

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 05278

ROY CARO,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed December 22, 2023, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (24 DOJ 05278) were filed January 2, 2024. The parties received proper Notice of Hearing and the Administrative Hearing was held in New Bern, North Carolina on April 17, 2024, before the Honorable Samuel K. Morris, Administrative Law Judge.

The Petitioner was represented by counsel, Barry K. Henline. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General J. Joy Strickland.

On August 2, 2024, Judge Morris filed his Proposal for Decision. Counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on November 21, 2024.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

BURDEN OF PROOF

1. ~~The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. §150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. §150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. §150B-34(a). There is no statutory allocation of the burden of proof in contested cases heard under Article 3A of the Administrative Procedure Act. In the absence of that direction, the burden of proof is "judicially allocated on considerations of policy, fairness, and common sense." 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence § 37 (4th Ed. 1993); citing *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998); *Robert Shawn Gaddis v. North Carolina Sheriff's Education and Training Standards Comm'n*, 2023 WL 2424080, 22 DOJ 03415.~~

2. ~~While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. *Overcash v. N.C. Dept. of Env't & Natural Resources*, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").~~

3. ~~If a reviewing court determines the burden is on the Respondent, that burden has been met. While at least one appellate decision in the Chapter 150B, Article 3 context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring the citizen to prove that they did not. *Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Comm'n*, 2024 WL 2778127, 20 DOJ 04578.~~

3. ~~Thus, when Respondent's proposed agency action is based on its conclusion that a citizen not convicted of a crime nonetheless "committed" a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that the person's actions satisfied all elements of the crime. *Christopher Garris v. N.C. Criminal Justice Education and Training Standards Comm'n*, 2019 WL 2183214, 18 DOJ 04480.~~

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge made makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

1. Both parties ~~were~~ ~~pare~~ properly before ~~the~~ ~~this~~ Administrative Law Judge, in that jurisdiction and venue ~~were~~ ~~are~~ proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed revocation letter dated October 25, 2023, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission" or "Respondent"). (Res. Ex. 8)

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner was first awarded certification by Respondent on July 16, 2018 through the Onslow County Sheriff's Office. Petitioner separated from the Sheriff's Office in 2019 due to an injury he sustained during training. Petitioner was subsequently awarded general certification by Respondent on July 3, 2020 through the Onslow County Sheriff's Office as a detention officer. At the time of the hearing, Petitioner remains certified by the Respondent. (Res. Ex 3)

4. The Onslow County Sheriff's Office submitted a Form F-5, Report of Separation for Petitioner, to Respondent in August 2022. (Res. Ex. 1) This form is required to be completed when a certified officer separates from employment with the employing agency. This form indicated that Petitioner was separated from employment with the Onslow County Sheriff's Office on August 15, 2022. In response to the preprinted question on the form; "Was this separation as a result of a criminal investigation or violation of Commission rules?", the box beside "YES" was marked. In addition, in response to the preprinted question on the form; "Are you aware of any on-going or substantiated internal investigation regarding this officer within the last 18 months?", the box beside "YES" was marked. Id.

5. Investigator Melissa Bowman testified in this hearing. Investigator Bowman has been employed by the Department of Justice and has been working in the Sheriffs' Standards Division for almost two years. (T p 8-9) Before joining the Department of Justice, Investigator Bowman was a wage and hour investigator for the Department of Labor for six years, and prior to that worked for the Gaston County Department of Social Services for five years. Sheriffs' Standards Investigator Melissa Bowman testified that as a result of the indication on the Form F- 5 that Petitioner's separation was due to either a

criminal investigation or violation of the Commission's rules and the agency was aware of an investigation within the last eighteen months, this case was assigned to her to investigate.

6. As part of the Standard's Division's investigation, the following information was obtained from the Onslow County Sheriff's Office: a use of force incident report involving Petitioner and inmate John Walsh, incident report 2022-2169 including statements from Petitioner and Detention officer Austin Ellison, and photographs of injuries of Petitioner and Walsh. (Res. Ex. 4-7)

7. At the conclusion of the investigation, the matter was presented to the Probable Cause Committee of the Sheriffs' Commission in 2023 to determine if probable cause existed to believe Petitioner's certification should be revoked.

8. After considering this matter, the Probable Cause Committee found probable cause to believe that Petitioner's certification should be revoked due to the allegation that Petitioner committed the Class B misdemeanor of misdemeanor assault inflicting serious injury in violation of N.C.G.S. § 14-33(c) against John Walsh and in violation of Commission rule 12 NCAC 10B .0204(d)(1). Written notification of the finding of probable cause was provided to Petitioner in a certified letter dated October 25, 2023. (Res. Ex. 8)

Commission of the Class B Misdemeanor

Deputy Justin Yaw Testimony

9. Justin Yaw, a deputy with the Onslow County Sheriff's office since 2022, testified that he assisted with an incident involving Petitioner and inmate John Walsh. Officer Yaw has a total of 5 years of law enforcement experience including his time as a detention officer with Onslow County and has an additional nine and one-half years in the marine corp. (T pp 24-25)

10. At the time the incident occurred, Deputy Yaw was working as detention officer in the Onslow County Detention Center/jail. Yaw heard a call for officer assistance over his radio. Each of the detention officers in the jail had a similar radio and when a call for officer assistance went out over the radio, all detention officers could hear it. Yaw immediately responded to the call for assistance by going to the area where Petitioner was working. Yaw arrived at that location in less than 60 seconds. (T pp 26-28)

11. When he arrived, he saw Petitioner using his body weight to try to control Walsh. Both Petitioner and Walsh were on the ground. Yaw and Officer Ellison, who had also arrived, began restraining the inmate's arms and put "restraints on the inmate immediately and advised Officer Caro to disengage from [Walsh]". Yaw described the event in more detail as set forth herein. (T p 29)

12. Yaw told Petitioner to disengage from Walsh multiple times. He testified that

he told Petitioner to disengage at least 3 to 4 times, however, Petitioner did not release the inmate. Yaw further testified, "I cannot give an accurate time on how long it took. I know it required myself to physically come up and begin shoving him off—shoving Officer Caro off of him." . . . "I was able to physically put my hands on Officer Caro's shoulders and begin to start shoving him back, simultaneously trying to Yank Inmate Walsh out from underneath." At the time that Deputy Yaw pushed Petitioner off Walsh, Petitioner had his hands "[s]till located around [Walsh's] neck." (T pp 31-33)

13. Deputy Yaw said that one of the reasons that he pushed Petitioner off Walsh is that he had noticed that Walsh, who was restrained in handcuffs behind his back, had begun to struggle to breathe because Petitioner still had his hands around Walsh's neck. (T p 34)

14. Once Petitioner was separated from Walsh, Petitioner "lunged forward and attempted to strike [Walsh]" with a closed fist. (T p 35)

15. Yaw believes that the force used by Petitioner in this incident was excessive and in violation of Onslow County's use of force policy. (T pp 36-37)

16. At the time of the incident, redness could be seen on the front and back of Walsh's neck. Within days of this incident, both Petitioner and Walsh had visible bruising and marks on their bodies. (T pp 38-39)

Officer Austin Ellison Testimony

17. Austin Ellison, a detention officer with the Onslow County Detention Center/jail for about two and one-half years, testified that he also assisted with an incident involving Petitioner and inmate Walsh. Prior to joining the Onslow County Sheriff's Office, Officer Ellison worked as a jailer in Hampton, Virginia for 5 years. (T p 44)

18. Ellison heard the call for officer assistance over his radio. He immediately responded to the call for assistance by going to the area where Petitioner was working. Ellison arrived within 30-60 seconds, shortly before Yaw. When he arrived, he saw Petitioner and Walsh wrestling on the ground and Petitioner was on top of Walsh. (T pp 45-46)

19. Consistent with standard protocol, Ellison began assisting with restraining Walsh. Ellison put Walsh's right arm in handcuffs and Yaw restrained Walsh's left arm. Petitioner continued holding Walsh by his esophagus. (T pp 46-47)

20. Ellison indicated that the technique Petitioner was using to restrain Walsh was not a technique he had been taught in detention training and violated the Onslow County Sheriff's Office use of force policy. (T p 47)

21. While Walsh was in handcuffs behind his back, Petitioner made a closed fist and drew his hand back to try to swing at Walsh. Ellison pulled Walsh back so that

Petitioner could not make contact. (T p 49)

22. Ellison estimated that it took approximately thirty seconds to a minute for Petitioner to disengage from Walsh after Deputy Yaw instructed him to disengage. (T p 52) After the event, Ellison repeatedly told Petitioner to go into his office and "separate himself from the incident." (T p 48)

23. Ellison stayed to provide medical aid to Walsh. Ellison noticed that "Walsh was starting to have labored breathing, so I radioed for the nurse to come to Lincoln block to provide medical aid." Ellison placed Walsh in "the rescue position." Specifically, Ellison placed Walsh on his left side so that he could breathe better. A nurse arrived and deemed it necessary to take Walsh to the medical station for treatment. Ellison escorted Walsh to the medical area and remained with him for security reasons. The nurse administered a nebulizer for Walsh for about 5-10 minutes. (T pp 49-51)

Major Linwood Straughn, Jr Testimony

24. Linwood Straughn, a member of the Onslow County Sheriff's Office for twenty- seven and one-half years, testified that he is currently the Division Major for the Detention Center. His responsibility is to oversee the jail functions for Sheriff Thomas. One of the positions that Major Straughn previously held included a 1st Sergeant position responsible for training all detention officers, a position that he held for seven years. (T pp 54-55)

25. Straughn was notified by someone on staff about the incident involving Petitioner and Walsh. His job responsibilities included reviewing incidents of force and the appropriateness of the use of force. His job included making a decision about the incident and informing the Sheriff of that decision. (T p 56)

26. Major Straughn reviewed the use of force by Petitioner on Walsh by reading the reports that had been prepared by Petitioner and Ellison, speaking to Petitioner, and watching the video footage of the incident and the 15-minute period of time prior to the start of the incident. (T pp 57, 60-61, 98). This video footage was not proffered at the hearing or admitted into evidence. (T pp 57). Although neither party objected or moved to strike the portions of Major Straughn's testimony recounting the contents of the video footage, the tribunal assigns to these portions of Major Straughn's testimony the appropriate weight, specifically for impeachment purposes. See N.C.G.S. 150B-29.

27. Major Straughn testified about his review of the video footage and described seeing Petitioner performing what he referred to as a "rear naked chokehold" on Walsh for thirty to sixty seconds. This type of maneuver was excessive and violated policy. The Sheriff's office use of force policy prohibited chokeholds and that information was communicated to each detention officer through the supervising lieutenant within the detention center. At the completion of his review of this incident, Major Straughn recommended that Petitioner be terminated from employment with the Sheriff's Office. (T

pp 57-59) (Res. Ex. 4)

28. Contrary to Petitioner's testimony that Walsh attacked another inmate, Straughn said that the video footage showed Walsh take two to three steps away from Petitioner who quickly stopped Walsh and prevented him from coming into contact with the other inmate. (T p 98-99)

Petitioner's Testimony

29. Petitioner testified on his own behalf at the hearing. Petitioner worked for the Onslow County Detention Center for a period of three years. He started in 2018 but left due to an injury he sustained during training. He returned to the Detention Center in 2019 where he remained employed until 2022. (Res. Ex. 1; 3) Petitioner is currently working as an armed security officer for Paragon. (T pp 72-73)

30. While with the Onslow County Detention Center, Petitioner attended and completed training, including training on the legal use of force. (T p 73)

31. Petitioner testified that inmate Walsh said he needed medical assistance and was suicidal. When Petitioner was taking Walsh to the medical unit, Walsh "dropped his things" and sprinted toward another inmate." Petitioner said that Walsh began attacking the other inmate, and Petitioner separated the two inmates. Petitioner said he got Walsh to the ground and used his own body weight to hold Walsh down. He said that Walsh began kicking the vending machine and other items in the area, so Petitioner applied a "modified chokehold. Petitioner explained that he used the chokehold to protect the other inmate. Petitioner said that Walsh began attacking Petitioner, so Petitioner then began squeezing Walsh's esophagus. (T pp 64-65)

32. Petitioner claimed the cell block was loud and he only heard the following: (1) he heard Officer Ellison say, "Caro, like, help me grab the other arm" and (2) he heard someone say, "Caro, we got him. He's restrained. Let him go." Caro said he didn't let go of Walsh's esophagus because he felt safe at that time. Caro testified that he and inmate Walsh were about the same height but that Caro outweighed Walsh by about 160 pounds. (T pp 70, 76)

33. Petitioner said that while Walsh was restrained in handcuffs with Officers Ellison and Yaw beside him:

[t]here was a moment where the inmate and I made eye contact. We were looking directly at each other. And Inmate Walsh said, 'I'm sorry.' And at that moment, all I felt was just everything that happened. I felt all the emotions inside me rise up because none of that should have happened. I'd never been injured. So I lost it, and I unfortunately threw that punch.

(T pp 86-87)

34. Regarding other incidents of use of force, Petitioner was counseled or otherwise disciplined for the following incidents:

(a) Jeremy Godwin- During this incident, an inmate was able to close Petitioner inside a cell within the detention center. After being let out of the cell, Petitioner, who was admittedly upset about the incident, pepper sprayed the inmate in his cell. Petitioner said he was counseled about this incident, not because of the use of force but because he violated policy by not having another officer present with him when he sprayed the inmate. When asked why he used the spray against the inmate, Petitioner said it was because the inmate was being loud. Petitioner testified he thought that was a proper use of force. Petitioner admitted that he remembered his Lieutenant counseling him and say something similar to "we cannot allow an inmate to manipulate us and cause us to lose our cool." (T pp 91- 92)

(b) Inmate Green- When inmate Green was being loud to the nursing staff in the detention center, Petitioner picked Green up by his jumpsuit and threw him out of the office he was in. Petitioner was suspended for two days for this incident and counseled by his Lieutenant and Major Straughn for using excessive force in this situation. (T pp 92-93, 95)

35. A third inmate complained that Petitioner pushed him down by his throat and punched him in the face. Petitioner testified that he pushed this inmate by putting his hand on the inmate's chest but denied punching the inmate. (T p 93)

36. Petitioner agreed that when his case went before the probable cause committee for the Respondent, he called the technique he used against Walsh as a bear hug, not a chokehold. He further testified that a bearhug is a better description of what he did instead of a chokehold. (T p 87)

37. Petitioner admitted that a chokehold and grabbing a person by the esophagus is a use of deadly force. Caro testified that he believed he was justified in using such force to protect the other inmates and himself from Walsh. (T p 85)

CONCLUSIONS OF LAW

1. The parties ~~were~~ ~~are~~ properly before the undersigned Administrative Law Judge and jurisdiction and venue ~~were~~ ~~are~~ proper. The parties received proper notice of the hearing in this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. There was no objection from either party to the Tribunal hearing this contested case.

2. The Office of Administrative Hearings ~~had~~ ~~has~~ personal and subject matter jurisdiction over this contested case under N.C.G.S. 150B, Article 3A, following a request from Respondent under N.C.G.S. 150B-40(e) for an administrative law judge to hear this

contested case. In such cases, the Tribunal sits in place of the agency and has the authority of the presiding officer in a contested case under Article 3A. The Tribunal makes a proposal for decision, which contains findings of fact and conclusions of law. Respondent makes the final agency decision. N.C.G.S. 150B-42.

3. A court, or in this case an administrative tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the resolution of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd* 335 N.C. 234, 426 S.E. 2d 588 (1993). The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

4. Respondent has authority granted by chapter 17E of the General Statutes and the Administrative Code to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances. Respondent may revoke, suspend, or deny the certification of a justice officer when:

. . . the Commission finds that the . . . certified officer has committed or been convicted of:

a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor.

12 NCAC 10B .0204(d)(1) ~~provides that:~~

56. 12 NCAC 10B .0103(10)(b)(i) defines Class B misdemeanor, in pertinent part, as follows:

an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. . .

67. The Respondent's Class B Misdemeanor Manual includes N.C.G.S. § 14-33(c), assault inflicting serious injury. (Res. Ex. 10)

78. N.C.G.S. § 14-33(c) provides:

Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

(1) Inflicts serious injury upon another person or uses a deadly weapon.

89. Importantly, “Commission of an offense” means “a finding by Respondent or an equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.” 12 N.C.A.C. 9A.0103(5). Accordingly, to substantiate the commission of N.C.G.S. 14-33 two things must be proven: (1) “[T]hat the [Petitioner] assaulted the alleged victim by intentionally (and without justification or excuse); and (2) that the [Petitioner] inflicted serious injury upon the alleged victim.” N.C.P.I. Crim. 208.60.

940. Relevant here, our Courts have repeatedly applied a broad definition of serious injury—including within that definition both physical and mental injuries. See *State v. Everhardt*, 326 N.C. 777, 781, 392 S.E.2d 391, 393 (1990) (holding a mental injury will support the element of serious injury under N.C. Gen. Stat. § 14-32); *State v. Demick*, 288 N.C. App. 415, 436, 886 S.E.2d 602, 618 (2023) (citing N.C. Gen. Stat. § 14-318.4, which defines serious physical injury to include physical and mental injuries). “Whether serious injury has been inflicted must be decided on the facts of each case.” *State v. Ramseur*, 338 N.C. 502, 507; 450 S.E.2d 467, 471 (internal citations omitted). What the appellate courts have made clear is that proof of serious injury requires less proof than serious bodily injury. *State v. Hannah*, 149 N.C. App. 713 (2002). “When making its determination, a [factfinder] may consider various factors such as hospitalization, pain, loss of blood, and time lost at work. Nevertheless, the absence of hospitalization does not preclude a [factfinder] from finding a serious injury.” *State v. Tice*, 191 N.C. App. 506, 509, 664 S.E.2d 368, 371 (2008) (internal citations omitted).

104. Given this standard, the injuries suffered by Mr. Walsh constituted serious injury. Officer Ellison described Walsh as having “labored breathing,” taking “raspy breaths,” and took immediate action to place Walsh in a “rescue position” to help him breathe. A nurse made the determination that Walsh needed medical attention in the detention medical center. The nurse provided a nebulizer treatment to Walsh for about 5-10 minutes. Photographs of Walsh shortly after the incident show red marks on his face and on the front and back of his neck. Deputy Yaw saw Walsh a few days after the incident, and he had bruising on his body from this incident. Petitioner’s application of his hands to Walsh’s throat resulting in his difficulty breathing, redness, and bruising constitutes a serious injury.

112. Further, Petitioner’s belief that he was justified in continuing to use such force after Walsh was subdued is not supported by the evidence.

(a) Petitioner first claimed that he took Walsh to the ground and began using his body weight to subdue him because Walsh attacked another inmate. Contrary to Petitioner’s assertion, Major Straughn watched 15 minutes of video footage before the incident and while he saw inmate Walsh take 2-3 steps away from Petitioner and toward another inmate, Walsh never struck the inmate.

(b) Petitioner testified that he continued to subdue Walsh because he wasn’t

sure how long it would take for other officers to assist him, and other inmates might join in. Contrary to that explanation, Petitioner prepared an incident report shortly after the incident occurred. In that incident report, Petitioner said "I ordered all other inmates to stay away, which they did." (Res Ex. 5)

(c) At the hearing of this matter, Petitioner claimed he only heard two things during the incident: Officer Ellison say, "Caro, like, help me grab his other arm," and another officer (Yaw) say, "Caro, we got him. He's restrained. Let him go." Petitioner said that it was loud in the cell block as one reason he didn't hear the other officers. Petitioner's testimony is not credible in light of the other evidence presented. In Petitioner's incident report, he stated the following: "Officer Ellison arrived on scene and tried to speak to me, but with the inmate harming me, providing injury, I was in a raged state of mind, not stopping with my action. . . Officer Ellison continued to reach out to me, shouting my name." The incident report was prepared on the same date as the incident at which time the incident was fresh in Petitioner's mind. He clearly admitted in his report that he heard Officer Ellison on more than one occasion. Further, Officer Ellison said it was not loud in the cell block and he clearly heard Yaw tell Petitioner to disengage Walsh more than once so there was no reasonable explanation as to why Petitioner could not have heard him as well. (Res. Ex. 4)

(d) Petitioner continued to apply force and specifically put his hands on Walsh's neck and throat well after Ellison and Yaw had restrained Walsh and the use of any force was no longer justified.

(e) The Petitioner's argument that his actions with Walsh constituted the proper use of force is further called into question by his action after the incident was concluded. As previously set out herein, when Yaw and Ellison had Walsh restrained with handcuffs behind his back, Petitioner closed his right fist and attempted to assault Walsh by punching him. Walsh was not struck only because Officer Ellison pulled Walsh out of the striking distance of Petitioner. Petitioner's action in attempting to strike Walsh while he was in handcuffs and not resisting in any fashion, with Officers Ellison and Yaw at his side, must be considered in determining Petitioner's true motivation with all of his actions and application of use of force against Walsh.

(f) This incident is similar to previous events when Petitioner became emotional during incidents which resulted in him either being counseled or suspended from work for using excessive force.

123. The sanction for the commission of a Class B misdemeanor is contained in 12 NCAC 10B .0205(2)(a) which provides that:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be . . . not less than five years where the case of sanction is . . . commission . . . of offenses as specified

in 12 NCAC 10B
.0204(d)(1).

134. In sum, if the burden was on Respondent, it has met its burden, as the evidence at the hearing supports the finding of the Respondent that on or about August 1, 2022, Petitioner committed the misdemeanor offense of assault inflicting serious injury in violation of N.C.G.S § 14-33(c).

145. The finding of the Respondent's Probable Cause Committee was not arbitrary or capricious.

ORDERPROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered proposed that Petitioner's justice officer certification should be **REVOKED** for a period of five years pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B 0205(2)(a) due to him committing the misdemeanor offense of assault inflicting serious injury in violation of N.C.G.S. § 14-33.

IT IS SO ORDERED.

This the 22nd day of November, 2024.

Alan Norman, **Chairman**
North Carolina Sheriffs' Education and
Training Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner** by mailing a copy to the address below:

Barry K. Henline
115 Nth 6th Street
Wilmington, North Carolina 28401

This the 1st day of October, 2024.

JOSHUA H. STEIN
Attorney General

/s/ J. Joy Strickland
J. Joy Strickland
Assistant Attorney General
ATTORNEY FOR THE COMMISSION