



POLICE DEPARTMENT

January 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Richard Aseng
Tax Registry No. 940931
76 Precinct
Disciplinary Case No. 2013-9652

Sergeant Patrick Quigley
Tax Registry No. 934081
Intel-Criminal Intel Section
Disciplinary Case No. 2013-9651

The above-named members of the Department appeared before me on February 12, April 15, and September 5, 2014, charged with the following:

Disciplinary Case No. 2013-9652

1. Said Police Officer Richard Aseng, on or about January 18, 2012, at approximately 16:15 hours, while assigned to the 76th Precinct and on duty, in the vicinity of 479 Columbia Street, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Jose Andujar without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

Disciplinary Case No. 2013-9651

1. Said Sergeant Patrick Quigley, on or about January 18, 2012, at approximately 16:15 hours, assigned to the 76th Precinct and on duty, in the vicinity of 479 Columbia Street, Kings County, abused his authority as a member of the New York City Police Department in that he stopped Jose Andujar without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP & FRISK

2. Said Sergeant Patrick Quigley, on or about January 18, 2012, at approximately 16:15 hours, while assigned to the 76th Precinct and on duty, in the vicinity of 479 Columbia Street, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Jose Andujar without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP & FRISK

The Civilian Complaint Review Board (CCRB) was represented by Carrie Eicholtz, Esq. and Gretchen Robinson, Esq., Respondents Aseng and Quigley were represented by John D'Alessandro, Esq., and Craig Hayes, Esq.

Respondents through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9652

Respondent Aseng is found Not Guilty.

Disciplinary Case No. 2013-9651

Respondent Quigley is found Not Guilty of both specifications.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is undisputed that on January 18, 2012, Respondents were assigned to the 76 Precinct anticrime team. At approximately 4:00 p.m. that day, they observed

complainant, Jose Andujar, walking alone along Columbia Street in Brooklyn, which is a high crime area. Respondent Quigley was familiar with Andujar because he had arrested him the previous year for burglary.

Respondents, along with Police Officer Rodriguez, approached Andujar to ask him questions. The officers were in plainclothes. Andujar did not want to stop for them. Respondents brought Andujar against a wall and frisked him. The frisk had negative results, and Respondents released him. Respondent Aseng prepared a Stop, Question, and Frisk Report for the encounter.

The CCRB's Case

CCRB called Jose Andujar as its sole witness.

Andujar

Andujar testified that he dropped his son off at work. He intended to stop for food and then go home. He had lived in that neighborhood for 27 years and walked along that street on a weekly basis for a couple of years. Andujar had keys in his front right pocket and money in his front left pocket. He had motor vehicle paperwork and two pens in an inside jacket pocket. He carried his wallet in his back pocket.

At the corner of Columbia Street and Huntington Street he passed a deli. He looked at advertisements posted in the deli window. Farther along the block he passed two residential buildings that had bars on the windows. He also passed a car service, where he stopped for a minute to speak with the owner who was standing in the doorway. He stated that this was the only stop he made. Other than the deli, Andujar claimed that

he did not look in the windows of any of the buildings he passed. Though the walk was just a third of a mile long, it took Andujar approximately 45 minutes. [CCRB Exhibit (CCRBX) 1 is a map of the route Andujar took. CCRBX 2 is a photograph of the stop location. CCRBX 3 and 4 are photographs of the Columbia Street block that Respondent passed just before the stop.]

Andujar was still walking when he noticed the three officers crossing the street and walking in his direction. Respondent Quigley stopped approximately two feet in front of him and asked where he was going. One of the other officers stood four or five feet from Andujar's side, and the third officer stood a little bit behind him. Andujar replied to Respondent Quigley's question, "None of your business," and attempted to step around him in order to pass. Andujar did not make any physical contact with Respondent Quigley. Respondent Quigley then stepped back in front of Andujar, put his hand on Andujar's chest, and told him to put his hands against the wall. Andujar asked if he had probable cause, and Respondent Quigley replied that he was conducting an investigation. Andujar described what Respondent Quigley did next: "He kind of held me. Put my hands on the wall . . . and he told me if I was to take my hands off the wall, that he would fuck me up and I [would] leave in cuffs." Andujar did not attempt to take his hands off the wall after that.

With Andujar's hands on the wall, Respondent Aseng kicked Andujar's ankle in order to spread his legs. Respondent Quigley then put his hand in the middle of Andujar's back and started to pat him down. Andujar described this process: "He put one hand on the center of my back. With his other hand, he moved it around my waist. My ankles. Went in my pocket. Took my keys out of my pocket." Andujar was able to see

that it was Respondent Quigley who conducted the pat down because he was looking over his shoulder.

Respondents gave Andujar their names and shield numbers upon request.

Andujar had previously seen Respondents on several occasions. Andujar did not learn the name of the third officer who was present. Andujar did not have any weapons on him that day. He did not resist or threaten physical violence. Other than saying, "This is bullshit," he did not curse during the encounter. He was neither arrested nor issued a summons. The next day he filed a complaint with CCRB.

Andujar has been arrested multiple times for larceny and burglary. He admitted that he has not been arrested for only 2 out of the last 32 years. The day before this encounter with Respondents, Andujar had been just released from prison. He had just served eight months for attempted burglary of a commercial establishment. Respondent Quigley had been the arresting officer in that case, and Andujar had attempted to flee from apprehension. Andujar is currently incarcerated for pending arson charges.

Respondents' Case

Respondents testified in their own behalf.

Respondent Quigley

Respondent Quigley, a sergeant, was the anticrime supervisor on the day of the incident. The area in Brooklyn where he was assigned was known for robberies, burglaries, and violent crimes. On the day of the encounter he recognized Andujar from his prior burglary arrest. During that prior arrest, Andujar had resisted by both fleeing

and flailing his arms upon apprehension. Respondent Quigley was aware that Andujar had an extensive criminal record with arrests for burglary, larceny, and drugs.

Respondent Quigley testified that he observed Andujar for a couple of minutes as Andujar walked back and forth on the block looking into commercial and residential locations. Because it appeared to him that Andujar was casing a location to commit burglary, Respondent Quigley decided to approach him. From a distance of approximately five feet, he identified himself as a police officer and asked Andujar to please stop and talk to him. Andujar refused and attempted to walk past. He described Andujar's motion: "He dropped his shoulder and attempted to walk past me shoulder first towards my chest." Respondent Quigley put his hand on Andujar's chest to stop Andujar "from walking through [him] with his shoulder." Because Respondent Quigley feared that Andujar was going to assault him, he grabbed both of Andujar's arms, placed him against the wall, and instructed him not to take his hands off the wall. He repeated his instruction for Andujar to keep his hands on the wall, but Andujar kept removing his hands and turning around. Respondent Quigley then physically held Andujar's arms against the wall by the sleeves of his leather jacket. Respondent Quigley described Andujar as being strong and capable of causing injury. Once he felt safe enough to let go of Andujar's hands, he did an "exterior pat down." He did not put his hands in Andujar's pockets.

Respondent Quigley testified that he saw a bulge in Andujar's right jacket pocket, though the record indicated that he did not mention a bulge at his June 2012 CCRB interview. When Andujar walked toward him with his shoulder down, Respondent

Quigley feared that Andujar was going to ram him in the chest. Andujar came within a foot of Respondent Quigley but did not make contact.

Respondent Aseng

Respondent Aseng testified that he observed Andujar walking slowly and looking into storefronts and buildings. Given that it was a high crime area, Respondent Aseng believed that Andujar was casing different locations for a possible burglary. Respondent Quigley made the decision to approach Andujar, and Respondent Aseng followed. When Respondent Quigley started talking, Andujar lowered his shoulder and tried to walk "through the sergeant." Respondent Aseng described this as an attempt to bump Respondent Quigley instead of walking around him. At that point, Andujar was no longer free to leave, and Respondents brought him to the wall for a pat down. Respondent Aseng explained that because Andujar was cursing and had acted aggressively toward Respondent Quigley, the pat down was conducted to ensure their safety. Respondent Aseng did not notice a bulge prior to the pat down. Respondents did not go into Andujar's pockets.

FINDINGS AND ANALYSIS

Respondent Quigley stands charged with stopping Andujar without sufficient legal authority. The legal basis for a stop is reasonable suspicion that a person has committed, is committing, or is about to commit a crime. *Patrol Guide* 212-11 provides that factors which contribute to "reasonable suspicion" include the demeanor of the

suspect, the gait and manner of the suspect, any knowledge the officer may have of the suspect's background and character, and the particular streets and areas involved.

While Andujar claimed that he was walking along Columbia Street innocuously, Respondent Quigley testified that he observed Andujar for a couple of minutes walking back and forth on the block looking into commercial and residential locations. The fact that it took Andujar approximately 45 minutes to walk a third of a mile is certainly more consistent with Respondent Quigley's version of the incident. Moreover, Andujar admitted that he looked through the deli window and later stopped in front of the car service doorway. While these acts may have been innocuous in Andujar's own mind, the officers could have interpreted them as suspicious. Respondent Quigley knew that Andujar was a recidivist burglar with an extensive criminal history, and they were in an area known for burglary and other crimes. When Respondents approached to speak with him, Andujar did not want to stop for them. All of these factors, when taken together, rise to the level of reasonable suspicion. Thus, the Court finds that Respondent Quigley articulated a legal basis for conducting his stop of Andujar.

Both Respondents stand charged with frisking Andujar without sufficient legal authority. They both testified that they frisked Andujar after he moved forward in a way that made them think Andujar intended to bump Respondent Quigley in the chest with his shoulder. Their testimony is consistent with the testimony of Andujar, who admitted that he attempted to move past Respondent Quigley. It makes sense that Respondents would construe Andujar's movement as aggressive. Respondent Quigley knew Andujar had a

history of being resistant with police officers. He also believed Andujar was strong and capable of causing injury.

An officer can frisk if he reasonably suspects he or others are in danger of physical injury. P.G. 212-11. When the underlying stop is for a violent crime, such as robbery or burglary, the officer's suspicion "not only justifies the detention but also the frisk, thus making it unnecessary to particularize an independent source for the belief of danger." *People v. Mack*, 26 N.Y.2d 311, 317 (1970). See also Legal Bureau Bulletin, Vol. 1, No. 3, p. 3 (Mar. 31, 1971). Respondents suspected Andujar of burglary. Respondents' belief that Andujar was acting aggressively and posed a threat to their safety only bolstered their decision to frisk him. Once they dispelled concerns of danger or wrongdoing, Respondents let Andujar on his way. Respondent Aseng properly memorialized the encounter in a Stop, Question, and Frisk Report.

Based on the foregoing, the Court finds that Respondents had sufficient legal authority for the actions they took with Andujar. Thus, they are found Not Guilty of all charges and specifications.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner – Trials

APPROVED

FEB 26 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER