



Institutional Equity
University of Missouri

**HEARING PANEL RESOLUTION
INVESTIGATIVE REPORT**

Aubrey Palmer v. Phillip Fizer

Investigator: Heidi Shearer
Date of Report: July 14, 2022

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CASE OVERVIEW

PARTIES

1. Complainant: Aubrey Palmer (she/her), MU Student
2. Respondent: Phillip Fizer (he/him), MU Student

WITNESSES

1. Stephen Smithton (they/them), MU Student, Friend of Palmer
2. Macy White (she/her), MU Student, Friend Palmer and Fizer

HISTORY OF THE CASE

On April 5, 2022, Residential Life staff submitted a report to the Office of Institutional Equity (OIE), describing alleged behaviors by Respondent Phillip Fizer toward Complainant Aubrey Palmer on April 2 that may constitute sexual assault (rape), in violation of University policy. I briefly met with Palmer on April 7 to discuss her rights and options. At that meeting, she expressed an interest in proceeding with a formal complaint and investigation.

On April 11, Palmer submitted a formal complaint to OIE. I met with her again on April 13 to discuss the allegations in greater detail.

On April 18, I sent Notices of Allegations to Palmer and Fizer, initiating this investigation.

On April 26, I met with Fizer to discuss the investigation process and to obtain his statement in response to the allegations.

In May 2022, I interviewed witnesses and gathered additional information. Summaries of my interviews are contained in this Investigative Report.

RELEVANT DATES IN THE TITLE IX PROCESS

August 2021

- Aubrey Palmer and Phillip Fizer met as members of the University of Missouri's Math Club.

April 2, 2022

- Palmer and Fizer spent time together at Palmer's room in Violette Hall. Palmer alleges that, while in the room alone that night, Fizer engaged in nonconsensual sexual intercourse with her while she was incapacitated due to alcohol and cannabis consumption.

April 5, 2022

- Residential Life staff submitted a report¹ to OIE.

April 11, 2022

- Palmer filed a signed formal complaint² with OIE, requesting an investigation.

¹ Exhibit 1: (Incident Report 4.5.2022).

² Exhibit 2: (Palmer Formal Complaint 4.11.2022).

April 18, 2022

- OIE sent Notices of Allegations³ and No Contact Directives⁴ to Palmer and Fizer.

April–May 2022

- OIE conducted an Investigation, including interviews with parties and witnesses.

June 22, 2022

- OIE granted Palmer and Fizer electronic access to a draft Investigative Report for a 10-day review period under Title IX policy.

July 14, 2022

- OIE sent Notices of Hearing⁵ and copies of the finalized Investigative Report and Exhibits to the parties.

August 11, 2022

- Hearing scheduled to occur via Zoom.

INTERVIEW DATES WITH PARTIES AND WITNESSES

1. April 13, 2022 – Interview with Palmer (In Person)
2. April 26 – Interview with Fizer (In Person)
3. May 3 – Interview with Witness Smithton (Zoom)
4. May 6 – Interview with Witness White (Zoom)
5. May 18 – Interview with Palmer (Zoom)

METHODS USED TO GATHER EVIDENCE

In conducting my investigation, I met with the Parties and witnesses through in-person and Zoom meetings. All communications outside of these interviews were through email.

SITE VISITS

No site visits were conducted.

POTENTIAL POLICY VIOLATIONS

I delivered a Notice of Allegations (NOA) to Phillip Fizer via University email on April 18, 2022. The NOA informed him that an investigation was being conducted pursuant to the University of Missouri Collected Rules and Regulations (CRR) Section [600.030](#), which is the Resolution Process for Resolving Complaints of Sexual Harassment under Title IX – for matters involving conduct alleged to have occurred on or after August 14, 2020.

The NOA stated that Fizer was accused of violating [CRR 600.020](#), which is the University's Sexual Harassment under Title IX Policy.

³ Exhibit 3: (PF Notice of Allegations 4.18.2022).

⁴ Exhibit 4: (PF No Contact Directive 4.18.2022).

⁵ Exhibit 5: (PF Notice of Hearing 7.14.2022).

The NOA contained this information:

Aubrey Palmer reported that, during the evening hours of Saturday, April 2, 2022, Phillip Fizer engaged in nonconsensual sexual intercourse with her (sexual assault in the form of rape, as defined by MU policy), while she was incapacitated due to alcohol consumption and thus unable to consent to sexual activity.

Specifically, Palmer reported the following:

1. Palmer reported that Fizer arrived at her room in Violette Hall (123 4th Street in Columbia, Missouri) around 9:00pm. Palmer alleges that she and Fizer consumed alcohol while watching television together.
2. Palmer reported consuming two White Claw Hard Seltzers and a cannabis edible before Fizer arrived and then two shots of vodka and part of a bottle of wine with Fizer, prior to blacking out due to intoxication.
3. Palmer alleges that, when her memory resumed, she and Fizer were naked in her bed. She alleges that she does not recall removing her clothing or consenting to its removal.
4. Palmer reported that she was positioned on top of Fizer when she came to, with his penis inside her vagina, but then she felt dizzy and fell onto the bed next to Fizer.
5. While lying beside Fizer on the bed, Palmer allegedly said she felt sick and wanted to sleep, and then she turned away from Fizer toward the wall.
6. Palmer reported that Fizer then positioned himself behind her with his penis near her vagina, before pausing to ask if he needed to put on a condom. Palmer allegedly said, "No."
7. Palmer alleges that Fizer then inserted his penis into her vagina without consent, and she blacked out again. She reported that her next memory is waking up in bed at 6:30am the next morning.

APPLICABLE POLICY DEFINITIONS

Sexual Harassment under Title IX (600.020)

B. Definitions

1. **Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - c. **"Sexual assault"** - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
 - (i) "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.
2. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to

engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts.

Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent. Further, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion and force, or threat of either, invalidates consent.

3. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation.

Factors to consider in determining incapacity include, but are not limited to, the following:

- a. Lack of awareness of circumstances or surroundings (e.g., an inability to understand, either temporarily or permanently, the who, what, where, how and/or why of the circumstances; blackout state)
- b. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
- c. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- d. Physical symptoms (e.g., vomiting or incontinence)

APPLICABLE PROCEDURE

At all times, this investigation was conducted in accordance with the relevant University of Missouri Collected Rules and Regulations, specifically Section 600.030, which describes the Resolution Process for Resolving Complaints of Sexual Harassment under Title IX.

JURISDICTION

At the time of the alleged incidents, both Aubrey Palmer and Phillip Fizer were enrolled students⁶ at the University of Missouri.

⁶ Meeting the definition as set forth by CRR 600.030(C)(22), "A person having once been admitted to the University who has not completed a course of study and who intends to or does continue a course of study in or through one of the Universities of the University System."

STANDARD OF PROOF

When this matter is reviewed by the decision maker pursuant to the University's Title IX Resolution Process, the standard of proof will be "preponderance of the evidence," defined as determining whether evidence shows it is more likely than not that a policy violation occurred.⁷

CREDIBILITY ASSESSMENT

The information provided in each interview summary was obtained by an interview with the stated person that was free of prompting, coaching, or behavior that could, in any way, compromise the validity of the statements made. At all times, the parties and witnesses were interviewed in a manner free of any coercion or undue intimidation.

All parties and witnesses were interviewed in person or via Zoom. The statements offered by parties and witnesses during interviews were in their own words and of their own accord. Prior to finalization of this Investigative Report, each party and witness had an opportunity to review and approve their statements contained therein, which they did.

PARTY INTERVIEWS

COMPLAINANT: AUBREY PALMER, MU STUDENT

I first met with Aubrey Palmer on Thursday, April 7, 2022, in my office. During our meeting, she briefly described an incident with Phillip Fizer that may violate the University's Title IX policy; we discussed her rights and options, and she expressed an interest in pursuing a formal complaint against Fizer, which she then submitted to OIE on April 11. In the signed formal complaint, Palmer identified two witnesses—Stephen Smithton and Macy White—and included a narrative alleging that Fizer engaged in nonconsensual sexual intercourse with her (classified as rape under MU policy) at Violette Hall on April 2, 2022. In relevant part, the complaint⁸ stated:

Phillip Fizer was a friend of mine, and we hung out on April 2nd in my dorm room. I was drinking and had an edible with another friend, Stephen Smithton, before Phillip came over, and he knew I was intoxicated. Phillip and I had never had sex before, and I did not want to have sex with him; we are just friends. We had hung out many times before, as friends. That night, he wanted to stay in the dorm, instead of going out. So, we watched TV and drank more alcohol. By then, I was very intoxicated and really started feeling the effects of the alcohol and edible, and I blacked out. I thought I was safe with Phillip, in my own room. I trusted him, and I never expected that he would take advantage of me.

But when I woke up later, I was naked and his penis was inside of me. I felt confused and scared. I had not consented to have sex with him, and I don't remember how that happened. I told him that I felt sick and wanted to sleep, and I moved away from him. He followed me and pushed himself against me and asked about getting a condom. I specifically said NO. I could not believe what was happening, and I did not want to have

⁷ Per CRR 600.030(Q)(12)(a).

⁸ For ease of reading, content from the formal complaint was copied/pasted into this section of the Investigative Report (IR) with slight formatting and punctuation adjustments to match the rest of the IR. See Exhibit 2 for the original document submitted by Complainant Palmer.

sex with him. I just wanted to sleep and escape that moment. But he didn't listen to me. He continued to have sex with me; he put his penis inside me again, without my permission. He was behind me, and it hurt.

I blacked out again and didn't wake up until the next morning. When I woke up, he was still in my bed, and we were both still naked. I still felt sick. I went down the hall to shower and text my friend, Macy White. When I got back to my room, he was gone. I felt so disoriented from blacking out. I sent him a message on Snapchat later that day, and he admitted that we had sex. He knew I was intoxicated, and I asked him why he would have sex with me when I couldn't consent. He wasn't taking it seriously, and he tried telling me that I wasn't too intoxicated. He was gaslighting me. He was not as drunk as me. He knew what he was doing, and he raped me.

On April 13, I met with Palmer (and her support person) to further discuss her relationship with Fizer and her allegations against him. I first asked how they met, and she explained:

We met in August (2021). I joined Math Club to help meet new people. This is my first year at MU, and I didn't know anyone. I'm pretty introverted, so it can be hard sometimes. I wanted to feel connected and make friends in this new place, so I put myself out there and joined Math Club. I saw fliers for the group when I moved in, so I went to an introductory meeting, which is where I met Phillip. He is a freshman, too, and a math major. We have that in common, and he was easy to talk to. We found out that we actually had a couple classes together, but the classes were so big that we hadn't crossed paths yet. After we met, we started sitting together in those classes and hanging out at night occasionally, too. He lives in a dorm next to mine, so we would meet up for dinner or just to watch movies, and I would see him at Math Club meetings a couple times per month.

I asked how many times they hung out before the incident, and whether they had any sexual interactions before then. Palmer answered:

I'm not sure exactly how many times, but it was pretty common—about once every one to two weeks, I would say. He was one of my first friends at MU, and he was really chill. I felt like I could be myself around him. I'm used to having guy friends, and we clicked well. But, we were only friends, and we never talked about being anything more than that. I didn't like him in that way (in a romantic or intimate way). We never had sex or even kissed before. I thought we were on the same page.

I then asked Palmer to walk me through the evening of April 2. She recalled:

I was with my friend Stephen Smithton in my room. We were hanging out, drinking and getting ready for the night. Stephen got to my room around 7:30; they wanted to use some of my makeup and pregame before going to a drag show downtown. My roommate was out of town that weekend, so it was just the two of us, having fun. We hung out there for a while before Stephen left to go out, and I was waiting for Phillip to come over. Phillip had texted⁹ to see if I wanted to hang out that night. I told him I was pregameing with Stephen but he should come over. I wasn't sure what we were going to do, whether we would go to the drag show, too, or do something else.

⁹ Exhibit 6: (Texts between Palmer and Fizer 4.2.2022, provided by Palmer).

I asked Palmer how much alcohol she consumed with Smithton. She said she had two cans of White Claw hard seltzer (citrus and wild berry flavors). I asked if they were the typical size (12 ounce) cans, and she confirmed. Next, I asked about the edible she consumed. She described that it was a gummy bear with a 10mg dose of THC; she explained that it was not homemade, but rather, purchased at a licensed dispensary, so she was confident that was an accurate amount. I asked if she had consumed edibles before that day, such that she knew how they affected her, or if this was the first time. Palmer explained, "I had eaten edibles about three or four times before, not too many times but enough to know how they work." I asked if she had ever combined alcohol and edibles in the same sitting, and she replied, "No, this was the first time I had done both together. I have had 10mg edibles before and I have drank this amount of alcohol, but not both at the same time."

I asked Palmer what time Smithton left her room. She replied, "I think Stephen left around 8:45pm. They didn't stay long because they were meeting a couple other friends at the event by 9:00pm." I asked how she was feeling when Smithton left. She said:

I was definitely feeling tipsy when they left. I think that was from the drinks. I finished the seltzers in less than one hour, which is pretty quick for me, so I think I was feeling it more than usual. I wasn't drunk, at that point, though. I just felt tipsy, and I was excited for the night.

I asked when she consumed the edible. Palmer recalled, "That was probably about 45 minutes after Stephen came over, so maybe around 8:15? I can't say for sure, but that is an estimate. I remember we did those after Stephen's makeup was on, but not right before they left my room. Edibles take a while to kick in, so I don't think I was feeling the effects of it until after Stephen left."

I then asked Palmer what happened after Stephen left. She explained:

After Stephen left, I put on some of the makeup myself and texted with Phillip. He was finishing a late dinner with some friends at the dining hall, and then he was going to come over. We had talked about trying a new show on Netflix; it is historical fiction about the British monarchy. But I also kind of wanted to go to the drag show, so that was an option, too. We were going to meet up and decide.

Phillip came to my room around 9:00pm. He commented on the makeup products spread all over the dresser, and I reminded him about the drag show that Stephen was going to. I asked if he wanted to go, and he said he would rather hang out at the dorm. That was okay with me, so we just settled in. I cleaned up some of the makeup, but I was starting to really feel buzzed, so I plopped down on the futon next to Phillip. He turned on the TV and had brought over some liquor—it was birthday cake flavored vodka. He asked if I wanted to do some shots, and I agreed.

I asked how many shots they had. Palmer recalled that they each had two shots. When asked, she explained that Phillip poured them, and they were about 1/2 full typical-size shot classes. She explained that they took the shots back-to-back and then started the show. I asked Palmer how she was feeling, at that point, and she said:

I was really intoxicated and feeling kind of flushed in my face. I didn't feel sick but was a bit dizzy. I was laughing a lot, especially at the costumes and comments in the show. We were having a good time. After a while, maybe 20 or 30 minutes after the shots, I grabbed a bottle of wine I had in my room. We split that between the two of us.

I asked how much wine she drank. Palmer replied:

The bottle was nearly full when we started. I poured the first glass, a red solo cup about half full. It was white wine, but I prefer red. I was complaining that it wasn't red, but Phillip liked it; he said he likes white wine best. He poured me a second cup. I'm not sure how full it was or how much he drank of the bottle. This is when my memory starts to fade. The last thing I remember is sitting on the futon, watching the show. I still had some wine in my glass, at that point.

I asked if Fizer knew how much she had to drink before he arrived, and whether he knew about the edible. Palmer stated, "He knew I was drinking with Stephen, and that we had edibles. I didn't tell him specifically how much alcohol or how many edibles I had, but he knew I was feeling it." I asked how he knew, and she explained:

I was getting loud and giggly. He has been around me before when I was drunk, so he knows what that looks like. When I drink, I get a lot of energy, which I think is the opposite of what is supposed to happen. It was obvious that I was drunk, especially after drinking more with him (Fizer). Like, when I plopped down on the futon after cleaning up the makeup, I was laughing and he said, 'Whoa!' and then laughed at me. I kind of fell onto the futon, or sat down a lot harder than I expected. I felt really loose with my movements, less steady.

I asked Palmer what she remembered next, after being on the futon with a glass of wine. She said, "The next thing I remember was waking up, or coming to, with his penis inside of me, and I was naked." I asked how they were positioned, and she explained:

He was lying on his back on my bed, and I was straddling him, on top of him. My hands were on his chest, helping to balance me as I felt dizzy. I was really confused as to where my clothes were. I don't remember taking them off, and I didn't see them on the bed with us. After a few seconds, I laid on the bed—kind of fell hard onto the bed—next to Phillip. I told him I felt sick and wanted to sleep. I pulled the blanket up over me and turned toward the wall. I was lying on my side and closed my eyes. The room was spinning and I wanted it to stop. I felt really drunk and high, and a bit nauseous, like I was dreaming but it wasn't a dream. It felt very surreal.

I asked if Fizer said anything, in response to her statement that she felt sick and wanted to sleep. Palmer answered, "I don't think so." I asked if she put on any clothes before rolling over, and she said, "No. I just wanted to sleep. I wasn't thinking straight. I didn't even know where my clothes were." I asked if she said anything else to Fizer, at that point. She said, "No, just that I felt sick and wanted to sleep. I thought he would get up and leave. I hoped he would, but he didn't." Palmer continued:

A few seconds after I turned away from him, I felt him move closer to me on the bed. I could tell he was really close to me, behind me. I heard him ask about getting a condom, like asking if he should get a condom, and I said, 'No.' I didn't know why he was even asking when I already said I wanted to sleep. And why would he think we were going to have sex? We don't do that. I never said I wanted to do that with him.

He ignored me and inserted his penis anyway. I felt him inside of me. It hurt. I don't remember opening my eyes; I just remember squeezing them closed and hoping it would

end. I should have said something right away, but I didn't. I was so shocked by what he was doing. Then I blacked out again.

I asked Palmer if she knew what time it was when she was positioned on top of Fizer, and then when she turned away from him in the bed. She said she does not know because she did not look at a clock, but it was still dark outside and quiet in the hallway. I asked if the TV was still on in the room, and she said:

Yes, I remember hearing the music of one episode ending and the beginning of the next episode. Actually, it couldn't have been too long [after the blackout began] because the show was still playing [when I came to], and when I turned on the TV the next day, it showed that we had finished two episodes. So when I heard the episodes change, it would have been about an hour after we started watching.

I asked Palmer if Fizer said anything when he inserted his penis the second time, she said, "No. I don't remember him saying anything. I think I heard him grunt." I then asked if they had discussed having sex that night, or if Fizer asked for consent at any point. She said, "No, we never talked about having sex that night, or any other time. He never asked for consent or if I was okay. I was not okay, and he should have known that."

Next, I asked about the pain she referenced when Fizer inserted his penis from behind, and where he had inserted his penis. Palmer described:

He inserted his penis into my vagina, but it hurt that time. It think it was the angle that was different, and I was not expecting the penetration. I was not wet or ready. It was really uncomfortable and a kind of pressure pain, like pushing into me.

I asked if there was any bleeding or other injury. She confirmed there was not. I asked if she was sore the next day or noticed any markings. Palmer said, "No markings. I did feel a bit sore when I woke up, in my vagina. It lasted for the rest of that day."

I asked what time she woke up the next morning. Palmer estimated, "It was around 6:30am." She further explained:

We were both naked in my bed [when I woke up]. He was still sleeping. I reached over and grabbed my glasses and my phone. That is how I checked the time. I really wanted him to leave. I was disoriented and didn't know what had happened because I was in and out of awareness during these interactions. I blacked out, and I was scared. I felt hung over and embarrassed that he had seen me naked. I kept fixated on that piece, like, 'I have no idea where my clothes are and why I'm naked.' I never thought Phillip would see me that way. I don't sleep with many guys; I'm private with my body. I definitely did not want to have sex with Phillip, and I felt violated. I needed to get out.

So, I threw on a big shirt from my drawer and went to the bathroom. It's down the hall from my room; you have to key into it, so I knew he wouldn't be able to follow me there. I got in the shower, and I cried. Nobody else was in there; it was so early. I just lost it. I texted my friend Macy (White) about it.¹⁰ I needed someone to know what was going on. I felt really lonely.

¹⁰ Exhibit 7: (Texts between Palmer and White 4.3.2022, provided by Palmer).

I took a long shower, trying to feel clean again. I eventually went back to my room, and Phillip was gone. I'm not sure what time he left. I think I got back to the room around 7:00am or 7:10am. I locked the door and laid down on the futon. Later that afternoon, I messaged Phillip on Snapchat.¹¹ I was angry and confused and wanted answers. I was freaking out.

I followed up by asking Palmer what she meant by "hung over." She described, "I felt tired and heavy, groggy. I had a headache." I asked if that was typical for her, after a night of intoxication. She said:

It was more severe than usual, probably because of the added effect of the edible. And, I drank a lot of alcohol between the seltzers with Stephen and the shots and wine with Phillip. That is not the most I've consumed in one night, but it's more than average, plus the edible. It was just a lot.

I asked what and when she had eaten on the night of the incident. Palmer recalled, "I had a chicken ceasar wrap from the dining hall around 6:00. And then some chips in my room while Stephen was there, a few handfuls as a snack."

Next, I asked what Palmer meant when she said that she was "trying to feel clean again," in the shower. She replied, "Being hung over made me feel gross, but more than that, I felt dirty because Phillip had touched me and had sex with me when I didn't want it. It's hard to explain, but it didn't feel like my body; I felt disconnected and unclear."

I referenced Palmer's statement that her vagina felt sore, and I asked how long the soreness lasted. She explained that she felt sore for the rest of the day (April 3) but not the next. I asked if and where she found her clothing the next day. She said, "My shirt was under my bed, like it had been shoved down between the bed and the wall. My leggings and underwear were across the room, next to my dresser, and my bra was caught in the covers at the bottom of my bed." I asked if she saw or found any evidence in the room of sexual activity that had occurred, such as condoms or semen. Palmer explained, "There was a stain on my comforter that wasn't there before. I'm guessing it was semen. I didn't look very closely; I just threw it in the washer. I didn't find a condom or wrapper. I don't think he wore one."

I asked Palmer if she had any additional information to provide, and she said she did not.

I met with Palmer again on May 18, via Zoom, to ask a few follow-up questions. First, I asked how intoxicated Fizer was on the night of the incident. She recalled:

He wasn't drunk. He had just gotten back from a late dinner at the dining hall. He hadn't been pre-gaming or out drinking before he came over. He had two vodka shots and some wine, but he was acting normal. I have been around him before when he was intoxicated, and this wasn't that.

I asked how much wine Fizer consumed. Palmer replied:

I don't know, exactly. I had one glass that I poured and then I'm not sure if I finished the second glass he poured for me. The bottle was nearly full before that night, and then it was nearly empty the next morning with maybe about an inch left at the bottom. I was

¹¹ I asked Palmer if she had screenshots of any messages between her and

blacked out. I don't know how much of it I drank or whether he finished it off, but that would not be a lot of alcohol for him, like not enough for him to lose control.

I then asked Palmer whether she had been around Fizer when she was under the influence of cannabis before, such as an edible. She said, "No." I asked if she has spoken with anyone other than Macy about the incident, since it occurred. She said, "Macy was the first friend I told about it. The only other friend I've shared with is Stephen. I didn't tell my roommate; she and I get along, but we aren't very close like that." I asked if she has spoken with or seen Fizer since April 3. Palmer said, "He Snapped me a few times a couple days afterward, and he tried to call me once, but I didn't answer. I don't want to be friends with him anymore, and I think he knows that now."

Going back over my notes and the complaint, I referenced Palmer's statement that she said "No" when Fizer asked about a condom. I first asked what exactly she recalled Fizer saying about condoms. She recalled, "He said, 'Should I get a condom?' I said, 'No,' very clearly and directly." I asked if she was answering his question about the condom or speaking more generally when she said, "No." Palmer replied, "I was saying no to everything. No, he didn't need a condom because we weren't going to have sex. No, we are not having sex. No, I don't want to have sex. No, stop." I asked Palmer to clarify whether she said anything other than the word "No," at that time. She answered, "I felt sick in that moment and just managed to say, 'No.' I didn't say anything else, but I said 'No' very clearly. But, he did it anyway."

I relayed to Palmer that, in his statement, Fizer said, "When we were on the futon, the Complainant stretched her legs out and touched mine. She was laughing, smiling, and flirting with me. The last few times we had hung out before that, I could tell things were shifting between us. She would touch my shoulder or my back or 'hit' me in a playful manner." I asked Palmer if she wanted to respond to that account of their relationship and interactions that night. Palmer replied:

I do not remember initiating any physical contact with Phillip that night, on the futon or in the bed. If I touched him with my legs or feet as I stretched out, which I don't remember doing, then it would have been an accident or just incidental contact. I was not making sexual advances toward him or trying to flirt. We were good friends, so we did like to give each other a hard time or fake 'hit' each other, but I never saw that as flirting. I have plenty of guy friends, and that is how we interact. It's not intimate or flirty. The only thing that shifted was perhaps that we were getting to be better friends, but that's all it was—friends. We never talked about being any more than that.

I also relayed this quote from Fizer's statement: "In the Spring, we were spending more time together and she was escalating the relationship in these various ways, like increased physical contact. I liked it, and I wanted to see where our relationship could go, beyond friends." Palmer responded:

This is misleading. I wasn't escalating our relationship or trying move beyond being friends. I honestly had no idea he felt this way or wanted that with me. It feels weird. If he had talked to me about this, I would have told him how I feel—that I don't have romantic feelings for him. Guys and girls can be friends without more, and it's frustrating when these presumptions are made. He was reading into our interactions things that were not there. And even if I did want to be more than friends, which I didn't, then that still doesn't negate what he did to me that night. I did not consent to sex with him, regardless of any other feelings or misconceptions about the nature of our relationship.

RESPONDENT: PHILLIP FIZER, MU STUDENT

I met with Phillip Fizer and his attorney support person on April 26, in my office. We first discussed the investigation process, as well as his rights and options. Fizer then read a written statement aloud:

The Complainant's allegations against me are untrue. All sexual activity between us was consensual and mutual, and I want to explain my thorough account of the evening, which will show that I did not take advantage of her while she was intoxicated or incapacitated and that I did not violate policy by violating her consent. Consent is very important to me, as was my friendship with the Complainant. I would never hurt her.

After dinner with my friends, I went to the Complainant's room in Violette Hall. We had been texting that day and agreed to hang out. This was not unusual; we had hung out many times before that, both at Math Club events and by ourselves. We would do dinner at the dining hall or spend time in each other's rooms. We had gotten to be good friends over several months.

When I got to her room around 9:00pm, the Complainant was fine. I knew she had been drinking, but she was not drunk. She was steady on her feet and not slurring her words. We had a normal conversation, talking about what we wanted to do that night. Her friend Stephen had been there before and was going to a drag show downtown. We had thought about going, too, but decided just to hang out at her room, instead. We watched TV on her futon and had a couple shots. We also had some wine, but it was less than a bottle between the two of us. Neither of us was drunk or incapacitated.

When we were on the futon, the Complainant stretched her legs out and touched mine. She was laughing, smiling, and flirting with me. The last few times we had hung out before that, I could tell things were shifting between us. She would touch my shoulder or my back or "hit" me in a playful manner. We had gotten really close, and it was starting to feel more like a romantic relationship with the physical contact and jokes between us. These accumulating advances were initiated by her before the night of this incident, and I reciprocated because I liked her. I didn't realize it when we first became friends, but we have a lot in common. We would talk about a lot of things, like shows and movies, our families, and we both bonded about being from the Chicago area. We reminisced about home and we got along really well. It was naturally progressing over the several months since we met in August. In the Spring, we were spending more time together and she was escalating the relationship in these various ways, like increased physical contact. I liked it, and I wanted to see where our relationship could go, beyond friends.

On April 2, when we were on the futon and she touched my leg with her feet, I looked up at her and she giggled back at me. I poured her another glass of wine and when I sat back down, she leaned into my shoulder with hers. We were sitting close and still watching the show. Then she put her hand on my thigh and we made eye contact. We kissed and we both giggled. It progressed naturally from there, all while she was coherent and alert. She was consenting at each step. She took off her shirt, and then I took off mine. We kissed some more before moving toward the bed. She was able to remove her own shirt without assistance, and she walked toward the bed without assistance. We helped each other take our pants off and then crawled into her bed. We continued kissing and touching each other, and then removed the rest of our clothing and engaged in consensual sexual intercourse.

By the Complainant's own account, she was positioned on top of me at one point during intercourse. She was able to balance herself while we had sex in that position. She gave no signs of incapacitation, and she actively participated in the sexual activity; she kissed me back and did not indicate that she wanted to stop, at any point, including when we changed positions so that I was behind her. She did not ask to sleep or say she felt sick; we were changing to a new position. As we proceeded, I did ask if she wanted me to wear a condom, and she said "no," so I continued without one. She did not tell me to stop or push me away or otherwise indicate a lack of consent.

I know how important consent is between partners, and I would never have sex with someone without their consent. The Complainant provided clear consent through her actions, and I had no reason to doubt her consent. It was not until our conversation the next day that she seemed upset in any way.

Fizer then indicated that he did not wish to answer any questions or provide information beyond this written statement, as part of the investigation. Later, on May 19, I emailed Fizer a list of follow-up questions, providing an opportunity for written response or to schedule a second interview, as I was concluding the investigation. Fizer opted not to answer the written questions but stated he would be open to speaking with the Hearing Panel directly about the allegations.

For the record, these are the written follow-up questions sent to Fizer on May 19 (pasted verbatim):

1. When did you first meet Complainant Aubrey Palmer?
2. How many times did you hang out with Palmer prior to the incident on April 2?
3. Had you and Palmer talked about engaging in sexual activity, either on April 2 or before?
4. Did you talk with Palmer about the progression of your relationship or your feelings toward her, when you were reportedly getting closer and flirting with each other?
5. Before you went, what had you planned to do while in Palmer's room on April 2? What was your expectation for the evening?
6. To your knowledge, how much alcohol did Palmer consume before you arrived? How much cannabis? Had you been around Palmer when she was intoxicated before? What are signs that she is intoxicated?
7. Did you ask Palmer about her level of intoxication that night, or how she was feeling, prior to engaging in sexual activity? How intoxicated were you, at the time?
8. Did she ask you to pour her a second glass of wine? Did she drink from that second glass and/or finish it?
9. Do you recall Palmer tripping or falling onto the futon, or sitting down hard on the futon, which caused the two of you to laugh?
10. Who initiated the first kiss?
11. Who moved toward the bed first?
12. Who got into the bed first?
13. Was there any conversation between the two of you as you moved from the futon to the bed? You mentioned that Palmer was able to get to the bed without assistance. How far away were the futon and the bed? Was she steady on her feet or holding onto things nearby?
14. What are all the signs you assess in determining whether someone is intoxicated or incapacitated? Did you assess all those elements with Palmer that night?
15. Before getting into bed, you stated that you "helped each other" remove pants. Please explain further as to what that looked like for each of you.

16. You referenced laughing and giggling, in your statement. Did Palmer laugh or giggle more than usual that night? What was the cause?
17. Did Palmer fall onto the bed after being on top of you during intercourse, or was it controlled movement? Please describe what you observed.
18. How did you interpret Palmer turning away from you and toward the wall, after she removed herself from on top of you? Did you hear her say anything or make any noise as she did so? Did you say anything?
19. What verbal and nonverbal feedback (including facial expressions) did you observe from Palmer throughout the sexual activity? Did you look at her face during intercourse, and if so, how did you interpret her expressions? Did you observe her eyes to be closed during penetration?
20. Was Palmer under a blanket when she moved to face the wall? Did she pull a blanket up over herself? How did you interpret her actions, at that time?
21. Were the lights on in the room at the time of sexual activity? Was the TV still on? Was there light or noise from other sources that would impact your ability to hear each other? If she did say that she felt sick and wanted to sleep, as alleged, would you have been able to hear her? Why or why not?
22. When you asked Palmer about a condom, what did she say and how did you interpret her answer—narrowly to the immediate question of using a condom, or more broadly? She has reported to me that her response of “no” applied to the question about a condom *and* as a general objection to proceeding with any sexual activity. How would you respond to that explanation of her intention?
23. Did Palmer say “no” at any other time during sexual activity?
24. Give examples of Palmer’s body language that indicated that she was consenting. Were there any movements or expressions by Palmer that you perceived to be withdrawing or withholding consent?

WITNESS INTERVIEWS

WITNESS 1: STEPHEN SMITHTON, MU STUDENT, FRIEND OF PALMER

I spoke with Stephen Smithton on May 3, 2022, via Zoom. I first asked Smithton how they know the parties in this case. They explained:

I am friends with Aubrey. We met back in August when we moved into the dorm. We live in the same building, just a couple floors apart. I don’t personally know Phillip. I know his name because Aubrey has talked about him and I’ve seen him in passing around the hall. I know they hang out, but we’ve never formally met or spent any time together.

Smithton recalled being in Palmer’s room on April 2, the night of the incident. They explained:

Earlier in the day, Aubrey and I had discussed going to a drag show downtown, but she wasn’t sure yet if she was going to go. She had been texting with Phillip too, and he asked to hang out that night. Either way, we knew we (Smithton and Palmer) wanted to hang out before I went to the show with other friends. We made plans for me to get ready in her room. She has a great makeup selection and agreed to let me use some. We pregame at her room while getting ready. We drank some hard seltzers, and I also brought edibles for us; we each had one of those. I was there for a little over an hour, from about 7:30

until I left at 8:45pm. I walked downtown to meet up with a group of queens outside the show. We wanted to get there early.

Phillip wasn't at Aubrey's room yet when I left. I'm not sure what time he arrived, but it would've been after 8:45. I Snapped her when we got into the show, and I sent some photos. She Snapped back, just messages with comments about my pics. She said she was going to hang out with Phillip back in Violette, which was fine. I figured they would stay back and chill.

I asked Smithton how much Palmer had to drink while they were together. Smithton said, "I think she had two or three of the hard seltzers." When asked, Smithton confirmed that she also had one edible containing 10mg of THC. I asked if they ate any food while they were pregaming in Palmer's room, and Smithton recalled that they both ate some chips.

I asked Smithton for their assessment of Palmer's level of intoxication when they left at 8:45. Smithton described, "I would say she was feeling a little tipsy from the alcohol, but she wasn't drunk. We drank the seltzers pretty quickly so I think that helped get a quicker buzz. I left soon after we had the edibles, so we weren't feeling those effects yet." I asked Smithton how they could tell Palmer was "tipsy" and they explained:

She gets really energetic when she's drinking, more talkative. It's funny, actually, because we talk about her being more extroverted when she's under the influence, including more giggly and just louder. She was starting to get chatty when I was about to leave. I could tell she was feeling it, but she was definitely still coherent and stable on her feet. She wasn't slurring her words or anything like that. Then, it was about 20 minutes after I left when I was Snapping her, and she was still messaging normally during that time.

I think she drank more with Phillip, though. And they had hard liquor and wine, which is not a good combination. Plus, she would've been feeling the effects of the edible after I left. I can imagine she was more intoxicated after I left. When she told me what happened [with Fizer] afterward, I felt terrible. I wish she had come out to the event with us, then this wouldn't have happened.

I asked Smithton if they had been around Palmer when she has been intoxicated before, and they replied:

Yeah, I've seen her really drunk a couple times, and I have done edibles with her once or twice before, but not at the same time. We had never mixed alcohol and edibles before. That night (April 2), she was laughing a lot and having a good time with me because I am hilarious, and I could tell she was loosening up, but she wasn't really drunk or incapacitated when I was there.

I think she was pushed over that limit when she consumed more with Phillip, based on what she told me and what I know of her alcohol tolerance. She can hold her alcohol, but she's pretty small. It doesn't take a lot for her to feel it sometimes. She was definitely already tipsy when I left that night, and you could tell from her laughing and louder volume.

I asked Smithton if they had screenshots of the messages they exchanged with Palmer while at the drag show. Smithton said they did not; the messages were sent via Snapchat and were automatically deleted,

and they did not take any screenshots. I asked if Smithton heard any more from Palmer that night, after their brief exchange when they arrived at the drag show. Smithton said, “No, I didn’t talk to her any more that day. I heard from her the next night (April 3). That’s when we had dinner at the dining hall, just the two of us, and she opened up to me about what happened with Phillip.”

I then asked Smithton what Palmer shared about the incident. Smithton explained:

She said that they had shots and wine after I left, and they were watching a new British show on Netflix. She remembered they were imitating the accents and gestures of the characters and laughing a lot. She remembered having a glass or two of wine, and then she blacked out. She said the next thing she remembered was waking up, naked, in the middle of sex. She said she tried to stop it and go to sleep because she didn’t feel well, but he kept going without her consent. She was really upset and crying when she told me. I didn’t get all the details and I didn’t want to pry, but that was the story she shared.

I asked Smithton if they have talked with Palmer about the incident since that initial conversation the day after, and they said, “No. I have been giving her space to deal with it, but she knows I’m here if and when she wants to talk. I haven’t seen Phillip around the hall since then; I don’t think they hang out anymore, obviously.”

I then asked Smithton if Palmer had talked with them about her relationship with Fizer before this happened, and what Smithton’s assessment was of their relationship. Smithton replied:

She would reference him as a friend, like they were hanging out at a certain place or time. Sometimes I knew when they had plans together. I knew he was from Chicago, like her, so they talked about that, and I think they had some other common interests like sports. I know she liked spending time with him, but she never mentioned wanting to be more than friends or having any sexual interest in him. Nothing like that. I thought they were just getting to be close friends, platonic.

WITNESS 2: MACY WHITE, MU STUDENT, FRIEND OF PALMER AND FIZER

I met with Macy White on May 6, 2022, via Zoom. I first asked how she knows Aubrey Palmer and Phillip Fizer. She explained, “I met them both as part of Math Club, and we became friends back during the fall semester. I live in the same dorm as Phillip, so I see him more often, but Aubrey and I have gotten close, like we text a lot and are really comfortable with each other.” I asked her to describe the relationship between the parties. She said:

Aubrey and Phillip are friends. They actually hang out a lot by themselves, I think. It’s weird because we are all friends, but we take the approach of one-on-one hang outs, most often. I spend time with each of them, but not often all together, unless it’s a Club event or we’ve had dinner together a few times this year.

I asked White if Palmer and Fizer had a romantic or intimate relationship. She said:

Not that I know of, but I think it might have been moving in that direction before this incident. They were seeing each other more often, and I could tell by the way they talked about each other that they really cared a lot about the other, especially Phillip. He confided in me that he had feelings for Aubrey. I told him I wasn’t sure if she felt the same way, and I didn’t want to be ‘high school’ about it and ask her for him, but I said I know

she cares a lot about him. I could see the possibility of their relationship escalating. They have a lot in common.

I asked if Palmer had talked to her about any romantic feelings she had toward Fizer. White answered:

No, she didn't confide in me about that, if she did feel that way. It hadn't come up, and I didn't ask. Normally, I might fish around to see what she was thinking or feeling, just one girlfriend to another, but Phillip told me about his feelings in confidence, so I was trying to stay in my lane and just observe what was happening as they started spending more time together. I knew they would figure it out together, without my meddling, and I knew Aubrey would come to me about it when she was ready or if she wanted to.

Next, I asked White about the incident between Fizer and Palmer, and when she heard about what happened. She explained:

Aubrey texted¹² me early in the morning (April 3). She was really upset. She said Phillip had sex with her when she was drunk and after she told him, "No." I told her I was sorry and I couldn't believe that happened, like I hated that it happened to her. My heart sank, and I wondered what had gotten into Phillip or what he would say. I know them both so well, and they are both very kind people. I didn't expect any of this.

I then asked if she talked with Palmer about the incident at any other time, beyond the text messages that morning. White said, "No, I haven't. I haven't talked to Phillip about it at all, either. I feel really torn, almost paralyzed, unsure what to do. My two friends are in trouble." She continued, "I told Aubrey I believe her and her experiences and I'm here for her, when she needs me. But she knows I'm friends with him (Fizer) too, so maybe that's why she hasn't brought it up again, or maybe she's just keeping to herself right now." I asked if she has spent time with Palmer since the incident. White explained, "Yeah, we've gotten dinner with a group of friends a couple times, and I went to her room just the other day to get notes for a class we have together. She has seemed more quiet than usual. I think it's a lot to process, and now she's dealing with this case."

I asked White if Palmer has talked to her about this investigation. She replied:

She just told me that she filed a complaint and gave my name as someone who could provide information. She gave me a heads up that you might be contacting me. I haven't talked to Phillip about it; I haven't talked to him at all since all of this happened last month. I've seen him around the hall, but we are moving out soon. I'm not really sure if I'll talk to him again. I feel so upset and torn. I don't know what to do, so I guess I'm doing nothing, which isn't great. I just want to share any information I have, in case it's helpful.

I asked White if she has any more to share, beyond what we already talked about. She said that she does not, but she reiterated how she is friends with both parties and very surprised by what happened between them.

¹² See Exhibit 7: (Texts between Palmer and White 4.3.2022, provided by Palmer). White provided screenshots that OIE crossreferenced with the versions provided by Palmer; they were a complete match, so one set of screenshots is included as an exhibit, to avoid redundancy.

LIST OF EXHIBITS

Exhibit #	Description of Exhibit	Page #
1	Incident Report 4.5.2022	1
2	Palmer Formal Complaint 4.11.2022	2-3
3	PF Notice of Allegations 4.18.2022	4-10
4	PF No Contact Directive 4.18.2022	11
5	PF Notice of Hearing 7.14.2022	12-17
6	Texts between Palmer and Fizer 4.2.2022, provided by Palmer	18
7	Texts between Palmer and White 4.3.2022, provided by Palmer	19