



POLICE DEPARTMENT

September 8, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Pantaleo
Tax Registry No. 942805
Patrol Borough Staten Island
Disciplinary Case No. 2013 9621

Police Officer Christian Cataldo
Tax Registry No. 939985
120 Precinct
Disciplinary Case No. 2013-9622

The above-named members of the Department appeared before me on March 18, 2014,
charged with the following:

Disciplinary Case No. 2013-9621

1. Said Police Officer Pantaleo, on or about June 27, 2012, at approximately 0645 hours while assigned to the 120th Precinct and on duty in the vicinity of Richmond Road and Mary Street, Richmond County, abused his authority as a member of the New York City Police Department in that he stopped Steven Sanzone without sufficient legal authority.

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

2. Said Police Officer Pantaleo, on or about June 27, 2012, at approximately 0645 hours while assigned to the 120th Precinct and on duty in the vicinity of Richmond Road and Mary Street, Richmond County, abused his authority as a member of the New York City Police Department in that he frisked Steven Sanzone without sufficient legal authority.

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

Disciplinary Case No. 2013-9622

1. Said Police Officer Cataldo, on or about June 27, 2012, at approximately 0645 hours while assigned to the 120th Precinct and on duty in the vicinity of Richmond Road and Mary Street, Richmond County, abused his authority as a member of the New York City Police Department in that he stopped Steven Sanzone without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq. and Heather Cook, Esq., Respondents Pantaleo and Cataldo were represented by John Tynan, Esq., Worth, Longworth & London LLP.

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. 2013-9621

Respondent Pantaleo is found Not Guilty of Specification No. 1 and is found Guilty of Specification No. 2.

Disciplinary Case No. 2013-9622

Respondent Cataldo is found Not Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

CCRB called Steven Sanzone as its sole witness.

Steven Sanzone

Sanzone testified that at approximately 6:45 a.m. on June 27, 2012, he was at Park Hill Avenue and Roff Street on Staten Island trying to bump into a woman he knew in order to give her lunch money. Because he could not find the woman he started to make his way home, walking along Park Hill Avenue toward Richmond Road. At the corner of Mary Street and Richmond Road, two police officers in plainclothes (subsequently identified as Respondents) jumped out of their unmarked car and stopped him. Respondents identified themselves as police officers and, he stated, "started frisking me and searching me right away." He claimed, "One officer was behind me and he was going through my he put his hands towards my buttocks and my groin and my back pockets." Meanwhile, the other officer "was feeling my front pockets and my sleeves, and my arms." Sanzone, who recognized Respondent Pantaleo from a previous encounter, said, "Not again." In the previous encounter, Sanzone was stopped, frisked and found with two bags of marijuana in his pocket and was arrested.

Though Sanzone did not live far [REDACTED] at the time of the incident, he said that before he was stopped by Respondents he did not enter that building. The location of the stop was two short blocks from the building. Sanzone, who is in the construction business, estimated that each of the blocks was 75 or 100 feet long. He did not speak or interact with anyone while walking that distance. He was not carrying anything in his hands. All he had in his pockets were his license, a debit card, and some money. He described his own demeanor as

being very pleasant during the encounter with Respondents. He explained, "I was unhappy being stopped and people putting their hands on me. . . . But there's nothing I can do about it. They're the police. They got their right to do whatever they got to do." He did not engage in any type of confrontation with Respondents. The stop did not result in Respondents arresting Sanzone or issuing him a summons.

On cross-examination, Sanzone testified that he has been unemployed on and off for several years. He has never been hospitalized for psychiatric issues, but he has taken [REDACTED] for [REDACTED] on and off for nine years. He has twice snorted cocaine, and he has smoked marijuana occasionally over the last 30 years. He last smoked marijuana about a week ago. He does not drink alcohol. He has never used heroin or methamphetamine.

Sanzone testified that [REDACTED] was the name of the woman he was hoping to bump into prior to the encounter with Respondents. He was attracted to her and wanted to catch her on her way to work. He did not tell CCRB investigators her name because he said he wanted to protect her privacy. She lived at [REDACTED] which was on the same block and in the same development as [REDACTED]. Sanzone went to an ATM machine that morning so that he would have money for Iesha. He did not speak with anyone on the street near the ATM machine.

Sanzone was carrying mace in his right pocket at the time of the incident. Sanzone believed this was legal, as the woman who sold it to him guaranteed its legality. He explained his reason for having mace: "I'm just a 50-year-old man. You never know who is going to try to rob me. If it's legal, why can't you have it on you to try to protect yourself, God forbid, if something happens?" He did not have time to tell Respondents about the mace before they went

“right in [his] pockets and patted [him] down.” At the time of his previous encounter with Respondent Pantaleo, the police found mace in his pocket and returned it to him.

Respondents grabbed Sanzone immediately upon exiting their car. They did not say anything to him and pushed him against a telephone pole. They went into his front and back pants pockets. They stuck their fingers in his buttocks and went through his clothes underneath his pants. They took the credit card and money out of his pockets and then put them back in. They put the mace on top of their car, and Respondent Pantaleo told him, “What did I tell you about having this on you?” Respondents made him take off his shoes one at a time, and Respondent Cataldo banged the shoes on the ground to see if anything was inside them. They did not make him take off his jacket. The search lasted less than a minute. Sanzone did not have any marijuana on him.

Sanzone saw Respondents again in October 2012. He explained that he was walking to the post office when he noticed a car that was possibly following him. He approached the car, and one of the Respondents rolled down the window and asked if he committed any crimes that day. Sanzone admitted that he had jay walked. He was not high on drugs at the time, and he did not bang on the car window.

Sanzone stated that when he did not take [REDACTED] medication, he might “feel a little depressed.” When asked whether he ever became violently depressed, Sanzone responded, “No, sir. Sir, I have no arrests for any kind for violence or any kind of stuff like that. Please don’t ask that question.”

Sanzone admitted that he had a felony conviction for Criminal Contempt 1st Degree for violating an order of protection. When questioned, he said he did not remember all the details

about this case. He spent a week in jail and received five years probation. The order of protection had been issued to his [REDACTED]

When asked why this woman got the order against him, Sanzone testified, "She was going through [REDACTED] When asked if this woman made a false allegation against him, Sanzone replied, "That was a long time ago. I can't recall everything. I'm sorry."

Sanzone stated that he was not continually taking his [REDACTED] medicine and not smoking marijuana throughout the period of time that he was charged with violating the order of protection. When asked if he had no memory of the reason for the order of protection, Sanzone explained about being more worried that the woman did not have enough money to buy food and not being able to communicate with her, so he went to her home and slipped some money under her door.

When asked again why this woman got an order of protection, Sanzone testified,

I really don't even know why she got the Order of Protection. But she had a neighbor. She was going through some depression. The neighbor started, from what I believe, started giving her, don't let this . . . You know, she was just being negative towards my [REDACTED] telling her negative things.

Sanzone maintained he did not do anything wrong or violate the order but pled guilty because his attorney advised him that by pleading guilty he would get out of jail. He later sued his attorney and attempted to have his plea withdrawn. His lawsuit was dismissed.

Respondents' Case

Respondents testified in their own behalf.

Respondent Cataldo

Respondent Cataldo, an eight-year member of the Department, is assigned to the 120 Precinct. On June 27, 2012, he was assigned to the precinct's Street Narcotics Enforcement Unit. SNEU sends out plainclothes officers to known drug locations. Prior to the encounter with Sanzone, Cataldo had made over 200 arrests. He and Respondent Pantaleo were working in plainclothes and driving an unmarked vehicle that day. At approximately 6:45 a.m., they were in the area of Park Hill, an area known for drug activity.

From a distance of 20 or 25 feet, Respondent Cataldo observed Sanzone enter [REDACTED] [REDACTED] This was a Section 8 housing development building where the owner wanted the police to ensure that people entering the building lived there. The view was unobstructed, and Respondent Cataldo was able to see Sanzone waiting around the lobby, walking back and forth into a hallway. Sanzone remained in the building for perhaps five minutes. When he exited, Respondents followed in their car, stopping him two or two-and-a-half blocks away at the corner of Mary Street and Richmond Road. Respondents displayed their shields and identified themselves as members of the service. Respondent Pantaleo proceeded to frisk Sanzone and ask him where he was coming from. Sanzone told Respondents that he had been looking for a friend but that he did not know the friend's name or where she lived. Sanzone was very agitated, spoke loudly, and cursed.

Respondents released Sanzone after the frisk. At no point did Respondent Cataldo ask Sanzone to remove his shoes. Respondent Cataldo has conducted well over a thousand stops and

has never asked a suspect to remove his shoes while on the street. He has never seen a police officer do such a thing. Sanzone did not have mace on him. Had Sanzone been carrying mace, Respondents would have arrested him for possession of a noxious chemical. Respondent Cataldo did not have any physical contact with Sanzone. Respondent Cataldo remembered at a later date that his team had previously arrested Sanzone for marijuana possession.

While Respondents were conducting an operation several weeks or months after the incident, Sanzone approached their car and knocked on the window. When Respondent Cataldo rolled down the window, Sanzone asked if Respondents were following him. Sanzone left when Respondent Cataldo instructed him to get away from the car.

On cross-examination, Respondent Cataldo agreed that it was because Sanzone entered [REDACTED] that he suspected him of engaging in a drug transaction. Respondent Cataldo did not observe anything unusual about the way Sanzone entered the building. The door to the building appeared unlocked, and Sanzone did not need to use a key or buzzer system to enter. He did not interact with anyone either in front of the building or inside the lobby. Respondent Cataldo suspected that Sanzone was participating in a drug transaction because there were no apartments in the hallway that Sanzone entered and it was known to the Department that a drug dealer conducted business there. Moreover, Sanzone remaining in the building just briefly was consistent with conduct commonly associated with drug transactions. Sanzone did not interact with anyone as he exited the building and walked away quickly. At no point did Respondent Cataldo observe any bulges on Sanzone's person. He never observed Sanzone speak, exchange money, or have hand-to-hand contact with anyone. Sanzone neither threatened nor became physically aggressive with Respondents.

Upon questioning by the Court, Respondent Cataldo described the hallway into which he observed Sanzone walking back and forth: "That particular hallway, we have a dealer a known dealer that we call set up, meaning they hang out in that hallway because there's no cameras and there's no apartments. There's only the front entrance and it leads to the back entrance. . . . So he's selling people drugs from [both] entrance[s]." He continued, "So when someone goes into the building in the front and goes right to that hallway, the only other reason would be to come out the back of the building or to buy drugs."

Respondent Pantaleo

Respondent Pantaleo, an eight-year member of the Department, is assigned to the 120 Precinct. During the course of his career he has effected approximately 270 arrests and has assisted in over a thousand. At the time of the incident he was working in the Street Narcotics Enforcement Unit. He has been working in the Anti-Crime Unit for a year and a half.

On June 27, 2012, Respondent Pantaleo and Respondent Cataldo were working in Park Hill, an area known for drug activity. At approximately 6:30 a.m. that day, they were in front of [REDACTED] a building known for drug sales. Respondent Pantaleo had made numerous drug arrests at that location prior to that day.

When Respondent Pantaleo first saw Sanzone that day, Sanzone was already in the lobby and walking in and out of a hallway that was known for "high usage and drug sales." Respondent Pantaleo did not see Sanzone interact with anybody. Sanzone approached neither the elevator nor stairwell. When Sanzone exited the building, Respondents followed. When Respondent Pantaleo exited his vehicle and approached Sanzone, he saw a bulge in Sanzone's front right pocket. Respondent Pantaleo described the bulge as a long object that could have

been a harmonica or knife inside of its handle. It was during the approach that Respondent Pantaleo recognized Sanzone as someone he had previously observed in a hand-to-hand transaction with a known drug dealer.

Respondent Pantaleo identified himself as a police officer. Sanzone became irate and very loud. Respondent Pantaleo proceeded to frisk the area of the bulge and saw that it was actually a soft object shaped more like a wallet. Though Respondent Pantaleo did not frisk Sanzone's upper body or legs below the knee, he did frisk "just around his front waistband a little bit because that's known to where weapons could be stored." He did not check Sanzone's back pockets.

Once he determined that the object in Sanzone's pocket was not a weapon, Respondent Pantaleo asked Sanzone why he was in the building. Sanzone told Respondents that he went to the building to meet a female friend. Respondent Pantaleo asked about the female friend's contact information, and Sanzone replied that he did not know her name or address. Sanzone claimed that he called his friend but, when Respondent Pantaleo asked him to call her, Sanzone replied that he did not have her number.

Sanzone did not have mace on him. Had Sanzone been carrying mace, Respondents would have arrested him. Once Respondent Pantaleo explained the reason for the stop, Sanzone became calm. Respondent Pantaleo released Sanzone and prepared a Stop, Question, and Frisk Report for the encounter. The entire incident lasted a matter of minutes. Respondent Pantaleo indicated on the Stop, Question, and Frisk Report that he suspected Sanzone of marijuana possession. (CCRB Exhibit 1).

On cross-examination, Respondent Pantaleo confirmed that his previous encounter with Sanzone occurred just a couple months prior to June 2012. The previous encounter resulted in

Respondent Pantaleo's team recovering marijuana from Sanzone. Respondent Pantaleo did not recognize Sanzone from the previous encounter while Sanzone was still in [REDACTED]

[REDACTED] Respondent Pantaleo did not know if Sanzone was a resident of the building, but he assumed that Sanzone was there to buy drugs once he saw Sanzone linger in the lobby and enter the hallway. Sanzone was by himself in the lobby. Respondent Pantaleo never observed Sanzone speak, exchange money, or have hand-to-hand contact with anyone.

Respondent Pantaleo confirmed that he stopped Sanzone because he suspected him of drug activity. After he recognized Sanzone and realized that he did not live in the building, however, Respondent Pantaleo started to suspect him of trespass. Thus, he asked Sanzone why he was in the building. Respondents were not at the building in response to a specific complaint or 911 call. Their observation of Sanzone took place from their vehicle.

Respondent Pantaleo described the object in Sanzone's pocket as rectangular in shape. He agreed that the object could have been a cell phone. He testified, "Based on my training and experience, normal size, shape, to be a knife that is put in the handle, such as a gravity knife or a switchblade." He continued, "Once I felt that it was not a hard object like a knife and it was more soft and the shape was more of a wallet, that's as far as I went with my frisk."

Sanzone was irate and spoke loudly. Pantaleo did not recall Sanzone cursing and acknowledged that in his official Department interview that he stated Sanzone did not curse. Sanzone neither threatened nor became physically aggressive with Respondents, but, Pantaleo stated, "the fact [Sanzone] was very irate, that put fear into myself, any individual that I stop."

FINDINGS AND ANALYSIS

Decision

Respondents Pantaleo and Cataldo are found Not Guilty of stopping Sanzone without legal authority.

Respondent Pantaleo is found Guilty of frisking Sanzone without legal authority.

Background

On June 27, 2012, Respondents were working for the Street Narcotics Enforcement Unit in plainclothes and in an unmarked car in the Park Hill section of Staten Island, an area known for drug use. They were watching to see who was going into the building at [REDACTED] [REDACTED] This address was a Section 8 housing development building where the owner wanted the police to check that people entering the building lived there. The door to the building was not locked, so it was accessible to people who weren't residents.

Respondent Cataldo observed Sanzone enter the building. Both Respondents observed Sanzone walking back and forth in the hallway there. The hallway where Respondents saw Sanzone lurking had no apartments or cameras. It was also a location they were observing where a known drug dealer conducted business that time of the day. Both Respondents watched Sanzone wait around the lobby, walk back and forth into the hallway for about five minutes, and then leave the building. Sanzone stayed in the hallway just long enough to conduct a transaction, and then left, walking quickly, consistent with the way someone involved in a drug transaction would. This is because after buying drugs in a building, a person usually leaves the area.

Respondent Cataldo indicated that generally when surveilling they liked to be discreet and not let dealers know where they were. In order to approach and catch up with Sanzone, Respondents had to make a U-turn and follow him in their car. A few blocks away from the building they exited the vehicle, displayed their shields and identified themselves as police officers.

Respondent Pantaleo testified that while he exited his vehicle and approached Sanzone, he recognized Sanzone as someone he had observed in a transaction with a drug dealer before this incident. He also saw in Sanzone's front right pocket a bulge that could have been a knife handle. When he frisked the area of the bulge, he saw that it was a soft object shaped more like a wallet. Respondent Pantaleo also frisked "just around his front waistband a little bit because that's known to [be] where weapons could be stored." After frisking Sanzone, Respondent Pantaleo asked Sanzone why he was in the building.

According to Respondent Pantaleo, Sanzone explained that he was meeting a woman, but did not know her name or address. Sanzone claimed that he called her. But when Respondent Pantaleo asked Sanzone to call her, Sanzone then said he did not have her number. Respondents never arrested Sanzone.

Sanzone claimed that on June 27 he was never in the building Respondents were observing. Instead, he maintained that he was walking along a street in the neighborhood hoping to bump into a woman he liked. Suddenly, police officers in plainclothes jumped out of their unmarked car, stopped and frisked him. Not only did he not give the police any information about this woman he was hoping to see, he also did not give CCRB her name because he wanted to protect her privacy.

The CCRB attorney stated at the beginning of the trial that she was not certain that her office was able to obtain a full criminal history of Sanzone. Although Respondent's attorney objected that CCRB should be required to make a more extensive check, Respondent's attorney declined the opportunity to take an adjournment to try to obtain fuller discovery of the complainant's criminal history. Instead, the Court granted Respondent's attorney latitude on his cross-examination of the complainant about his criminal history.

On cross examination, Sanzone agreed that Respondents did not say a word to him when they jumped out of the car, "took the stuff out of my pockets," then put his money and credit cards back in his pockets. They put the mace from his pocket on top of their car. Sanzone further claimed that Respondents made him take his shoes off and that Respondent Cataldo was "on his knees banging the shoe on the ground to see if something would fall out."

Sanzone stated that when he did not take his [REDACTED] medication, [REDACTED] he might "feel a little depressed." When asked whether he ever became violently depressed, Sanzone responded, "No, sir. Sir, I have no arrests for any kind for violence or any kind of stuff like that. Please don't ask that question."

Sanzone then admitted that he had a felony conviction for Criminal Contempt 1st Degree for violating an Order of Protection. He spent a week in jail and received five years probation. The Order of Protection had been issued to [REDACTED]. When questioned about this conviction, he said he did not remember all the details about it.

Then when asked why [REDACTED] the order against him, Sanzone testified, "She was going through [REDACTED]. When asked if this woman made a false allegation against him, Sanzone replied, "That was a long time ago. I can't recall everything. I'm sorry." Later, when asked if he had no memory of the reason for the order of

protection, Sanzone explained that he was worried that the woman did not have enough money to buy food. Because he was not able to communicate with her, he went to her home and slipped some money under her door. When asked again why this woman got an Order of Protection, Sanzone testified,

I really don't even know why she got the Order of Protection. But she had a neighbor. She was going through some depression. The neighbor started, from what I believe, started giving her, don't let this . . . You know, she was just being negative towards my [REDACTED] telling her negative things.

Sanzone maintained he did not do anything wrong or violate the Order of Protection, but that he pled guilty because his attorney advised him to do so to get out of jail. He later sued his attorney and attempted to have his plea withdrawn. His lawsuit was dismissed.

Analysis

Specification No. 1, Case No. 2013-9621; Specification No. 1, Case No. 2013-9622

Respondents Pantaleo and Cataldo are found Not Guilty of stopping Sanzone without legal authority.

The New York State Court of Appeals has described four levels of permissible intrusion by the police in street encounters with the public in *People V. DeBour*, 40 N.Y.2d 210 (1976). These categories of encounter have been adopted by the Police Department (PD 344-153). The first three levels which are relevant in this case are:

Level I - Request for Information, is when a police officer has "some objective credible reason" to approach someone but does not necessarily suspect criminal conduct.

Level II - Common-Law Inquiry, is when there is “founded suspicion” that criminality is afoot. The officer may question someone “to the extent necessary to gain explanatory information, but short of a forcible seizure.”

Level III - Stop, Question and Frisk, is a forcible stop and detention where the police officer has a reasonable suspicion that a person “has committed, is committing, or is about to commit a felony or misdemeanor.” Under Criminal Procedure Law § 140.50 [3], the police officer may frisk for a weapon if the officer believes he or she is in danger of physical injury or that the suspect is armed.

As in the present case, a Level 1 determination may quickly become a Level 3 judgment call when officers in street encounters have to make split second decisions for their own safety.

Patrol Guide Procedure 212-11 addresses the criteria for conducting a Level 3 stop:

“When a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor, that officer may “stop [the] person and request identification and explanation of conduct.” Some of the factors the Respondents may rely on to formulate a reasonable suspicion are the suspect’s demeanor, gait and manner, the particular streets and areas involved, knowledge of the suspect’s background and character, and bulges in clothing. *Patrol Guide Procedure 212-11* ADDITIONAL DATA.

Respondents relied on some of the same factors described in the *Patrol Guide* for initiating their street encounter with Sanzone. They observed Sanzone lingering in a hallway known to be the site in the building where drug transactions occur. Respondent Cataldo observed Sanzone’s behavior and gait. The landlord of the building wanted people who might be trespassing to be questioned. It was necessary to question Sanzone away from the building because, as Respondent Cataldo indicated, generally when conducting surveillance, they did not want to announce their presence to dealers. Respondents followed Sanzone by car. Respondents got out of their car to question Sanzone. As Respondent Pantaleo was approaching Sanzone, he recognized Sanzone as someone he observed in a previous drug transaction. Respondent

Pantaleo also saw a bulge in Sanzone's pocket that could have been a weapon. Thus, Respondents articulated a legal basis for stopping Sanzone, under *Debour* and under the *Patrol Guide*.

Sanzone's testimony did little to challenge Respondents' account because he was an unreliable witness. When Respondents' counsel cross-examined Sanzone about his Criminal Contempt conviction, Sanzone did not want to answer, was vague and claimed he could not remember. Since Sanzone had been involved in extensive litigation about his guilty plea to this felony conviction, it is unlikely that he forgot the facts. Similarly, Sanzone was vague about the woman he claimed he was trying to meet on the day that he was stopped by Respondents. Sanzone also left out in his direct testimony facts about the incident with Respondents, which he embellished during cross-examination. Therefore, this Court does not credit Sanzone's testimony and instead bases its findings on the testimonies of both Respondents.

Accordingly, Respondent Pantaleo and Respondent Cataldo are found Not Guilty of stopping Sanzone without legal authority.

Specification No. 2, Case No. 2013-9621

Respondent Pantaleo is found Guilty of conducting a frisk of Sanzone without legal authority.

Respondent Pantaleo examined the bulge in Sanzone's pocket to ascertain whether it was a weapon. Concerned that the bulge could be a knife handle, he suspected that Sanzone could be

armed. Thus, Respondent Pantaleo was justified in frisking Sanzone's pocket. *Patrol Guide* § 212-11 (2), *Debour*, 40 N.Y.2d at 223.

Respondent Pantaleo, however, then extended the frisk to Sanzone's front waistband to check for more weapons. Respondent's attorney seemingly indicated in his closing argument that the waistband is in the same area as the pocket and constitutes the same search. This argument is unclear and undeveloped. Certainly the pocket and the waistband are areas close to each other. The testimony supports a finding that Respondent Pantaleo checked Sanzone's waistband after checking Sanzone's pocket. After articulating a reason for checking the pocket, which was seeing a bulge, Respondent Pantaleo then gave a second reason for checking the waistband. He explained that he frisked "[j]ust around [Sanzone's] front waistband a little bit because that's known to [be] where weapons could be stored."

While this generalization about where a weapon can be found may be true, Respondent Pantaleo did not articulate any specific reason to suspect that Sanzone was carrying a weapon in his waistband. He did not see or feel anything during the frisk of Sanzone's pocket to justify the extra step of frisking Sanzone's waistband. When a police officer is questioning a suspect, the officer needs an independent, reasonable belief of immediate danger to himself in order to frisk that person. Thus, Respondent Pantaleo did not have sufficient legal authority to conduct the frisk of Sanzone's waistband. *Id.* See also *People v. Mack*, 26 N.Y.2d 311, 317 (1970); *Patrol Guide* § 212-11 (2); Legal Bureau Bulletin, Vol. 1, No. 3, p. 3 (Mar. 31, 1971).

Accordingly, Respondent Pantaleo is found Guilty of frisking Sanzone without legal authority.

PENALTY

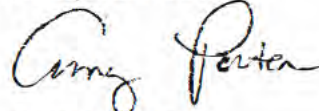
In order to determine an appropriate penalty, the service records of Respondent Pantaleo were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Pantaleo was appointed to the Department on July 20, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Civilian Complaint Review Board recommended a penalty of not less than eight vacation days for Respondent Pantaleo. Because Respondent Pantaleo has been found Not Guilty of stopping Steven Sanzone without sufficient legal authority and because there was sufficient legal authority for part of Respondent Pantaleo's frisk of Sanzone, CCRB's recommendation is excessive. The scope of Respondent Pantaleo's unauthorized search was brief and limited.

Yet Respondent Pantaleo, as an eight year member of the service, should not receive a mere reprimand. When this incident occurred, he was working plainclothes in the Street Narcotics Enforcement Unit. When he testified, Respondent Pantaleo had been a member of the Anti-Crime team for a year and a half. He had also conducted about 270 arrests and, according to him, had assisted in over a thousand arrests.

Respondent Pantaleo is an experienced patrol officer with specialized training who should know the correct standards for frisking an individual. Accordingly, it is recommended that Respondent Pantaleo forfeit two vacation days.

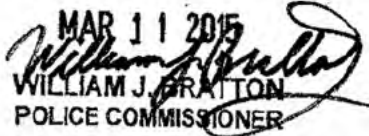
Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner -- Trials

APPROVED

MAR 11 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL PANTALEO
TAX REGISTRY NO. 942805
DISCIPLINARY CASE NO. 2013-9621

In 2013, Respondent received an overall rating of 4.5 “Extremely Competent/Highly Competent” on his annual performance evaluation. In 2011 and 2012, he received a rating of 4.0 “Highly Competent.” Since July 2013, Respondent has been on Level 1 Force Monitoring. Respondent has received 11 medals for Excellent Police Duty and 1 Meritorious Police Duty medal.

[REDACTED]

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials