

Dep't of Correction v. Smith

OATH Index Nos. 2526/19, 2527/19, 2528/19 & 198/20 (Nov. 12, 2019), *adopted*, Comm'r Dec. (Aug. 13, 2020), **appeded**

Respondents were charged with filing false and inaccurate reports for omitting that they observed a use of force perpetrated upon an inmate by another officer. ALJ finds that petitioner failed to prove its case by a preponderance of the credible evidence and recommends that the charges be dismissed.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
**FRANK SMITH, ANTONY KUZHIVELIL,
TRACE CAMPBELL AND ROGER FLEMING**
Respondents

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

This disciplinary proceeding was referred by the Department of Correction (“Department” or “petitioner”), pursuant to section 75 of the Civil Service Law. Civ. Serv. Law § 75 (Lexis 2019). The charges allege that respondents, Correction Officers (“COs”) Frank Smith, Antony Kuzhivelil and Trace Campbell, and Correction Captain Roger Fleming, witnessed a use of force (“UOF”) on an inmate on August 16, 2016, and filed false and inaccurate reports by omitting that the inmate was struck to the facial area, in violation of Department rules and its Use of Force Directive No. 5006R-C (eff. Jan. 31, 2008) (ALJ Ex. 1).

At a trial before me on October 7, 2019, the Department presented a video of the alleged incident, documentary evidence, and the testimony of its investigator. Respondents presented documentary evidence and testified on their own behalf. I held the record open for petitioner to provide respondents with copies of e-mails from the Department of Investigation (“DOI”) to petitioner’s Investigations Division (“ID”), and a video recording of petitioner’s interview of the

inmate against whom force was allegedly used, after their existence was revealed at trial. The record closed on October 17, 2019.

Based upon my analysis below, I recommend that the charges against respondents be dismissed.

ANALYSIS

The Department charged that respondents witnessed a use of force during which an inmate was struck in the face and that they failed to report the incident.

Timothy Brown has been employed by the Department since 2007. He currently works with the K-9 unit, but at the time of the incident at issue here, he was an investigator with ID. As an investigator, his job duties ranged from monitoring facilities to monitoring uses of force, arrests and confiscations. Investigator Brown estimates that he has conducted hundreds of investigations, the majority of which involved UOF (Tr. 16-18). As part of his inquiry into UOF cases, he canvasses the area, interviews the inmate and the different persons involved, obtains reports from staff and witnesses and reviews relevant videos to determine whether the force used was necessary or excessive (Tr. 18-19).

Investigator Brown was assigned to investigate a UOF incident that occurred at Bellevue Hospital Prison Ward (“Bellevue”) on August 16, 2016, following an argument between an inmate and CO Thurston, which required the presence of a probe team. Respondents comprised the probe team. At some point, DOI assumed the investigation but returned the file to ID in 2018, causing the Department’s delayed investigation and initiation of charges against respondents. Before the charges were brought, Investigator Brown reviewed respondents’ UOF reports, as well as a video of the probe team’s response (Tr. 19-21, 35, 37-38).

Petitioner submitted the video of the incident, which did not display the actual times of the event (Pet. Ex. 6). At 17 seconds into the video, a clearly agitated inmate can be heard shouting profanities, while a female officer who is in the camera’s view calls for an emergency response. At 27 seconds into the video, the respondents appear, wearing helmets. At one minute into the video, while respondents are present, the inmate can be seen and heard confronting and challenging CO Thurston (whom Investigator Brown later identified in the video and who is not wearing the same gear as respondents (Tr. 28)), to state what Thurston had done to him. Thurston replies that

he had taken the inmate's phone. Respondents attempt to speak with the inmate who states in an elevated voice that he is not the problem and that Thurston had placed hands on him.

At three minutes and 18 seconds into the video, someone calls out to the captain who responds and is out of the camera's view. The captain returns to the camera's view at about 23 seconds later and appears to issue instructions for the officers to restrain the inmate, which they begin to do at approximately four minutes into the video. About thirty seconds later, they start to escort the inmate out of the area down a hallway. Respondents, whose vests display the numbers 19 and 11, are on the right and left sides of the inmate, respectively, but are slightly behind him, as they hold his arms. At about four minutes and fifty-three seconds into the video, the inmate turns his head to the right and spits at Thurston. The two respondents holding the inmate immediately take him down to the left, where his face hits the row of chairs that line the hallway.

Investigator Brown identified the two COs beside the inmate as COs Smith and Campbell.¹ CO Kuzhivelil, wearing a vest with the number 12, trailed COs Smith and Campbell, while Captain Fleming, wearing vest number 6, was about one foot behind Kuzhivelil. Investigator Brown acknowledged that: the helmets worn by respondents do not provide perfect vision; the videographer was at the rear of respondents so Investigator Brown could not see the direction of respondents' eyes; and he had reviewed the video on multiple occasions and at different speeds, and could not discern a punch being thrown. But he asserted that respondents were looking forward and should have seen CO Thurston throw a punch to the right side of the inmate's face after the inmate spat at Thurston (Tr. 19-34, 40-45, 48, 51, 55, 63-64). According to Investigator Brown, Captain Fleming was charged because "it's possible that he - - it's possible that he saw the punch" and "Well, he's also facing the probe team. He's also facing Officer Thurston. He's facing the corridor to where they're leading" (Tr. 65).

Investigator Brown did not interview CO Thurston or respondents because of how late the file was returned to him by DOI. But he interviewed and memorialized the inmate's account of what had happened (Tr. 36; Pet. Ex. 1 at 8). As reported by the investigator, the inmate was speaking with his wife on the phone when an unnamed officer, using profanities, told him that his time was up. He remained on the phone and the officer began to punch him in his face and back, grabbed him, and threw him on the floor. The officer placed his hands around the inmate's neck, choking the inmate and banging his head on the floor. When the officer got off him, the inmate

¹ Investigator Brown did not indicate who was on the left and right sides of the inmate.

stood up, reached into his socks, retrieved and brandished a pair of scissors and told the officer to “Get the fuck away from me.” At that, the officer retreated, at which point the probe team arrived (Pet. Ex. 1 at 8).

The probe team inquired about the scissors which the inmate surrendered to them. As per the investigator’s report, “[w]hen [the inmate] walked by the officer, again, the officer punched [the inmate] in his face, causing an open and bleeding wound above his left eye. When the probe team asked [the inmate] to turn around and place his hands behind his back, [he] refused.” The probe team then forcefully secured the inmate. “When the probe team escorted [the inmate] by the intake area and walked [him] by the un-named officer, the officer punched [him] in the face.² The probe team then slammed [the inmate’s] face against the chairs” (Pet. Ex. 1 at 8).

Investigator Brown stated that he found the inmate to be partially truthful. He conceded that the inmate had lied to him but could not recollect what those lies were. He testified that his misgivings were included in his closing report (Tr. 36, 44-47; Pet. Ex. 1 at 10).

In summarizing the incident in his report, Investigator Brown wrote the following:

It is determined, through handheld video footage that Inmate Shaw spat on Officer Thurston while being escorted by the Probe Team. It is determined that Officer Thurston, upon being spat upon, immediately punched Inmate Shaw to the right side of the face. . .

The Probe Team immediately took Inmate Shaw down and he landed on the bench in the corridor. Inmate Shaw hit his face on one of the chairs, causing a laceration to the left side of his face (above the left eye). Inmate Shaw can be seen on the handheld video footage with the left side of his face pressed up against the arm of the bench. Inmate Shaw’s allegation that Officer Thurston’s punch caused the laceration to his face is **unfounded**, as Officer Thurston’s punch landed on the right side of Inmate Shaw’s face and the laceration was to Inmate Shaw’s left eye.

It is determined that Inmate Shaw refused the Probe Team’s orders to turn around so that restraints could be applied. Inmate Shaw stated that he never received medical attention, which is also **unfounded**.

(Pet. Ex. 1 at 10). Investigator Brown testified that there was no record of injury to the right side of the inmate’s face (Tr. 47). In spite of his misgivings, the investigator was persuaded that CO

² As written, the inmate appeared to suggest to the investigator that he was struck twice after the probe team arrived.

Thurston had punched the inmate after being spat at, because of the probe team's reaction in taking the inmate down, and because of "additional reports from staff saying that they witnessed the, the punch from Officer Thurston to Inmate Shaw." Investigator Brown identified only one officer, CO Wright, who reported witnessing the punch (Tr. 48-49). Petitioner did not provide a copy of Wright's UOF report, but Investigator Brown summarized that CO Wright described observing the inmate spit at Thurston who immediately threw a punch toward the inmate's facial area. The investigator testified that CO Wright was in the control room and would have had full view of the incident (Tr. 60, 67-68; Pet. Ex. 1 at 7). Neither the investigator's summary of Thurston's UOF report nor Thurston's UOF report, which was written by CO Wooten because of injury to Thurston's right wrist and hand, contained any reference to Thurston punching the inmate after the inmate spat at him (Tr. 58-59; Pet. Ex. 1 at 6; Resp. Ex. A). The only use of force described in Thurston's report occurred before the probe team's response. Regarding the spitting incident, Thurston's report reflected that, "Inmate also spat in the facial area of C.O. Thurston as C.O. Thurston was standing against the wall, and the probe team was escorting Inmate Shaw into the intake area" (Resp. Ex. A). Similarly, Investigator Brown's summaries of the UOF witness reports of CO Darrick Leak and Captain Dawn Johnson made no mention of Thurston punching the inmate after the inmate spat at him.

The investigator's report of his interview of the inmate constituted hearsay. His summaries of the reports of COs Wright and Leak and Captain Johnson, were double hearsay. Hearsay is admissible in the quasi-judicial administrative proceedings conducted at OATH, and may even form the sole basis for an administrative adjudication. *People v. Smith*, 66 N.Y.2d 130 (1985); *S & S Pub, Inc. v. NYS Liquor Authority*, 49 A.D.3d 654 (2d Dep't 2008); *see also* Charter § 1046(c)(1) (Lexis 2019); 48 RCNY § 1-46 (Lexis 2019). But we have consistently questioned the reliability of hearsay upon hearsay. *Business Integrity Comm'n v. Liberty Water & Sewer, LLC*, OATH Index No. 983/13 at 5 (Jan. 25, 2013); *Health & Hospitals Corp. (Correctional Health Services) v. LaSane*, OATH Index No. 1165/02 at 4 (Aug. 8, 2002). The reports of COs Wright and Leak, and Captain Johnson, were not presented at trial. Therefore, Investigator Brown's summaries of their reports were double hearsay. However, they comprised part of the larger picture of his investigation, so there was no reason for me to conclude that his summaries did not accurately reflect what the witnesses' UOF reports stated. Accordingly, their admission as part of the larger report will only affect the weight that I allocate to them.

Respondents COs Frank Smith, Trace Campbell and Antony Kuzhivelil have worked for the Department for 13 years, 10 years, and just short of 10 years, respectively. Smith and Campbell have been at Bellevue for seven years each, while Kuzhivelil has been there for approximately six years (Smith: Tr. 70; Campbell: Tr. 85-86, 89-90; Kuzhivelil: Tr. 102). Respondent Captain Roger Fleming has worked for the Department for 18 years, and has been at Bellevue consistently for about six years (Tr. 119-22).

It was undisputed that on August 16, 2016, respondents Smith, Campbell and Kuzhivelil, along with Captain Fleming comprised a probe team that responded to a disturbance in Ward 19 South at approximately 8:20 p.m. Clad in vests and helmets which had face shields, chin guards and protective bars, respondents met at the staging area and proceeded to the location of the disturbance where they found an inmate irate and resistant. At Captain Fleming's instructions, they restrained the inmate with handcuffs and were escorting him to the intake area when the inmate jerked to the right and spat at CO Thurston. COs Smith and Campbell, who were on the right and left sides of the inmate, respectively, immediately took him down to their left. The inmate's face struck one of the chairs in the hallway, he complained that he was injured, and he was bleeding on the left side of his face. Smith and Campbell lifted the inmate to his feet and continued to the intake area (Smith: Tr. 71-73; Campbell: Tr. 86-88, 94; Kuzhivelil: Tr. 103-05; Fleming: Tr. 123-24).

COs Smith, Campbell and Kuzhivelil testified that their helmets, which had visors and side flaps, permitted them to see straight ahead, but did not facilitate lateral viewing. Kuzhivelil added that when responding to an alarm, COs may grab whatever helmet is available, regardless of size, and the wrong size helmet may also obscure one's vision. But he admitted that nothing prevents an officer from turning his head to the left or to the right while wearing a helmet. Given the helmet restrictions which the COs asserted, Smith maintained that he saw the inmate spit towards CO Thurston, but could not confirm that the spit made contact. Campbell stated that he was slightly behind the inmate who was taller than he, so he could see the back of the inmate's head, but could not see Thurston to the right. However, he heard Thurston's voice after the inmate spat. Kuzhivelil admitted that, from the video, it appeared that he was looking to the right, but he noted that CO Smith, who was on the inmate's right side, is over six feet tall, and blocked his view, because he is a few inches shorter. Nonetheless, he knew that Thurston was to the right because that is where he was standing when they were exiting the housing area with the inmate, and he saw the inmate

turn to the right and spit. He did not see the spit land on Thurston, but testified that the facial area was usually where the inmates aimed (Smith: Tr. 73-75, 78-82; Campbell: Tr. 90-91, 101; Kuzhivelil: Tr. 107-12, 114-18).

The same day, the officers completed UOF reports which COs Smith and Kuzhivelil acknowledged they were trained³ in writing (Smith: Tr. 82-83; Kuzhivelil: Tr. 106). CO Smith wrote that “Upon arrival at the INTAKE entrance, said inmate then attempts to break our control hold, and turns and spits on C.O. Thurston . . .” (Tr. 73-75; Pet. Ex. 5). CO Campbell wrote his report immediately after the incident and stated that he did not communicate with the other respondents before doing so. In his report, he noted that the inmate lunged towards CO Thurston and spat in his face (Tr. 88-89, 94-95; Pet. Ex. 2). CO Kuzhivelil wrote that, “[u]pon arrival to (sic) the Intake area, inmate Shaw turned towards CO Thurston [badge # omitted] and spat on his facial area” (Pet. Ex. 4). He testified that he did not witness punches being thrown (Tr. 105-06). Also, he could not recall where he wrote his report but identified three areas as the only possible locations that he may have used: the officers’ lounge; the locker room; or the rear of the intake area (Tr. 112-13). Each of their reports noted that the inmate struck his face on the chairs during the takedown.

Captain Fleming identified himself in the video at the rear of the officers. He testified that he was toting a shield and three batons which he had taken from the officers after instructing them to handcuff the inmate. In a UOF report which he completed within an hour or so of the incident, the captain wrote that as he was being taken to the intake area, the inmate began to resist “and spit on CO Thurston’s facial area.” The captain maintained that from his position, he could see the inmate spit at Thurston and wrote his perception of what actually occurred, that is, that the inmate spat “on” Thurston. He did not see CO Thurston punch the inmate, or he would have included it in his report (Tr. 123-29; Pet. Ex. 3).

The Department bears the burden of proof by a preponderance of the credible evidence. *See Dep’t of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 08-33-SA (May 30, 2008); *Dep’t of Correction v. Ingram*, OATH Index No. 320/04 at 4 (Feb. 13, 2004). Preponderance has been defined as “the burden of persuading the trier of fact that the existence of a fact is more probable than its non-existence.” “If

³ CO Campbell was not asked about training, but Investigator Brown testified that officers receive training on how to complete UOF reports at the Department’s Academy and in follow-up sessions, during which they are instructed to memorialize what force they and others had employed or what they had observed (Tr. 33).

the evidence is equally balanced, or if it leaves the [trier of fact] in such doubt as to be unable to decide the controversy either way, judgment must be given against the party upon whom the burden of proof rests.” Prince, *Richardson on Evidence* § 3-206, at 110 (11th ed. 1995). See also R.A. Barker and V.C. Alexander, *Evidence in New York State and Federal Courts* § 3:9 at 90 (West 2001) (“The modern trend is to define preponderance as the ‘more likely’ or ‘probable’ account of what happened”); see, e.g., *Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976); *Dep’t of Correction v. Jackson*, OATH Index No. 175/03 at 14 (Jan. 30, 2003). The Department has not met its burden.

The Department’s primary evidence was its video of the incident. In closing, its counsel suggested that I draw an inference that CO Thurston threw a punch at the inmate because it was “a natural spontaneous reaction most, 99 percent of correction officers would, would react the same way, punching an inmate that spit at them” (Tr. 140). In essence, this begs an inference that an officer would violate the Department’s UOF directive when spat at. I decline to draw such an inference. First, I am not sure of counsel’s statistical accuracy. But even so, on the video, while I could clearly see and hear the inmate spitting at CO Thurston, I did not see the officer throw a punch and did not hear a punch make contact with the inmate’s face.

Investigator Brown admitted that he did not see a punch being thrown. Yet his reporting of the inmate’s version of events suggested that Thurston struck the inmate on two occasions in the presence of the probe team. The investigator did not make any further inquiries of the inmate or clarify this suggestion in his report. The investigator also testified and wrote in his report that there was no record of injury to the right side of the inmate’s face, only to the left side, which was caused when he struck his face on the chairs in the hallway following his immediate take-down. In spite of finding the inmate to be less than candid, the investigator concluded that Thurston punched the inmate to the right side of his face.

Investigator Brown appears to have relied on CO Wright’s UOF report, which he cited in his closing report. He suggested that Wright had a full frontal view of the incident because he was in the control room. Wright’s UOF report was not submitted and he was not called to testify. This tribunal has often held that a negative inference may be drawn against a party who fails to produce a witness within its control. See, e.g., *Dep’t of Correction v. James*, OATH Index No. 1453/03 at 5 (July 29, 2003), *rev’d*, NYC Civ. Serv. Comm’n Item No. CD 05-29-R (Apr. 6, 2005); *Police Dep’t v. Smith*, OATH Index Nos. 345-346/01 at 22 (May 23, 2001); *Transit Auth. v. Davila*,

OATH Index No. 383/92 at 4-5 (Mar. 23, 1992); *see generally People v. Kitching*, 78 N.Y.2d 532 (1991). Accordingly, I drew a negative inference against the Department for its failure to produce Wright's report, or to call Wright, the only witness whom the investigator claimed to have reported seeing Thurston punch the inmate upon being spat at. In any event, my review of the video did not convince me that Wright saw Thurston punching the inmate. Moreover, while the location of the control room was pointed out during the trial, no one identified Wright or where he was positioned. Thus, the investigator's narrative appears to have been shaped by his expectations of how an officer would react to being spat at or upon.

The investigator's conclusion that Thurston struck the inmate was contrary to the summaries of the UOF reports of the other witnesses (including respondents, CO Leak and Captain Johnson), none of whom appeared to have memorialized such a reaction from Thurston. And the investigator made no discernable assessment of the credibility of the statements contained in their UOF reports versus Wright's. Petitioner did not call Wright as a witness or even introduce his report. Thus, petitioner did not persuade me that the investigator's summary of Wright's account should be credited over respondents, who testified and were subject to cross-examination.

In so far as assessing credibility is concerned, this tribunal has considered factors such as: "witness demeanor, consistency of a witness' testimony, supporting or corroborating evidence, witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience." *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). I found respondents' version of events to be credible. As previously mentioned, as soon as the inmate spat at the officer, respondents took him down and to their left. There was nothing to persuade me that even if Thurston had punched the inmate, respondents would have witnessed it, not only because of the high intensity and velocity of their reaction, but because their face shields appeared to make it incumbent on them to turn their heads from side to side to see what was happening. I saw no display of head-turning. Also, I found that the positioning of CO Kuzhivelil and Captain Fleming would have made it more difficult for them to see what was happening as they were behind the inmate and COs Smith and Campbell. This made troubling, the investigator's testimony that the captain was charged because of the possibility that he might have seen a punch.

While respondent testified that the inmate spat "at" CO Thurston, their reports indicated that the inmate spat "on" Thurston. Petitioner's counsel suggested that if respondents were able

to see the spit make contact, they should have seen CO Thurston punch the inmate. First, the video did not demonstrate that Thurston punched the inmate. Second, since respondents knew where Thurston was standing and saw the direction in which the inmate spat, I found it reasonable for them to conclude that the spit hit its intended target and to memorialize their immediate perceptions in their reports, which were written soon after the incident. Accordingly, the distinction which counsel highlighted, is insufficient for me to conclude that Thurston threw a punch or that respondents saw a punch being thrown and failed to report it in their UOF reports.

FINDING AND CONCLUSION

Petitioner did not establish by a preponderance of the credible evidence that respondents witnessed a use of force on an inmate and filed false and misleading reports when they did not state that they observed as such.

RECOMMENDATION

I recommend that the charges against respondents be dismissed.

Ingrid M. Addison
Administrative Law Judge

November 12, 2019

SUBMITTED TO:

CYNTHIA BRANN
Commissioner

APPEARANCES:

JOSEPH TILLMAN, ESQ.
YVONNE PRITCHETT, ESQ.
JAMES MATTONE, ESQ.

Attorneys for Petitioner

FRANKIE & GENTILE, P.C.

Attorneys for Respondent Fleming

BY: JAMES FRANKIE, ESQ.

KOHLER & ISAACS, LLP.

Attorneys for Respondents Smith,

Kuzhivelil & Campbell

BY: DAVID KIRSCH, ESQ.



NEW YORK CITY DEPARTMENT OF CORRECTION
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August 13, 2020

John Gallagher
Deputy Warden In Command (DWIC)
Bellevue Hospital Prison Ward

Re: C.O. Frank Smith
Not Guilty at OATH – DR # 173/18

Dear DWIC Gallagher,

Please be advised that on November 12, 2019, the Office of Administrative Trials and Hearings issued findings on the charges and specifications listed above. The Honorable Ingrid M. Addison found C.O. Frank Smith not guilty on all specifications and therefore all charges are dismissed.

On June 24, 2020, Commissioner Cynthia Brann accepted the Court’s findings and its recommendation of dismissal of charges.

Please notify C.O. Smith by serving him ASAP with a copy of this letter. Upon service of this letter on the subject employee, have him sign below acknowledgment of service. After the employee is served, please fax and/or scan me a copy of the signed acknowledgment. My fax number is (718) 278-6526.

Yours truly,



Sarena Townsend
Deputy Commissioner

Attachments

C: Nadene Pinnock, Deputy Commissioner, Human Resources
Counsel for Respondent
O.A.T.H.

Served by: _____

Respondent’s Signature: _____

Date: _____



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

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August 13, 2020

John Gallagher
Deputy Warden In Command (DWIC)
Bellevue Hospital Prison Ward

Re: C.O. Anthony Kuzhivelil
Not Guilty at OATH – DR # 174/18

Dear DWIC Gallagher,

Please be advised that on November 12, 2019, the Office of Administrative Trials and Hearings issued findings on the charges and specifications listed above. The Honorable Ingrid M. Addison, found C.O. Anthony Kuzhivelil not guilty on all specifications and therefore all charges are dismissed.

On June 24, 2020, Commissioner Cynthia Brann accepted the Court’s findings and its recommendation of dismissal of charges.

Please notify C.O. Kuzhivelil by serving him ASAP with a copy of this letter. Upon service of this letter on the subject employee, have him sign below acknowledgment of service. After the employee is served, please fax and/or scan me a copy of the signed acknowledgment. My fax number is (718) 278-6526.

Yours truly,



Sarena Townsend
Deputy Commissioner

Attachments

C: Nadene Pinnock, Deputy Commissioner, Human Resources
Counsel for Respondent
O.A.T.H.

Served by: _____

Respondent’s Signature: _____

Date: _____



NEW YORK CITY DEPARTMENT OF CORRECTION
Cynthia Brann, Commissioner

Sarena Townsend, Deputy Commissioner
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August 13, 2020

John Gallagher
Deputy Warden In Command (DWIC)
Bellevue Hospital Prison Ward

Re: C.O. Trace Campbell
Not Guilty at OATH – DR # 175/18

Dear DWIC Gallagher,

Please be advised that on November 12, 2019, the Office of Administrative Trials and Hearings issued findings on the charges and specifications listed above. The Honorable Ingrid M. Addison found C.O. Trace Campbell not guilty on all specifications and therefore all charges are dismissed.

On June 24, 2020, Commissioner Cynthia Brann accepted the Court’s findings and its recommendation of dismissal of charges.

Please notify C.O. Campbell by serving him ASAP with a copy of this letter. Upon service of this letter on the subject employee, have him sign below acknowledgment of service. After the employee is served, please fax and/or scan me a copy of the signed acknowledgment. My fax number is (718) 278-6526.

Yours truly,



Sarena Townsend
Deputy Commissioner

Attachments

C: Nadene Pinnock, Deputy Commissioner, Human Resources
Counsel for Respondent
O.A.T.H.

Served by: _____

Respondent’s Signature: _____

Date: _____



NEW YORK CITY DEPARTMENT OF CORRECTION
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August 13, 2020

John Gallagher
Deputy Warden In Command (DWIC)
Bellevue Hospital Prison Ward

Re: Captain Roger Fleming
Not Guilty at OATH – DR # 177/18

Dear DWIC Gallagher,

Please be advised that on November 12, 2019, the Office of Administrative Trials and Hearings issued findings on the charges and specifications listed above. The Honorable Ingrid M. Addison, found Captain Roger Fleming not guilty on all specifications and therefore all charges are dismissed.

On June 24, 2020, Commissioner Cynthia Brann accepted the Court’s findings and its recommendation of dismissal of charges.

Please notify Captain Fleming by serving him ASAP with a copy of this letter. Upon service of this letter on the subject employee, have him sign below acknowledgment of service. After the employee is served, please fax and/or scan me a copy of the signed acknowledgment. My fax number is (718) 278-6526.

Yours truly,



Sarena Townsend
Deputy Commissioner

Attachments

C: Nadene Pinnock, Deputy Commissioner, Human Resources
Counsel for Respondent
O.A.T.H.

Served by: _____

Respondent’s Signature: _____

Date: _____