



POLICE DEPARTMENT

January 26, 2023

-----X  
In the Matter of the Charges and Specifications :

- against - :

Captain Tony Wong :

Tax Registry No. 945112 :

114 Precinct :

Case No.

2022-24526

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

Before: Honorable Paul M. Gamble  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Maria Paolillo, Esq.  
Emily Collins, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Louis C. La Pietra, Esq.  
La Pietra & Krieger, PC  
30 Glenn Street- Suite 105  
White Plains, NY 10603

To:

HONORABLE KEECHANT L. SEWELL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

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

## CHARGES AND SPECIFICATIONS

1. Said Captain Tony Wong, on or about October 16, 2021, while on duty and assigned to 115th Precinct, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department when said Captain failed to respond to and conduct a thorough investigation involving an off-duty Member of the Service. *(As amended)*

P.G. 202-30, Page 1, Para. 2

P.G. 202-32, Page 1, Para. 3

P.G. 212-09, Page 1, Para. 5

P.G. 212-32, Page 1, Note and Para. 7

P.G. 206-12, Page 1, Para. 5 and Note

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

EXECUTIVE OFFICER

DUTY CAPTAIN

UNUSUAL OCCURRENCE  
REPORTS

OFF-DUTY INCIDENTS  
INVOLVING UMOs

REMOVAL OF FIREARMS FROM  
INTOXICATED UMOs

PROHIBITED CONDUCT

2. Said Captain Tony Wong, on or about October 16, 2021, while on duty and assigned to 115th Precinct, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department when said Captain made inaccurate statements in an official Department record. *(As amended)*

A.G. 304-10, Page 1, Para. 3

P.G. 206-12, Note

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

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

FALSE AND MISLEADING  
STATEMENTS

REMOVAL OF FIREARMS FROM  
INTOXICATED UMOs

PROHIBITED CONDUCT

PERFORMANCE ON DUTY

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 29 and 30, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeants Ivonne Olachea, Irene Bonica-Delgado, and Police Officer Gee Han as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Not Guilty of the charged misconduct.

## ANALYSIS

In this case, the Tribunal is tasked with reviewing Respondent's performance of duty in the early morning hours of October 16, 2021, in his role as the on-duty Executive Officer of the 115th Precinct. At about 0500 hours, Respondent was informed by the Patrol Supervisor that a Member of Service<sup>1</sup>, who resided in the precinct, had been the apparent victim of a domestic assault. The Patrol Supervisor, who was at the scene, called Respondent at the precinct and briefed him on her observations of the alleged assailant, the victim's statements, and the victim's physical condition. The suspected assailant was placed under arrest and brought to the 115th Precinct for arrest processing, while the victim was taken to Elmhurst Hospital for treatment.

During the Patrol Supervisor's initial encounter with the victim, she admitted that she and her alleged assailant had been out drinking. As a Member of Service, this admission raised the question of whether she was fit for duty. The Department Advocate took the position at trial that Respondent's decision not to personally go to the scene of the incident affected his ability to render a competent assessment of whether the victim, in his view, was fit for duty. The Department also took the position that specific answers Respondent provided in response to official questioning were inaccurate, based on his decision not to go to the scene of the incident.

The following is a summary of the facts that are not in dispute.

At approximately 0447 hours on October 16, 2021, Complainant called 911 to report that her ex-boyfriend had assaulted her in her apartment (Dept. Exs. 3, 9; T. 31, 131, 165). In this call, Complainant first provided her address, including cross-streets, to the 911 operator. Complainant told the operator that her ex-boyfriend punched her in the face approximately 30

---

<sup>1</sup> The identity of this Member of Service is known to the Tribunal. In this memorandum, she will be referred to as Complainant.

minutes before she made the call and that her face was swollen. When asked whether he hit her with his hands or an object, Complainant stated, “Yeah . . . I don't even know what he did; he's totally like . . . I'm fucked up.” Complainant denied needing an ambulance but stated that she wanted her ex-boyfriend “to get out of here.” Complainant told the operator that her ex-boyfriend was sleeping in her apartment and explained further that he was drunk. She then provided the ex-boyfriend's name, race, date of birth, approximate age, and clothing description. When the operator asked Complainant for her name, she responded, “I don't want to give too much info because I am an MOS.” She then provided her last name and the telephone number she was calling from before identifying herself as a police officer, who “literally just started, so [she] didn't want to get into this” (Dept. Ex. 9).

Sergeant Ivonne Olachea, the on-duty Patrol Supervisor, responded to the 911 call along with several other police officers<sup>2</sup> (T. 31, 33). Video evidence from Sergeant Olachea's body-worn camera, as well as from other police officers' body-worn cameras, was offered in evidence (Dept. Exs. 1, 10-A, 10-B, 10-C, 10-D).

Complainant opened the apartment door for the police officers and allowed them to enter (T. 33, 35). She directed the police officers to a bedroom, where **Person A**, her former boyfriend and the alleged assailant, was passed out on the floor next to a bed (T. 36). Several police officers entered the bedroom and placed **Person A** in handcuffs, then removed him from the apartment to be transported to the 115th Precinct.

Once **Person A** was out of the apartment, Sergeant Olachea began interviewing Complainant to obtain the details of the alleged assault. When Sergeant Olachea asked her if her neighbors heard anything, Complainant said no. She asserted that neighbors were below her

---

<sup>2</sup> According to Sergeant Olachea, Police Officers Corleto, Han, Morrissey, Tranquellino, Rodriguez, Rangasami, and Tobia, all responded to the scene (T. 36).

apartment, but “They don't know anything.” When Olachea asked her the nature of her relationship with Person A and whether she had just met him, Complainant answered, “We used to go out.” Sergeant Olachea clarified that Person A was “an ex” and did not reside with Complainant. Complainant confirmed that she lived alone “with my kitty” (Dept. Ex. 1, 09:04:26-09:04:57).

When Sergeant Olachea asked Complainant what happened, she told her that Person A was getting mad at the bartender at Amaru and then became aggressive. They returned to her apartment, and an argument started. Complainant stated that she could not remember what started it “because I was drinking too,” but Person A had already been aggressive with the bartender. She believed that Person A wanted “control” over her. When Sergeant Olachea asked her, “Did he hit you out of nowhere?” Complainant said, “No . . . um . . . I don't really . . .” before she hesitated, covered her mouth, and looked away. Complainant then said, “All I know is he wanted to control me” (*Id.* at 09:04:58-09:06:07).

EMS personnel arrived at the apartment and approached Complainant, asking her what had happened. She replied, “He hit me . . .” then looked down at her left ankle and exclaimed, “Oh my God . . .” While the paramedics began assessing Complainant, Sergeant Olachea asked Complainant what her next tour of duty was, which squad she was in and when she last worked. When Sergeant Olachea told the paramedics that Complainant needed to go to the 115th Precinct to meet with Respondent, they told her that Complainant needed to go to the hospital instead because her ankle injury was severe. Sergeant Olachea contacted Respondent and informed him of the EMS assessment; she accompanied Complainant to Elmhurst Hospital by ambulance at Respondent's direction (*Id.* at 09:06:08-09:15:30).

The Department Advocate and Counsel for Respondent stipulated that when Complainant was transported to Elmhurst Hospital, her injuries were such that she was required to have a brain scan (T. 6-7).

At approximately 0600 hours, Respondent appeared at the hospital and met Complainant and Sergeant Olachea. Respondent interviewed Complainant and conversed with Olachea before returning to the 115th Precinct, where he remained until he ended his tour at approximately 1030 hours (T. 232-33; Dept. Ex. 5).

Respondent and Sergeant Olachea each completed Fitness for Duty Forms pertaining to Complainant; both found her fit for duty (Dept. Ex. 4; Resp. Ex. B; T. 64, 240).

Sergeant Olachea entered a guilty plea and forfeited five vacation days in connection with her performance of duty on October 16, 2021, as it related to the above-described incident (T. 66, 156). Complainant has been charged with being unfit for duty on that date; that charge is currently pending (T. 157).

On November 12, 2021, Respondent was questioned in a Department interview and was asked questions about the observations he made of Complainant at Elmhurst Hospital and his findings as reflected on his Fitness for Duty form (Resp. Ex. D; T. 139, 253-54).

The following is a summary of the relevant evidence presented at the trial.

Sergeant Ivonne Olachea testified that when she first observed Complainant at her apartment, her face was “very swollen,” and she had a black eye; by the time that Complainant was seen in the hospital, she had two black eyes (T. 60, 74-75). Complainant told her that she and her assailant had been drinking (T. 35; Dept. Ex. 1 at 3:44). Sergeant Olachea detected the

scent of alcohol on Complainant's breath and "could tell she had some drinks in her"<sup>3</sup> (T. 38-39). She also saw that Complainant had an apparent ankle injury, as she hopped on one foot as she moved through the apartment<sup>4</sup> (T. 85).

Sergeant Olachea called the Desk Officer, but he was engaged in other matters, so, at his direction, she called Respondent, whom the Desk Officer told her was the Duty Captain (T. 38, 165). When Olachea called Respondent at approximately 0503 hours, she told him that Complainant had a black eye and that she was "a little intox," but the assailant was in handcuffs and was "very intox" (T. 41-52, 95, 165, 223). She told Respondent that everyone was waiting "until you get here," to which Respondent replied that since the assailant was coming back to the precinct, everyone should return to the precinct (T. 95, 226-227).

Sergeant Olachea placed a second call to Respondent approximately four minutes and five seconds after Respondent ended the first call; she informed him that EMS had responded to the scene and they told her that Complainant should be taken to Elmhurst Hospital immediately to have the injury to her ankle treated, rather than taking her to the precinct (T. 96, 171, 226, 229). Respondent questioned Olachea about how Complainant received the injury and which ankle was injured (*Id.*). According to Olachea, Respondent asked Complainant for her squad and her RDO while she was on the call with Respondent; when Complainant answered her, she passed along her answers to Respondent (T. 96-97). Respondent also asked Olachea to confirm that the assailant would be transported to the precinct, which she did (*Id.* at 97).

---

<sup>3</sup> Sergeant Olachea testified she also described Complainant's state to Respondent as "tipsy" (T. 76). She also testified that during her Internal Affairs interview, she attempted to explain that by "tipsy," she meant that Complainant "had a few drinks" (T. 78-79). Sergeant Olachea further denied recalling any training she received from the Department concerning how long she was expected to observe an off-duty Member of Service who was suspected of being unfit for duty and was never told that she could not give such an individual water (T. 82).

<sup>4</sup> While Complainant was treated at the hospital, she told Sergeant Olachea that when she attempted to leave her apartment, the assailant grabbed her ankle and twisted it (T. 84).

Respondent testified that at approximately 0500 hours on October 16, 2021, he was on duty as the Executive Officer of the 115th Precinct; his tour of duty began the previous evening at 2139 hours (T. 126, 222-223, 267). At that time, he received a telephone call from Sergeant Olachea, the Patrol Supervisor, who informed him that she was at the scene of a domestic violence incident involving an off-duty Member of Service, whom she believed to be “a little tipsy” and “a little intoxicated” (T. 223-25, 271). Sergeant Olachea also informed Respondent that the victim had a visible black eye and that **Person A** her former boyfriend, had been arrested (*Id.*).

Respondent noted that although his understanding was that Complainant had been “beaten up pretty bad,” she seemed to “know where she was” because she had dialed 911 (T. 224). He directed Sergeant Olachea to return to the stationhouse with the alleged assailant and Complainant so that he could speak to the arresting officers, review their body-worn camera footage, and interview Complainant (T. 226-27). Respondent testified that while he was aware that, at some point, he would have to assess Complainant’s fitness for duty, his priority was to deal with her as the victim of a domestic assault (T. 224-25). Upon ending the call, Respondent commenced a preliminary background check on Complainant and **Person A** to learn more about her (T. 228).

According to Respondent, he received a second call from Sergeant Olachea approximately “four minutes and five seconds” after he ended the first call (T. 226). In this call, Sergeant Olachea told Respondent that in addition to the black eye Complainant sustained, she also had an injury to her left ankle; according to EMS personnel who responded to the scene, the seriousness of her ankle injury required her to proceed directly to the hospital, rather than first

---

<sup>5</sup> Respondent admitted on cross-examination that during one of the two conversations he had with Sergeant Olachea, she expressed the opinion that Complainant was not fit for duty (T. 272).



stopping at the 115th Precinct; Respondent then directed Sergeant Olachea to accompany Complainant to the hospital (T. 229, 271-72).

Respondent testified that at approximately 0510 hours, as he ended his second call with Sergeant Olachea, Police Officers Tranquellino and Corleto arrived at the precinct with Person A the alleged assailant, in custody (T. 229-30). After they took his pedigree information and lodged him, Respondent directed them to dock their body-worn cameras (T. 230). He then interviewed them about their observations at the scene, what Complainant told them, and how the arrest was effected (T. 230-231). Respondent then reviewed their body-worn camera footage; he saw Complainant tell the two officers who arrived at the scene first that she had been assaulted and that the person who assaulted her was passed out in the bedroom (T. 231, 273-74). The recordings<sup>6</sup> depicted the police officers entering the bedroom and handcuffing Complainant's ex-boyfriend, but only captured intermittent portions of Complainant's interaction with Sergeant Olachea while they were in the apartment (T. 231-32). Respondent testified that, based on what he saw in the video recordings, he could not assess whether Complainant was fit for duty (T. 232). Once Respondent completed his case assessment, he left the stationhouse to go to Elmhurst Hospital, where Complainant was being treated (T. 232).

Respondent testified that approximately one hour had elapsed from receiving his first notification about the incident until he arrived at the hospital at 0555 hours (T. 139, 233, 278). When he arrived, Complainant was in a restroom, accompanied by Sergeant Olachea (*Id.*). As she emerged from the bathroom, Respondent noticed that she could not put any weight on her left ankle, and Sergeant Olachea assisted her to the hospital bed (T. 234, 279-80). He then stood next to her bed, three to four feet away, and had a 20-25 minute conversation with her (T. 234-

---

<sup>6</sup> Respondent estimated that each recording ran for 26 minutes (T. 275).

37, 280, 286). Respondent testified that he was wearing a surgical mask during this meeting, as required by COVID protocols (T. 235). Complainant repeated her allegation that she had been assaulted, providing details about how she was assaulted and her injuries (T. 236). She related that she had been in an establishment called Amaru Bar with her former boyfriend before the incident<sup>7</sup> (*Id.*). Complainant described how long she had been a Member of Service and provided other employment information, such as her date of appointment, tour of duty, days off, and when she was next due to work (*Id.*). Respondent testified that he had a dual motive in conducting this interview with Complainant: to assess her recall of the pertinent aspects of the assault and to test her cognitive abilities, mindful that he would have to complete a Fitness for Duty report (T. 236).

On cross-examination, Respondent conceded that he never asked Complainant how many drinks she had or how long she remained at the bar (T. 287). He further acknowledged that there was one moment during his interview with her when she could not recall what had happened (*Id.*).

Respondent also had a conversation with Sergeant Olachea, in which he reminded her of her obligation to complete a Fitness for Duty form<sup>8</sup> (T. 238). When she asked him where to access the form, he told her that he would email her a copy<sup>9</sup> (*Id.*). Respondent told Sergeant Olachea, “You saw what you saw. You have to know what you saw. You have to know what time you saw it because you are gonna [sic] have to fill out the fitness for duty form. I’m gonna

---

<sup>7</sup> Respondent testified that the first time he heard Sergeant Olachea tell him that Complainant had been at a bar before the incident was when he spoke with her at the hospital (T. 281).

<sup>8</sup> Sergeant Olachea testified that she had only been a sergeant since June 10, 2021, and had never performed a fitness for duty assessment before this incident (T. 29, 56).

<sup>9</sup> Respondent testified that before this incident, he had completed approximately 20 fitness for duty assessments as a supervisor (T. 221, 266).

[sic] do the same thing, and I'm gonna [sic] take everything into accountable [sic], including what you write on your form, but don't let anyone put words in your mouth . . ." (T. 239, 285).

Respondent testified that he told her, "[A] person can merely consume alcohol. That does not fit the definition of an unfit member of the service. You need to be able to know the distinction of that, because the form needs to be accurate" (T. 240).

On cross-examination, Respondent disputed the assertion that he did not question Sergeant Olachea regarding her statement on the telephone that Complainant was "a little intoxicated," testifying, "I certainly did . . . I wanted her to go deeper into that – into the comment she made, because she made it on the phone to me that she was unfit for duty. She also mentioned that she was tipsy. I needed to dig further to know what her – what she saw and what she interpreted as a uniform[ed] member of the service that was unfit for duty" (T. 282-83). He testified further that he asked Sergeant Olachea ". . . if she knew the difference between a person who merely consumed alcohol and someone who is, by our standards, unfit for duty as a uniform[ed] member of the service" (T. 283).

Respondent testified that while Sergeant Olachea appeared confused by his question, "She said that she thought that she was unfit. However, she explained to me that there were three instances where she had conversations with her that were not only coherent, there was no deviations in the information added or subtracted. In other words, she was consistent, and that's when I explained to her, you know, listen, you know what you saw, you saw what you saw. Don't let anybody put words in your mouth. Okay. I need you to be as honest and accurate as possible" (T. 283-84).

Respondent testified that in the Fitness for Duty form he completed, he made a notation that, at 0430 hours, "The above MOS is the victim of a domestic assault (while unarmed)" (T.

242). He testified that he began completing the form at 0605 hours when he first observed Complainant, but did not begin his interview with her until approximately 0620 hours (T. 244-45). He further noted on the form that there was no odor of alcohol on Complainant's breath; her balance was steady; her clothes were neat; and the color of her face was flush[ed]" (T. 291).

On cross-examination, Respondent acknowledged that the common law indicia of intoxication included slurred speech and glassy, watery eyes (T. 294). He further acknowledged that being the victim of a domestic assault is a traumatizing event (*Id.*).

On redirect examination, Respondent testified that while he observed Complainant in the hospital, "There was no swaying at all, no unbalanced coordination, and there were, in fact, further evidence that – that could – that supported my overall determination and the fact that she did not have any kind of unsteadiness through the interview, the interactions with the officers and Sergeant Olachea" (T. 302).

He testified that once he had the opportunity to review Sergeant Olachea's body-worn camera footage back at the precinct, the video reinforced his belief that his assessment of Complainant's balance as "steady" was appropriate (T. 302-03). He cited examples from his review of the recording: "I can give you at least three. It's the three times that she walked on her camera. 4:56 a.m., she got her wallet and walked to the couch unassisted, no swaying, no unbalance, no uncoordination [sic]. She did start having a limp. The second incident was three minutes later when she was told to go into the kitchen when they were bringing her ex-boyfriend back out. She walked to the kitchen unassisted. There was no swaying; there was no unbalanced coordination. She did also have a limp. The third time was four minutes later when she walked from the kitchen back into the living room. At that time, you could tell the injury got a lot worse because when she put any pressure on it, she would immediately lung[e] forward in pain, and

that is on the video. All three times, not one time did she – was she uncoordinated or unsteady. She walked without any assistance in a straight line” (T. 303).

After his interview with Complainant, he returned to the 115th Precinct, where he began making notifications and preparing a UF-49 (T. 245-46).

On cross-examination, Respondent testified that while he reviewed body-worn camera footage from Sergeant Olachea, Police Officer Tobia, Police Officer Han, and Police Officer Morrissey once he returned to the 115th Precinct, he examined the footage in “multi-view” mode and did not interview Police Officers Tobia, Han, or Morrissey (T. 289-90).

Respondent testified that when he was promoted to captain, he attended a Basic Management Orientation Course, where he was trained to respond to assignments (T. 247). He testified that he was never instructed on what a response consisted of but believed, “Responding means taking action. To me, response can be handling, managing, doing something in response to something” (*Id.*).

Respondent further described what he understood his role to be, whether as an executive officer or as a duty captain in conducting an investigation, testifying, “It means that once you’re aware of the incident or situation, you need to act upon it . . .” (T. 248). When asked by his counsel, “And do what?” Respondent answered, “It depends on the situation. But as an executive with the information you have, you need to basically do something. You can’t just sit on the information and wait and – and take some type of action later on” (*Id.*).

When asked why he did not go to the scene of the incident, which he conceded was approximately five blocks away from the 115th Precinct stationhouse, he answered, “The offender was gonna [sic] be en route to the stationhouse. These are the opportunities I – I used, because I know that there’s gonna [sic] be officers there I can quickly interview. The ones who I

can interview at the scene of the house because they're bringing the perpetrator back. The body cams are significant because I needed – I need to review them to see what they saw. Those are the opportunities that I saw occur” (T. 249, 273). Respondent testified further that his primary focus was on the perpetrator who had assaulted an off-duty MOS being on his way to the stationhouse and the secondary focus was that the victim of the assault had been injured (*Id.*).

Respondent testified that when Internal Affairs interviewed him, he was initially confused when the investigators informed him that the allegation against him was the falsification of documents; after asking for clarification, he learned that the allegation involved the Fitness for Duty form he completed regarding Complainant, specifically that he checked the box on the form indicating that she was fit for duty (T. 252-53). He affirmed that he told Internal Affairs investigators that he did not smell alcohol on Complainant's breath (T. 254). He testified that one of the investigators pointed out that he observed an open container on Sergeant Olachea's body-worn camera recording taken inside Complainant's apartment (T. 257). Respondent testified that he was unaware of any ordinance or statute which prohibited an individual from possessing an open container in their home (T. 258-59).

The investigators also questioned Respondent in the Internal Affairs interview regarding whether he had taken disciplinary action against Sergeant Olachea for providing water to Complainant while she was in her apartment; he answered that he did not because, in his view, she did not violate any Department procedures by doing so. He did concede that an exception to that position would be if the subject were about to submit to breath testing in a suspected driving while intoxicated scenario (T. 260-61).

Sergeant Irene Bonica-Delgado testified that she is an investigator with Internal Affairs Special Investigations Group 1 (T. 121-122). She explained that Respondent, while not assigned

as the Duty Captain at the time of the incident, assumed the duties of a Duty Captain because he was the Executive Officer of the 115th Precinct, he was on duty, and the incident occurred in the 115th Precinct (T. 126). She testified further that as the Executive Officer of the 115th Precinct, Respondent was responsible for all patrol functions in the precinct and the precinct house; he would also be accountable for all unusual incidents occurring in the precinct if he were on duty (T. 126-27). Sergeant Bonica-Delgado testified that the Duty Captain was responsible for responding to “specific major incidents,” including any incident involving a Member of Service, whether on or off duty (T. 129). Finally, the Duty Captain is also responsible for investigating (T. 130).

Sergeant Bonica-Delgado testified that she obtained the 911 call Complainant made and the “ICAD” document as part of her investigation (T. 131-32). She testified further that her investigation revealed that Respondent never responded to Complainant’s residence (T. 136-37). Sergeant Bonica-Delgado testified, “It’s my understanding that the Duty Captain, or captain, or any supervisor, when they can, should respond to the scene directly just for investigative purposes to be able to locate witnesses and get a better sense of what’s going on on-scene” (T. 138-39). She acknowledged that Respondent interviewed Complainant at Elmhurst Hospital, but only learned that fact during Respondent’s Department interview (T. 139).

Sergeant Bonica-Delgado testified that she reviewed “the arrest paperwork . . . the ICAD, activity logs, the fitness for duty report, and the audits of the cameras” (*Id.*). She clarified that she reviewed Fitness for Duty reports that both Sergeant Olachea and Respondent completed (*Id.*). She testified that the Fitness for Duty form documents whether a Member of Service can “carry out their duties without any type of impairment” (T. 140). According to Sergeant Bonica-Delgado, the assessment “should be done when the incident happens or when you respond there”

(*Id.*). She testified that a Member of Service might be considered unfit for duty if they are injured, ill, “intoxicated or under the influence of something” (*Id.*).

Sergeant Bonica-Delgado testified that she reviewed all of the responding officers’ body-worn camera videos and an audit of the videos assembled by a member of her investigative team (T. 144; Dept. Exs. 6A-F). Based upon the audit, she determined that Respondent viewed Police Officers Corleto and Tranquellino’s body-worn camera videos, respectively, at 0538 hours on October 16, 2021 (T. 146, 152). The audit also revealed that Respondent reviewed Olachea, Morrissey, Tobia, and Han’s body-worn camera videos at 1024 hours on October 16, 2021 (T. 152, 158).

On cross-examination, Sergeant Bonica-Delgado conceded that she only learned that Respondent interviewed Police Officers Corleto and Tranquellino at the 115th Precinct before he went to Elmhurst Hospital during Respondent’s Department interview and further conceded that there was nothing improper about him doing so (T. 159-61). Sergeant Bonica-Delgado confirmed that there was no specific methodology by which a duty captain is guided in deciding whether to go to a residence or a hospital when responding to an unusual occurrence (T. 162). She later testified that in general investigations, “You would want to get to the scene of the crime first to investigate and gather witnesses as an investigator. I’m not talking rank. I’m talking investigation” (T. 163-64).

Sergeant Bonica-Delgado acknowledged that Respondent had three telephone conversations with Sergeant Olachea, reviewed two body-worn camera videos before going to Elmhurst Hospital, went to Elmhurst Hospital within one hour of the incident, interviewed Complainant and observed her for 20-25 minutes, spoke again to Sergeant Olachea in the hospital, completed a Fitness for Duty form; prepared a UF-49, reviewed other body-worn



camera videos, including Sergeant Olachea's, made all the required notifications, and worked four and one-half hours beyond his tour of duty (T. 175-76).

Sergeant Bonica-Delgado testified that she believed Respondent's Fitness for Duty form and Sergeant Olachea's Fitness for Duty form were each inaccurate since they both found Complainant fit for duty<sup>10</sup> (T. 177). She further acknowledged that she heard Sergeant Olachea tell Respondent on her body-worn camera video, "She's tipsy" referring to Complainant, but also told Respondent that Complainant "knows where she is, she's otherwise okay" (T. 182-83). Sergeant Bonica-Delgado also testified that the term "boxed" "denotes that you're intoxicated to a higher level than regular. But everybody's interpretation of intoxication can be different" (T. 184).

Sergeant Bonica-Delgado acknowledged that she conducted a telephone interview with Christopher Nichols, one of the paramedics who responded to Complainant's apartment<sup>11</sup> (T. 184-85). She further confirmed that during the interview, Nichols indicated that while he was in Complainant's apartment, he said that she was intoxicated and that in his experience with calls for assistance where a person is drunk, their face becomes swollen. Finally, she conceded that she never asked Nichols if being punched could also cause someone's face to become swollen (T. 187-89).

---

<sup>10</sup> While Sergeant Bonica-Delgado was permitted to express her opinion regarding the alleged inaccuracy of Respondent's statement, her opinion is not binding upon the Tribunal in the exercise of its fact-finding function.

<sup>11</sup> The Tribunal reviewed Department's Exhibit 7, the recorded telephone interview of Christopher Nichols. I note that Nichols told Sergeant Bonica-Delgado that he had just finished a 12-hour shift, was trying to sleep, and had a class scheduled for that afternoon (Dept. Ex. 7; T. 185). Nichols had little recollection of the event until Bonica-Delgado provided several facts to jog his memory. He eventually acknowledged his voice was on the body-worn camera recording stating that Complainant was intoxicated. It is noteworthy that Nichols only realized that Bonica-Delgado was an NYPD investigator, not an FDNY investigator, near the end of a twenty-minute conversation and that Complainant was the subject of her investigation, not himself. Bonica-Delgado also forgot to advise Nichols that the conversation was being recorded until near the end of the interview.

Sergeant Bonica-Delgado conceded that during the 911 call, Complainant provided her address correctly, even correcting the 911 operator when she provided the wrong cross-street and correctly provided Person A's date of birth and approximate age (T. 189-90). She further conceded that on Sergeant Olachea's body-worn camera video, Complaint moved about her apartment while hopping on one leg and did not lose her balance. However, she claimed that Complainant was "swaying a little bit" (T. 190-91).

While Sergeant Bonica-Delgado questioned Respondent's assertion during his Department interview that he could not smell any alcohol on Complainant's breath when he saw her in the hospital, she conceded that wearing a mask, as Respondent asserted in the interview, does diminish the sense of smell to some unspecified degree (T. 193-94).

Sergeant Bonica-Delgado acknowledged that although Respondent was suspected of influencing how Sergeant Olachea completed her Fitness for Duty form, and while the documents were generally consistent with each other, with slight differences, her investigation did not reveal any evidence that Olachea's assessment was based upon Respondent's (T. 196-198, 201). Finally, she conceded that she had never completed a Fitness for Duty form, although she had dealt with Fitness for Duty form issues as an investigator (T. 199).

In a case such as this, where the Tribunal must assess the credibility of witnesses who testified to judgments they made based on conclusions reached by other Members of Service, their perceptions must be considered part of that assessment. Perception is influenced by many factors, including the circumstances under which an event is observed; the witness's state of mind; the prior experience and training of the witness in relevant circumstances; and the amount of time the witness has to process the event they have observed.

I credit Respondent's testimony as forthright, concise, and supported by the independent, credible evidence in the case. The credible testimony of other witnesses and documentary evidence corroborated his factual assertions. While he is interested in the outcome of this proceeding, his demeanor as he responded to questions on direct and cross-examination, and the content of his testimony, was consistent with a desire to provide the Tribunal with a full accounting of the relevant facts.

I credit Sergeant Olachea's testimony as credible and candid. Her testimony was corroborated by her own body-worn camera video and the body-worn camera videos of other police officers who were present with her in Complainant's apartment.

Similarly, I credit Police Officer Han's testimony as a candid accounting of his activities inside Complainant's apartment when he encountered her on October 16, 2021. He is a disinterested witness whose testimony was corroborated by his body-worn camera video.

I further credit Sergeant Bonica-Delgado's testimony as forthright and concise. She is a disinterested witness in this proceeding and testified consistently with her role as an evidence collector. To the extent that she offered opinions regarding the probative value of such evidence, the value of those opinions is tempered by the historical nature of her investigative endeavor and the reality that she did not have access to the evidence in real time as other witnesses did.

*Specification 1: Failure to Respond/Inadequate Investigation*

I find that the Department Advocate has failed to meet her burden of proof by a preponderance of the relevant, credible evidence that Respondent failed to respond to and conduct a thorough investigation of an incident involving an off-duty Member of Service.

Patrol Guide procedure 202-32 directs the Duty Captain to respond to "major radio runs and unusual occurrences" (P.G. 202-32[3]). Patrol Guide procedure 202-30 also directs the

Executive Officer of a command to “respond to major radio runs and unusual occurrences within the command, when available, and perform prescribed functions” (P.G. 202-30[2]).

Included in the Patrol Guide procedure 212-32 definition of “unusual occurrence” is any domestic violence incident where a Member of Service is a victim or a witness (P.G. 212-32).

Under this procedure, the Patrol Supervisor is directed to “*respond to [the] scene* and assess situation” (emphasis added)(P.G. 212-32[3]). The Commanding Officer/Counterpart is directed to “conduct investigation and take appropriate action” (P.G. 212-32[7]).

Members of Service are required to be “fit for duty at all times, except when on sick report” (A.G. 304-04[1]). MOS are further directed not to “consume intoxicants to the extent that member becomes unfit for duty (A.G. 304-04[2]).

The theory of the Department’s case was that Respondent should have physically appeared at Complainant’s apartment as soon as Sergeant Olachea notified him and that his decision not to do so impacted his ability to assess Complainant’s fitness for duty, rendering any later judgment he made regarding her status to be inadequate *ab initio*. I find that adopting such an inelastic interpretation of Patrol Guide procedures 202-30 and 202-32 would be inconsistent with good order and efficiency. Such an interpretation would undermine the long-standing deference afforded executives in their decision-making when in command.

A threshold issue in this analysis is what the word “respond” means in this context. While it could certainly mean going to the scene of the incident, the responsibilities of command are so grave that it would be naïve to believe that that single act could discharge them.

Based on common sense, in a para-military organization operating under a chain of command, “respond” means “to take charge of and be responsible for” a situation. “Respond”

may also be considered synonymous with “command.” Any consideration of what “respond” may call for in a given case will be fact-specific.

When Respondent received his first notification from Sergeant Olachea, at approximately 0500 hours, he was informed that: (1) an off-duty Member of Service had been assaulted in her apartment by an acquaintance; (2) she appeared to have sustained injuries as a result of the assault; (3) the person suspected of committing the assault was present at the scene and incapacitated due to apparent alcohol consumption; and (4) the off-duty Member of Service/victim of the assault admitted to drinking before the assault and appeared to be “slightly ‘intox’” or “tipsy.”

At that point, Respondent’s priority was to ensure the life and safety of the off-duty Member of Service, the victim of the alleged assault. Second, he had a time-sensitive task of ensuring that the arrest of the suspected assailant met all procedural requirements and that police officers gathered any evidence tending to support a future charge of assault before bringing the case to the District Attorney for prosecution. Third, as a matter of good order and discipline, he was required to assess the off-duty Member of Service’s fitness for duty concerning her consumption of alcohol.

It is not in dispute that Sergeant Olachea asked Respondent what he wanted her to do, and his answer was to bring the suspect and the off-duty service member to the precinct. This decision, on its face, does not seem unreasonable or ill-advised. This was a static, as opposed to a dynamic event. The assault was a complete crime. **Person A**, the suspected assailant, was in custody. The victim of the assault was being transported to a hospital for medical treatment. Respondent had a supervisor at the scene, supervising the alleged assailant’s disposition, the collection of evidence, and the care of the off-duty Member of Service. There is no credible,

relevant evidence in this record to establish that there was some condition or circumstance at Complainant's apartment that required Respondent's presence to resolve.

Despite the proximity of the off-duty Member of Service's apartment to the precinct, Respondent could bring the resources at his disposal to bear easier from his position in the stationhouse. This is not to say that if he determined that he needed to conduct an on-the-scene assessment, he could not have done so; the evidence in the record, however, does not establish that such a need was present. In the view of the Tribunal, it was reasonable then for Respondent to rely upon the supervisor on the scene to assess the situation from her perspective and to remain at the stationhouse to provide support and the deployment of additional resources, if necessary.

When Sergeant Olachea made her second call to Respondent and informed him that the EMS workers counseled that Complainant should be transported immediately to a hospital for treatment of her ankle injury, Respondent affirmed that change in plan and remained at the precinct. Before receiving that call, he had already run a preliminary background check on Complainant and Person A. When Corleto and Tranquellino arrived at the precinct with Person A in custody, he directed them to "dock" their body-worn cameras to preserve arrest evidence, interviewed them, and then reviewed their body-worn camera footage once it had downloaded. Respondent testified credibly that he viewed the situation after Olachea's second phone call as more serious, as he not only was dealing with a Member of Service who had been the victim of a domestic assault but that the MOS was injured seriously enough to require immediate medical treatment.

Only after Respondent took those critical, preliminary steps did he drive himself to the hospital, arriving at approximately 0600 hours, to continue his investigation. He interacted with

Complainant and then received a briefing from Sergeant Olachea. He reminded her that she had to complete a Fitness for Duty form and informed her where she could acquire a copy of the document; Respondent later completed a similar form.

The Fitness for Duty form Respondent completed noted that Complainant's appearance was a flushed face with glassy/watery eyes and neat clothing (Dept. Ex. 4). A comparison of the photographs of Complainant taken in Elmhurst Hospital (Dept. Exs. 8A-8E) appears consistent with Respondent's observations as he recorded them on the Fitness for Duty form. Of particular significance is Department Exhibit 8B, a photograph of Complainant's face. In this photograph, the appearance of Complainant's face appears consistent with that of someone who has been struck in the face one or more times: there is evidence of broken capillaries beneath both eyes and on her nose; each eyelid appears to have the beginnings of "black and blue" markings, the left eye to a greater degree than the right; there are marks above and around her left eye suggesting that Person A punched her in that area; and both eyes appear to be slightly red (Dept. Ex. 8B). The remaining photographs do depict someone whose clothing seems to be neat (Dept. Exs. 8A, 8C, 8D, 8E). Department Exhibits 8C and 8E depict Complainant's left ankle, which appears to be red and somewhat swollen (Dept. Ex. 8C, 8E). Department Exhibit 8D illustrates Complainant's left ankle with an ice pack taped to it, further supporting a finding that Person A injured her ankle during the assault (Dept. Ex. 8D).

Based upon Respondent's observations of Complainant's injuries, it would have been arbitrary to discount the likely effect of the assault upon her physical condition and ascribe her swollen face and glassy eyes to excessive consumption of alcohol.

Respondent's credible testimony established that he questioned Complainant to assess how much of the assault she could recount and what her cognitive abilities were at that moment.

His conclusion that she appeared lucid, consistent, and able to answer questions in detail 1-1/2 hours after the assault seems reasonable. This preliminary judgment also aligns with Sergeant Olachea's assessment of Complainant's ability to recall material facts while she was still in her apartment, roughly 30 minutes after she had been assaulted. Taken together, Respondent's assessment that Complainant was fit for duty, despite her consumption of alcohol and sustaining punches to her face, was also reasonable.

The fitness for duty assessment is a subjective determination made upon arguably objective criteria. Where indicia of possible intoxication are either in dispute or speculative, Department precedent has supported findings of Not Guilty (*see Disciplinary Case No. 2017-17314* [Aug. 20, 2019])[Twenty-one-year police officer found Not Guilty of (i) consuming an intoxicant to the extent that he was unfit for duty and (iii) failing to identify himself to members of the local police department who were conducting an investigation. The officers' assessments of Respondent's sobriety were, under the circumstances presented, speculative, and they disagreed upon whether they observed him to have a strong smell of alcohol about him]; *compare Disciplinary Case No. 2018-19437* [Feb. 19, 2021])[Twelve-year police officer with no disciplinary record forfeited 32 pretrial suspension days, 20 vacation days, was placed on one-year dismissal probation and s ordered to cooperate with breath testing and counseling after being found Guilty of (i) being unfit for duty due the consumption of alcohol; (ii) leaving the scene of a vehicle accident and (iii) refusing to submit to a Breathalyzer test after on-duty officers arrived at his residence. In this case, though the charge of driving while impaired was dismissed both in criminal court and by the Department, based upon Respondent's admissions alone, he drove his vehicle from Manhattan to the Bronx after consuming 7-8 beers, all while forgoing sleep for 24 hours. He stated he did not recall being involved in a vehicular accident.



Two captains responded to his apartment and observed an odor of alcohol on his breath and watery, glassy eyes]).

The Department's case appears to be based upon two premises being true: (1) that Complainant was, in fact, not fit for duty; and (2) that Respondent, had he proceeded directly to Complainant's apartment, instead of remaining at the precinct, would have concluded that she was not fit for duty. There is no evidence of the former other than Sergeant Olachea's opinion at Complainant's apartment; the latter is speculative. No medical records establish the smell of alcohol or intoxication that tend to establish Complainant's unfitness for duty. Sergeant Olachea and Respondent each assessed Complainant's physical condition at different times.

Notably, there was no evidence presented by the Department to address whether the observations made by both supervisors were impacted, either in part or in totality, by the undisputed evidence that Complainant had been punched in the head several times. While there was no evidence presented regarding the effect of recent blows to the head upon her cognitive ability, balance, or facial swelling, common sense informs a finder of fact of the typical manifestations of someone who has sustained head injuries. It is noteworthy that both parties stipulated that Complainant required a brain scan at the time of her emergency room admission. I infer from that stipulation of fact that the appearance of Complainant's head injuries was sufficiently serious to warrant EMT personnel to recommend imaging to detect whether she suffered additional injuries which may have been undetectable by a visual examination.

While it is interesting that both Sergeant Olachea and Respondent found Complainant fit for duty, there is no credible, relevant evidence from which I can reasonably infer that Respondent made anything other than an assessment based upon his observation of Complainant

at the hospital, fully aware that Sergeant Olachea had earlier expressed an opinion that she was “slightly ‘intox’” and “tipsy.”

In the view of the Tribunal, Respondent’s actions, as set forth above, appear logical, thoughtful, and reasonable, given the circumstances (*see Disciplinary Case No. 2009-85577* [Jan. 17, 2012][21-year captain acting as the Duty Captain, charged with failing to conduct a proper investigation into an accident involving a Department vehicle, has charge dismissed. He did not assess the fitness for duty of the driver, an off-duty chief, believing he had no basis for doing so. It was later discovered that the chief had been drinking]; *compare Disciplinary Case No. 2016-15782* [Sept. 28, 2017][11-year lieutenant, while a probationary captain, forfeited 15 suspension days, 45 vacation days and was placed on dismissal probation after pleading guilty to failing to assume the command and perform the duties of the commanding officer in his absence, including responding to a hospital in his precinct and activating the Hospital Emergency Response Plan, after being notified that two police officers had been shot and were being taken to that hospital for treatment]; *Disciplinary Case No. 2021-23745* [Sept. 15, 2022][20-year sergeant, forfeited 35 vacation days after pleading guilty to, while acting as desk officer, failing to properly investigate a line of duty injury to an officer on patrol. Respondent did not review the body-worn camera footage of the incident and did not interview a sergeant who was with the police officer when the incident occurred and relied only on the injured police officer’s report]).

Even if I had found that Respondent’s actions, or failure to take action, were a technical violation of the Patrol Guide, the Department has not established evidence of a bad faith motive or ignorance of available facts which would be considered negligent; under long-standing precedent, such a technical violation of the Patrol Guide would be deemed to have been in good faith (*see Disciplinary Case Nos. 2015-14067 & 2015-14068* [Oct. 20, 2016]).

Based upon the foregoing, I find Respondent Not Guilty of Specification 1.

*Specification 2: Inaccurate Statements*

I find that the Department Advocate has failed to meet her burden of proof by the credible, relevant evidence that Respondent made an inaccurate statement during his Department interview.

The Department Advocate took the position at trial that Respondent's assertions in his Department interview that: (1) Complainant was fit for duty; (2) her gait was steady; and (3) he did not smell the odor of alcohol on her breath were all inaccurate.

Administrative Guide procedure 304-10 defines "inaccurate statement" as "a statement that a member of the service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member's actions are grossly negligent" (A.G. 304-10).

I have reviewed the body-worn camera videos of Complainant as she interacted with police officers in her apartment. I have further reviewed Respondent's testimony regarding his perception of Complainant's balance as she moved about her apartment and when she was in the hospital. Based upon that evidence, I find no support for the Department's position that Respondent's assessment of her balance was incorrect.

I further find that there is no credible evidence that Respondent's assertion that he did not smell alcohol on Complainant's breath was inaccurate. Respondent was the sole witness to testify on this point. There is no credible evidence in the record of Respondent's bias or a prior inconsistent statement. There is no forensic evidence that would refute Respondent's factual assertion.

To find Respondent Guilty on this point, the Tribunal would have to speculate that there was, in fact, a detectable odor of alcohol on Complainant's breath, that Respondent knew that to be true, contrary to his testimony, and made an incorrect representation to Department investigators, based upon a rationale for which the Department has presented no evidence. The Tribunal will not engage in such a theoretical undertaking.

Finally, the Department argues that had Respondent proceeded to Complainant's apartment as soon as he was notified of the incident, he would not have found her fit for duty; *ipso facto*, his later judgment that she was fit for duty was grossly negligent.

Based upon the entirety of the record, there is no credible evidence to support a finding that Respondent's actions in connection with Complainant's off-duty incident were grossly negligent. Respondent testified in detail to his observations when he made decisions about courses of action and why he took those actions.

The Tribunal cannot divorce the circumstances Respondent found himself in from the soundness of the decisions he made on October 16, 2021. Near the end of his scheduled tour, he learned of a domestic assault upon a Member of Service that was serious enough to require her to be taken to a hospital immediately and undergo a brain scan. Based upon Sergeant Olachea's report to him and his observations of Complainant in the hospital, she had been punched in the face several times by her former boyfriend. This Member of Service had been in her apartment with her assailant for approximately 30 minutes before she called 911 for help getting him out of her apartment.

The video evidence demonstrates that Complainant looked shaken in the aftermath of the assault, even with an apartment full of her fellow police officers, as her assailant was passed out in the next room. Even as Person A was being led out of the apartment in handcuffs, he

attempted to persuade Complainant to desist from holding him accountable for the injuries he inflicted. While Complainant is a Member of Service, her demeanor in the aftermath of the assault is unsurprising among victims of domestic violence, based upon the experience of this Tribunal: the hesitation expressed in the 911 call, the embarrassment, and the shame.

The evidence supports a finding that, as expected of an executive of his experience, position, and training, Respondent was careful, deliberate, and thoughtful as he managed this incident. He took the time to evaluate the evidence at his disposal, made an in-person assessment of Complainant's welfare, and executed the duties of his office consistent with the Patrol Guide. While it is true that he treated Complainant primarily as a victim of a domestic assault, making any consideration of her fitness for duty secondary, it would have been professionally irresponsible to ignore that reality. The presence of visible injuries to Complainant's face and the possible, but unquantified, impact upon her cognitive abilities made it difficult, if not impossible, to make a reliable judgment on whether Complainant's alcoholic consumption rendered her unfit for duty. Based upon Complainant's ability to respond to Respondent's questioning with detailed answers, his assessment of her fitness was not unreasonable and was certainly not grossly negligent.

Based upon the foregoing, I find Respondent Not Guilty of Specification 2.

**APPROVED**

MAR 31 2023  
KEECHANT L. SEWELL  
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble  
Assistant Deputy Commissioner Trials