

STATE OF NORTH CAROLINA  
COUNTY OF CLEVELAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 00705

Timothy G Kimbrell Petitioner,  v.  NC Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSED DECISION</b>
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**THIS MATTER PRESENTS** under authority of the North Carolina Constitution, Art. III, Sec. 11, *accord*, Art. IV, Sec. 3; G.S. 7A-750; and G.S. 150B (“APA”); following hearing on the merits before Jonathan S. Dills, Administrative Law Judge (“ALJ”) with the Office of Administrative Hearings (“OAH”); for proposed decision per Art. 3A of the APA. The ALJ sits for the agency to establish facts, apply law, and issue proposal. G.S. 150B-40(e).

**APPEARANCES**

Petitioner: Garland F. Byers, Jr., Attorney  
Cleveland County

Respondent: J. Joy Strickland, Assistant Attorney General  
North Carolina Department of Justice

**ISSUE**

Should the Commission revoke Petitioner’s certification for moral turpitude?

ANSWER: No.

**FINDINGS**<sup>1</sup>

1. Both parties are properly before the Tribunal. (Ex. 8 & 9).
2. Respondent (“Commission”) appears in its delegated role of oversight and maintenance of minimum standards for justice officer certification. G.S. 17E-4(a)(6) & 7(c).
3. Petitioner has been in law enforcement for seven years, having worked as a canine officer, a school resource officer, an animal control officer, and patrol officer. (T pp 112-114).

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<sup>1</sup> The Tribunal need only find facts material to resolution. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff’d*, 335 N.C. 234, 436 S.E.2d 588 (1993).

4. Petitioner is currently a Detention Officer with the Rutherford County Sheriff's Office ("RCSO").

5. Petitioner previously worked for RCSO and twice with the Forest City Police Department ("FCPD"). *Id.* This dispute involves the just prior employment with FCPD.

6. FCPD provided deputies with MiFi® devices for portable, work-related internet access. They were subject to check out; however, there was minimum stricture and oversight. (T pp 29-30; 98-101).

7. It was as much as a year before anyone noticed the missing devices. It appeared that at least one device was never recovered. (T p 142; Ex. 7).

8. Leadership noticed several units were out and unlogged. Word was sent to everyone for them to be returned. (T pp 32-35; 98-101).

9. Petitioner returned one such device and admitted to using it personally. (Ex. 7).

10. Internal Affairs was involved and investigated. Petitioner was interviewed. *Id.* Petitioner admitted that he had one of the devices, but initially downplayed for how long. (Ex. 6).

11. The subject actions violated FCPD procedures and standards. (Ex. 10).

12. Following the incident, Petitioner voluntarily separated from FCPD. *Id.*

13. At hearing, Petitioner was ultimately, credible and conciliatory. (T pp 142).

14. The Commission learned of the subject malfeasance from the Report of Separation from RCSO. (Ex. 3). It investigated and referred the matter to committee. (Ex. 5 & 7).

15. Ultimately, the Commission determined probable cause to believe Petitioner lacks the requisite moral character required of a justice officer. (Ex. 8).

16. Petitioner timely appealed here. (*See* Petition).

17. Mitigating factors, to any extent relevant, include:

- a. Seven years in Law Enforcement (T pp 112-114).;
- b. An otherwise, relatively unblemished career (T p 146);
- c. Petitioner's admissions and accountability (*Eg.* T pp 142);
- d. Financial and familial pressures (T p 126);
- e. Support from the Sheriff of Rutherford County (T pp 105-109);
- f. Support from other leadership at RCSO (T pp 90-92); and
- g. That this was ultimately an internal, employment issue.

18. This was an isolated incident of poor judgment.
19. These circumstances certainly do not justify revocation.

### CONCLUSIONS<sup>2</sup>

1. Respondent is authorized to certify Petitioner; and to revoke, suspend, or deny such in proper circumstances. G.S. 17E; 12 NCAC 10B.
2. Though Art. 3A of the APA is silent regarding the applicable standard of evidence, it is undisputedly by preponderance. *In re Rogers*, 297 N.C. 48, 59, 253 S.E.2d 912, 919 (1979).
3. As the Tribunal has repeatedly concluded, the State generally bears the burden of proof when it proposes to restrict certification. *See, Russell v. Commission*, 2022 NC OAH LEXIS 55; *cf., Graves v. Commission*, 2022 NC OAH LEXIS 374 (new applicant); *see also, Canty v. Commission*, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference.
4. Regardless, to any extent the burden was Petitioner's, he carried it; to any extent it was Respondent's, it failed. *Harris v. Mangum*, 183 N.C. 235, 239-40, 11 S.E. 177, 179 (1922) (summarizing the interplay of burden, participant roles, and a decision by preponderance of the probative evidence regardless of who successfully introduced it or when).
5. Every criminal justice officer shall *be* of good moral character, as defined by caselaw. 12 NCAC 10B .0301(12) (emphasis added). At issue is Petitioner's current character. *Id.*
6. 12 NCAC 10B .0204(b)(2) requires revocation, denial, or suspension when a justice officer fails to meet or maintain minimum standards to include good moral character.
7. 12 NCAC 10B .0205(3)(b) requires that such revocation, denial, or suspension continue indefinitely, or for "so long as the stated deficiency, infraction, or impairment" persists.
8. The purpose is not to punish a candidate but to protect the public and preserve integrity. *In re Legg*, 325 N.C. 658, 673, 386 S.E.2d 174, 182 (1989).
9. The term good moral character is unusually ambiguous. *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957).
10. Due to concerns about flexibility and vagueness, certification restriction based on moral turpitude must be judiciously applied. *In re Willis*, 288 N.C. 1, 15, 215 S.E.2d 771, 780 (1975), *appeal dismissed*, 423 U.S. 976 (1975).
11. Acts of moral turpitude are described to involve "baseness, vileness, or depravity." *Dew v. State ex rel. N.C. Dep't of Motor Vehicles*, 127 N.C. App. 309, 311, 488 S.E.2d 836, 837 (1997) (internal quotations and citation omitted).

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<sup>2</sup> To the extent Findings contain Conclusions or vice versa, they should be appropriately considered regardless of labeling. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

12. It may be defined as "[c]onduct that is contrary to justice, honesty, or morality." Black's Law Dictionary, 1101 (9th ed. 2009); *cf. and contrast, In re Willis, supra* at 10, 215 S.E.2d at 775-77 (1975) ("honesty, fairness, and respect for the rights of others and for the law....").

13. \*Isolated instances are seldom sufficient. *See In Re Rogers*, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979).

14. \*Only severe conduct may serve as a basis for moral turpitude. *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 289 N.C. App. 12, 28, 887 S.E.2d 891, 901 (2023).

15. In absence of clear mandate, we resort to "policy, fairness and common sense." *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998). Judiciousness and a standard of obvious and severe transgression, in this sense, are akin.

16. There is insufficient evidence of moral turpitude. Indeed, the totality of credible evidence demonstrates current, good moral character. *Harris, supra*.

17. The ALJ determines credibility. *Brithaven of Morganton v. DHR*, 118 N.C. App. 379, 388, 455 S.E.2d 455, 462-3, *disc. rev. denied*, 341 N.C. 418, 461 S.E.2d 754 (1995).

18. "[D]eciding which permissible inference to draw from evidentiary circumstances is as much within the fact finder's province as is deciding which of two contradictory witnesses to believe." *Halloway v. Tyson Foods, Inc.*, 193 N.C. App. 542,548, 668 S.E.2d 72, 76 (2008).

19. Nonetheless, the decision of the Respondent's Probable Cause Committee was not arbitrary or capricious.

20. The determinations of the Undersigned are based upon a preponderance of the credible evidence, after full hearing and significant deliberation.

21. Substantial evidence justifies adoption of the following proposal. G.S. 150B-42.

### **PROPOSAL**

WHEREFORE, Respondent should not revoke Petitioner's certification.

### **NOTICE**

The agency captioned and addressed herein will make the final decision in this contested case. G.S. 150B-38 *et seq.* (Art.3A).

The parties must be given opportunity in advance "to file exceptions and proposed findings of fact and to present oral and written arguments to the agency." G.S. 150B-40(e).

The agency or its counsel will timely file a copy of the final decision referencing the case number specified herein with the Office of Administrative Hearings.

**ORDERED** 07 November 2024.

A handwritten signature in black ink, appearing to read "Jonathan S. Dills", is positioned above a solid horizontal line.

The Honorable Jonathan S. Dills  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below by electronic service as defined in 26 NCAC 03 .0501(4) and/or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which thereafter places the foregoing document into an official depository of the U.S. Postal Service, as follows:

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This the 7th day of November, 2024.

  
Karen L Rust

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