

**MINUTES**  
**OF**  
**THE NORTH CAROLINA SHERIFFS'**  
**EDUCATION AND TRAINING STANDARDS COMMISSION**

**DATE:** September 03, 2015  
**TIME:** 2:00 P.M.  
**SUBMITTED BY:** Julia A. Lohman, Director

**I. CALL TO ORDER**

**- Chairman Brad Riley**

The North Carolina Sheriffs' Education and Training Standards Commission's Final Agency Decision meeting was called to order by Chairman Brad Riley on Thursday, September 03, 2015 at 2:00 P.M. The Final Agency Decision meeting was held at the New Bern Riverfront Convention Center, 203 South Front Street, New Bern, NC.

Chairman Riley requested a roll call of Commission members. Administrative Assistant Judy Marchetti recorded the following:

**MEMBERS PRESENT**

Lieutenant Fennell (proxy)  
Sheriff Ricky Oliver  
Sheriff Steve Bizzell  
Mr. Robert Wisecarver  
Major Sanders (proxy)  
Sheriff Eric Tilley  
Sheriff Alan Cloninger  
Sheriff Brad Riley

**MEMBERS ABSENT**

Sheriff Maynard Reid  
Sheriff Alan Jones  
Mr. Marc Nichols  
Mr. Jamie Markham (non-voting member)  
Ms. Tracy McPherson (non-voting member)

The "Roll Call for Attendance" reflects those members who are eligible to vote based on the provision in the Commission's bylaws.

**STAFF**

John Congleton - Legal Counsel - NC Department of Justice  
Matthew Boyatt - Legal Counsel - NC Department of Justice  
Julia A. Lohman - Director - Sheriffs' Standards Division  
Judy Marchetti - Administrative Assistant - Sheriffs' Standards Division

Chairman Riley recognized Host Sheriff Jerry Monette. Sheriff Monette welcomed everyone to Craven County and introduced District Court Judge Walter Mills.

**\*Administration of Oaths of Office**

District Court Judge Mills administered the oaths of office to Sheriff William Oliver, Yadkin County; Sheriff Brad Riley, Cabarrus County; Sheriff Alan Cloninger, Gaston County; Sheriff Eric Tilley, Perquimans County.

In the first order of business, Legal Counsel John Congleton read the Ethics Reminder which states:

All members have a duty to avoid conflicts of interest and appearances of conflict. Commission members have an affirmative duty to fully disclose any conflict of interest or potential conflict of interest between the member's service on the Commission and his or her private interests. One of the most basic rules is that members cannot knowingly use their position on the Commission in a manner that will result in a financial benefit to the person, a member of the person's family, or a business with which he or she is associated. [N.C.G.S. 138A-31]. Commission members are also prohibited from accepting gifts from persons doing or seeking to do business with the Commission, persons engaging in activities that are regulated or controlled by the Commission, or persons having a financial interest that may be substantially affected by the member's official duties.

Legal Counsel John Congleton then asked whether any member had a known conflict or appearance of conflict with respect to any matters coming before the Commission at this time. Negative response from all Commission members.

Legal Counsel John Congleton acknowledged that he has a conflict with the Final Agency Decision for Derrick W. Knox. Legal Counsel John Congleton recused himself from Derrick W. Knox's Final Agency Decision. If advice from Legal Counsel is needed, Chairman Riley was provided with a phone number to contact available Legal Counsel if needed.

Chairman Riley welcomed the visitors and asked that the visitors stand up and introduce themselves.

## **VISITORS**

Shea Maliszewski, Attorney  
Mike McGuinness, Attorney  
Gregory Kelly, Durham County  
Derrick Knox, Bertie County  
Walter Mills, District Court Judge

## **II. FINAL AGENCY DECISIONS**

**\*Derrick W. Knox**

**Matthew Boyatt**

Mr. Boyatt summarized the Proposal for Decision for Derrick W. Knox as submitted by the Administrative Law Judge [**Attachment #1**]. Mr. Knox is represented by Attorney McGuinness. The Commission members have been provided with a Supplemental Memorandum for review during deliberation [**Attachment #2**].

Mr. Knox is Bertie County Deputy applicant. The issue is whether Mr. Knox committed various felony offenses in addition to misdemeanor assaults, as well as, whether or not he assaulted his girlfriend in 1996. The Administrative Law Judge issued 215 findings of fact. Mr. Boyatt and co-counsel filed exceptions to edit the 215 findings to those specific to the alleged offenses. Mr. Boyatt stated that the Petitioner and Attorney McGuinness have agreed to Counsel's exceptions to remove the unnecessary information. Mr. Boyatt found that there was no evidence of the alleged offenses to prevent Mr. Knox from being certified. Mr. Boyatt asked the Commission that they follow the Administrative Law Judge's recommendation to certify Mr. Knox.

Attorney McGuinness addressed the Commission. Mr. McGuinness praised Mr. Boyatt's summary of the Proposal for Decision. Attorney McGuinness does applaud and agree with Mr. Boyatt's Proposal for Decision. In closing, Mr. McGuinness stated with as much conviction as possible, that in 30 years of representing law enforcement officers, he has never known an officer that wanted to continue a career in law enforcement any more than Derrick Knox. There were some hefty allegations thrown at him and it would have been easy for him to give up. He's been fortunate to have a good job with the pharmaceutical industry in recent years. Mr. Knox has endured for a long time with these allegations and what has been put forth before you is proof positive that the system works.

There was a basis for the allegations brought forth by Mr. Stepney despite his well-known status as being the number one drug dealer in the region. There has been a full trial of the merits and a very good judge put his serious efforts into it and he hopes the Commission will do the same.

Chairman Riley asked the Commission if there were any questions. Negative Response

A **MOTION** was made at 2:40 p.m. by Sheriff Eric Tilley to enter into closed session; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

A **MOTION** was made at 2:43 p.m. by Sheriff Eric Tilley to enter into open session; seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Eric Tilley in the matter of Derrick W. Knox to adopt the Proposal for Final Agency Decision by Legal Counsel [**Attachment #3**] with the exceptions by Legal Counsel. Seconded by Sheriff Steve Bizzell. [**Attachment #4 for Roll Call Vote**] [**Attachment #5 for Final Agency Decision**]. **MOTION CARRIED.**

## II. FINAL AGENCY DECISIONS

**\*Gregory Paul Kelly**

**Matthew Boyatt**

Mr. Boyatt summarized the Proposal for Decision for Gregory Paul Kelly as submitted by the Administrative Law Judge [**Attachment #6**], in addition to the exceptions to the Proposal for Decision and an alternate Proposed Final Agency Decision submitted by Legal Counsel. [**Attachment #7**].

Mr. Kelly is a Detention Officer applicant for certification with Durham County. There are two issues before the Commission. The first is whether or not Mr. Kelly committed an Assault with Injury, and second whether Mr. Kelly possesses the good moral character that is required of a sworn justice officer. The investigation began due to the termination of Mr. Kelly from the Durham Police Department during an Internal Affairs Investigation involving excessive force for assaulting a detainee.

Mr. Boyatt believes the Administrative Law Judge glossed over the evidence presented by Mr. Baker, an EMS veteran with 13 years experience. Mr. Baker testified with confidence that Mr. Kelly broke the detainee's nose and busted up his face. Mr. Baker jumped on the detainee's legs to stop Mr. Kelly from beating him since the detainee was knocked out. Mr. Baker testified that in his 13 years he never saw such an extreme use of force. Mr. Boyatt filed extensive Exceptions to Proposal for Decision by Judge Elkins, II. Mr. Boyatt recommends the Commission adopt his exceptions and find that Mr. Kelly committed an Assault Inflicting Serious Injury.

Mr. Boyatt stated that the conclusions of law should be modified to reflect that Mr. Kelly assaulted the detainee inflicting serious injury, and the conclusions of law should be modified to reflect that Mr. Kelly lacks the good moral character required of a sworn justice officer. Mr. Boyatt recommends that the Commission adopt the exceptions regarding the case law on good moral character. Mr. Boyatt's recommendation to the Commission is that Mr. Kelly not be certified based on his lack of good moral character that is required by a sworn justice officer. Mr. Boyatt also recommends that Mr. Kelly be denied for a period of five (5) years based on the assault.

Chairman Riley asked the Commission if there were any questions. Negative response.

Attorney Maliszewski addressed the Commission and stated that everything was heard by the Administrative Law Judge. Everything you heard from Mr. Boyatt was considered by the Administrative Law Judge. The Judge got to see Mr. Baker, EMS, testify. The judge did not believe everything Mr. Baker said. Mr. Kelly made a mistake and he admitted that he made a mistake that night when he verbally told his sergeant everything that happened.

The evidence that you didn't hear is that the Durham Sheriff's department was short of personnel that night. Mr. Kelly was on the scene for 15 – 20 minutes and his back-up didn't show up at that time. Because they were short, Mr. Kelly was told to "get back out there" after he verbally gave his report.

The testimony of Mr. Baker, EMS, was that the Hispanic male jerked away and tried to head butt other EMS personnel. Ms. Aronin and Mr. Newport, EMS, ran back to the ambulance. Mr. Baker testified that the detainee needed to be taken down. Mr. Maliszewski stated that the detainee did not just get up and walk away from the EMS personnel. The Administrative Law Judge quoted Mr. Baker's testimony in Finding of Fact #9 that the Hispanic male "needed to be taken down".

Attorney Maliszewski stated that Mr. Kelly admitted he punched the detainee in the face and roundhouse kicked him. Yes this was a mistake, and he has admitted that this was a mistake. Other evidence in dispute is that after the detainee fell to the ground Mr. Kelly got on top of him, pinned him down and punched him 10 – 20 times in the face. The amount of times Mr. Kelly punched the detainee in the face keeps changing to a lesser amount. Under cross-examination Mr. Baker testified that it might have been 10 times. Mr. Boyatt referenced in his Exceptions that it was "several" times.

Attorney Maliszewski referred the Commission to paragraph #22 of the Exceptions. This is referring to the verbal report Mr. Kelly made in haste so he could get back out to his officers. Mr. Maliszewski referred to Mr. Boyatt's proposal, paragraphs 4, 6, and 20, and Mr. Boyatt's reference that the detainee got up and was walking away. Attorney Maliszewski doesn't dispute that Mr. Kelly punched and kicked the detainee in the face, just that there was a reason for it. Mr. Kelly believed that something was going to happen.

Attorney Maliszewski stated that Mr. Boyatt referred to the detainee as being calm. This Hispanic male was arrested for aggravated assault, larceny, possession of drug paraphernalia, and admitted to being under the influence of crack. Mr. Maliszewski was a police officer and stated that the last adjective he would use to describe a person on crack is calm. Attorney Maliszewski stated that Mr. Boyatt is trying to present the Hispanic male as being calm is not true. The Hispanic male couldn't be interviewed by the Sergeant at the hospital because the detainee was being belligerent.

Attorney Maliszewski wants to make sure the Commission is aware that there are two sides to the story. Mr. Maliszewski stated that there is a big difference between Mr. Boyatt's proposal for decision and the Administrative Law Judge's proposal after listening to all the testimony and weighing the evidence.

Attorney Maliszewski addressed the issue regarding Durham County Staff Sergeant Justin Ellerbee, whom Mr. Kelly has worked with for the past two years, not knowing anything about what had happened. Staff Sergeant Ellerbee didn't interview Mr. Kelly and did not have that information. Mr. Kelly had applied to approximately five agencies and told them what had happened. Attorney Maliszewski posed the question "does a person have bad character if they tell the truth about doing something wrong?"

Mr. Kelly served two tours of duty in Afghanistan with no reprimands. Mr. Kelly has worked at the Durham County jail for the past five years with no incidents. Mr. Kelly graduated at the top of his class from the Detention Academy, and he is on the detention response team. Mr. Ellerbee testified that Mr. Kelly is the first person he calls when something is going down because he has control of what he is doing.

During the investigation, Sgt. Pennica never said he found Officer Kelly to be a non-credible person. Attorney Maliszewski stated that it is frustrating that Sgt. Pennica testified that he didn't think it was important enough to find out whether an allegation that one of the officers got on top of the handcuffed detainee and punched him in the face 10 – 20 times. Sgt. Pennica didn't think that was important to the case. Sgt. Pennica did conclude that Officer Kelly punched the detainee while handcuffed on the ground.

In the Exceptions it is noted that the detainee had to go to the hospital overnight. Technically, that is true because the incident happened around 10:00 pm – 11:00 pm. The detainee did go to the hospital but a few hours later he was released. The detainee was able to walk out on his own. There were no reports of visible injuries the morning after by the Officers. The only person that saw Mr. Kelly get on top of the detainee and punch him in the face was Mr. Baker, EMS.

Mr. Boyatt has also included in his Exceptions that there's more than one bad act here and stated multiple things. Mr. Boyatt stated Mr. Kelly is trying to hide through his report and that he will not follow standard protocol. Diane Konopka, Deputy Director of Sheriffs' Standards Division, testified that the only reason for the lack of good moral character probable cause was due to the events of November 01, 2007.

Attorney Maliszewski stated once again that everything was put forth to the Administrative Law Judge for consideration. There were no motions to exclude anything. The Administrative Law Judge was a neutral third party. Mr. Maliszewski asked that the Commission adopt the Administrative Law Judge's proposed decision as written. Attorney Maliszewski distributed letters of reference for Mr. Kelly [**Attachment #8**].

Attorney Maliszewski asked the Commission if there were any questions. Negative response.

Mr. Kelly addressed the Commission and stated that he made a mistake and he knows it was wrong. He has never tried to hide or deny that fact. He told his Supervisor and he is the first to admit that he wrote a horrible report that night. Mr. Kelly stated that he is not the type to hide anything that he has ever done. The reality of this situation is that he feels like he has already been punished from that day forward. He has been rejected from the five to eight agencies that he has applied to both in North Carolina and outside of North Carolina.

Mr. Kelly stated that he knows he made a mistake but he loves the field of law enforcement. He understands that he may never be able to do that again. He will continue to apply to agencies because that is what he loves and wants to do. Mr. Kelly hopes that the Commission will provide him with another chance. He stated that it was inexperience and a horrible mistake that he regrets every day since then. Mr. Kelly stated that it is a mistake that will never happen again and hasn't happened again. Mr. Kelly stated that he has worked as an armed security officer for almost two years at some of the worst apartment complexes in Durham and never had an issue. He was certified under Private Protective Services. Currently, Mr. Kelly has worked five years at the Durham County Sheriff's Office as a Detention Officer and has had no issues of excessive use of force. Sgt. Ellerbe had enough trust and faith to make him a part of the Durham Detention Center Response Team. Once again, Mr. Kelly stated that he knows he made a mistake and regrets it to this day.

Mr. Kelly asked the Commission if there were any questions. Sheriff Tilley asked why Mr. Kelly didn't take out any charges on the detainee if the detainee did put his hands on him. Mr. Kelly responded that it was inexperience, he had been with the agency about three years, and he now wishes that he had. Mr. Kelly did file the charges for aggravated assault, possession of drug paraphernalia, and shop-lifting. Looking back on it now, he realizes that he could have charged the detainee for other charges but wasn't informed of that until later.

Sheriff Oliver asked Mr. Kelly when he wrote the incident report. Mr. Kelly responded that he did it that night after he took out the warrants. He showed the report to his Supervisor who approved it and then Mr. Kelly sent the report off. This was the same Supervisor that he verbally told what happened earlier.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 3:40 P.M. by Sheriff Steve Bizzell to enter into a closed session; seconded by Sheriff Eric Tilley.  
**MOTION CARRIED.**

A **MOTION** was made at 4:05 P.M. by Sheriff Eric Tilley to enter into open session; seconded by Sheriff Ricky Oliver.  
**MOTION CARRIED.**

A **MOTION** was made by Sheriff Eric Tilley in the matter of Gregory Paul Kelly to adopt the Proposed Final Agency Decision by Legal Counsel. Seconded by Sheriff Ricky Oliver.  
**[Attachment #9 for Roll Call Vote] [Attachment #10 for Final Agency Decision]. MOTION CARRIED.**

Sheriff Cloninger asked if a motion was needed to review the remaining three (3) Final Agency Decisions together for consideration: Harfel Davis, Waseen Abduhl-Haqq, and Catherine Netter. John Conleton, Legal Counsel stated a motion was not necessary.

Mr. Boyatt informed the Commission Members that the Donald Earl Schwab case would not be presented because they were not able to serve him. Also, Mr. Schwab's attorney, Malea Drew, has closed up her law office and was not served.

## **II. FINAL AGENCY DECISIONS**

### **\*Harfel Davis**

### **Matthew Boyatt**

Mr. Harfel Davis is a Deputy Sheriff applicant for certification in Bladen County. This issue is if he has committed or been convicted of four (4) or more Class A and B misdemeanors. Mr. Boyatt summarized the Proposed Final Agency Decision as submitted by the Administrative Law Judge. **[Attachment #11]**. Mr. Boyatt recommends in his proposed Final Agency Decision **[Attachment #12]** that the Commission adopt Administrative Law Judge Lassiter's decision and certify Mr. Davis.



Chairman Riley asked the Commission if there were any questions. Sheriff Tilley asked if Mr. Davis has the support of his Sheriff. Mr. Boyatt answered that Mr. Davis does have his Sheriff's support.

Chairman Riley asked the Commission if there were any other questions. Negative Response.

**\*Waseen Abdul-Haqq**

**Matthew Boyatt**

Mr. Boyatt provided the Commission with information regarding Mr. Abdul-Haqq. Mr. Abdul-Haqq was represented by Legal Counsel. Mr. Haqq and his Legal Counsel were not able to attend the Final Agency Decision today, but Mr. Boyatt suggested that we move forward with the case. Mr. Haqq's Legal Counsel made a request that if there is any concern with the Administrative Law Judge's decision, that the case is tabled and they be allowed to arrange for another scheduled time to be heard.

Mr. Boyatt summarized the Proposed Final Agency Decision as submitted by the Administrative Law Judge [**Attachment #13**] and the Proposed Final Agency Decision submitted by Legal Counsel [**Attachment #14**]. The issue is Misdemeanor Hit and Run that was a fender bender in a parking lot. Mr. Boyatt's recommendation to the Commission Members is to adopt the Administrative Law Judge's decision which is a suspended suspension for one (1) year. If the Commission has issue with that decision, they would like the opportunity to reschedule their case. Mr. Abdul-Haqq is still employed with Sheriff Barnes. Sheriff Barnes did dock Mr. Abdul-Haqq pay for a few days as a punishment for not leaving a note on the vehicle. Mr. Abdul-Haqq did pay restitution for the vehicle repair which was approximately \$600.

**\*Catherine Denise Netter**

**Matthew Boyatt**

Ms. Catherine Netter is a Detention Officer with Guilford County. Mr. Boyatt summarized the Proposed Final Agency Decision as submitted by the Administrative Law Judge [**Attachment #15**] and the Proposed Final Agency Decision submitted by Legal Counsel [**Attachment #16**]. The issue is a Class B misdemeanor for Ms. Netter's phone going off in court. The District Attorney did dismiss this case due to intent because it was an accident. Mr. Boyatt explained to the Commission that the issue they have to decide is if Ms. Netter was convicted of a Class B misdemeanor, criminal contempt of court. Mr. Boyatt recommends that no action be taken against Catherine Netter's certification.

Chairman Riley asked the Commission if there were any questions. Negative response.

A **MOTION** was made at 4:30 P.M. by Sheriff Alan Cloninger to enter into a closed session for deliberation on three (3) cases: Harfel Davis, Wasseen Abduhl-Haqq, Catherine D. Netter; seconded by Sheriff Eric Tilley. **MOTION CARRIED.**

A **MOTION** was made at 4:35 P.M. by Sheriff Alan Cloninger to enter into open session; seconded by Sheriff Eric Tilley. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Cloninger in the matter of Harfel Davis to adopt the Administrative Law Judge Proposed Final Agency Decision to certify Mr. Davis; seconded by Sheriff Eric Tilley. **[Attachment #17 for Roll Call Vote] [Attachment #18 for Final Agency Decision] MOTION CARRIED.**

A **MOTION** was made by Sheriff Cloninger in the matter of Waseen Abdul-Haqq to adopt the Administrative Law Judge Proposed Final Agency Decision to suspend Petitioner's certification for a period of six (6) months, and that this suspension be stayed for one (1) year, provided Petitioner does not violate any rules of the Commission; seconded by Sheriff Steve Bizzell. **[Attachment #19 for Roll Call Vote] [Attachment #20 for Final Agency Decision] MOTION CARRIED.**

A **MOTION** was made by Sheriff Cloninger in the matter of Catherine Denise Netter to adopt the Administrative Law Judge Proposed Final Agency Decision to take no adverse action against Catherine D. Netter's certification; seconded by Sheriff Ricky Oliver. **[Attachment #21 for Roll Call Vote] [Attachment #22 for Final Agency Decision] MOTION CARRIED.**

### **III. LEGAL COUNSEL'S REPORT**

Mr. Matthew Boyatt went over the required legislative mandated Ethics training. Chapter 93-B requires the Commission to complete training for Rules that govern the Administrative Hearings as well as Ethics training. Mr. Boyatt discussed Article 3 Hearings vs. Article 3-A Hearings. It is important that the Sheriffs keep the Article 3-A Hearing status. Mr. Boyatt discussed Public Records Law. Anything written or email with regard to duties on the Commission is open for public consumption. Certain records are open to inspection. The Open Meetings Act allows the public to be present at Commission Meetings other than the closed sessions. Mr. Boyatt discussed Lobbying, chapter 120-C. Mr. Boyatt went over the Administrative Code. Rules .0204, .0205, and .0301 are what the Commission follows during the Final Agency Decision meetings.

Mr. Boyatt asked the Commission Members if there were any questions. Negative response.

Mr. Matthew Boyatt's report was distributed to all Commission Members along with a chart which included 40 active administrative case files that were in the Office of Administrative Hearings. He reported that 16 cases have not been litigated. Mr. Boyatt went over the various stages of litigation for the 40 administrative cases as follows: [See **Attachment #23**]

- Eight (8) cases involve Class B misdemeanors after the deputy/detention officer has been certified.
- Ten (10) felony commissions.
- Ten (10) cases involving four (4) or more Class A or B misdemeanors.
- Five (5) cases material misrepresentations.
- Four (4) cases involve a lack of good moral character.
- Two (2) cases involve certified officers who have been charged and did not report that charge within the five day reporting period.
- One (1) case Positive Drug Screen.

### **VI. ADJOURNMENT**

A **MOTION** was made by Sheriff Cloninger at 4:45 pm to adjourn the September 03, 2015 Sheriffs' Final Agency Decision meeting; Seconded by Sheriff Steve Bizzell. **MOTION CARRIED.**