

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
23 DOJ05278

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

**EXCEPTIONS**

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Samuel K. Morris, Administrative Law Judge, and filed in the Office of Administrative Hearings on August 2, 2024, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision and renumbered the Conclusions of Law as there appeared to be a typo in the filed Proposed Decision.
2. The Burden of Proof paragraphs 1-3 should be deleted and/or amended as follows:

**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 proof in the case at bar as does a petitioner in an Article 3 case. *Overcash v. N.C. Dep't. 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*, 2021 WL 2779127, 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.~~

3. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

### **PROPOSAL FOR DECISION ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ~~proposed ordered~~ 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.

This the 1<sup>st</sup> day of October 2024.

JOSHUA H. STEIN  
Attorney General

*/s/ J. Joy Strickland*

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State Bar No.: 25695  
COUNSEL TO THE COMMISSION

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner's Counsel** by mailing a copy to the address below:

Barry Henline  
115<sup>th</sup> Nth 6<sup>th</sup> Street  
Wilmington, NC 28401

This the 1<sup>st</sup> day of October 2024.

JOSHUA H. STEIN  
Attorney General

Attorney General

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

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September 6, 2024

Director of Sheriffs' Standards Division

P.O. Box 629

Raleigh, NC 27602

### **RE: REQUEST TO PRESENT WRITTEN ARGUMENT**

To whom it may concern,

Please accept this as my request to submit written argument to the Commission during its Final Agency Decision hearing. Enclosed is the written argument I wish to present to the Commission.

Thank you in advance for your time and compliance with this request. If you have any questions or concerns, please let me know at your earliest convenience.

Best regards,

*Barry K. Henline*

The following witnesses testified for the Respondent:

1. Melissa Bowman
2. Justin Yaw
3. Austin Ellison
4. Linwood Straughn

**EXHIBITS**

Petitioner's Exhibit 1 was admitted into evidence, without objection.

1	Petitioner's Medical Records from Onslow Memorial Hospital Dated 8/2/2022
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Respondent's exhibits 1 - 10, were admitted into evidence, without objection.

1	Report of Separation Dated 8/15/2022 from Onslow County Sheriff's Office to NC DOJ Sheriff's Standards
2	General Detention Officer Certification of Petitioner
3	Officer's Complete History
4	Onslow County Sheriff's Office Use of Force Report
5	Onslow County Sheriff's Office Incident Report # 2022-2169 – Supplemental Report of Deputy A. C. Ellison
6	Photographs of Injuries to Petitioner
7	Photographs of Injuries to Inmate John H. Walsh
8	Notification of Probable Cause Hearing Letter
9	Petitioner's Request for Probable Cause Hearing
10	Class B Misdemeanor Manual

**ISSUE**

Whether Petitioner committed the Class B misdemeanor offense of assault inflicting serious injury in violation of N.C. Gen. Stat. § 14-33 (c)(1).

5. Petitioner became engaged in an altercation with an inmate, John H. Walsh, hereinafter inmate Walsh.

6. During the course of the altercation with inmate Walsh, Petitioner was alleged to have used excessive force that amounted to an "Assault Inflicting Serious Injury" in violation of N.C. Gen. Stat § 14-33 (c)(1).

7. A violation of N.C. Gen. Stat § 14-33 (c)(1) is a Class A1 misdemeanor and is found within the Class B misdemeanor manual.

8. N.C. pattern jury instruction 208.60 prescribes the elements of "Assault Inflicting Serious Injury."

9. Those elements are:

- a. That the defendant assaulted the alleged victim by intentionally and without justification or excuse) by applying a modified choke hold and by grabbing the victim's esophagus and squeezing, and
- b. that the defendant inflicted serious injury upon the alleged victim. Serious injury is such physical injury as causes great pain and suffering.

10. 12 N.C.A.C. 10B .0204 (d)(1) gives the Commission the authority to revoke, suspend, or deny the certification of a justice officer when the individual has committed or been convicted of an offense contained within the Class B misdemeanor manual.

11. Petitioner was clearly engaged in a physical altercation with inmate Walsh which ended in obvious injuries to both parties. (T p 29-30) (T p 67)

12. Petitioner became engaged in conduct that found him to have his hands on the throat of inmate Walsh. (T p 33-34)

13. Petitioner admitted to having placed his hands on inmate Walsh's esophagus and squeezing. (T p 69)

14. Deputy Ellison testified that he saw redness and swelling around inmate Walsh's neck. (T p 38-39)

15. Deputy Yaw testified that inmate Walsh had labored breathing and he provided first aid by placing inmate Walsh into a recovery position. (T p 50)

16. Deputy Yaw noted on cross examination that inmate Walsh had been engaged in a physical altercation with a much larger individual which could have likely added to his difficulty in breathing. (T p 52-53)

17. Deputy Yaw testified that inmate Walsh was treated at medical at the request of the nurse by giving him a nebulizer. (T p 50-51)

18. Petitioner admitted to having applied force to the neck and/or throat are of inmate Walsh. (T p 66)

19. Petitioner made an attempt to strike Inmate Walsh with a closed fist that failed to strike the inmate or cause any physical injury. (T p 49)

20. Petitioner had justification and/or excuse to use the level of force used against inmate Walsh in that, while his use of force violated his employer's policy, it did not in and of itself, violate any state law for an officer to use force against another person.

21. Petitioner was exposed to an assault that could have been deadly force against himself – inmate Walsh was committing an assault against petitioner and had caused him to strike his head against a concrete floor with enough force to cause a laceration and bleeding.

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact the undersigned makes these Conclusions of Law:

1. All parties are properly before this Administrative Law Judge and jurisdiction and venue are proper.

2. To the extent that the Findings of Fact 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.

3. Rule .0204(d)(1), Chapter 10B of Title 12 of the North Carolina Administrative Code reads, in pertinent part, that: "The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of (1) a crime or unlawful act defined in 12 NCAC 10B .0103(17)(b) as a Class B misdemeanor and which occurred after the date of appointment;

4. Respondent has failed to prove by the preponderance of the evidence that Petitioner committed an assault inflicting serious injury in violation of N.C. Gen. Stat § 14-33 (c)(1) because Petitioner had the defense of justification and excuse to protect himself and others from a violent assault by inmate Walsh.



5. Furthermore, Respondent has failed to prove by the preponderance of the evidence that Petitioner committed an assault inflicting serious injury in violation of N.C. Gen. Stat § 14-33 (c)(1) because the element of serious injury is lacking and therefore the elements of that offense are not met.

- a. Labored breathing, which could be accounted for by the physical altercation inmate Walsh engaged in, and redness and swelling, are not serious injury.
- b. The only evidence of medical attention given to inmate Walsh was that he was placed on a nebulizer.

6. Respondent has only proven that Petitioner committed the offense of simple assault by throwing a punch at inmate Walsh.

7. However, Respondent lacks the authority of any sanctions under Rule .0204(d)(1) of 12 N.C.A.C. 10B. (Respondent's Exhibit 10)

8. That administrative sanction is authorized for offenses contained within the Class B misdemeanor manual.

9. Simple assault is codified in N.C. Gen. Stat § 14-33 (a).

10. Simple Assault, under N.C. Gen. Stat § 14-33 (a), is listed in the Class B misdemeanor manual as a sanctionable offense, however, it is clearly intended to be for domestic violence related offenses. (Respondent's Exhibit 10)

11. The preponderance of the evidence in this matter would show this was not a domestic violence related event, and therefore, the Commission lacks the authority to impose the sanctions in 12 N.C.A.C. 10B .0103 (17)(b).

### **PROPOSAL FOR DECISION**

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby recommends that the Commission **REVERSE** its intended revocation of Petitioner's justice officer certification.

### **NOTICE AND ORDER**

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings

of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

**IT IS HEREBY ORDERED** that the agency shall serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700. Moreover, the agency shall also serve a copy of its Final Decision upon each party by one of the methods for service of process under N.C.G.S. § 1A-1, Rule 5(b). A copy shall also be furnished to each party's attorney of record. N.C.G.S. § 150B-42(a).

**SO ORDERED.** This the 18<sup>th</sup> day of June, 2024.

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Hon. Samuel K. Morris  
Administrative Law Judge

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing **PETITIONER'S PROPOSAL FOR DECISION** has been electronically filed using the Office of Administrative Hearings electronic filing system and duly served upon Respondent's Counsel by mailing a copy to the address below:

Attorney Joy Strickland  
Assistant Attorney General  
Attorney for the Commission  
[jstrickland@ncdoj.gov](mailto:jstrickland@ncdoj.gov)  
P.O. Box 629  
Raleigh, NC 27602

This the 18<sup>th</sup> day of June, 2024.

/s/ Barry K. Henline  
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