



POLICE DEPARTMENT

April 5, 2018

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Donald Alexandre : Case No. 2016-15143  
Tax Registry No. 937856 :  
24<sup>th</sup> Precinct :

Police Officer Gregory Donato : Case No. 2016-15144  
Tax Registry No. 946948 :  
24<sup>th</sup> Precinct :

Police Officer Juan Duprey : Case No. 2016-15145  
Tax Registry No. 948571 :  
24<sup>th</sup> Precinct :

Lieutenant Roger Lurch : Case No. 2016-15141  
Tax Registry No. 917904 :  
Police Service Area 1 :

Sergeant Jermaine Oden : Case No. 2016-15142  
Tax Registry No. 939136 :  
24<sup>th</sup> Precinct :

Police Officer Danielle Orapallo : Case No. 2016-15147  
Tax Registry No. 953531 :  
24<sup>th</sup> Precinct :  
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At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Jeff S. Adler  
Assistant Deputy Commissioner Trials

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Website: <http://nyc.gov/nypd>

APPEARANCES:

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Department Advocate's Office  
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The MacDonald Law Firm  
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For Respondent Duprey: Stuart London, Esq.  
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New York, NY 10038

For Respondent Lurch: Philip Karasyk, Esq.  
Karasyk & Moschella, LLP  
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New York, NY 10279

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Kew Gardens, NY 11415

For Respondent Orapollo: Maria E. Paulsen, Esq.  
756 Oliver Avenue  
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To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

### **Charges and Specifications:**

#### Respondent Donald Alexandre

#### Disciplinary Case No. 2016-15143

1. Said Police Officer Donald Alexandre, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on-duty, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer was involved in a physical altercation with another Police Officer.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

2. Said Police Officer Donald Alexandre, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, having become aware of an allegation of misconduct by a Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1

ALLEGATIONS OF CORRUPTION OR OTHER  
MISCONDUCT AGAINST MEMBERS OF THE  
SERVICE - COMPLAINTS

3. Said Police Officer Donald Alexandre, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 5, 2015, caused inaccurate entries to be made in a Department record relating to an injury to said Police Officer.

P.G. 203-05, Page 1, Paragraph 4

PERFORMANCE ON DUTY - GENERAL  
GENERAL REGULATIONS

4. Said Police Officer Donald Alexandre, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer provided inaccurate, incomplete, or misleading statements to a supervising Member of the Service as to the cause of his injury.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

#### Respondent Gregory Donato

#### Disciplinary Case No. 2016-15144

1. Said Police Officer Gregory Donato, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, wrongfully failed to render reasonable aid to a sick or injured person, to wit: a Member of the Service who had injured his leg or knee.

P.G. 216-01, Page 1, Paragraph 1

AIDED CASES GENERAL PROCEDURE  
AIDED CASES

2. Said Police Officer Gregory Donato, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, while on duty, having become aware of an allegation of misconduct by a Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1

ALLEGATIONS OF CORRUPTION OR OTHER  
MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE – COMPLAINTS

3. Said Police Officer Gregory Donato, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer failed to intervene or diffuse an altercation or incident between other Police Officers or failed to inquire or obtain information about said incident.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

P.G. 202-21, Page 1, Paragraph 8

POLICE OFFICER  
DUTIES AND RESPONSIBILITIES

4. Said Police Officer Gregory Donato, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, while on duty, wrongfully failed and neglected to make Activity Log entries as required.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS  
COMMAND OPERATIONS

5. Said Police Officer Gregory Donato, while assigned to the 24<sup>th</sup> Precinct, on or about April 18, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer made inaccurate, incomplete, or otherwise misleading statements during an official Department interview regarding an incident that occurred at Riverside Park, New York County, on August 1, 2015 at approximately 0440 hours. (As amended)

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

Respondent Juan Duprey

Disciplinary Case No. 2016-15145

1. Said Police Officer Juan Duprey, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, wrongfully failed to render reasonable aid to a sick or injured person, to wit: a Member of the Service who had injured his leg or knee.

P.G. 216-01, Page 1, Paragraph 1

AIDED CASES GENERAL PROCEDURE  
AIDED CASES

2. Said Police Officer Juan Duprey, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, having become aware of an allegation of misconduct by a Member of the Service, wrongfully failed to report

said allegation to the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1

**ALLEGATIONS OF CORRUPTION OR OTHER  
MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE – COMPLAINTS**

3. Said Police Officer Juan Duprey, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, while on duty, wrongfully failed and neglected to make Activity Log entries as required.

P.G. 212-08, Page 1, Paragraph 1

**ACTIVITY LOGS  
COMMAND OPERATIONS**

4. Said Police Officer Juan Duprey, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, wrongfully failed to notify the Desk Officer and Patrol Supervisor that he was leaving the stationhouse during his meal period to respond to a location in his capacity as a Patrolmen's Benevolent Association Delegate.

P.G. 202-21, Page 1, Paragraphs 4 & 6

**POLICE OFFICER  
DUTIES AND RESPONSIBILITIES**

5. Said Police Officer Juan Duprey, while assigned to the 24<sup>th</sup> Precinct, on or about October 8, 2015 and May 13, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer made inaccurate, incomplete, or otherwise misleading statements during official Department interviews regarding an incident that occurred at Riverside Park, New York County, on August 1, 2015 at approximately 0440 hours.

*(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**

Respondent Roger Lurch

Disciplinary Case No. 2016-15141

1. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on duty, wrongfully failed to render reasonable aid to a sick or injured person, to wit: a Member of the Service who had injured his leg or knee.

P.G. 216-01, Page 1, Paragraph 1

**AIDED CASES – GENERAL PROCEDURE  
AIDED CASES**

2. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, while on duty, having become aware of an allegation of misconduct by another Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1

**ALLEGATIONS OF CORRUPTION OR  
OTHER MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE – COMPLAINTS**

3. Said Lieutenant Roger Lurch, while assigned as the 24<sup>th</sup> Precinct First Platoon Commander and Patrol Supervisor, on or about and between August 1, 2015 and August 3, 2015,

having responded to an incident involving Members of the Service and a possible Line of Duty injury, wrongfully failed to supervise his subordinates by not conducting a proper investigation of the incident or by preventing the accurate reporting of the incident.

P.G. 202-13, Page 1, Paragraph 1  
Page 2, Paragraph 15

LIEUTENANT - PLATOON COMMANDER  
DUTIES AND RESPONSIBILITIES

P.G. 202-17,  
Page 1, Paragraphs 2 & 6

PATROL SUPERVISOR  
DUTIES AND RESPONSIBILITIES

P.G. 205-05, Page 1, Paragraph a  
Page 2, Paragraphs 13-21

LINE OF DUTY INJURY OR DEATH  
OCCURRING WITHIN CITY  
PERSONNEL MATTERS

4. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, while on duty, wrongfully failed and neglected to make required Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS - COMMAND OPERATIONS

P.G. 212-02, Page 2, Paragraph 15

MEAL PERIOD - COMMAND OPERATIONS

5. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about and between February 1, 2015 and December 31, 2015, on multiple occasions, wrongfully worked overtime periods without proper authorization to do so. (*As amended*)

P.G. 205-17, Page 1, Paragraph 1

OVERTIME - PERSONNEL MATTERS

6. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct or Housing PSA #1, on or about December 10, 2015 and July 21, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Lieutenant made inaccurate, incomplete, or otherwise misleading statements during official Department interviews regarding an incident that occurred at Riverside Park, New York County, on August 1, 2015 at approximately 0440 hours. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

7. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Lieutenant urged or otherwise dissuaded a Member of the Service from accurately reporting an incident or altercation involving Members of the Service.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

8. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 5, 2015, made, caused to be made, or failed to correct incomplete, misleading, or inaccurate entries in Department records relating to an injury of a Police Officer.

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY - GENERAL  
GENERAL REGULATIONS**

9. Said Lieutenant Roger Lurch, while assigned to the 24<sup>th</sup> Precinct, on approximately two (2) occasions, on or about and between February 1, 2015 and August 31, 2015, wrongfully submitted overtime reports for approval for unauthorized overtime activities. (*As amended*)  
P.G. 205-17, Page 1, Paragraph 1

**OVERTIME - PERSONNEL MATTERS**

Respondent Jermaine Oden

Disciplinary Case No. 2016-15142

1. Said Sergeant Jermaine Oden while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, having become aware of an allegation of misconduct by a Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau in a timely manner, as required.

P.G. 207-21, Page 1, Paragraph 1

**ALLEGATIONS OF CORRUPTION OR OTHER  
MISCONDUCT AGAINST MEMBERS OF THE  
SERVICE - COMPLAINTS**

2. Said Sergeant Jermaine Oden, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, having been made aware of a line of duty injury of a Member of the Service, wrongfully carried out the responsibilities of the Investigating Supervisor when the Platoon Commander was available to carry out these duties.

P.G. 205-05, Page 1, Paragraph a

Page 2, Paragraphs 13-21

**LINE OF DUTY INJURY OR DEATH  
OCCURRING WITHIN CITY  
PERSONNEL MATTERS**

3. Said Sergeant Jermaine Oden, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 5, 2015, made or caused to be made or failed to correct incomplete, misleading, or inaccurate entries in Department records relating to an injury of a Police Officer.

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY - GENERAL  
GENERAL REGULATIONS**

4. Said Sergeant Jermaine Oden, while assigned to the 24<sup>th</sup> Precinct, on or about September 30, 2015 and July 13, 2016, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Sergeant made inaccurate, incomplete, or otherwise misleading statements during official Department interviews regarding an incident that occurred at Riverside Park, New York County, on August 1, 2015 at approximately 0440 hours. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**

5. Said Sergeant Jermaine Oden, while assigned to the 24<sup>th</sup> Precinct, on or about and between August 1, 2015 and August 3, 2015, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Sergeant assisted in urging or otherwise dissuading a Member of the Service from accurately reporting an incident or altercation involving Members of the Service.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**

Respondent Danielle Orapollo

Disciplinary Case No. 2016-15147

1. Said Police Officer Danielle Orapollo, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, in the vicinity of Riverside Park, New York County, while on-duty, wrongfully failed to render reasonable aid to a sick or injured person, to wit: a Member of the Service who had injured his leg or knee.

P.G. 216-01, Page 1, Paragraph 1

**AIDED CASES GENERAL PROCEDURE  
AIDED CASES**

2. Said Police Officer Danielle Orapollo, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, while on duty, having become aware of an allegation of misconduct by a Member of the Service, wrongfully failed to report said allegation to the Internal Affairs Bureau, as required. (*As amended*)

P.G. 207-21, Page 1, Paragraph 1

**ALLEGATIONS OF CORRUPTION OR OTHER  
MISCONDUCT AGAINST  
MEMBERS OF THE SERVICE – COMPLAINTS**

3. Said Police Officer Danielle Orapollo, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer failed to intervene or diffuse an altercation or incident between other Police Officers or failed to inquire or obtain information about said incident.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**

P.G. 202-21, Page 1, Paragraph 8

**POLICE OFFICER  
DUTIES AND RESPONSIBILITIES**

4. Said Police Officer Danielle Orapollo, while assigned to the 24<sup>th</sup> Precinct, on or about August 1, 2015, caused inaccurate entries to be made in Department records, in that said Police Officer did not write a complete or accurate version of facts in Department records relating to an injury to another Police Officer. (*As amended*)

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY- GENERAL  
GENERAL REGULATIONS**

5. Said Police Officer Danielle Orapollo, while assigned to the 24<sup>th</sup> Precinct, on or about April 27, 2017, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer made inaccurate, incomplete, or otherwise misleading statements during an official Department interview regarding an incident that occurred at Riverside Park, New York County, on August 1, 2015 at approximately 0440 hours. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS**



## SUMMARY OF FINDINGS AND RECOMMENDED PENALTY

The above-named members of the Department appeared before the Court on January 24, 25, 26, 29, 30, and 31, 2018. Respondent Lurch pleaded Guilty to Specification Nos. 5 and 9, and Not Guilty to the remaining charges. The other Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Department called Sergeant Tania Tolentino and Lieutenant Fabian Madrid as witnesses, and also called Respondent Donald Alexandre, who testified both as a witness and on his own behalf. The remaining Respondents also testified on their own behalves. After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find as follows:

- **Respondent Alexandre:** Guilty. Recommended penalty: the forfeiture of thirty (30) vacation days, and the imposition of one (1) year dismissal probation.
- **Respondent Donato:** Guilty of Specification 4; Not Guilty on remaining specifications. Recommended penalty: the forfeiture of one (1) vacation day.
- **Respondent Duprey:** Guilty of Specifications 3 and 4; Not Guilty on remaining specifications. Recommended penalty: the forfeiture of one (1) vacation day.
- **Respondent Lurch:** Guilty of Specifications 1, 3, 4, 5, and 9; Not Guilty on remaining specifications. Recommended penalty: the forfeiture of thirty (30) vacation days.
- **Respondent Oden:** Not Guilty.
- **Respondent Orapollo:** Not Guilty.

## ANALYSIS

This matter began with an early-morning incident inside Manhattan's Riverside Park between two on-duty officers from the 24<sup>th</sup> Precinct. At about 0430 hours on August 1, 2015, Officer Eric Martinez (who was not a Respondent at this trial) and his partner, Officer Gregory Donato, arrived in the park to disperse some people who were there after hours. Soon after, Officer Donald Alexandre and his partner, Officer Danielle Villanueva<sup>1</sup>, arrived in a separate vehicle. After the people in the park were dispersed, Alexandre initiated a verbal exchange with Martinez regarding a seeming disagreement that occurred earlier that tour involving the handling of an unrelated job. At some point during the two officers' interaction in the park, Alexandre fell to the ground and injured his knee. It is alleged that Alexandre fell to the ground because he was pushed by Martinez, and that the other two officers at the scene failed to respond adequately. For their part, both Donato and Villanueva denied seeing Martinez push Alexandre.

After the incident, Lieutenant Roger Lurch, the platoon commander, arrived on the scene as did Officer Juan Duprey, a precinct delegate. It is alleged that each of those Respondents initiated a cover-up of what really happened, persuading Alexandre to report that he had hurt his knee when he slipped and fell, without any mention of being shoved by Martinez. At Lurch's request, Sergeant Jermaine Oden, the patrol supervisor, was brought into the investigation, and it is alleged that he, too, encouraged the false narrative regarding what had occurred. The main evidence of this alleged cover-up was the testimony of Alexandre, who insisted that his co-Respondents were aware of what really happened inside the park. The remaining Respondents countered that there was no cover-up: it was Alexandre, himself, who initially stated that he slipped and fell, and that they relied upon the account he provided.

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<sup>1</sup> As was discussed at the outset of the trial, at the time of the incident Officer Orapollo's last name was "Villanueva." In an effort to avoid confusion, during the trial Respondent Orapollo was referred to as "Officer Villanueva."

Sergeant Tania Tolentino of IAB testified that she was assigned to investigate this incident, in which it was alleged that there was inaccurate Department paperwork generated regarding an injury suffered by Alexandre on August 1, 2015. The incident was referred to IAB by Lieutenant Madrid, the 24 Precinct's Integrity Control Officer ("ICO") on August 2, and a day later by Oden, the patrol supervisor. (Tr. 89-90, 118, 125-26, 163-65) As part of her investigation, Tolentino interviewed all Respondents (See Dept Exs. 4/4A; 5/5A; 6/6A; 7/7A; 8/8A; 9/9A; 10/10A; 11/11A; 12/12A). With respect to Lurch, Tolentino confirmed that there was no evidence corroborating Alexandre's allegation that Lurch was aware on the morning of the incident that Martinez had allegedly pushed Alexandre. Her investigation also did not reveal any evidence that Lurch had pressured any officer to falsify their accounts regarding what had transpired. (Tr. 172-73)

Lieutenant Fabian Madrid, the ICO, testified that on the morning of August 2, 2015, he learned that Alexandre was being treated at the hospital. That afternoon he went to the hospital to see if Alexandre needed anything. Near the end of the visit, Alexandre indicated he wanted to speak privately with Madrid. Once they were alone, Alexandre said, "That's not really how it went down," and proceeded to explain that there had been a "situation" with Martinez, with whom he had "some animosity" for years. Alexandre recounted to Madrid that he had asked Martinez to get out of his RMP so they could speak privately about a work-related issue. Martinez repeatedly indicated he did not want to talk to him, but Alexandre had insisted. Alexandre told Madrid that Martinez then got out of his RMP and removed his gun belt, shirt and vest, before pushing Alexandre, causing him to lose his balance and fall to the ground. Alexandre further advised Madrid that two supervisors, Lurch and Oden, were aware that Martinez had pushed him, though neither supervisors name appears in Madrid's memo book

entry. Madrid proceeded to notify IAB at approximately 1630 hours on August 2. (Tr. 201-06, 209, 218, 236)

Respondent Officer Donald Alexandre testified that on the night of the incident, he was working with Villanueva. Alexandre described an incident earlier in their tour that led to the confrontation with Martinez in the park later that night. At around 0330 hours, he and Villanueva were canvassing the area with a robbery complainant in an effort to locate suspects. Alexandre was aware that Martinez and Donato had an aided job across the street from where the robbery had occurred. He pulled up next to Martinez's RMP to inquire about whether the aided individual could also be the robbery suspect in their case. Alexandre tried to discuss the situation with Martinez, who was in the driver's seat, but Martinez did not acknowledge him or Villanueva. Alexandre viewed this as unprofessional and admitted he was annoyed by it. He inquired again, raising his voice this time, until Donato made it clear that they had not encountered Alexandre's suspect. Villanueva and Alexandre headed back to the precinct with their victim. Alexandre testified that he had never had any issues working with Martinez prior to this date. (Tr. 255-57, 414, 514, 532-33)

At around 0430 hours, Lurch put over the radio that he had multiple people stopped inside of Riverside Park, and requested that Donato and Martinez respond. Alexandre testified that he and Villanueva also decided to go to the park as back-up. Alexandre did not make a radio notification to central to advise that he was responding outside his sector for back-up, though he conceded that would have been standard protocol. On arrival, they parked on the grass, perpendicular to and behind Martinez's RMP. Lurch directed them to assist Donato and Martinez, who had about seven to ten young adults stopped. The individuals were warned and admonished and left the park. Lurch also left the scene. (Tr. 405-06, 410, 437-38, 535, 641)

Alexandre then wanted to speak with Martinez about their earlier encounter, confirming at trial that he was still annoyed and felt it needed to be discussed urgently. He told Villanueva to go back to their RMP while he spoke with Martinez. He also told Donato that he wanted to speak privately with Martinez, and Donato got into the passenger seat of the RMP. Alexandre testified that he approached Martinez, who had gotten back in the driver's seat of his RMP, and told Martinez he wanted to speak outside. Martinez responded, "I don't have to fucking talk to you...get out of my face." Alexandre denied getting angry or using any profanity in response. He reiterated to Martinez that he wanted to speak about something job-related. An apparently irate and angry Martinez responded, "You want to fucking talk, we'll fucking talk." Martinez kicked his car door open, as Alexandre backed away, and exited the RMP. Martinez unbuckled his gun belt, it fell to the ground, and he ripped off his shirt and vest; Alexandre testified that Martinez's actions "didn't phase me," and he told Martinez that he just wanted to talk. Martinez walked toward Alexandre, who instinctively had stepped back a few feet, and forcefully pushed Alexandre in the chest using both hands. Alexandre described the push as similar to a bench press. He felt himself begin to fall back and heard a sharp pop in his knee as he fell to the ground. Martinez, meanwhile, paced back and forth, cursing, before putting his uniform back on. He walked away and they had no further contact. (Tr. 258-64, 345-48, 410-13, 422, 428, 440-45, 514-18, 536, 592-600)

Alexandre testified that the pain in his knee was excruciating. He repeatedly tried to stand up, but fell back to the ground. Villanueva emerged from the RMP and, after two-to-three minutes, attempted to assist Alexandre in getting up. Alexandre complained out loud that there was something wrong with his knee, and stated to Donato and Villanueva, "You saw what happened." Donato responded that he had not seen anything, and Villanueva similarly replied that she had been on her phone and had not seen anything. Alexandre acknowledged that in his

GO-15 interview of October 27, 2015, he had stated that it was possible that Villanueva had not seen anything. (Tr. 261, 266, 426, 450-56, 476-77, 538-39)

Alexandre proceeded to use his cell phone to call Lurch. He told Lurch that he needed him to return to the park and would explain further when he arrived. Alexandre testified that approximately five minutes later, Lurch arrived and Alexandre, who had been leaning against his RMP, tried to walk towards him and fell more than once. After making his way toward Lurch, he relayed to him that he had asked to speak with Martinez about an earlier job, and Martinez had pushed him. Alexandre repeatedly stated that he needed a bus for his knee. He further advised Lurch that Martinez had removed his vest, gun belt and shirt. Without responding, Lurch went to speak with Martinez and Donato. A few minutes later, Duprey, the delegate, arrived. Duprey spoke with Lurch, then went over to Martinez and Donato before approaching Alexandre. Alexandre told Duprey that he needed a bus, as well as the duty captain if necessary. He then explained what had transpired between him and Martinez, providing the same account he had given to Lurch. Alexandre testified that Duprey told him that if the duty captain showed up, it would affect Alexandre's overtime and paid detail. At this point, the pain in his knee had intensified and Alexandre told Duprey, "I need the fucking duty captain here and I need a goddamn bus." Alexandre cut open his pants leg, exposing his swollen knee. Duprey walk over to Lurch, had a brief conversation, then returned to Alexandre, who again insisted he needed a bus. According to Alexandre, Duprey gestured to Lurch by putting his hands up and shaking his head. (Tr. 265-73, 355-56, 361, 372, 418, 426-27, 459-64, 537-39)

Lurch then called Alexandre back over, and he "gingerly" walked to the supervisor. Alexandre testified that Lurch stated that they had worked together a long time, and asked Alexandre, who had a wife and kids, who had the most to lose if the duty captain arrived. Specifically, Lurch suggested that Alexandre would be modified, which could affect his overtime

and paid detail. Alexandre confirmed that he liked to work overtime frequently and was close to the overtime cap for the precinct, but stated that in this moment his concern was his knee, not the loss of overtime. He felt that Lurch was coercing him to fabricate the truth about what had happened by raising these issues, though Lurch did not specifically direct Alexandre to say he slipped and fell or give any specific narrative of events. Lurch concluded the conversation by emphasizing that he was not telling Alexandre what to say, and telling him to he speak again with Duprey about making a decision. Lurch then left the scene with Martinez and Donato to go to a burglary job. Neither Lurch, Donato nor Martinez rendered any medical aid or called for an ambulance before leaving. (Tr. 273-76, 284-86, 293, 357-59, 370, 540-41, 545-50)

Duprey then asked Alexandre what he wanted to do. Alexandre testified that he believed Lurch wanted him to say that nothing had happened, and so Alexandre felt he had to come up with a different story about how he was injured to avoid getting in trouble. Alexandre told Duprey, "I guess I fell. Based on our conversation, I guess this didn't happen... I guess that's what the blue wall of silence is." He testified that Duprey never called for an ambulance and after about 45 minutes of waiting for Lurch to return, Villanueva said she was taking him to the hospital. Just prior to their leaving, Duprey spoke by phone with Lurch, who was now at a bagel shop. On their way to the hospital, Alexandre told Villanueva to drive by the bagel shop to see if Lurch's car was there. She did so and Alexandre observed Lurch eating his breakfast inside. According to Alexandre, none of the three officers went inside to speak with Lurch. (Tr. 287, 291, 294-97, 364, 433, 519, 527).

Alexandre arrived at St. Luke's Hospital more than two hours after his injury occurred. Villanueva helped him to the emergency room. After diagnostic scans, he was determined to [REDACTED] Alexandre conceded that he lied to medical personnel, telling them that he had injured himself when he fell

while walking back on the grass. Alexandre's medical records from St. Luke's (Dept. Ex. 1) confirm that he told the medical staff that he tripped and stumbled, and there is no reference to his being pushed to the ground. Alexandre insisted that he did not have any prior difficulties with his knee. (Tr. 298-99, 399-400, 425, 485-89)

Alexandre testified that at the hospital, Duprey reminded him that the fewer people who knew what happened, the better it would be. The duty captain arrived and Alexandre falsely told him that he had fallen on the grass, without any mention of being pushed. Oden also arrived and Alexandre asked Duprey to leave the room. Alexandre claimed that he told Oden of Martinez's aggression toward him, giving the same narrative he had given to Lurch and Duprey in the park. He also advised Oden that he had a "one-sided" conversation with Lurch where he felt coerced not to reveal what really happened. He told Oden that based on this conversation, "I guess this didn't happen...I slipped and fell on the grass." Oden stated that he understood why Lurch wanted to go this way because "it could get sticky for all involved." He indicated he would be in touch and left. (Tr. 303-09, 369, 481-82, 605-06, 621)

Within the hour, Oden texted him asking him for a brief statement of what happened so Oden could complete the line of duty report. Alexandre testified that he texted back that Oden knew what happened, but based on Alexandre's conversation with Lurch, "I guess we're going to go with me walking and falling on the grass." The actual text in evidence (Dept. Ex. 2) reads, "Walking on the grass, inside riverside park to get into the RMP, my knee buckled on the grass and I fell. Sarge u know I'm tight, smh. Lol." Alexandre claimed that the additional portion of his text must have been deleted or blanked out, though Alexandre did not preserve his text message and stated that he was unable to retrieve it from Sprint because he had upgraded his phone (Tr. 311-12, 387-89, 497-99, 502-07, 615-19).



Alexandre's direct supervisor, Sergeant Stubbing, also visited the hospital on the morning of August 1 to check on Alexandre. When he entered the room, Stubbing, who was off-duty, said, "I heard you were walking and fell." Alexandre testified that he decided not to get into the details of what happened with Stubbing since the sergeant had a baby on the way and was about to go on paternity leave. He deliberately did not explain to Stubbing that his understanding of what occurred was incorrect. (Tr. 328-32, 370-71, 495-97)

Alexandre never made any notifications to IAB about this incident until he received his charges and specifications, at which point he contacted IAB to claim that the charges against him were retaliatory. However, when the precinct's ICO, Madrid, visited Alexandre at the hospital on August 2, Alexandre did tell him that he was pushed by Martinez. Alexandre also told Madrid that both Lurch and Oden were aware of the push. When asked at trial about his mindset at the hospital, and whether he was concerned that his career might be over while Martinez was still able to walk, Alexandre initially denied having any such thoughts. However, Alexandre was then confronted with his prior GO-15 statement, where he stated, "But I'm saying to myself and it didn't hit me until, you know, like sitting there going over in my head line of duty, you fall, and you know what the truth and in my heart, in my head I know what happened, so God forbid if this thing ended my career, it ends my career, he just still - he's just going to still be walking, smiling and it's not right." (Tr. 313-16, 351, 524-526)

\_\_\_\_\_ <sup>2</sup> A request to have his injury designated as line-of duty was disapproved, though Alexandre did not know why it was denied. As a result of the disapproval, Alexandre had to pay out-of-pocket costs for his co-payments as well as transportation expenses \_\_\_\_\_. The medical

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division explored the possibility of disability retirement, and was seeking ordinary disability retirement for Alexandre as opposed to the line of duty three quarters disability; Alexandre believed this decision was made based on his line of duty paperwork being denied. Ultimately, Alexandre had [REDACTED] and resumed full-duty almost two-and-a-half years after the incident. He has filed a civil lawsuit against Martinez and the Department, seeking monetary damages. (Tr. 316-22, 382, 402, 557-61, 635)

Respondent Officer Gregory Donato testified that after asking the group of young adults to leave Riverside Park, he and Martinez returned to their RMP. Alexandre, who had arrived at the scene, approached their vehicle on the driver's side and asked multiple times to speak with Martinez. Martinez, who seemed agitated, indicated he did not want to talk to him, but Alexandre was insistent. Donato, who was in the passenger seat, observed Martinez exit the vehicle. Donato remained in the RMP, and did not hear the substance of Alexandre and Martinez's discussion. Shortly thereafter, Donato heard Alexandre say that his knee had locked up, and Donato exited the vehicle. He observed Alexandre on the ground, and asked if he was all right. Donato believed Villanueva had also approached Alexandre at this point. Alexandre repeated that his knee was locked up, and asked if he had seen what happened. Donato stated he had been in the car and had not seen anything. He testified that he did not know exactly where Martinez was positioned, but recalled that Martinez's shirt, gun belt, firearm, and vest were on the ground (Tr. 658-64, 675-76, 683-86, 703).

Donato testified that Alexandre was able to stand up on his own without assistance, and was walking around, "just walking it off more or less." Donato did not see that he was in need of medical assistance and, as such, did not render any aid to him. He noted that he had previously seen Alexandre wearing a knee brace and heard him complain about his knee. Nevertheless, Donato called Duprey, the PBA delegate, to the location in case there was a need to help out

Alexandre, such as in preparing paperwork regarding his knee. Meanwhile, Alexandre called Lurch on his cell phone and he, too, responded to the scene. Donato did not interact with Duprey and did not hear his conversations with other officers. He insisted that Lurch never took him aside at the scene and told him what to say, and did not hear Lurch complain about the amount of paperwork that would need to be done if Alexandre went to the hospital. He recalled that Alexandre was able to walk over to the lieutenant, did not appear to be in significant pain, and was not struggling to stay on his feet. According to Donato, Alexandre's pant leg was not ripped open. He did not hear Alexandre request an ambulance at any point nor did he call one for him. At no time while at the scene did Donato hear Alexandre say anything about being pushed. (Tr. 664-71, 687-88, 691, 706-11, 714, 716-17)

Around 0610 hours, Donato and Martinez received a robbery call and they left the park to handle that assignment. He and Martinez did not discuss what had transpired with Alexandre. Donato acknowledged that he did not want to know what happened and tried to change the subject if it was brought up. Donato reviewed his activity log (Dept. Ex. 13), and confirmed that he did not make any entry referencing what had occurred in Riverside Park. He made no notifications to IAB in connection with this incident (Tr. 673, 676-77, 689-96).

Respondent Officer Danielle Villanueva testified that when she and Alexandre arrived at Riverside Park as back-up, Alexandre parked their RMP on a grassy patch on a bit of uneven hill about ten feet southwest of Martinez's RMP. After the individuals in the park dispersed, the four officers walked back toward their respective RMPs. As she got to the front of her vehicle, Villanueva heard Alexandre, who was a few steps behind her, ask Martinez to step out of his vehicle to talk. She turned around and observed that Martinez did not look like he wanted to exit the vehicle, but Alexandre asked again and he stepped out. She saw Martinez remove his gun

belt, vest and shirt and heard Alexandre state, "No I just want to talk." Martinez responded, "Okay, we'll just talk," and they walked away.

Villanueva explained that she turned away in order to give the two officers privacy to talk; she tried to zone out, and may have looked at her phone. She heard loud voices but did not characterize either officer as screaming or yelling. She did not discern the substance of their conversation. Villanueva next recalled hearing Alexandre's keys jingling a few minutes later. She turned again and saw Alexandre coming back in the direction of her vehicle slipping on the grass. He tried to regain his balance, but ultimately fell onto his knee, about three feet from the driver's side door of their RMP. (Tr. 721-26, 729, 745-53, 780-84, 788-89)

Villanueva testified that she immediately went over to try to help Alexandre, who stated his knee was locked. Alexandre got up himself and immediately started walking, in what she believed was an attempt to "walk off whatever happened to his knee." He got about ten feet before he fell back down and stated, "Call Lieutenant Lurch." Immediately, though, Alexandre took out his phone and called Lurch himself.

Alexandre never indicated to Villanueva that he had been pushed, and did not ask for an ambulance or to be taken to the hospital. He got back up and continued walking around. Villanueva testified that she did not see him fall again. When Lurch and later Duprey arrived separately, Alexandre walked over to Lurch's vehicle without falling. No one, including Alexandre, talked to Villanueva about what happened. Lurch did call her over and gave what she described as a "rambling lecture" about people getting along. She did not know why he was bringing this up and he did not mention any officers' names. (Tr. 726-28, 730-33, 754-58, 784-87, 790, 794-95)

After Lurch left the scene with Donato and Martinez to address another job, Villanueva remained at the scene with Duprey and Alexandre. She was told, though she did not recall by

whom, that Lurch had instructed that they should "stand by" and that he would return. She suggested to Alexandre that he sit down and get off his leg. He looked uncomfortable but did not mention pain. While they were waiting, Alexandre tore his pants leg open and Villanueva observed swelling around his knee. She did not call for an ambulance or seek medical attention for him. However, when it seemed that Lurch was taking a long time to return, Villanueva told Alexandre that she was taking him to the hospital. The officers were advised that Lurch was at a nearby bagel shop. On the way to the hospital, Villanueva stopped at the bagel shop and advised Lurch they were going to the hospital. Lurch told her to notify the patrol supervisor. They then continued to St. Luke's Hospital with Duprey following in his RMP, arriving around 0730 hours. At the hospital, Villanueva waited in the hall while Duprey secured Alexandre's equipment. When the nursing staff entered the room, the door was open and she heard Alexandre tell the nurse he had injured his knee slipping on the grass. (Tr. 733-38, 759-62, 786, 790-93, 796-99)

Villanueva testified that Sergeant Oden subsequently arrived at the hospital and had a closed door conversation with Alexandre while Villanueva remained in the hall. Villanueva and Oden then returned to the precinct, while Duprey remained with Alexandre. At the precinct, Oden asked Villanueva if she saw how Alexandre got injured, and she stated that she had observed him slipping back and landing on his knee. Oden directed her to prepare an aided card and line-of-duty witness statement report. On the witness statement, she wrote "Fell inside Riverside Park causing injury to right knee." She turned it in to Oden who asked her to add more detail. Villanueva added, "Slipped on grass going towards RMP." Similarly, in the details section of the aided report, Villanueva wrote, "At TPO aided fell causing injury to right knee. Removed to hospital by RMP #4329." Villanueva insisted that at the time she prepared these forms, no one had told her that Alexandre had allegedly been pushed by Martinez, and she believed that he had injured himself slipping on the grass. Because she did not believe she had

witnessed anything that rose to the level of misconduct, and Lurch, the lieutenant, was notified to respond, she made no notifications to IAB regarding this incident. (Tr. 739-44, 765-69, 778-80, 793, 801-12; Dept Exs. 18, 21)

Respondent Officer Juan Duprey testified that he was Sergeant Oden's operator on the date of the incident. At 0430 hours, while on meal inside the precinct, he received a brief phone call from Donato, who stated that Alexandre needed him in Riverside Park, but didn't specify why. Duprey, who had been a PBA delegate for less than a year, drove the sergeant's marked RMP to the park without notifying Oden, who also was on meal. Duprey explained that he did not feel it was necessary to notify Oden, as he thought he would be back quickly. (Tr. 827-28, 849, 852-58, 871, 887)

When Duprey arrived at the park, he saw Lurch, who called him over and directed him to find out what happened. Duprey testified that he approached Martinez and Donato, who were standing closer to him, and asked what happened. Martinez, who appeared upset, said that he had gotten into an argument with Alexandre, but indicated he did not want to discuss it and walked off to the side. Duprey then approached Alexandre, who was standing by his RMP, and asked him the same question. Alexandre, who Duprey believed was injured because he was leaning over and rubbing his knee, stated he had gotten into an argument with Martinez and slipped. He also indicated that he needed a bus, which was the only time Duprey heard him make such a request. Duprey did not ask Alexandre how he slipped, and maintained that he had no additional knowledge of what had transpired, other than there being an argument, before his arrival on the scene. Duprey then went over and relayed this information, including the fact that Alexandre was asking for a bus, to Lurch, who said he wanted to speak to Martinez and Alexandre. (Tr. 829-32, 845, 860-61, 872, 877, 879, 881-82)

According to Duprey, Lurch first spoke with Martinez for about ten minutes. Duprey then told Alexandre that Lurch wanted to speak with him, and observed him slowly walk over to the lieutenant. He did not witness Alexandre fall down at this or any point in time. Duprey did not hear Lurch's conversation with Alexandre. Duprey had those two brief exchanges with Alexandre, but insisted that he did not mention anything to Alexandre about how his overtime and paid detail might be impacted by calling the duty captain. Alexandre did not say anything to him about the "blue wall of silence."

When Lurch left the park after assigning a robbery job to Donato and Martinez, he instructed the remaining officers to just "stand by," which Duprey interpreted to mean that they should wait in the park. Once Lurch told him to stand by, Duprey believed he was acting in his capacity as a police officer, not a delegate, and that he had been directed to stay at the park and wait for further instructions. Duprey explained that he did not inform Oden or the desk officer to advise of his whereabouts because a lieutenant had been on the scene with him. (Tr. 835-39, 850-851, 878, 884, 888-89).

After about 40 minutes, Duprey called Lurch, who said they should meet him at a bagel shop on Broadway. At the bagel shop, Duprey advised Lurch they were taking Alexandre to the hospital, and Lurch said, "Okay." He did not recall whether Villanueva also came into the shop to speak with Lurch. (Tr. 836, 839-42, 863-64, 873, 879).

At the hospital, Duprey secured Alexandre's gear. Duprey denied telling Alexandre, "The less people who know about this the better." About twenty minutes after their arrival at the hospital, Oden responded and indicated that he needed to speak with Alexandre privately. When Oden emerged from the room, he and Duprey did not discuss what Duprey had observed in the park. Duprey agreed to stay with Alexandre until relief arrived. (Tr. 843-44, 885-86, 889-90)

Regarding his activity log (Dept. Ex. 14), Duprey testified that he had noted taking Alexandre to the hospital at 0730 hours, but had not made entries about his initial response to the park or his departure from the hospital. It was his understanding that he did not have to make entries about actions that he took in his role as PBA delegate. Duprey acknowledged that he did not make any notifications to IAB about any of the officers present in the park, as he did not believe he had observed any misconduct. (Tr. 847-50, 865-69)

Respondent Sergeant Jermaine Oden, the patrol supervisor on the morning of the incident, testified that he finished his meal around 0500 hours and asked the desk sergeant, Stubbing, where his driver, Duprey, was. Stubbing reached out to Duprey, learned he was with Lurch, and Oden waited in the stationhouse for his return. Prior to Duprey's return, Lurch came back to the stationhouse and directed Oden to check on Alexandre at the hospital, and to prepare the necessary paperwork. Lurch did not provide further details about why Alexandre was hospitalized, or guidance about the investigation Oden was to do. On arrival, at the hospital, Oden saw Duprey and Villanueva in the hallway. He asked what had happened and Villanueva said she did not know. Oden proceeded into Alexandre's room alone, closing the door. (Tr. 993-98, 1008-09, 1047-48, 1082-86)

According to Oden, Alexandre told him that he slipped and fell on grass walking back to his RMP. He did not say anything about being pushed by Martinez. Oden exited the room and again asked Villanueva if she had seen what happened. She indicated that she saw Alexandre slip and fall on grass. They had no further discussion and Oden directed her to go back to the stationhouse while Duprey remained with Alexandre. (Tr. 999-1000, 1047-48, 1073)

Back at the stationhouse, Oden instructed Villanueva to begin filling out a line-of-duty injury report. Under "Witness Statement," Villanueva wrote that Alexandre "fell inside Riverside Park causing injury to right knee." Oden told her to include more detail and she



added, "Slipped on grass going towards RMP." Oden testified that he did not tell Villanueva what specifically to write. She next prepared an aided card, writing in the "Details" section that Alexandre fell causing injury to his right knee, and was removed to the hospital in their RMP. Oden reviewed this report after Villanueva had went end of tour and realized she had not included "the whereabouts of how [Alexandre] slipped and fell inside the park." Oden added a third sentence to the aided card: "Aided was I/O Riverside Park walking to RMP when injury occurred." Oden explained that this sentence was consistent with the statement Villanueva made to him at the hospital and had written in the "Witness Statement" of the line of duty report. (Tr. 1001-08, 1068-72; Dept Exs. 18, 21)

On the first line of duty report he prepared, Oden put Lurch's name in the signature boxes of Parts A & B, and Alexandre's name in Part C, which is to be completed by the injured member. Lurch took the document but did not sign it, directing Oden to get a statement from Alexandre. Oden testified that neither Lurch nor anyone else directed him as to the wording and content that should be included in the report. He insisted that all information in the report represented what he believed to be the truth at the time the report was prepared. (Tr. 1027-32)

In response to Lurch's directive, Oden texted Alexandre at 1019 hours, writing, "if you can just text me a brief story pls." At 10:29, Alexandre responded, "Walking on the grass, inside Riverside Park to get into the RMP, my knee buckled on the grass and I fell. Sarge u know I'm tight, smh. Lol." Oden replied, "Indeed as you should," and asked for his weight and medical district. Oden testified that nothing had been erased from these messages. He denied that Alexandre ever texted him anything to the effect of, "You know the truth," or, "You know what really happened." (Tr. 1033-37, 1042, 1048, 1074, 1078; Dept Ex. 2)

Oden showed the text messages directly to Lurch. Oden testified that Lurch indicated that he wanted the line of duty report to contain Lurch's name in "Part B" and Stubbing's name

in "Part A." Oden prepared a second report, but put his own name in Part A because he was the one who had actually spoken with Alexandre. He showed this updated report to Lurch, who directed him to "take care of it." Accordingly, Oden signed his own name in Part A, and in Part B signed "Sgt. Oden for Lt. Lurch," before faxing the form to the Medical Division. (Tr. 1016-19, 1037-41, 1087)

Oden took no further actions and had no conversations about this incident until his tour that began at 2305 hours on August 2. During the first hour of his tour, Oden overheard officers, who he did not see, talking in passing in the stationhouse about a fight between Alexandre and Martinez. Oden testified that prior to overhearing this conversation, he had no indication that there had been any sort of problem leading to Alexandre's injury. Oden went to the hospital at 0255 hours without first attempting to identify and/or speak to the officers he had overheard. He informed Alexandre he had heard what actually occurred, and asked him what really happened. Alexandre told him that he had gotten into a fight with Martinez, Martinez had pushed him, and that's how he fell. Oden returned to the stationhouse at 0336 hours and contacted IAB for the first time, reporting there had been an incident where an officer was pushed, and explaining that he had prepared a line-of-duty report containing what he now understood was erroneous information as to how the officer was injured. Oden did not know at that time that Madrid had already contacted IAB in connection with this incident. (Tr. 1020-23, 1041-42, 1049-58; 1062-63; Dept Ex. 19/19A)

Respondent Lieutenant Roger Lurch, the midnight platoon commander, testified that he had worked with Alexandre for approximately nine years. He described him as a hard worker who had improved conditions in the precinct, but was aware that Alexandre had, at times, clashed with other officers. (Tr. 894-98, 917-18, 943, 984)

On the night of the incident, Lurch had stopped a group of young adults in Riverside Park. He requested that Martinez and Donato respond to the park, directed them to have the individuals disperse, and continued on patrol to the lower level of the park. Later, he received a phone call from Alexandre asking him to return, though Alexandre did not indicate why. (Tr. 902-04, 918, 943-45)

As Lurch pulled up to the scene, Alexandre approached his RMP. Lurch maintained that he did not see Alexandre fall at any time, and did not observe anything out of the ordinary about the way he walked toward his vehicle. Alexandre "rambled" on to Lurch about the earlier dispute he had with Martinez, and told Lurch that now he was having an argument with Martinez in the park. Lurch testified that Alexandre did not say that he had been pushed, or that there had been any physical contact between him and Martinez. Lurch spoke with Alexandre about the need to get along with others. The lieutenant then attempted to speak with Martinez, who was wearing his full uniform at the time. Martinez appeared annoyed, and indicated that he did not want to talk. Lurch also spoke with Villanueva, but did not recall speaking with Donato directly. Lurch called the desk and asked them to have Duprey, the PBA delegate, respond. When Duprey arrived, Lurch directed him to speak with both Alexandre and Martinez to try to gain insight into the nature of their dispute and report back. Lurch denied that the reason he involved Duprey was because he was aware that there had been a physical altercation, and was concerned it would reflect badly on him as a supervisor, or create additional work. Lurch acknowledged making a general comment to everyone at the scene that he had no problem calling a duty captain if the incident escalated, though he never actually called for one. (Tr. 905-09, 911-12, 926, 930-32, 936-38, 945, 952-53, 958-59, 963)

When Lurch spoke with Alexandre, he emphasized that it was important that he work on trying to get along with other officers, as this was a recurring issue. Alexandre did not seem

happy to hear this. Lurch denied that he told Alexandre this incident could impact his ability to work overtime or anything to that effect. (Tr. 908-10)

Shortly before Lurch left the park to respond to a robbery call with Martinez and Donato, Alexandre mentioned that his leg hurt. Lurch did not ask him follow-up questions about his leg, explaining he knew Alexandre to have preexisting issues with his right knee. Lurch testified that he had no recollection of anyone stating that Alexandre had slipped and fell in the park, and Alexandre did not directly tell him that he wanted to go to the hospital. However, as Lurch was leaving to respond to the robbery, Duprey advised him that Alexandre wanted to go to the hospital. Lurch claimed he told Duprey, "If he wants to go to the hospital, go to the hospital." He agreed, though, that he might have told the officers to stand by, as the robbery was a violent crime and he was monitoring the radio. (Tr. 912-13, 923-29, 935-36, 959)

Lurch testified that if he had become aware of a physical altercation between two officers, it would require an automatic call to the duty captain. A verbal dispute, which is what he believed this incident to be, would not warrant such a call. Lurch did not believe he had any responsibility in causing the conflict between Martinez and Alexandre, either by his actions or by any failure to supervise them. (Tr. 910-13, 915-16, 935)

After the robbery job was finalized, Lurch stopped at a bagel store for a break. He maintained that at this point he still had no idea that there had been any physical altercation. While there, Duprey called and advised he was on the way to the hospital with Alexandre. Lurch directed that they stop by the bagel shop on the way, and briefly spoke with Duprey and Villanueva. He told Duprey to go to the hospital and called Stubbing at the desk to direct that Oden respond to the hospital to investigate. Lurch instructed Stubbing to prepare the necessary paperwork, which was to be submitted to Lurch for a final review and determination. He characterized his management style of delegating as "supervisory redundancy," where he would

involve multiple supervisors in an effort to ensure accuracy. Lurch insisted that he did not instruct anyone as to how Alexandre's injury should be portrayed. (Tr. 912-16, 929, 932-33, 959-60, 963-67, 976-78)

Lurch explained that he initially refused to sign the Line of Duty Injury report that Oden provided him because he had wanted Stubbing to conduct an investigation and be part of the paperwork preparation. Oden told him that Stubbing had gone home. Lurch was not aware of any time parameter for the submission of the report. He did not recall telling Oden that he needed to get a statement from Alexandre. Lurch testified that he was unaware that Oden had signed Part B of the report "for Lieutenant Lurch" until his GO-15 interview. He did not ultimately make a final determination on line-of-duty status or speak with Stubbing further because of the commencement of IAB's investigation shortly after the incident. (Tr. 971-75, 978-84)

Lurch confirmed that he made no referrals to IAB regarding this incident. His activity log (Dept. Ex. 15) made reference to the incident in Riverside Park, noting a request at 0441 hours by Alexandre/Villanueva to respond to West 96 with Donato and Martinez to deal with several people in a park. He made no subsequent entries regarding the robbery he responded to with Donato and Martinez. (Tr. 920-23, 938)

Prior to his testimony, Lurch pled guilty to Specifications 5 and 9, alleging unauthorized overtime, with an understanding that if restitution is ordered, it should be limited to a total of thirteen (13) hours and three (3) minutes for February 23, 2015 and August 1, 2015. (Tr. 814-16)

#### Credibility Assessment

The evidence has established that Respondent Alexandre sustained a knee injury when he had a physical altercation with Officer Martinez, but that the incident was initially reported as an accidental slip and fall. What is in dispute is how it came about that the true nature of this

altercation was falsely reported, and more specifically, what role, if any, each Respondent played in creating and furthering this false narrative.

The primary evidence of an alleged cover-up by five of the Respondents is the testimony of Alexandre, who also filed a lawsuit against the Department. According to Alexandre, he informed Lurch and Duprey, from the start, that he had been pushed down by Officer Martinez. Alexandre claimed that both of them encouraged him to fabricate what happened, suggesting that his ability to make overtime would be adversely affected if the incident were reported as a physical altercation. No clear motive was suggested, though, as to why they would pressure him to lie about what happened. According to Alexandre, when Oden visited him at the hospital, Alexandre informed him, too, that he had been pushed by Martinez, but he also told Oden that he felt pressure from Lurch to tell a different story.

However, since Alexandre's claim of a cover-up is essentially uncorroborated, it is important to assess his credibility carefully, to determine whether his version of events is worthy of belief. After observing and listening carefully to each of the witnesses who testified, and reviewing all of the evidence, this tribunal concludes that Alexandre is not a reliable narrator. By his own admission, Alexandre repeatedly lied about what had occurred. It is unclear why exactly he did so – perhaps he feared the ramifications of admitting he was part of a physical altercation with another officer – but it is undisputed that he repeatedly misrepresented what really occurred. For instance, when a duty captain visited him at the hospital, Alexandre merely told him that he fell, making no mention of being pushed. Similarly, when Sergeant Stubbing, the desk officer, made a personal visit to the hospital and told Alexandre that he heard he had fallen, Alexandre did not correct him and again said nothing about being pushed to the ground.

Further, Alexandre acknowledged that he even lied to the hospital nurses and doctors, the people responsible for treating him, regarding how his injury occurred. For example, the

medical assessment in the hospital records indicates that Alexandre suffered knee pain "after tripping and stumbling while walking at work as NYPD officer." Another entry in the records notes that Alexandre reported that he "*almost* fell 3 times due to knee buckling after injury," which contradicts his trial testimony that he actually fell to the ground multiple times in the presence of his co-Respondents.

One of Alexandre's lies was memorialized in a text message (Dept. Ex. 2). Oden was instructed by Lurch to contact Alexandre in order to get a subject statement for Part C of the line of duty report. Oden sent a text to Alexandre asking him to write what happened. Specifically, the sergeant wrote, "If you can just text me a brief story pls." Alexandre texted back, "Walking on the grass, inside riverside park to get into the RMP my knee buckled on the grass and I fell. Sarge u know I'm tight, smh. Lol." Oden then followed up with some additional informational questions, such as asking Alexandre's weight and medical district, which Alexandre provided. In his testimony, Alexandre claimed that as part of this exchange, he also texted to Oden that Oden knew what really happened, but based on the pressure he felt from Lurch he would go with the story that he slipped and fell on the grass. There is no indication in the exhibit, however, of Alexandre making this additional statement to Oden, and I do not credit that an additional text was sent or that part of the text was deleted.

In light of the frequency with which Alexandre distorted the truth, I am not persuaded by his claim that each of his co-Respondents was initially aware that he was pushed to the ground by Officer Martinez. Indeed, Sergeant Tolentino, who conducted a thorough investigation for IAB and came across as professional on the witness stand, confirmed that there was no corroborating evidence that the co-Respondents "got together and conspired to make up a story against Officer Alexandre." Additionally, both Villanueva and Donato testified in a consistent and forthright manner that they did not witness any such push, and I credit their accounts. Both

Lurch and Duprey arrived on the scene after-the-fact, and I credit their consistent denials that Alexandre told them that he was shoved down. Oden didn't become involved until he met with Alexandre at the hospital, and I credit the sergeant's logical and plausible testimony that he did not find out until much later that Alexandre was pushed by Martinez. The credible evidence does not support a finding that there was a collaborative cover-up by each of these five Respondents against Alexandre. In that context, we turn to the charges against each Respondent.

#### Respondent Alexandre

Specification 1 charges Alexandre with being involved in a physical altercation with Martinez. The credible evidence has established that Martinez did make physical contact with Alexandre, causing him to fall to the ground and injure his knee. Alexandre claims he was the innocent victim of an unexpected assault by his fellow officer. However, the circumstances leading up to the contact paint a less innocent picture. It is undisputed that Alexandre initiated the confrontation by approaching Martinez, who was sitting inside his RMP. Alexandre was annoyed about his earlier interaction with Martinez, and insisted on speaking with him about it. Alexandre repeatedly urged Martinez to step out of his vehicle before Martinez finally complied. Even when Martinez removed his shirt, vest, and gun belt, Alexandre did nothing to terminate the encounter, which culminated with Martinez physically engaging him. As such, even if he did not physically strike Martinez, Alexandre was very much a part of this physical altercation, and I find him guilty of Specification 1.

Specification 2 charges Alexandre with failing to report an allegation of misconduct to IAB. Specifically, it is alleged that Alexandre had an obligation to call IAB regarding his altercation with Martinez inside the park. On August 2, Alexandre did tell Madrid, the precinct's ICO, that he was pushed, and Madrid promptly notified IAB. But Alexandre concedes that he



did not, himself, contact IAB before then, explaining that he instead informed an on-scene lieutenant within moments of the incident.

However, as discussed above, I do not credit Alexandre's uncorroborated claim that there was a conspiracy to cover-up the truth of what transpired. I am not persuaded that Alexandre initially told Lurch and Duprey at the scene that he had been pushed. He did tell Madrid about it the next day, but that was only after he had a fuller understanding of the possible career-ending extent of his injury, and may well have reassessed the possible implications of his account on his pecuniary interests. The credible evidence has established that Alexandre did not report to IAB that Martinez had shoved him, and I find him guilty of Specification 2.

Specification 3 charges Alexandre with causing inaccurate records to be made in a Department record, namely the aided and line of duty reports (Dept. Ex. 21). The reports state that Alexandre slipped on the grass and fell, causing an injury to his knee, a description that was later determined to be inaccurate. Although he did not fill out these reports himself, the credible evidence has established that Alexandre contributed to this false narrative by repeatedly telling people at the scene, and in the hospital, that he slipped and fell. He also sent a text message (Dept. Ex. 2) to Oden stating that as he was walking on the grass, his knee buckled and he fell. Again, I reject Alexandre's claim that he was coerced to give this initial false account. Accordingly, I find Alexandre guilty of Specification 3.

Specification 4 charges Alexandre with providing inaccurate, incomplete, or misleading statements to supervisors regarding the cause of his injury. Specifically, it is alleged that Alexandre essentially told a duty captain and Sergeant Stubbing that he hurt his knee when he slipped and fell, and sent a text message to Oden stating the same. Alexandre does not dispute making those statements, claiming that he only did so due to the coercion of Lurch. But as previously discussed, I reject the claim of coercion. The credible evidence has established that at

the scene, Alexandre stated that he slipped and fell. He repeated that narrative to Stubbing and the duty captain, and texted it to Oden as well. Alexandre claimed that he also texted Oden that they both knew what really happened, but their text exchanges are in evidence, and there is no credible evidence to support that contention. Accordingly, I find Alexandre guilty of Specification 4.

#### Respondent Donato

Specification 1 charges Donato with failing to render reasonable aid to Alexandre. The evidence clearly established that Donato was present at the scene in Riverside Park when Alexandre injured his knee. What is less clear is whether it was reasonable to require Donato to have called for medical assistance under the circumstances.

At the time of Alexandre's altercation with Martinez, Donato was seated inside his RMP. I credit his testimony that he was unaware of a physical altercation between the officers. When he heard Alexandre say that his knee locked up, Donato exited his vehicle. He observed Alexandre stand up on his own and walk around, as if he was walking it off, and he never heard Alexandre request an ambulance. As such, Donato did not see an immediate need for medical attention. Nevertheless, Donato did call Duprey, the delegate, to the scene in case Alexandre needed any assistance. Moreover, Alexandre called Lurch, the platoon commander, who responded to the park within approximately five minutes and was in charge of the scene. Donato left the park soon after when a call for another job came over the radio.

Under the totality of these circumstances, I find that Donato did not commit misconduct by not rendering aid to Alexandre. The record has not established, by a preponderance of the credible evidence, that at the time of the incident Donato knew that Alexandre required medical assistance, and that he failed to render appropriate aid to the officer. Additionally, within five

minutes a lieutenant arrived and was in charge of the scene. Accordingly, I find Donato not guilty of Specification 1.

Specification 2 charges Donato with failing to report an allegation of misconduct to IAB. Specifically, it is alleged that Donato had an obligation to call IAB regarding the altercation between the two officers inside the park. That altercation included the manner in which Martinez removed his vest and gun belt, as well as the subsequent contact. As discussed above, Donato did not witness a physical altercation between the two officers. He did see Martinez's vest and gun belt on the ground, but there was some confusion regarding what exactly had occurred. The platoon commander arrived within minutes to take charge of the investigation, and he spoke with Alexandre and Martinez. Under the totality of these circumstances, it was not reasonable to require Donato to notify IAB, and I find him not guilty of Specification 2.

Specification 3 charges Donato with failing to intervene in the altercation between the two officers, or failing to obtain information about the incident. Regarding the first part of this specification, the credible evidence has established that Donato believed the two officers were having a discussion. Donato was sitting inside his RMP at the time, and was unaware of any physical altercation. As such, it was not reasonable to expect him to have intervened.

Regarding the second part of the specification, the platoon commander, Lurch, was on the scene within five minutes of the incident. Lurch was responsible for taking charge of the investigation, and he utilized the delegate, Duprey, to help gather information. Under these circumstances, it was not reasonable to require Donato to obtain additional information without being further directed to do so. Later in his tour, Donato steered Martinez away from telling him further details of what occurred, rather than get in the middle of a dispute between two colleagues. Under these circumstances, I find Donato not guilty of Specification 3.

Specification 4 charges Donato with neglecting to make activity log entries. A review of his activity log (Dept. Ex. 13) reveals that Donato made no entries regarding his time in the park: there is nothing about dispersing the people who were there afterhours, and nothing about the incident involving Alexandre. Even if the precise details of that incident were somewhat unclear to Donato, at the very least there should have been some indication in his activity log of his enforcement activities in the park. Accordingly, I find Donato guilty of Specification 4.

Specification 5 charges Donato with making inaccurate, incomplete, or misleading statements during his official Department interview of April 18, 2017. The Advocate provided a Bill of Particulars specifying the statements in question. A review of those statements (Dept. Exs 11/11A) reveals that they are essentially consistent with Donato's trial testimony, which I found to be credible. The record has failed to establish that Donato's statements were inaccurate, or that they were incomplete or misleading, and I find him not guilty of Specification 5.

#### Respondent Villanueva

Specification 1 charges Villanueva with failing to render reasonable aid to Alexandre. As with Donato, the evidence clearly established that Villanueva was present at the scene in Riverside Park when Alexandre injured his knee. Again, what is less clear is whether Villanueva failed to render reasonable aid under the circumstances.

At the time of Alexandre's altercation with Martinez, Villanueva was standing by her RMP, giving the officers some privacy. I credit her testimony that she did not see any physical contact between the officers. When she heard Alexandre's keys jangling, Villanueva looked up and saw Alexandre slipping and falling backward to the ground. She rushed over to try to help her partner to his feet, but he stood up on his own and walked around, as if he was walking it off. Villanueva observed Alexandre fall once more, after which he called Lurch back to the scene.

Alexandre stood back up, walked around, and Villanueva did not see him fall again. She also never heard Alexandre request an ambulance.

Lurch responded to the park within approximately five minutes and was responsible for taking charge of the scene. Before departing to respond to another job, Lurch instructed Villanueva, Alexandre, and Duprey to stand by. They remained in the park until approximately 0700 hours, when Villanueva noticed that Alexandre's knee was swollen. She insisted on driving him to the hospital, which she did. Upon their arrival at St. Luke's Hospital, Villanueva got a wheel chair and brought Alexandre inside. Under these circumstances, the credible evidence has not established that Villanueva failed to render reasonable aid to Alexandre, and I find her not guilty of Specification 1.

Specification 2 charges Villanueva with failing to report an allegation of misconduct to IAB. Specifically, it is alleged that Villanueva had an obligation to call IAB regarding the altercation between the two officers inside the park. Alexandre testified that he had told Villanueva to go back to the RMP so he could speak privately with Martinez. Villanueva complied, and as she stood by her vehicle she observed Martinez remove his shirt, vest and gun belt. She then heard each of the officers say that they would just talk and they walked off; Alexandre confirmed in his testimony that at that point he did tell Martinez that he just wanted to talk. Villanueva then turned away to give them privacy; she zoned out and may have looked at her phone.

Villanueva testified that since she was facing in a different direction, she did not witness any physical contact between the officers. After she heard keys jingling, she turned and saw Alexandre already slipping backward and falling to the ground. Under the totality of these circumstances, and having observed her testimony, I credit that she reasonably believed that Alexandre had fallen by himself, and that she heard nothing at the scene to the contrary. The

platoon commander arrived within minutes. As such, it was not reasonable to require Villanueva to notify IAB in this situation, and I find her not guilty of Specification 2.

Specification 3 charges Villanueva with failing to intervene in the altercation between the two officers, or failing to obtain information about the incident. Regarding the first part of this specification, the credible evidence has established that Villanueva believed the two officers were having a discussion, and that Alexandre slipped and fell by himself. Villanueva was standing near her RMP at the time, and was unaware of any physical altercation. As such, it was not reasonable to expect her to have intervened.

Regarding the second part of the specification, the platoon commander, Lurch, was on the scene within five minutes of the incident. He was responsible for assuming command of the investigation, and utilized the delegate, Duprey, to help gather information. Under these circumstances, it was not reasonable to require Villanueva to obtain additional information at the scene, and I find her not guilty of Specification 3.

Specification 4 charges Villanueva with causing inaccurate entries to be made in Department records, namely the aided and line of duty reports (Dept. Ex. 21). She wrote the first two sentences of the Aided report narrative, stating that Alexandre injured his knee falling, and was removed to the hospital. She also prepared the line of duty witness report, stating that as Alexandre was walking toward the RMP in Riverside Park, he slipped on the grass and fell, causing an injury to his knee.

However, as discussed above, I find that the information she entered into these reports reflects what Villanueva reasonably believed at the time. She did not see Martinez push Alexandre; rather, she saw her partner falling and believed that he had slipped on the grass. At the scene, Villanueva heard nothing to the contrary, and when she arrived with Alexandre at St. Luke's Hospital, she heard him tell the nurse that he had slipped on the grass and hurt his knee.

As such, the credible evidence has not established that Villanueva caused inaccurate entries to be made in the reports, and I find her not guilty of Specification 4.

Specification 5 charges Villanueva with making inaccurate, incomplete, or misleading statements during her official Department interview of April 27, 2017. The Advocate provided a Bill of Particulars specifying the statements in question. A review of those statements (Dept. Exs 9/9A) reveals that they are essentially consistent with Villanueva's trial testimony, which I found to be credible. The record has failed to establish that Villanueva's statements in her interview were inaccurate, or that they were incomplete or misleading, and I find her not guilty of Specification 5.

#### Respondent Duprey

Specification 1 charges Duprey with failing to render reasonable aid to Alexandre. Duprey was called to the scene by Donato, and arrived after the incident had occurred. Alexandre told him that he had slipped, and Duprey did hear Alexandre initially request a bus, but the delegate promptly relayed that information to Lurch, the platoon commander who was on the scene. Lurch, himself, spoke with the parties involved, and then instructed Duprey, Alexandre, and Villanueva to stand by, which they did. Other than the one initial request for a bus, Duprey did not hear Alexandre request an ambulance during their time in the park, and he did not believe that the injury was severe. Under these circumstances, the credible evidence has not established that Duprey failed to render reasonable aid to Alexandre, and I find him not guilty of Specification 1.

Specification 2 charges Duprey with failing to report an allegation of misconduct to IAB. Specifically, it is alleged that Duprey had an obligation to call IAB regarding the altercation between the two officers inside the park. However, Duprey arrived in the park after the incident,

and had no knowledge of a physical altercation. I credit Duprey's testimony that Alexandre, himself, told him that he had slipped. Moreover, the platoon commander arrived within minutes. Under the totality of these circumstances, it was not reasonable to require Duprey to notify IAB, and I find him not guilty of Specification 2.

Specification 3 charges Duprey with neglecting to make activity log entries. A review of his activity log (Dept. Ex. 14) reveals that Duprey provided scant detail of his involvement in this matter. He noted that at 0730 he transported Alexandre to St. Luke's Hospital, but there is no mention of anything else that occurred inside the park. Duprey's explanation for his incomplete entries, that he initially was in the park in his role as a delegate, is unpersuasive, and I find him guilty of Specification 2.

Specification 4 charges Duprey with failing to notify the desk officer and patrol supervisor that he was leaving the stationhouse during his meal period to go to Riverside Park. Section 202-21 (4) of the Patrol Guide requires an officer to report to the desk officer when leaving the stationhouse. Oden conceded that he did not notify a supervisor before departing, explaining that he didn't feel it was necessary since he expected to be back quickly. That explanation is not persuasive. Duprey also noted that Lurch, the platoon commander, saw that he was present inside the park, so his whereabouts were known. However, that after-the-fact observation did not relieve Duprey of his responsibility to notify the desk when leaving in the first place. Accordingly, I find Duprey guilty of Specification 4.

Specification 5 charges Duprey with making inaccurate, incomplete, or misleading statements during his official Department interviews of October 8, 2015 and May 31, 2016. The Advocate provided a Bill of Particulars specifying the statements in question. A review of those statements (Dept. Exs 7/7A, 8/8A) reveals that they are essentially consistent with Duprey's trial testimony, which I found to be credible. The record has failed to establish that Duprey made



inaccurate statements in the interviews, or that they were incomplete or misleading, and I find him not guilty of Specification 5.

#### Respondent Lurch

The charges against Lurch are grounded in two theories of culpability: that he knew about the push and oversaw a cover-up, and that he was negligent in his supervision of the investigation. As already discussed, the evidence that Lurch was part of a cover-up was unfounded. However the evidence that Lurch failed in his supervision was much more compelling.

Specification 1 charges Lurch with failing to render reasonable aid to Alexandre. Lurch acknowledged that Alexandre said to him that his leg hurt, yet did not ask him any follow-up questions. The lieutenant explained that he knew the officer had a preexisting knee issue, but that does not excuse Lurch's failure to make any additional inquiry about Alexandre's knee. Lurch claimed that he did not recall hearing anyone in the park mention that Alexandre slipped and fell; I find that claim incredible, particularly since the delegate, Duprey, credibly testified that he informed Lurch that Alexandre had stated he slipped. Duprey also advised Lurch that Alexandre wanted to go to the hospital, but Lurch instructed the officers to stand by, while he went to respond to a robbery call. Lurch, as the platoon commander, was the only supervisor on the scene; as such, he had a greater responsibility to investigate the nature of Alexandre's condition and to make sure the officer received appropriate assistance. Under these circumstances, the credible evidence has established that Lurch failed to render reasonable aid to Alexandre, and I find him guilty of Specification 1.

Specification 2 charges Lurch with failing to report an allegation of misconduct to IAB. Specifically, it is alleged that Lurch had an obligation to call IAB regarding the altercation

between the two officers inside the park. However, Lurch arrived on the scene after-the-fact and did not witness the altercation. As previously discussed, I am not persuaded by the credible evidence that when he returned to the park, Lurch was made aware of the physical altercation. Under the totality of these circumstances, it was not established that Lurch possessed information that reasonably required him to notify IAB, and I find him not guilty of Specification 2.

Specification 3 charges Lurch with failing to supervise his subordinates by not properly investigating the incident in the park, or preventing the accurate reporting of it. Section 202-13 (15) of the Patrol Guide requires a platoon commander to "ensure all personnel of the platoon are properly supervised and performing duty in a satisfactory manner." As already alluded to above, Lurch's supervision of this investigation fell short of what one would reasonably expect from a platoon commander on the scene. Lurch conducted a minimal investigation, failing to uncover the true nature of Alexandre's request for Lurch to respond right back to the scene; instead, he left it to others to sort it out. He did not adequately follow-up on information that Alexandre's leg hurt. As he apparently sat in a bagel shop, Lurch instructed his sergeant to go to the hospital to investigate Alexandre's situation. At the precinct, rather than take responsibility for preparing parts A and B of the line of duty report as required by Patrol Guide section 205-05, Lurch chose to pass off those duties to Sergeants Oden and Stubbing.

Lurch described his managerial style as "supervisory redundancy," whereby he deliberately gets lots of people involved for greater transparency. But getting others involved did not relieve Lurch of the responsibility to initiate a proper investigation of a matter of such import, and to ensure its accurate reporting. This he failed to do, and I find Lurch guilty of Specification 3.

Specification 4 charges Lurch with neglecting to make activity log entries. A review of his activity log (Dept. Ex. 15) reveals that Lurch did make an entry at 0441 hours indicating a

request by Alexandre and Villanueva to respond to West 96<sup>th</sup> Street regarding people inside Riverside Park after hours. He also notes the presence of Officers Martinez and Donato. However, there is no further information about what transpired in the park. The entries do not accurately reflect that Lurch initially was present for the removal of the people in the park at an earlier time, left, and then returned to deal with an issue between Alexandre and Martinez. There also is no entry reflecting the subsequent robbery job to which he responded. As such, Lurch's activity log entries were incomplete, and I find him guilty of Specification 4.

Specifications 5 and 9 charge Lurch with misconduct related to unauthorized overtime. During trial, Respondent Lurch pled guilty to each of those specifications, with an understanding that if restitution is ordered, it should be limited to a total of thirteen (13) hours and three (3) minutes, for February 23, 2015 and August 1, 2015. (Tr. 814-16)

Specification 6 charges Lurch with making inaccurate, incomplete, or misleading statements during his official Department interviews of December 10, 2015 and July 21, 2016. The Advocate provided a Bill of Particulars specifying the statements in question. A review of those statements (Dept. Exs 5/5A, 6/6A) reveals that they are essentially consistent with Lurch's trial testimony, which, as a whole, I found to be credible. The record has failed to establish that Lurch made inaccurate, incomplete, or misleading statements, and I find him not guilty of Specification 6.

Specification 7 charges Lurch with dissuading Alexandre from accurately reporting his altercation with Martinez. As discussed above, I do not credit the uncorroborated claim of Alexandre that Lurch coerced him into fabricating his story of what transpired. Alexandre repeatedly stated on August 1 that he slipped and fell, and there is a lack of credible evidence that his account was influenced in any way by pressure from Lurch. Accordingly, I find Lurch not guilty of Specification 7.

Specification 8 charges Lurch with making or causing to be made incomplete, misleading, or inaccurate entries in Department records, or failing to correct such entries. The records in question are the aided and line of duty reports (Dept. Ex. 21). The reports indicate that Alexandre slipped and fell by himself, which turned out to be an incorrect description of what occurred. It is alleged that even though Lurch was aware that there had been physical contact between Martinez and Alexandre, he coerced a false narrative leading to the inaccurate reports. However, the credible evidence has not established that Lurch was aware that there was physical contact between Martinez and Alexandre, or that Lurch steered Alexandre's account of what occurred. As such, Lurch was not responsible for the inaccurate entries in the reports. The manner in which Lurch passed off the responsibility to complete the reports was addressed in Specification 3, above. The credible evidence has not established that Lurch, himself, caused the inaccuracies in the reports, and I find him not guilty of Specification 8.

#### Respondent Oden

Specification 1 charges Oden with failing to report an allegation of misconduct to IAB in a timely manner. Oden was never in the park, and didn't become involved in the investigation until he was directed to speak with Alexandre at the hospital. I credit Oden's testimony that Alexandre told him he slipped and fell, which is corroborated by the follow-up text Alexandre sent to him. As such, Oden initially had no reasonable basis for reporting misconduct to IAB. When Oden later overheard a conversation at the precinct suggesting misconduct, he returned to the hospital, at which point Alexandre admitted to the physical altercation. Oden then reported the incident to IAB (Dept. Exs 19/19A). Accordingly, I find Oden not guilty of Specification 1.

Specification 2 charges Oden with wrongfully carrying out the responsibilities of the "investigating supervisor" when the Platoon Commander was available. Specifically, it is

alleged that Oden improperly filled out parts A and B of the line of duty report (Dept. Ex. 21). Patrol Guide section 205-05 requires the platoon commander to fill out parts A and B of the line of duty report. If the platoon commander is unavailable, a patrol supervisor will fill out part B, and the desk officer either designates a second supervisor to fill out part A or does so himself.

Here, I credit Oden's testimony that he initially submitted the report to Lurch with Lurch's name correctly listed for parts A and B. However, Lurch returned the report to Oden with two instructions: to get a statement from Alexandre for part C, and to substitute Stubbing's name for Lurch's in part A. As stated previously, this latter request, which is consistent with Lurch's "supervisory redundancy" approach, was contrary to the Patrol Guide. Oden proceeded to obtain a statement from Alexandre, which he signed on Alexandre's behalf in part C. However, since Stubbing had no involvement in the case, Oden used his own name for part A. Oden left Lurch's name in part B as instructed, and presented the form back to Lurch, who instructed Oden to take care of it. Oden signed part B on behalf of Lurch, and submitted the form to the medical division.

Under these circumstances, the credible evidence has not established that Oden wrongfully carried out the responsibilities of the investigating supervisor. Oden initially prepared the line of duty report consistent with the requirements of the Patrol Guide. It was only at Lurch's direction that Oden re-did the report, which Lurch then returned to him with the instruction that he take care of it. This was not a case of Oden usurping Lurch's authority as platoon commander; rather, it was Lurch, himself, who chose admittedly chose to abdicate his responsibility for preparing the report. Accordingly, I find Oden not guilty of Specification 2.

Specification 3 charges Oden with making or causing to be made incomplete, misleading, or inaccurate entries in Department records, or failing to correct such entries. The records in question are the aided and line of duty reports (Dept. Ex. 21). As discussed above, I credit

Oden's testimony that Alexandre told him he slipped and fell. Villanueva also informed Oden that she observed Alexandre slip and fall. Oden reasonably relied on the accounts provided by two separate officers when he filled out the reports, and I find him not guilty of Specification 3.

Specification 4 charges Oden with making inaccurate, incomplete, or misleading statements during his official Department interviews of September 30, 2015 and July 13, 2016. The Advocate provided a Bill of Particulars specifying the statements in question. A review of those statements (Dept. Exs 3/3A & 3B, 4/4A) reveals that they are essentially consistent with Oden's trial testimony, which I found to be credible. The record has failed to establish that Oden's statements were inaccurate, or that they were incomplete or misleading, and I find him not guilty of Specification 4.

Specification 5 charges Oden with assisting in dissuading Alexandre from accurately reporting his altercation with Martinez. Again, I do not credit Alexandre's claim that he was coerced into fabricating his account of what occurred in the park. On August 1, Alexandre repeated to multiple people that he slipped and fell. There is a lack of credible evidence that Oden in any way dissuaded Alexandre from making an accurate report of what occurred; indeed, when Oden later heard a suggestion that there may have been a physical altercation, he returned to the hospital and directly confronted Alexandre about it. Accordingly, I find Oden not guilty of Specification 5.

## **PENALTIES**

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Alexandre was appointed to the Department under his current tax number on July 11, 2005, Respondent Donato was appointed to the Department on July 8, 2008, Respondent Duprey was appointed to the Department under his current tax number on February 2, 2010, and Respondent

Lurch was appointed to the Department on July 18, 1996. Information from their personnel records that was considered in making these penalty recommendations is contained in the attached confidential memoranda.

Respondent Alexandre

Alexandre has been found guilty of four specifications. Not only did he engage in a physical altercation with a fellow officer, his lack of candor in reporting what had occurred made it unnecessarily difficult to determine the truth of what transpired. At the scene, Alexandre repeatedly misstated what had happened, and those falsehoods continued at the hospital. As a result, inaccurate Department paperwork was filed, such as the line of duty report. Medical personnel at the hospital treated Alexandre without a truthful account of the events that brought him there. Several of Alexandre's colleagues were enmeshed in false allegations of a cover-up based on his misrepresentations.

The Advocate recommends that Alexandre forfeit thirty (30) vacation days, but a greater penalty is warranted. This tribunal is mindful of Alexandre's strong record with the Department. However, his misconduct here, and its effects on other members of service, was egregious, and a period of monitoring is appropriate. Taking into account the totality of circumstances, I recommend that Alexandre's penalty be the forfeiture of thirty (30) vacation days, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respondent Donato

Donato has been found guilty of only one of the specifications against him, for incomplete entries in his activity log. The Advocate recommends that Donato forfeit thirty (30)

vacation days and be placed on one (1) year dismissal probation. However, in light of the not guilty findings on four of the specifications, that recommendation is excessive. Taking into account the totality of circumstances, I recommend that Donato forfeit one (1) vacation day.

Respondent Duprey

Duprey has been found guilty of only two of the specifications against him, for incomplete entries in his activity log, and for failing to notify the desk before leaving the stationhouse. The Advocate recommends that Duprey forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation. However, in light of the not guilty findings on the three more serious allegations, and factoring in the assistance he attempted to provide after he was called to respond to the scene while on his meal, that recommendation is excessive. Taking into account the totality of circumstances, I recommend that Duprey forfeit one (1) vacation day.

Respondent Lurch

Lurch has been found guilty of five specifications, the most serious of which was for his failure to supervise. Although he was not present for the initial altercation between the two officers, Lurch, the platoon commander, was at the scene within five minutes. Rather than personally take charge of the preliminary investigation in a meaningful way, Lurch chose to pass off that responsibility to others, and he left the park without a reasonable understanding of what had transpired. Back at the precinct, Lurch similarly left it to others to sort out what had occurred, opting for a managerial style that was antithetical to the situation at hand. Although the credible evidence was insufficient to establish that Lurch put pressure on officers to create a false narrative, his lack of supervision was a major contributing factor to the debacle that followed the incident.

The Advocate recommends service retirement, along with dismissal probation, the forfeiture of thirty (30) vacation days, thirty (30) suspension days, and deduction of 13 hours and



3 minutes to his time and leave balance. However, since Lurch has been found not guilty of four specifications, including allegations that he deliberately caused the incident to be falsely reported, that recommendation is excessive.

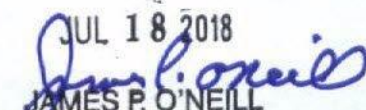
This tribunal is mindful of Lurch's solid record with the Department, but there needs to be some accountability for the inadequate supervision he provided in this case. Taking into account the totality of circumstances, I recommend that Lurch forfeit thirty (30) vacation days.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

JUL 18 2018  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER

APPROVED

JUL 18 2018

*James R. O'Neill*  
JAMES R. O'NEILL  
POLICE COMMISSIONER



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JUAN DUPREY  
TAX REGISTRY NO. 948571  
DISCIPLINARY CASE NO. 2016-15145

Respondent was appointed to the Department under his current tax number on February 2, 2010.

On his last three annual performance evaluations, he received a 3.0 overall rating of “Competent” in 2015, and twice received 4.0 overall ratings of “Highly Competent” in 2013 and 2014. He has one medal for Excellent Police Duty.

Respondent has no disciplinary record. As a result of the instant charges and specifications, Respondent was placed on Level 1 Discipline Monitoring on August 14, 2017. That monitoring remains ongoing.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT ROGER LURCH  
TAX REGISTRY NO. 917904  
DISCIPLINARY CASE NO. 2016-15141

Respondent was appointed to the Department on July 18, 1996.

On his last three annual performance evaluations, he received a 4.5 overall rating of “Extremely Competent/Highly Competent” for 2015, and twice received 5.0 overall ratings of “Extremely Competent” for 2013 and 2014. He has six medals for Excellent Police Duty. [REDACTED]

Respondent has no disciplinary record. He was placed on Level 1 Discipline Monitoring on July 18, 2016, based on his history with the Department; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER GREGORY DONATO  
TAX REGISTRY NO. 946948  
DISCIPLINARY CASE NO. 2016-15144

Respondent was appointed to the Department on July 8, 2008.

On his last three annual performance evaluations, he received 4.0 overall ratings of  
“Highly Competent” in 2014, 2015 and 2016. [REDACTED]  
[REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DONALD ALEXANDRE  
TAX REGISTRY NO. 937856  
DISCIPLINARY CASE NO. 2016-15143

Respondent was appointed to the Department under his current tax number on July 11, 2005.

On his last three annual performance evaluations, Respondent received a 4.0 overall rating of "Highly Competent" in 2016 and twice received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2014 and 2015. He has one medal for Excellent Police Duty.

[REDACTED]

In 2015, following a Department trial, Respondent was reprimanded for frisking and searching an individual without sufficient legal authority.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials