

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02402

<p>Trenton Allen Taylor Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSED DECISION</p>
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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: William L. Hill
Frazier, Hill, & Fury R.L.L.P.

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

ISSUES

Whether Petitioner committed the Class B misdemeanor offense of assault on a female and whether Petitioner has sufficient moral character to be a Law Enforcement Officer.

FINDINGS ¹

BASED UPON careful consideration and deliberation of the entire record; having weighed all evidence, and assessing the credibility of each witness; the Undersigned finds as follows:

1. The OAH has jurisdiction over the parties and subject matter; venue is proper; parties are properly designated; joinder is a nonissue; notice was lawful; and to any extent otherwise, such was properly addressed, unpreserved, and/or waived. G.S. 131E, 150B, & 1A-1, Rule 12.

¹ This 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).

2. Respondent appears in its role to establish and maintain minimum law enforcement standards. *See*, Conclusions # 1 & 5.

3. Petitioner was certified on 18 August 2020, with the Ashe County Sheriff's Office; he involuntarily separated from there on 15 March 2021. He is currently employed as a Davidson County Deputy Sheriff, taking that position on 08 November 2021. He has risen to the position of Canine Handler. (T pp 12, 36).

4. Petitioner received a proposed revocation of his certification by letter mailed from Respondent on 08 May 2024. (T p 20); (R Ex 6).

5. On 24 May 2024, Petitioner appealed to the OAH. (R Ex 7).

6. At hearing, Respondent called three witnesses: Petitioner, Melissa Bowman (Commission Investigator) and Jennifer DeSpain (Ashe County Sheriff's Detective).

7. Ms. Bowman testified that she was assigned to investigate Petitioner following receipt of his Report of Separation (Form F-5). (R Ex 1). It insinuated that he may have committed assault on a female, calling into question his moral character.

8. Bowman interviewed the alleged victim ("AV"), Detective DeSpain, and Petitioner. Ms. Bowman also had a notarized statement from Petitioner. (T p 14); (R Ex. 4).

9. Petitioner admitted to a consensual interaction consisting of "making out" with the AV but denied any assault. He was uniformed and on-duty. (T pp 17-8, 44).

10. The incident began in the early morning hours of 28 February 2021. The AV came to the station around 3am and asked for Petitioner. She felt unsafe in her home and thought someone was "hacking" her cameras, *et al.* The AV was known for prior, similar complaints. Petitioner told the AV he was busy, left her in the waiting area, and she soon departed. Petitioner thereafter went on patrol. (T p 39-40).

11. At approximately 3:30am, Petitioner stopped at a gas station for an energy drink. He noticed the AV sleeping in her car. He knocked on the window and eventually offered to check her house. The AV agreed and he followed her home. *Id.*²

12. After clearing the home, the AV asked Petitioner to sit with her. He sat and they talked. Eventually both started to flirt and things advanced to kissing and touching. (T pp 44-45).

13. Eventually, this incident came to light. Petitioner was called in and questioned by leadership. He admitted his indiscretions and was terminated. (T pp 48-49).

² Texts between Petitioner and the AV which preceded the subject incident were questioned, raising the issue of Petitioner's veracity. Based on the totality of the evidence presented (largely his consistent admissions re the gravamen of the case against him) and the overall credibility of Petitioner, the undersigned found such inconsistencies to be inadvertent and/or due to the passage of time.

14. When the incident occurred, Petitioner was 22 years old, and the AV was estimated to be in her early fifties. (T p 46).

15. Although subpoenaed, the AV failed to appear. However, in her interview, she could not remember significant details and denied being traumatized by the incident. Investigator Bowman also testified that Ms. Scott was “matter of fact” about it all. (T pp 25-26).

16. Petitioner’s first witness was Sheriff Richard Simmons, Jr., the High Sheriff of Davidson County. Sheriff Simmons testified that he had worked with Petitioner for three years and knows him to be of good moral character. Sheriff Simmons testified that it took a strong work ethic to advance to Canine Handler. (T p 57). Sheriff Simmons was significantly credible.

17. Petitioner next called Lieutenant Jeff Barber, his current supervisor. (T p 61). Mr. Barber testified that he had worked with Petitioner for twenty months and knows him to have strong moral character. (T p 62). Jeff Barber was significantly credible.

18. Petitioner next called Corey Edwards, a co-worker of two years. Edwards testified that he thought highly of Petitioner’s moral character and that they had been through a lot together, including a justified shooting. (T p 63). Corey Edwards was significantly credible.

19. All character witnesses clearly wanted Petitioner to retain his certification and to continue working with them.

20. Petitioner then testified further. He loves his current job. He received commendation from Sheriff Simmons for apprehending a felon in a foot chase. (T p 66). He was promoted from Deputy I to Deputy II. (P Ex 7). A transcript of his certifications was admitted. (P Ex 8). He has gotten married since the subject incident. (T p 67). His wife, Sheriff Simmons, Lt. Barber and Deputy Edwards remained in the courtroom in support of Petitioner. (T p 68).

21. Petitioner has consistently maintained that he had a consensual encounter with the AV. *See, the Record in toto.*

22. Petitioner was significantly credible.

23. At the close of evidence, Petitioner’s counsel moved for dismissal of the claim that Petitioner committed the Class B misdemeanor offense of assault on a female. The motion was granted because there was insufficient evidence to sustain the allegation. Specifically, the AV was absent, and anything presented re what she said in support was hearsay. Further, much of what was introduced re AV’s account contradicted the state’s case.

24. On the alleged criminal element of this matter, it could legitimately be seen as a *he said she said* issue, and the competent evidence presented lacked the latter.

25. Petitioner stipulated to the authenticity and admission of Respondent’s exhibits, except to the extent they offered statements of the AV against Petitioner. The latter was given

appropriate weight and consideration. Respondent stipulated to the authenticity and admission of Petitioner's exhibits.

CONCLUSIONS³

BASED UPON the foregoing, the Undersigned concludes as follows:

1. Respondent is authorized to certify this member of law enforcement and to revoke, suspend, or deny certification in proper circumstances. G.S. 17E-4 & 4.1; 12 NCAC 10B .0301.
2. Though Article 3A of the APA is silent re 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 fell to Petitioner, he carried it. To any extent it fell to Respondent, it failed. *Cf. 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. The Commission establishes *minimum* standards. 12 NCAC 10B .0204(b)(2).
6. Assault on a female is a class B misdemeanor, and the Commission has the authority to deny Petitioner for *no less than five years* for committing it. G.S. 14-33(a)(2); 12 NCAC 10B .0204(d)(1); *cf.* 12 NCAC 10B .0103(17)(b)(i), 12 NCAC 10B .0205(2)(a), and (Ex 8).
7. Notwithstanding, the Commission has discretion. 12 NCAC 10B .0205(2); *cf.* 12 NCAC 10B .0204(c) ("may" presents choice). But for dismissal on this issue, it would be appropriate to exercise such discretion here.

Moral Character

8. Every criminal justice officer shall *be* of good moral character, as defined by case law. 12 NCAC 10B .0301(12). At issue is Petitioner's current character. *Id.*
9. Moral turpitude is "conduct that is contrary to justice, honesty, and morality." *Richardson v. Mancil*, NO. COA09-1400 (27 April 2010), 2010 N.C. App. LEXIS 2323 at 18-19 (internal quotations omitted) (citing Black's Law Dictionary, 1101 (9th ed. 2009)).

³ 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).

10. The goal is not to punish but to protect the public and preserve integrity. *In re Legg*, 325 N.C. 658, 673, 386 S.E.2d 174, 182 (1989).

11. 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).

12. Isolated instances are seldom enough. *In Re Rogers, supra* at 58, 253 S.E.2d at 918.

13. Only severe conduct may serve as a basis for finding moral turpitude. *Devalle v. N.C. Sheriffs' Educ. & Training Standards Comm'n*, 289 N.C. App. 12, 28, 887 S.E.2d 891, 901 (factually similar to the matter *sub judice*).

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

15. Findings are viewed in the aggregate. *In re Legg, supra* at 673-674, 386 S.E.2d at 183.

16. Finally, the employer is generally in the best position to observe and determine an officer's individual 'character, competence, and fitness to serve' in a law enforcement capacity. *Marcum v. N. C. Criminal Justice Educ. & Training Standards Comm'n*, 2016 WL 6830998, 15 DOJ 07702 (emphasis added).

17. The totality of credible evidence demonstrates current, good moral character.

18. Credibility, it is the province of this Tribunal. *In re G.G.M.*, 377 N.C. 29, 35, 855 S.E.2d 478, 483 (2020); *Brithaven of Morganton v. DHR*, 118 N.C. App. 379, 388, 455 S.E.2d 455, 462-3 (1995). "[D]eciding which permissible inference to draw ... 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. Hearsay is subject to discount/disregard. 26 NCAC 03 .0122; G.S. 8C-1, Rule 803.

20. Notwithstanding the rulings contained herein, the actions of the Probable Cause Committee were not arbitrary or capricious. There was probable cause to believe malfeasance. *State v. Campbell*, 282 N.C. 125, 129, 191 S.E.2d 752, 755 (1972); *but see, Scroggs v. N.C. Criminal Justice Educ. & Training Standards Comm'n*, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991) (looking back too far or taking too long can equate to arbitrary and capriciousness).

21. This ruling is based upon a preponderance of credible evidence; there is substantial evidence justifying the following proposal. G.S. 150B-42.

PROPOSAL

WHEREFORE, certification should be **ALLOWED**, and the decision of the Probable Cause Committee **REVERSED**.

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 an 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.

SO ORDERED 07 April 2025.

A handwritten signature in dark ink, appearing to read 'Jonathan S. Dills', is written over a 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 April, 2025.



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