Respondent Holguin pushing people with her baton or swinging it with one hand. Ms. Parejo conceded that the whole matter happened quickly, and, when shown the video at trial (CCRB Ex. 1), she was not even sure when exactly, in the sequence of events, she was hit. There was a crowd of people in the immediate area, and it is not

clear whether Ms. Parejo was the specific target of the baton, as opposed to being struck inadvertently when she suddenly thrust herself between the protester on the ground and the oncoming officers.

In light of the lack of detail provided in the testimony, I am not persuaded that Respondent Holguin deliberately and wrongfully struck Ms. Parejo in the face with her baton. The record has failed to establish, by a preponderance of the credible evidence, that Respondent Holguin wrongfully used force by striking Ms. Parejo in the face with a baton without police necessity. Accordingly, I find Respondent Holguin Not Guilty of Specification 1.

Specification 2 charges Respondent Holguin with providing a misleading official statement to the CCRB during her interview on October 6, 2020 regarding her actions and use of force on June 1, 2020. Section 203-08 of the Patrol Guide defines a misleading statement as one that is intended to misdirect the fact finder, and materially alter the narrative. This includes situations where an MOS intentionally omits a material fact, or makes repeated claims of “I do not remember” or “I do not know” when a reasonable person under similar circumstances would recall, or have been aware of, such material facts.

Under the totality of the specific facts presented here, I am not persuaded that Respondent Holguin was providing intentionally misleading answers during her interview. Although she was unable to provide much detail as to what occurred at this particular location, she did not deny that she was present. Rather, she credibly explained how this was one of many tumultuous situations over a two-week span in which she was responding to multiple locations during 12-hour tours, which made it extraordinarily difficult to recall details from each location. Although she did not definitively identify herself in the video footage shown to her, the CCRB investigator herself noted that the footage was blurry at times. Moreover, Respondent Holguin

did state at one point that the officer on the screen looked like it could be her, and she identified Respondent Osipowich and Sergeant Kalogeropoulos in the footage as well. (CCRB Ex.4A at 40-41).

Additionally, I am not persuaded that her statements regarding the use of her baton were deliberately misleading. When Respondent Holguin was asked, “Did you hit any civilian in the face with a baton?” she responded, “Not that I recall. No.” (CCRB Ex. 4A at 58) Under the totality of these specific circumstances, it is plausible that she did not, in fact, specifically recall striking Ms. Parejo in the face with her baton. As noted above, based on the evidence presented at trial, the precise details of how Ms. Parejo was injured were vague. The video footage did not capture a strike. In her testimony, Ms. Parejo stated only that she positioned herself between the protester on the ground and the police officers, and that she saw the baton “coming down and hitting [her] in the face. There was minimal detail elicited as to the relative positions of Ms. Parejo and Respondent Holguin, whether Respondent Holguin was pushing into the crowd with two hands on her baton or swinging with one hand, and whether any of the parties were moving at the time of impact. Indeed, Respondent Holguin did acknowledge using her baton to push protesters back, and it is possible that she struck Ms. Parejo in the face while doing so, without fully realizing the full extent of what had occurred.

This was not a situation where Respondent Holguin used her baton as part of a standalone incident, where it would be easy to perceive and recall precisely what occurred. Rather, this appeared to be a very brief encounter that occurred in the midst of many such nights of violence and chaos during a 14-day stretch. Taken as a whole, I am not persuaded by the credible evidence that Respondent Holguin was intending to mislead the fact-finder with her responses. The record has failed to establish, by a preponderance of the credible evidence, that Respondent

Holguin provided an intentionally misleading statement to the CCRB. Accordingly, I find her Not Guilty of Specification 2.

Respondent Osipowich

Respondent Osipowich is charged with providing a misleading official statement to the CCRB on October 14, 2020, in that she refused to identify herself in the video footage of this matter. Respondent Osipowich was not accused of any wrongdoing during the encounter, and was merely asked questions as part of the CCRB's investigation into the matter; indeed, in the video footage in evidence (CCRB Ex.1), she appears to be pushing officers away from the commotion. She credibly testified that during that virtual interview, she was shown video footage on a small computer screen that was often "blurry" and "grainy." When she was asked to identify herself in the video, she stated she could not be one hundred percent sure that she was the officer being shown on the screen.

Based on the totality of the circumstances presented here, I am not persuaded that Respondent Osipowich was being intentionally misleading in her responses. As Respondent Osipowich noted, part of the footage shows her standing in profile as opposed to head-on, and she is moving instead of stationary, which was a factor in her uncertainty. Also contributing to her confusion was the shield number that could be seen on the helmet in the video, which did not match her actual shield; Respondent Osipowich credibly testified that she subsequently realized that she must have grabbed someone else's helmet before rushing out. Moreover, although she did not definitively identify herself, she also did not deny being at the scene, and twice stated that the officer in the footage did look like her. She also identified Sergeant Kalogeropoulos in the video, which was easier to do since, unlike her, he was not wearing a helmet.

Additionally, it is important to take into account the context in which this situation occurred. As noted above with respect to Respondent Holguin, this was just one of many calls the officers handled that evening, during an extremely challenging stretch where they were regularly performing 12-hour tours in response to the protests. Under these specific circumstances, it is understandable how details of this this particular matter would not have stood out in the mind of Respondent Osipowich. I credit her trial testimony that she was not intending to misdirect the fact-finder.

As such, the record has failed to establish, by a preponderance of the credible evidence, that Respondent Osipowich deliberately provided a misleading statement on October 14, 2020. Accordingly, I find her Not Guilty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

FEB 07 2024


EDWARD A. CALAN
POLICE COMMISSIONER