



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 0199412016 et al. (1 Summons) NEW YORK CITY POLICE DEPT, -against- KELVIN MONTILLA Hearing Date: 03/04/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$0.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
0199412016	Dismissed	09/09/2024	110-00 Rockaway Blvd

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AD6L	AC 19-190(B)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Petitioner NYPD did not appear. Attorney Michael Nacmias appeared on behalf of Respondent KELVIN MONTILLA at telephone hearing on March 4, 2026. Respondent's counsel waived the present of the issuing officer, formal reading of the charges and the use of a translator.

Respondent was charged with violating section 19-190(B) of the Administrative Code. Date of occurrence was 09/09/24.

Respondent's counsel made two arguments in support of the dismissal of the summons. First, the summons was defective since it had a blank affidavit of service. Thus, Petitioner failed to provide proper proof of service as per the CPLR. Second, the

summons is facially defective because it fails to allege the pedestrian suffered a physical injury. No additional evidence was submitted.

The Board has held that service is improper when the Issuing Officer fails to provide any information on the affidavit of service and petitioner offered no testimony or other evidence at the hearing as to how the summons was served. See *NYC v. M & G General Construction*, Appeal No. 1200063 (May 31, 2012); reaffirmed in *NYPD v. Doe*, Appeal No.1800218 (May 17, 2018). See also *NYPD v. Barrett Cherelle*, Appeal No. 2000420 (June 18, 2020).

In addition, OATH rule 6-08(c)(2) states that a summons must contain "[a] clear and concise statement sufficient to inform the Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation or the violations charged, including the date, time where applicable, and place when and where such facts were observed..."

I give credit to the issuing officer's sworn statement but find that it fails to establish a violation. The summons fails to state whether the pedestrian was physically injured. Moreover, I find the Affidavit of Service is blank and there was no evidence presented to show that the Respondent was properly served with the summons.

Therefore, the summons is dismissed.

	
03/05/2026	03/05/2026
Raul Quezada, Judicial Hearing Officer	Date