

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 00939

<p>Samuel Joseph Paldino Petitioner,</p> <p>v.</p> <p>NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing before the Honorable Karlene S. Turrentine, Administrative Law Judge, on August 2 and 3, 2021 in Halifax County, North Carolina and, pursuant to the parties' agreement, virtually on August 31, 2021 at the Office of Administrative Hearings ("OAH") in Wake County, North Carolina, pursuant to Respondent's request for designation of an Administrative Law Judge to preside over an Article 3A contested case hearing, as provided for in N.C.G.S § 150B-40(e).

APPEARANCES

For Petitioner: Mary-Ann Leon, Ph.D., J.D.
The Leon Law Firm
Greenville, North Carolina
Attorney for Petitioner

For Respondent: Jason Caccamo
Assistant Attorney General
North Carolina Department of Justice
Special Prosecutions/Law Enforcement Section
Raleigh, North Carolina
Attorney for Respondent

WITNESSES FOR PETITIONER

Samuel J. Paldino, Petitioner
North Carolina Department of Revenue Officer Emmanuel Moore
Investigator Christopher Baker, Pitt County ABC Law Enforcement
Police Chief Timothy Greene, Pitt County ABC Law Enforcement

WITNESSES FOR RESPONDENT

Officer Robert Nunnery, Greenville Police Department
Sergeant Gary Howard, Greenville Police Department, Internal Affairs
Officer Travis Diggs, North Carolina Department of Motor Vehicles
Detective Brian Gillen, Greenville Police Department

EXHIBITS

For Petitioner:

EXHIBIT NO.	PETITIONER’S EXHIBITS ADMITTED INTO EVIDENCE
1	PERFORMANCE APPRAISAL REPORT 2015
2	PERFORMANCE APPRAISAL REPORT 2016
3	PERFORMANCE APPRAISAL REPORT 2017
4	PERFORMANCE APPRAISAL REPORT 2018
5	PERFORMANCE APPRAISAL REPORT 2019
6	COMMUNITY PHOTOGRAPHS
7	CITY OF GREENVILLE AUTHORIZATION FOR RELEASE OF PERSONNEL FILE
13	FARMVILLE POLICE DEPARTMENT OBSERVATION REPORT
14	PHOTOGRAPH OF DICKENSON AVE., GREENVILLE NC
15	AUTHORIZATION FOR RELEASE OF INFORMATION (by Petitioner)
17	BODY WORN CAMERA PHOTOGRAPH OF DICKENSON AVE.
18	NOVEMBER 3, 2020 LTR. FROM RESPONDENT Re: Probable Cause Meeting
20	QUESTIONS FOR REFERENCES BY INVESTIGATOR T.C. GREENE (Admitted as corroborative evidence only)
22A	BODY WORN CAMERA PHOTOGRAPH (456 PATROL, 2019/05/10, 15:59:28+1H, first view)
22B	BODY WORN CAMERA FRAME: 456 PATROL, 2019/05/10, 15:59:28+1H, second view
22C	BODY WORN CAMERA FRAME: 456 PATROL, 2019/05/10, 15:59:33+1H
22D	BODY WORN CAMERA FRAME: 456 PATROL, 2019/05/10, 15:59:34+1H
22E	PHOTOGRAPH OF FORD TAURUS POLICE INTERCEPTOR (Admitted for Illustrative Purposes Only)
23A	OFFICER INTERVIEW EXCERPTS: Travis Diggs, 05/15/19, titled “Diggs Clip 1-1;” “Diggs Clip 1-2;” “Diggs Clip 1-3;” “Diggs Clip 1-4;” “Diggs Clip 1-5”
23C	OFFICER INTERVIEW EXCERPTS: Travis Diggs, 06/19/19, titled “Diggs 2d Interview Excerpts”
23D	OFFICER INTERVIEW EXCERPTS: Brian Gillen, titled “Gillen 1-1;” “Gillen 1-

	2;” and “Gillen 2-1.”
23F	OFFICER INTERVIEW EXCERPTS: Robert Nunnery (Titled Nunnery 1-1)
23G	OFFICER INTERVIEW EXCERPTS: Samuel Paldino (Titled Paldino 2-1)
24A	VIDEO OF FORD TAURUS POLICE INTERCEPTOR - Front perspective with doors ajar (Admitted for Illustrative Purposes Only)
24B	VIDEO OF FORD TAURUS POLICE INTERCEPTOR - Side perspective and Interior (Admitted for Illustrative Purposes Only)

For Respondent:

EXHIBIT NO.	RESPONDENT’S EXHIBITS ADMITTED INTO EVIDENCE
1	MAY 27, 2020 LETTER FROM PETITIONER
2	GPD’S REDACTED INTERNAL AFFAIRS’ INVESTIGATION FILE
2A	OFFICER INTERVIEWS
3	DECEMBER 16, 2020 NOTICE OF PROPOSED SUSPENSION OF LAW ENFORCEMENT OFFICER CERTIFICATION
4	PETITIONER’S REQUEST FOR ADMINISTRATIVE HEARING
5	OFFICER’S COMPLETE HISTORY (Petitioner’s)

PREHEARING MOTIONS

On the first day of hearing, Petitioner motioned the Court to sequester the witnesses, which motion was granted without objection.

ISSUES

1. Did Respondent have probable cause to deny Petitioner’s application for criminal justice officer certification for committing the Class B misdemeanor of “Willfully Failing to Discharge Duties” in violation of N.C.G.S. § 14-230?
2. Did Respondent err in finding Petitioner failed to meet the minimum standards that every criminal justice officer shall possess good moral character?

STATUTES & RULES AT ISSUE

N.C.G.S. § 14-230(a)
N.C.G.S. § 17C-2(3) (2021 *amendment at different subparagraph*)
N.C.G.S. § 150B-1, *et seq.*
12 NCAC 09A .0103 (7) and (24)(b)
12 NCAC 09A .0203
12 NCAC 09A .0204(b)(2) and (3)
12 NCAC 09A .0200, *et seq.*

BASED UPON careful consideration of the sworn testimony of all witnesses presented at the hearing, stipulations, documents admitted into evidence, and the entire record in this proceeding as appropriate for consideration, having weighed all evidence and assessed the credibility of the witnesses, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; whether such testimony is consistent with all other believable evidence in the case, and upon assessing the preponderance of the evidence from the record as a whole, the Undersigned makes the following:

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that: a) jurisdiction and venue are proper; b) both parties received notice of hearing; c) Petitioner received, by certified mail, Respondent North Carolina Criminal Justice Education and Training Standards Commission's (hereinafter, "Respondent" or "the Commission") proposed denial letter which was mailed on December 16, 2020; d) Petitioner timely filed his request for a contested case hearing, and; e) neither party objected to the Undersigned judge hearing this case.

2. Pursuant to Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, Respondent is authorized to certify criminal justice officers and to revoke, suspend, or deny such certification if an officer "is found to have knowingly and willfully violated any provision or requirement of Respondent's Rules." 12 NCAC 09A .0203. *See also* N.C.G.S. § 17C-2(3) and 12 NCAC 09A .0103(7).

3. Petitioner Samuel Joseph Paldino (hereinafter, "Petitioner" or "Mr. Paldino") testified that he became a sworn law enforcement officer in 2010, worked for the Farmville Police Department for two years and then worked for the City of Greenville's Police Department for seven years (from 2013 to 2020). At the time of this hearing, Petitioner was working as a civilian (unsworn) investigator with the Pitt County ABC Board.

4. While employed with the Greenville Police Department (hereinafter, "GPD"), Petitioner was often assigned to work in the city's highest crime zones, was part of GPD's Emergency Response Team, and ultimately, served as a "neighborhood police officer" on the west side of the city.

5. By the time the incident in question occurred in 2019, three (3) separate supervisors at GPD had reviewed Petitioner's work and each consistently and zealously praised Petitioner's innovation, talent, and dedication to law enforcement and the Greenville community at large.

6. The record is replete with testimony and exhibits revealing that Petitioner was an exemplary officer throughout the time he served the GPD, including but not limited to showing that:

- a) Petitioner consistently received the highest ratings on his annual performance appraisals while he was employed as a Greenville Police Officer. *See Petitioner's Exh. 1-5; also see Chief Timothy Greene testimony.*
- b) Petitioner's GPD supervisors consistently commended him for his intelligence, problem-solving, and decision-making skills. *See Petitioner's Exh. 4-5.*
- c) On more than one occasion, Petitioner was commended for establishing strong, positive relationships with the members of the communities that he served. *See Investigator Christopher Baker's and Greene's testimonies.*
- d) Pitt County ABC Investigator Christopher Baker testified that he had been a training officer for twelve years prior to joining the ABC. He stated he had been Petitioner's field training officer when Petitioner was with the Farmville Police Department and that Petitioner "was one of the best trainee officers [he]'d ever had."
- e) Pitt County ABC Police Chief Timothy Greene testified that he has known Petitioner since 2013 when they were patrol officers together at the GPD and had worked twelve-hour shifts with Petitioner at least fifteen days per month from 2015-2017 and again, from 2018-2019. Chief Greene testified that the "most intriguing thing about Petitioner" is that he is "very talented.... He never says, 'This is the way we've always done things.' [Instead, Petitioner] comes up with innovating ways to get the job done. ...High stress situations w[ere] his nitch." Chief Greene further stated that Petitioner was the only one to get five-star reviews from his supervisors, which made other officers upset. When asked how the other officers would know of the reviews, Chief Greene responded, "It was the determining factor for Petitioner coming off of patrol."
- f) Chief Greene further testified that he worked with Petitioner as a "neighborhood police officer." He averred that Petitioner "showed me what it was like to be an actual community-oriented police officer." Greene testified that Petitioner was instrumental in bringing together the various stakeholders in the community where they were assigned and facilitated dialog among stakeholders. Chief Greene observed that Petitioner was genuinely dedicated to improving the quality of life in the neighborhood where he served.
- g) Petitioner was characterized as a highly motivated officer who was sought out by different supervisors. *See Petitioner's Exh. 1, 2 and 5.*
- h) Petitioner was commended for the successes he brought to his department's mission, including documented reductions in crime rates in the neighborhoods he served. *See Petitioner's Exh. 2, 3, and 5, also Greene testimony* (In their area of operation, crime dropped by around sixty percent during the first year of neighborhood policing and by around thirty-six percent during the second year).

i) Petitioner was singled out for recognition of his outstanding service to the Greenville Police Department. *See Petitioner's Exh. 3 and 5.*

7. No officer who testified—either for Petitioner or Respondent—had anything detrimental to say about Petitioner's work ethic or behavior on the job. To the contrary, each officer, without exception, testified that Petitioner consistently exhibited a calm, professional demeanor even under stressful situations.

a) Emmanuel Moore, a sworn law enforcement officer currently employed by the North Carolina Department of Revenue (hereinafter, "DOR"), testified that prior to joining DOR, he was a police officer with the GPD. While with GPD, Officer Moore was the GPD's Emergency Response Team's (a/k/a "SWAT" team) trainer and he trained Petitioner for SWAT and then worked with him on that team. He asserted that Petitioner was always "poised" and "direct," giving "clear verbal directives[,] and was always "by the book."

b) Investigator Baker testified that he had worked with Petitioner at the Farmville Police Department and was again working with Petitioner currently with the Pitt County ABC. He stated that Petitioner always showed respect to citizens even when they were uncooperative. Investigator Baker further asserted that he had never seen Petitioner lose his temper.

c) Chief Greene testified that in his observations, Petitioner maintained his professional demeanor and confined his use of force to those times when all other options had been exhausted.

d) Detective Brian Gillen, a sworn officer since 1997, testified that he became Petitioner's partner assigned to the west zone as part of the GPD's neighborhood policing. He further said he found Petitioner to be trustworthy and had never seen Petitioner lose his temper.

Incident Giving Rise to this Contested Case

8. Petitioner was a neighborhood police officer with a unit assigned to the West Zone Neighborhood Unit of the GPD. The West Zone Neighborhood Unit and Special Investigations Unit of the Greenville Police Department had been looking for Jamal Weaver for approximately a week to serve 2 felony warrants. The warrants were concerning drug charges.

9. A "reliable confidential informant" provided information to the GPD that Weaver would be in the neighborhood that day, identifying the vehicle Weaver was using as well as his expected route of travel. The informant also said Weaver would be armed with a handgun and had traps—hidden compartments in his vehicles. Officer Gillen testified that one of the Special Investigation officers advised that Weaver was "coming through with guns and heroin" in his vehicle and that there were "outstanding felony warrants for him."

10. Based on that information, a team of officers staked out locations around the area that they thought that Weaver would be driving. Petitioner was in uniform driving an unmarked city vehicle with no blue lights. Officer Diggs was in uniform, riding alone in his marked Ford Explorer police vehicle. Officer Carnevale and LoGelfo were both in uniform, riding together in an unmarked Ford Taurus police interceptor that had blue lights. Once the car was identified, the traffic stop was initiated by several officers.

11. Petitioner logged into NC Aware (law enforcement website) to verify the warrants were still active. He also looked to see Weaver's criminal history and found that Weaver was a felon and had a history of resisting arrest. At some point, Officer Gillen told Petitioner that Weaver was a known gang member, known to be difficult to handle, and had a history of running from law enforcement. Chief Greene testified that he had once seen Weaver jump from a second-floor balcony, break his leg, and continue to run.

12. The testimony heard over the course of this hearing detailed the facts and circumstances surrounding the traffic stop and encounter Petitioner's unit had with Weaver in Greenville, North Carolina on May 10, 2019.

13. By way of proffer and through proof of subpoena, Respondent subpoenaed Weaver to testify on two (2) separate occasions and the attorney for the Commission called Weaver as well. Still Weaver failed to show and did not testify in this matter.

14. The traffic stop was made at approximately 5:00 p.m. on Dickinson Avenue under a railroad bridge near Hooker Road in Greenville, North Carolina. At this point, Dickinson is a two-lane road and traffic was heavy. By the time Petitioner arrived on the scene, Officers Diggs, Gillen, LoGelfo, and Carnevale were already there and the two occupants of the vehicle, Jamal Weaver and Marcus Bell, had been removed from the vehicle. (Evidence reveals Officer LoGelfo took Weaver into custody; however, Officer LoGelfo did not testify at hearing. Officer Gillen testified that Weaver was already in custody (handcuffs) when he arrived on the scene and that he was "familiar with both suspects." He said Weaver was with "the bloods" and the other passenger was "with the crips".)

15. Officers Carnevale and LoGelfo were searching the vehicle for the gun that the confidential informant said would be present. Weaver was handcuffed next to his vehicle (a black Lexus) yelling at the passing traffic, asking passersby to call his mother or his girlfriend. His attempt at attention was causing traffic to back up on Dickinson Ave.

16. Although Officer Gillen had the most time in with the PD (having served approximately 20 years), he had no higher rank than Petitioner. The rest of the officers on the scene had only 2-3 years' experience. By that time, Petitioner had been with GPD for approximately seven years, making him second in seniority on the scene.

17. Upon his arrival and seeing the situation, Petitioner was surprised that the officers had not conducted a felony traffic stop, since Weaver was a convicted felon, who was being served with felony warrants and was reported to have a handgun with him. Nevertheless, Petitioner

recognized the various officers' vehicles were blocking traffic, so he proceeded to move the cars to facilitate the flow of traffic.

18. In observing Weaver still yelling at the passing cars, Petitioner advised Officer Diggs (who was watching Weaver) to place Weaver in the back of his marked police vehicle for the safety of the public and to also assist in getting traffic moving. Officer Gillen went to assist getting Weaver into the back of the interceptor. Officer Diggs testified that he took Weaver back to LoGelfo and Carnevale's car, the officers put Weaver in the back passenger's seat and, Diggs closed the door with the window cracked. Once Weaver was in the vehicle, Officer Gillen told Diggs to "watch him" because Weaver was a runner and might attempt to flee. Then Officer Gillen resumed his place over by the side of the Lexus where Bell was sitting handcuffed on the curb.

19. Soon after, Weaver began complaining that it was hot in the vehicle so Officer Diggs opened the back door of the vehicle and left it open to allow air in. Weaver put his feet out the door of the interceptor. As Diggs stood on the sidewalk next to the open door, he soon told Petitioner that Weaver was trying to get out through the cage of the patrol car. Officer Gillen testified that he was watching the 2nd occupant of Weaver's car, Marcus Bell, because Bell was also a known gang member with a violent history.

20. In response to Officer Diggs' plea, Petitioner came over to the patrol car. Petitioner credibly testified that he did not have confidence that Officer Diggs could safely control the scene. Petitioner credibly testified that he was concerned that Weaver was trying to trick the Officer into letting him out of the vehicle. Petitioner stated, "I just knew based off of my history and his history of resisting – that for scene security – . . . we could not allow him to dictate the situation and open up the door every time he wished the door to be opened." So Petitioner opened the front passenger door and told Weaver to remove his head from the cage window. Weaver continued to complain about the heat and Petitioner shut the vehicle's cage completely, turned on the car's air conditioning to full blast and directed it to the back of the vehicle so Weaver could be cool with the back door closed. Petitioner then closed the back passenger door that Diggs had left open.

21. The officers decided to call the canine unit in to assist with the search of Weaver's Lexus. While waiting for Officer Nunnery and his canine partner to arrive, Officer Carnevale sat in the front passenger's seat of the interceptor working on his laptop checking Bell's information while Weaver was seated in the back behind the closed cage. After arriving and assisting with the search of the Lexus, Officer Robert Nunnery sat in the driver's seat of the interceptor and talked with Officer Carnevale.

22. Weaver continued to shout at the passersby and then began to curse Petitioner, calling him a "_itch." There was competing testimony about who opened the back door next to Weaver this time—whether Petitioner or Officer Diggs. Officer Gillen testified that because he remained in his position of watching Bell, he could "hear[some] commotion" and looked back, but the rear passenger door of the interceptor was open and he couldn't see the ensuing interaction between Petitioner and Weaver. Petitioner admitted that he returned to the back door of the vehicle to confront Weaver. Petitioner testified he intended on scaring Weaver into compliance. However, when Petitioner got to the door, Officer Diggs moved out of the way and Weaver "popped out" of the car, standing "eye to eye" and chest to chest with Petitioner. Officer Diggs testified that when

Petitioner came back to the back door, he asked “me to step out the way so [he] could talk to [Weaver and when I moved, Petitioner] talked very firmly” to Weaver.

23. Weaver then immediately pivoted which made Petitioner believe he was trying to escape so Petitioner grabbed Weaver, wrapped his arm around Weaver’s neck and “brought him to the ground.” Although still in handcuffs while on the ground, Petitioner testified Weaver began to “fake [a] seizure,” convulsing his body but all the while still yelling and shouting. For about 20 seconds, Petitioner put his knee on Weaver’s back trying to get him subdued but when Weaver refused to relax, Petitioner and Officer Diggs picked Weaver up to get him back in the car. Back on his feet, the officers had Weaver facing the doorway of the police car and Petitioner tried to get Weaver to comply with commands to get back into the vehicle. However, Weaver stiffened his body so as to keep from being put in the car and, at the same time, began yelling again to cars traveling on the roadway. Petitioner testified that he was able to bend Weaver at the waist and get him back into the car while Officer Nunnery, who was on the other side of the car, opened the back driver’s side door and assisted in pulling Weaver from his side back into the car. Officer Nunnery did not recall assisting Petitioner in getting Weaver back in the vehicle.

24. Petitioner admitted he got upset with Weaver’s cursing and behavior and, in response, he engaged in a verbal altercation with Weaver that was unprofessional. However, Petitioner testified that at no time did he use excessive force with Weaver. He used only the force necessary to contain a combative subject. Petitioner testified that he understands he could have de-escalated the situation in a more professional manner and he desires to be further trained on de-escalation tactics before being sworn again. No officer testified that Petitioner used excessive force.

25. From this confrontation, Weaver called the police department (either from the jail or after bailing out) on May 10, 2021, alleging Petitioner used excessive force on him. Weaver went in person to the police department on May 13, 2019.

The Investigation

26. Sgt. Gary Howard, a 15-year veteran with GPD, was an Internal Affairs Investigator in May 2019 when Weaver came into the station to complain of excessive force by Petitioner. Sgt. Howard interviewed Weaver at the police station on May 13, 2019.

27. During that interview, Weaver showed Sgt. Howard pictures he had taken on his own cell phone of injuries he allegedly sustained from his interaction with Petitioner. Those pictures reflected injury to Weaver’s face, head, neck, arms and, shoulder. Weaver claimed “he was in the back of a police car and an officer took him out and whooped his _ss.” However, during the interview, Sgt. Howard observed injuries only on Weaver’s shoulder and arm. At hearing, Sgt. Howard described the injuries he saw as consistent with road rash.

28. During the Internal Affairs (hereinafter, “IA”) investigation that followed, each of the officers were interviewed twice.

29. Having done most of the initial interviews alone, Sgt. Howard testified that:

- a) He interviewed Officer Diggs on May 15, 2019. Diggs did not know how Weaver got out of the car but he did see Petitioner grab Weaver after Weaver bumped chests with Petitioner and he saw Petitioner take Weaver down to the ground.
- b) He interviewed Officer Nunnery on May 12, 2019 and recalled that Nunnery was on the other side of the car when the incident happened and saw nothing. Officer Nunnery told him he helped pull Weaver back into the car as Petitioner was putting him into the car.
- c) Sgt. Howard interviewed Officer Gillen on May 14, 2019 who said he saw nothing but he knew something was going on.
- d) Sgt. Howard interviewed Officer Carnevale on May 14, 2019 who said he saw nothing.
- e) He interviewed Officer LoGelfo on May 15, 2019 who told him that he had seen nothing of the incident. He was in the front seat working on something on his computer and never looked back. Officer LoGelfo took Weaver to jail after the search and arrest. He told Sgt. Howard that while processing Weaver into the jail, he had to look Weaver over several times and he saw no injury on Weaver except on his shoulder. *See Resp. Ex. #2.*

30. Thus, from the first interviews, none of the officers present on the scene reported they saw Petitioner use excessive force on Weaver. Most officers were busy doing other things at the time and, although they heard commotion, it is reasonable to believe they ignored it because Weaver had been making a commotion from the time they put him in handcuffs on the side of the road.

31. However, these officers were interviewed a second time by Lieutenant Shari S. Groccia and those interviews went very differently. Lt. Groccia did not testify at trial; however, between videos admitted into evidence and the testimony of the particular officers at trial, the evidence of record reveals that, at the beginning of each interview, Lt. Groccia spent from 10-25 minutes threatening each officer, telling them their career was on the line, that she had already watched the bodycam footage from the incident and/or the video recordings of their first interview and she expected them to “tell me what I already know.”

32. Officer Diggs testified that Lt. Groccia interviewed him on June 19, 2019 and she spent the first 25 minutes showing him policy and telling him what she would do if he didn't tell her the truth. He stated she told him she had four other officers who had seen the same thing and Diggs was “going to tell her what she already knew.” Only thereafter, did he say Petitioner had grabbed Weaver out of the car. Officer Diggs said Lt. Groccia threatened him and threatened his job. “The way Groccia came off to me was like I didn't tell the truth the first time (interview). He felt if he didn't tell her what *she believed* happened, he would be fired.

33. Video of the Diggs interview reveals Lt. Groccia told him, in pertinent part:

“I’m going to tell you some things that I believe and then I’m going to tell you some things that I know. . . . I know that you saw more than you disclosed in your[first] interview. I know that you weren’t being truthful and that you purposely failed to disclose all that you saw. And I know that you are going on three short years on the Greenville Police Department and three years is not much time at all. . . . Because you have three years on and because I know you’re a standup guy – others have told me that – I’m gonna give you a clean slate today.”

34. Lt. Groccia told Officer Diggs that if she did not believe he was being completely candid and forthcoming she would “have no choice” but to charge him with untruthfulness. Lt. Groccia ended her introduction to the second interview by saying: “. . .before you walk out of that door, I’m telling you right now Travis, you better tell me what you saw and tell me some of the things that I already know or I have no choice I can’t promise that you won’t be in trouble But I can promise you that you won’t be fired.” *Pet. Exh. 23C*.

35. When shown an excerpt from his first IA interview with Sgt. Howard, Officer Diggs stated he told the truth—he didn’t know how Weaver got out of the car. The incident had just happened and he remembered it at that time. He testified that he had not seen Petitioner grab Weaver out of the car and Lt. Groccia “kind of led me to say” that’s what happened. He stated he had no actual memory of Petitioner pulling Weaver out of the car. Officer Diggs said he left the GPD soon thereafter, taking a job with the Mecklenburg Dept. of Motor Vehicles, License Theft division and he was much happier there.

36. Officer Gillen testified that he was interviewed by Lt. Groccia the day after Sgt. Howard interviewed him. He testified he believed Lt. Groccia was “telling him to ‘tell her what she already knows’ or lose his career.” She told him, “she did not believe that he had been completely forthcoming[in his first interview]. She said, “Don’t go down with somebody that messed up. Don’t throw your career away.” At hearing, Officer Gillen testified that he believed she wanted him to “tell [her] what [she] think[s] happened” or he’d get fired. He further stated that Lt. Groccia told him there was bodycam video and that made him second-guess himself. He was not trying to be deceptive but he was afraid she’d pull out video and make it appear like he was being deceptive about something he simply didn’t remember.

37. Officer Gillen believed Petitioner lost his temper (and Gillen stated, “I’d never seen [Ppetitioner] lose his cool before[,]”) and, in retrospect, he wished he’d intervened in the argument between Petitioner and Weaver because he was very familiar with Weaver and “pretty well thought he’d file a complaint because his mother had done so” times before. Nevertheless, Officer Gillen stuck to his original statements made to Sgt. Howard— he never saw Petitioner hit or knee Weaver. Officer Gillen also defined “excessive force” as “unreasonable force” or “unnecessary force,” but the force he understood Petitioner to utilize “would be acceptable to apprehend a handcuffed suspect.”

38. Neither Officer Carnavale nor Officer LoGelfo testified at hearing and, Officer Nunnery testified he saw none of the interaction between Petitioner and Weaver.

39. There was no evidence presented at the hearing which indicated that Petitioner pulled Weaver out of the vehicle and several of the officers testified that it is not uncommon for prisoners to get in and out of cars by themselves even with handcuffs on.

40. The evidence supports that whatever commotion occurred, the officers simply took it as part of Weaver's attempts to get attention as none felt either the need or inclination to intervene at the time.

41. Weaver sustained abrasions to his shoulder as reported by Officer LoGelfo and as actually seen by Sgt Howard. Sgt. Howard testified the abrasions were consistent with "road rash" that is, abrasions sustained by a person who was held on the ground but continued to move.

Probable Cause Issue

42. Petitioner has held a permanent General Certification as a law enforcement officer since November 25, 2013. Petitioner was a sworn law enforcement officer with the GPD on May 10, 2019. However, following Weaver's complaint and its investigation, Respondent notified Petitioner, on November 3, 2020, that its Probable Cause Committee (hereinafter, "PCC") would meet to decide whether Respondent should take action against the Petitioner's Officer Certification.

43. The matter came before the Respondent's PCC on November 18, 2020 for review and the PCC was asked to determine if there was enough information to find probable cause existed that Petitioner violated:

- a) Rule 12 NCAC 09A .0103(24)(b), by committing a Class B misdemeanor pursuant to N.C.G.S. § 14-33(c): Assault Inflicting Serious Injury; or, Class B misdemeanor pursuant to N.C.G.S. § 14-230(a): Willfully Failing to Discharge Duties; and/ or,
- b) Rule 12 NCAC 09B .0101(3), by failing to meet the Minimum Standards for Criminal Justice Officers, specifically through a Lack of Good Moral Character

44. Although Petitioner provided the PCC with a release so it could obtain his complete personnel file as well as a release to obtain any employment, medical, and military service files, there is nothing in the record to reflect whether the PCC did, in fact, obtain any of those things, and; aside from the Respondent's exhibits introduced—which consisted mostly of Lt. Groccia's Internal Affairs Memorandum and its attachments—there is no indication in the record of what the PCC actually considered in its deliberations.

45. However, after hearing from Petitioner and his counsel, the PCC found probable cause to believe that Petitioner committed a Class B Misdemeanor to wit: Failure to Discharge Duties and Lack of Good Moral Character.

46. No probable cause was found for the assault allegation.

47. As a result, Respondent notified the Petitioner, on December 16, 2020, that it proposed suspension of his Officer Certification:

- a) for a period of not less than five years for willfully failing to discharge his duties as a law enforcement officer based on his alleged conduct during the May 10, 2019 traffic stop and,
- b) for an indefinite period for failing to meet or maintain the minimum employment standards that every criminal justice officer shall have good moral character.

48. Chief Greene took a pay cut to leave GDP. When he was appointed as Chief of the Pitt County ABC Board, the Board tasked him to “go after [Petitioner] for the job” of Investigator for the ABC but make sure Petitioner would not be a liability to the Board. In doing his due diligence as part of hiring Petitioner, Chief Greene investigated Petitioner’s background, including the May 10, 2019 incident. He obtained the Internal Affairs file from GPD and reviewed all of the officers’ interviews therein. He came to the conclusion that Petitioner’s “story was the only one that held. Between the two interviews, all the other officers’ stories changed—some enough for criminal prosecution. ...Gillen said he didn’t see but later says he saw [Petitioner] grab [Weaver’s] shirt and skin. [Yet,] at the jail, Weaver’s shirt [wasn’t] torn or stretched.”

49. Moreover, Chief Greene testified that the “GPD was losing officers left and right. Eighty percent of the force at that time had 3 years’ or less.” He defined an ‘excessive use of force’ as “anything outside the minimum force necessary to subdue a suspect. ...[But you must] ‘one-up’. If met with force, you must one-up that force used against you. Never lose control.” Based on what he knew, Chief Greene had no doubt in his mind that Weaver was attempting to flee.

50. Because Petitioner (would be) and now is an applicant for law enforcement officer certification with Pitt County ABC Law Enforcement, Chief Greene also investigated Petitioner’s references, as required by Respondent, to make certain no sworn officer was concerned about Petitioner’s trustworthiness or honesty. Chief Greene further checked with the Pitt County District Attorney to be certain Petitioner would not be excluded from testifying on behalf of the State based on the May 10, 2019 incident.

51. Chief Greene’s investigation produced no evidence that Petitioner ever willfully failed to discharge his duties as a law enforcement officer or that Petitioner did not meet the minimum standards that every criminal justice officer must demonstrate good moral character. Chief Greene had two sworn Investigators working for him. He hired Petitioner as an unsworn Investigator with all belief that Petitioner is fully qualified to obtain his justice certification again.

52. There is no dispute that Petitioner exhausted his administrative remedies. Petitioner timely sought review by the Office of Administrative Hearings and the hearing on his case took place in Halifax, North Carolina on August 2-3, 2021 and a remote hearing to close evidence on August 31, 2021.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. 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 or Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Respondent is authorized by Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify criminal justice officers, and revoke, suspend, or deny such certification. *See* 12 NCAC .0204.

3. Pursuant to 12 NCAC 09A .0204(b)(2) and (b)(3)(A), Respondent may deny certification of a justice officer when the Respondent finds probable cause to believe the applicant for certification or the certified officer has committed a crime or unlawful act defined in N.C.G.S. §§ 14-33 (Assault) or 14-230(a) (Willful Failure to Discharge Duties). Respondent may also deny certification if the officer fails to meet the minimum standards for criminal justice officers by failing to “be of good moral character pursuant to G.S. 17C-10 as evidenced by...not having engaged in any conduct that brings into question the truthfulness or credibility of the officer, or involves ‘moral turpitude.’” 12 NCAC 09B .0101(3)(h).

4. Respondent found no probable cause existed that Petitioner committed the misdemeanor of assault against Mr. Weaver, in violation of N.C.G.S. § 14-33.

5. Contrarily, Respondent found probable cause existed that Petitioner had willfully failed to discharge his duties when: “After a verbal exchange between [Ppetitioner] and Mr. Weaver [a handcuffed suspect in Petitioner’s custodial care, Petitioner] opened the back door of the vehicle, pulled Mr. Weaver from the vehicle and assaulted him by delivering knee strikes to his body and slamming him to the ground.” *Resp. Exh. 3* (emphasis added.) Yet no one actually saw Petitioner open the door of the vehicle. No one actually saw Petitioner knee-strike Mr. Weaver. No one testified that Petitioner “slammed [Mr. Weaver] to the ground.” Most importantly, no other sworn officer present at the time testified that they believed Petitioner used excessive force in subduing Mr. Weaver. To the contrary, at least two officers who knew Mr. Weaver testified they believed he was either trying to flee or certainly would have if he had the opportunity.

6. N.C.G.S. § 14-230. Willfully failing to discharge duties reads, in pertinent part:

(a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true

intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

N.C.G.S. § 14-230(a).

7. Nevertheless, in finding there was no probable cause to support assault, and having no eyewitness to the actions, and no officer able to definitively state Petitioner used excessive force, there is insufficient, credible evidence to prove by a preponderance of the evidence that Petitioner committed the Class B misdemeanor offense of “Willfully Failing to Discharge Duties” on May 10, 2019, in violation of N.C.G.S. § 14-230.

8. Respondent found probable cause existed that Petitioner “failed to meet the minimum standards that every criminal justice officer shall demonstrate good moral character, when...[Petitioner] made untruthful statements to the Greenville Police Department Internal Affairs personnel who were conducting an internal investigation concerning [Petitioner’s] actions on May 10, 2019. *Resp. Exh. 3*. However, Respondent produced no witnesses at hearing to attest to any untruthful statements made by Petitioner. More telling, every witness at hearing—both for Petitioner and for Respondent—who was interviewed by Lt. Groccia testified under oath that they were essentially coerced into telling Lt. Groccia whatever she wanted to hear for fear of losing their jobs. The greater weight of the evidence supports that Lt. Groccia’s internal investigation was more of a witch hunt than a search for the truth and, that at the expense of good officers.

9. As such, there is insufficient, credible evidence to prove by a preponderance of the evidence that Petitioner made untruthful statements to Internal Affairs and thereby fails to meet the minimum standards by failing to demonstrate good moral character.

PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends that Respondent **GRANT** Petitioner’s application for criminal justice officer certification and arrange for Petitioner to be trained in de-escalation tactics.

NOTICE

The **North Carolina Criminal Justice 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).

The Undersigned hereby orders that agency to 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.

SO ORDERED, this the 29th day of October, 2021.



Karlene S Turrentine
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 at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), 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 who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Mary-Ann Leon
The Leon Law Firm, P.C.
maleon@leonlaw.org
Attorney For Petitioner

Jason P Caccamo
North Carolina Department of Justice
jcaccamo@ncdoj.gov
Attorney For Respondent

Brenda Rivera
NC Department of Justice
brivera@ncdoj.gov
Attorney For Respondent

This the 29th day of October, 2021.



Jerrod Godwin
Administrative Law Judge Assistant
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000