

STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 01728

Anthony Donnell Spellman Petitioner, v. North Carolina Criminal Justice Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before the Honorable Karlene S. Turrentine, Administrative Law Judge, on November 14, 2022 in Ayden, Pitt County, North Carolina and, concluded on December 1, 2022 in Elizabeth City, Pasquotank County, North Carolina, as per to courtroom availability and the parties' agreement. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

THE PARTIES

The parties to this contested case are the Petitioner Anthony Donnell Spellman ("Petitioner" or "Mr. Spellman") and Respondent North Carolina Criminal Justice Education and Training Standards Commission ("Respondent", "the Commission", or "CJETSC").

APPEARANCES

For Petitioner: Dan M. Hartzog, Jr.
Hartzog Law Group
2626 Glenwood Avenue
Raleigh, North Carolina, 27608
Attorney for Petitioner

For Respondent: Ameshia Cooper Chester
Special Deputy Attorney General
North Carolina Department of Justice
Special Prosecutions/Law Enforcement Section
9001 Mail Service Center
Raleigh, North Carolina, 27699-9001
Attorneys for Respondent

WITNESSES FOR PETITIONER

Kim Spence
James Adams
Valerie Jackson
Leonardo Lee Custis
Frederick Lee Yates
Anthony Donnell Spellman, Sr., Petitioner

WITNESSES FOR RESPONDENT

Eddie Buffaloe, Secretary of the NC Department of Public Safety
Williams George Williams, III
Steven Norman
Eric Smith
Latoya Flanigan
James Avent
Judy Kelley

EXHIBITS

For Petitioner:

EXHIBIT NO.	PETITIONER'S EXHIBITS ADMITTED INTO EVIDENCE
1	2-2-2022 Statement from Leonardo Custis—no objection
2	2-4-2022 Statement from George Long—no objection
3	1-31-2022 Statement from Debbie Jean Parker—no objection
4	Statement from Preston White—no objection
5	1-25-2022 Statement from George Lorenzo Barner—no objection

EXHIBITS

For Respondent:

EXHIBIT NO.	RESPONDENT'S EXHIBITS ADMITTED INTO EVIDENCE
1	12/2/21 Probable Cause Committee Memorandum 22/062 Re: Anthony Donnell

	Spellman—no objection
2	3/4/2020 State Bureau of Investigation (SBI) Letter from Norman to Buffalo Re: Employee Records—admitted over Petitioner’s objection (Relevance)
3	3/4/2020 911 Telephone & Radio Transmission Recording Request Form Re: Employee Records—no objection
4	3/4/2020 Memorandum from Buffalo to Norman Re: Employee Records—no objection
5	Disk containing radio traffic for 9/18/2019 and 9/19/2019 (911 transmissions received in response to Resp. Exh 3 above)—admitted over Petitioner’s objection(Relevance)
6	Pasquotank Central Dispatch (CAD) List of Events for 9/18/2019 and 9/19/2019—over Petitioner’s objection (Relevance)
7	9/18/2019 Email with attachments Re: Shift Report from Lamar Battle—admitted over Petitioner’s objection (Relevance)
8	9/19/2019 Email with attachments Re: Shift Report from Anthony Spellman—admitted over Petitioner’s objection(Relevance)
9	Emails Re: Security/Business Checks—admitted over Petitioner’s objection (Relevance)
10	9/19/2019 Email with attachments Re: Squad 1 Shift Report from Ervin Rodriguez— admitted over Petitioner’s objection (Relevance)
11	1/23/2020 Incident/Investigation Report 2020-123 Re: 1932 N Road Street, Elizabeth City, NC 27909 / Curtis Markham—no objection
12	1/29/2020 News article titled, “Three Gambling Facilities Raided”—admitted over Petitioner’s Hearsay objection - not offered for the truth of the matter asserted therein
13	4-23-2020 Buffalo Letter to Hopkins Re: Request for Assistance Completing Internal Affairs Investigation—no objection
14	4-29-2020 Memorandum from Buffalo to Spellman Re: Internal Affairs Investigation (IA-0120)—no objection
15	4-29-2020 Memorandum from James to Spellman Subject: Directive to Appear at Internal Investigation Interview—no objection
16	6-9-2020 Memorandum from Smith to Buffalo Re: Sergeant Anthony Donnell Spellman---admitted over Petitioner’s objection (Relevance)
17	Audio Recording of Spellman Internal Affairs interview recorded on 5-6-2020—no objection
18	7-24-2020 Memorandum from Avens to Buffalo Subject: Demotion to Rank of Police Officer II— admitted over Petitioner’s

	objection
19	7-30-2020 Memorandum from Buffaloe to Spellman Subject: Response to “City of Elizabeth City Employee Grievance to Department Head” in Reference to Demotion to Police Officer II—no objection
20	8-20-2020 Investigator Kelley’s Typed Review of SBI Investigation 2019-02759 Re: Suspect Curtis Markham/ Gambling Devices—admitted over Petitioner’s objection only as far as corroborated by Testimony in the Record from Judy Kelley and Steven Norman
21	7-30-2021 Affidavit of Separation (Form F-5B) Re: Anthony Donnell Spellman—no objection
22	8-1-2014 Incident / Investigation Report 14-2737 Re: 108 N. Poindexter Street, Elizabeth City, NC 27909 / Curtis Markham-admitted over Petitioner’s objection
23	8-4-2014 News Article: <u>Elizabeth City Man Charged with Running Illegal Gaming Business</u> ; www.13newsnow.com —admitted over Petitioner’s Hearsay objection- not offered for the truth of the matter asserted
24	11-8-2021 NC Department of Public Safety Offender Public Search Results Re: Curtis Markham—admitted as a Public Record
25	11-8-2021 NC Department of Public Safety Offender Public Search Results Re: Dempsey L. Teacher Jr.—admitted as a Public Record
26	10-4-2021 Written statement by Anthony Donnell Spellman Re: Internal Affairs Investigation and leaving Elizabeth City—no objection
27	3-10-2022 Letter from Criminal Justice Standards Division to Spellman Re: Proposed Suspension of Law Enforcement Officer Certification—no objection
28	4-8-2022 Letter from Hartzog to Training and Standards Commission Re: Request for Administrative Hearing Regarding Proposed Suspension of Law Enforcement Officer Certification—no objection
29	1-28-2014 Memorandum from Chief Buffaloe to All members of the Elizabeth City Police Department Re: District Attorney’s Office (Areas of Discussion) including Internet Sweepstakes—admitted over Petitioner’s objection

ISSUE

Whether by a preponderance of the evidence, Petitioner acted in violation of N.C.G.S. § 17C-10, 12 NCAC 9A .0204(b)(2) and, 12 NCAC 9B .0101(3)(h) of the Commission’s Administrative Rules and thereby, Respondent had probable cause to suspend Petitioner’s law enforcement officer certification for an indefinite period of time for lack of good moral character.

APPLICABLE STATUTES AND REGULATIONS

N.C.G.S. § 17C *et seq.*
N.C. Gen. Stat. § 18B-500 (2018) and N.C. Gen. Stat. § 143B-927

N.C.G.S. § 150B *et seq.*
12 NCAC 9A .0204(b)(2)
12 NCAC 9B .0100 *et seq.*
25 N.C.A.C. 1J.0600 *et seq.*

12 NCAC 09A .0204(b)(2)
12 NCAC 09A .0205(c)(2)
12 NCAC 09B .0101(3)(h)
12 NCAC 09B .0100

12 NCAC 09B .0101(3)(h)

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

In making the FINDINGS OF FACT, the Tribunal has weighed all the evidence and assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of each 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.

FINDINGS OF FACT

1. The parties are properly before this Tribunal, in that jurisdiction and venue are proper and there was no objection to the Undersigned being the judge in this matter. Both parties received proper notice of hearing, and; Petitioner exhausted his administrative remedies and received Respondent's Proposed Suspension of Correctional Officer Certification Letter on March 10, 2022 via certified mail.

2. Pursuant to Chapter 17C of the North Carolina General Statutes and Title 12, Chapter 9A of the North Carolina Administrative Code, Respondent has the authority (and responsibility) to certify law enforcement officers and to revoke, suspend, or deny such certification when appropriate. N.C.G.S. § 17C-6(a)(3).

3. Petitioner had been in law enforcement for almost thirty (30) years prior to the incidents giving rise to this contested case. He testified that he "started in law enforcement [in] December of '92." 2T.302. Initially he was certified as a deputy sheriff by the NC Sheriffs' Education and Training Standards Commission through the Perquimans County Sheriff's Office from January 4, 1993 through June 6, 1997.

4. Thereafter, he was certified by Respondent as a law enforcement officer through the Elizabeth City Police Department ("ECPD") from July 18, 1997 through July 30, 2021. Resp. Exh 21. *Also see* 2T.337. Petitioner also worked as a law enforcement officer for the Winfall Police Department from 2015 through June 30, 2021.

5. Petitioner left the employ of the ECPD and began employment as the Chief of Police with the Winfall Police Department (“WPD”) Petitioner was Chief of Police from January 2021 to the end of the 2022 fiscal year (June 30, 2022). 2T.333. At some point following Petitioner’s becoming Windfall’s Chief of Police, the matter at issue came to Respondent’s attention.

The Relevant Facts Leading Up to the Commission’s Determination

6. On January 28, 2014, ECPD Chief of Police Eddie Buffaloe issued a Department-wide Memorandum with the subject: “District Attorney’s Office (Areas of Discussion)”. Resp. Exh 29. In that Memorandum, Chief Buffaloe stated:

“District Attorney Andrew Womble has advised all law enforcement agencies in our district to be aware of the following areas of discussion **and to adhere to instruction from his office accordingly:**

Internet Sweepstakes – In accordance with North Carolina General Statute 14-306.4, it shall be unlawful to operate an Internet café or video poker system. **To that end, all places that permit such activity have been deemed illegal.** If you know of such a business operating within this jurisdiction, it should be reported, and the owners charged accordingly. Also, **no employee from this agency shall patronize such an establishment in accordance with our policies and procedures prohibiting Department members from being involved with illegal activity.**

Thank you for your immediate attention to these matters of importance, as requested by the District Attorney’s Office. **I [Chief Buffaloe] expect everyone’s full compliance regarding the directives given in this correspondence.** If additional information is needed concerning any of these matters of discussion, you may feel free to contact me for further clarification.”

Resp. Exh 29 (emphasis added, some in original). This email went to all employees of the ECPD via electronic mail, including Petitioner. Latoya Flanigan’s testimony.

7. It is uncontested that for some years thereafter the legality of internet cafés in North Carolina oscillated back and forth in the courts but, at no time relative to this matter did Chief Buffaloe rescind his January 28, 2014 directive to his subordinates.

8. Petitioner testified that he didn’t recall the 2014 memo. 2T.357:4-14. He asserted instead that the first time he learned that the ECPD believed there was an issue with him going to gaming establishments was when he learned he was under an Internal Affairs (“IA”) investigation. 2Tp. 306.

9. 17 North Recreational Center (“the Rec Center”) and Mildred’s Plaza (“Mildred’s”) were internet cafés a/k/a gaming establishments (“game rooms”), in or around Elizabeth City. The game rooms were owned by Curtis Markham (“Markham”) and managed by Dempsey Teachey (“Teachey”).

10. For several months of 2019 and 2020¹, during the time he worked for ECPD, Petitioner and his wife visited the Rec Center to play internet sweepstakes games some two or three times per week. 2T.323:20-23. The two usually went together but sometimes Petitioner’s wife went by herself. 2T.307:23 – 308:5, Petitioner testified “the game room was a quiet environment of *elderly* people, for the most part. 2T.308:12-14. However, during his IA interview, he stated that he and his wife preferred the Rec Center because of the *older* crowd, and he defined older as aged 30 and up.

11. At trial Petitioner also admitted that during those same months of 2019 and 2020, he played internet sweepstakes games on his cell phone while “[o]n duty, but [only] on [his] lunch break[—never] while [he] w[as] actively on duty[.]” 2T.324:4-15. But during the IA interview, Petitioner (having played that same “morning before [he] got off”) stated he played “[a] couple times a week or so...It all just depends on how busy I am. If I’m not busy, I may pull over and play some.” Resp. Exh 16, p.10; *see also* FOF #53(t).

12. Lt. William Williams (“Williams”) has been with the Pasquotank County Sheriff’s Office since 1998 and has “been working investigations ever since.” 1T.70:22-23. Over the course of his and Petitioner’s careers in the Elizabeth City area, Williams had come to know Petitioner and the two were cordial when meeting. 1T73:12-17, 1T74:1-2. Petitioner agreed the two had known each other for years and were not on bad terms. 2T353:4-6.

13. In 2019-2020, Williams was working as part of the Federal Bureau of Investigation’s (“FBI”) task force investigating the illegal gambling operations of Markham, during which time the task force surveilled the Rec Center for “a couple of months.” 1T.71:1-3, 83:2-4.

14. On September 18, 2019, at about 11:30 p.m., Williams was in an unmarked car conducting surveillance from the State Employees Credit Union’s (“SECU”) parking lot adjacent to the Rec Center. 1T.71. The subject SECU is within the city limits of Elizabeth City, but the Rec Center is not. 1T.71:17-25.

15. Williams saw a marked slick-top ECPD patrol car

¹ There is a great discrepancy in Petitioner’s stories regarding how long he had been patronizing the Rec Center. *See* FOF #53(c). At trial Petitioner stated he had only been going for 3-4 months but, during his IA interview, Petitioner stated he had known Markham for some 2 years—and the only capacity in which he had known him was from going to the game room. When questioned about this contradiction, Petitioner agreed there was “a big difference between three to four months and two years[...] but like I say, I didn’t know for sure, and I just gave you that number, but I don’t recall telling [Captain Smith] two years either.” 2T.342:13-18. Nevertheless, *Petitioner’s voice can be heard telling Captain Smith that he knew Markham for (about) 2 years.* Resp. Exh 17 @ 26:12.

“going through the parking lot of the 17 North Rec Center, and it was driving slow, obviously in my training and experience doing what I call a security sweep, using his headlights to shine on different cars that were parked in the parking lot where patrons, you know, had parked to go inside of the business.

At that time, I didn’t know who it was, but based off of where the Credit Union is and he -- and the Rec Center, there’s a -- it’s not really a road but kind of like a public vehicle area or street that goes back to a business subdivision that separates the two properties.

And once I saw that he was going to cross -- or at the time, that the car was going to cross over into the parking lot, then I just turned [my vehicle] around so that I could interact with whoever it was, and I found the driver to be Mr. Spellman.”

1T.72:3-18; *see also* Resp. Exh 16, p.3.

16. Petitioner pulled his patrol vehicle close to Williams’ unmarked vehicle and the two men spoke to each other. Petitioner told Williams “... he was just...look[ing] out for” the Rec Center and “[h]e didn’t want them to get robbed.” 1T.73:5-9. Petitioner was dressed in his police uniform. *Id.* Petitioner further told Williams “... he wasn’t...employed by the business[,]...he was just doing it for kindness.” 1T88:7-9.

17. As Petitioner drove away, Williams heard Petitioner say into his police radio (talking to Central Communications) that he was “clear from Old Oak” which usually meant the officer was just leaving the place mentioned. 1T.74:7-9. Williams thought it strange because Old Oak was 2-3 miles away from the Rec Center where Petitioner was actually located. Williams testified “it was [absolutely] odd to me because he was, in fact, leaving from a different location. [Petitioner] wasn’t at Old Oak.” 1T.75:3-5.

18. On direct while not directly confirming he was in the Rec Center’s parking lot that night, Petitioner testified he “r[a]n into Deputy Williams...not in a parking lot of the Rec Center [but...]it was in the parking lot of the State Employees’ Credit Union....” 2T319:22-320:5. Petitioner went on to say he “was riding through the back parking lot [of SECU]” when he saw Williams’ vehicle and “started coming up behind [it]... and then “pulled up beside [it]....” 2T320:10-15.

19. When explaining the strange radio transmission of his checking out from Old Oak, Petitioner stated he didn’t remember until he “happened to catch a glimpse of [his]... computer screen[which] was sitting open[and...it] still show [ed him] actively out at the Old Oak Subdivision. I said [to myself], ‘Well, shucks. I forgot to clear. ... So I immediately cleared from Old Oak.... I forgot to clear Old Oak when I left Old Oak, which happens a lot.” 2Tp. 321-22.

20. On cross-examination, Petitioner testified that Williams was untruthful “when he testified that he observed [Petitioner] in [the Rec Center’s] parking lot[.]” 2T352:4-7. Petitioner denied doing the security sweep at the Rec Center saying, “I never told [Williams] I was looking out for that business.” 2T377:20-21. When the Tribunal asked for clarification, the following exchange took place:

The Court: So, did you tell...Williams...you were there just checking on your wife?

Petitioner: No, I don’t—I don’t remember telling him that I was there checking on my wife. ...I may have....

The Court: You had a conversation. He’s telling you why he’s there. Do you say nothing?

Petitioner: I may have. I don’t remember saying that. I don’t recall that I told him that....

2T379:7-17.

21. Petitioner said he had not been there at the Rec Center “that day [September 18, 2019]. ...I am testifying to that because, like I say, I ran into him at the Credit Union parking lot. He was sitting in the Credit Union parking lot. And when I left the Credit Union parking lot, I went back to town...I cleared that area.” 2T377:4-13. Petitioner did not address where he had been *prior* to entering the SECU parking lot.

22. On September 19, 2019 a little after 3:00a.m., the FBI task force was conducting another surveillance operation of Markham and his employees of the Rec Center. Williams averred:

“...we were attempting to follow...Teachey who we identified to [sic] the manager of the Rec Center. He was driving a car. And when he left a little after 2:00 a.m. from the...Rec Center, we lost him. ...[A]bout 20 minutes later we located [Teachey’s] vehicle and reestablished surveillance at Mildred’s Plaza.

Mildred’s Plaza is -- was eventually established to be a second location that was being operated by -- managed by Mr. Markham to be an illegal gambling operation. But at this time, Mr. Markham’s truck and Dempsey Teachey, the manager’s car, were located at the Plaza, and it was 2:30 a.m. [or] sometime around that when we found that. So, then we decided just to set up surveillance again on Mr. Teachey [there at Mildred’s Plaza].

And at this time, ...I saw another slick top [ECPD] patrol car do another security sweep through the parking lot [of Mildred's]. ...[S]ame type of action, like driving real slow, using the headlights to like shine in vehicles and in different areas. And then the vehicle left the parking lot and headed back...[s]outh on North Road Street towards Elizabeth City.”

1T75:16-22, 76:2-7, 13-21, 77:1-3, 6-9.

23. Although Williams could not definitively identify the driver of that ECPD patrol vehicle that night, he believed it to be Petitioner doing this September 19, 2019 security sweep. 1T.77, 1T.83:12-17; Resp. Exh 16, p.4.

24. Petitioner described security sweeps the same as Williams described. 2T350:6-14. On direct examination, when asked “...Deputy Williams...believed it might have been you [he saw] driving slow in the parking lot. ...Do you know if it was you[who did the September 19th security sweep at the Rec Center]?” Petitioner answered: “No, sir. Not –no, sir. ...*I didn’t see anybody, and I don’t recall* riding through the parking lot either.” 2T. 322:14-18 (emphasis added).

25. Petitioner was similarly evasive on cross-examination. When asked to confirm his testimony that it was not him that Williams saw that September 19th night, Petitioner responded: “Yes, ma’am, it is [my testimony]. *Because if he [Williams] didn’t see me...it could be eight different [other] officers it could have been.*” 2T350:15-25 (emphasis added).

26. Petitioner continued to be evasive when asked if he was on duty that night:

Ms. Chester: “...[O]n that night, September the 19th, isn’t’ it true that you were on duty?”

Petitioner: “There were two sergeants on duty. And, also, the other thing is you have other officers that still drive their cars when they’re off.”

Ms. Chester: “But my question to you is...isn’t it true that you were on duty?”

Petitioner: “As far as I know, yes.”

2T351:1-8.

27. On September 25, 2019, the FBI task force observed Petitioner arrive at the Rec Center “a little bit after 2:00 a.m.” driving his personal car (1T77:21-24), a “little red car” (with license plate CPE-8796) with a female passenger in. 1T.78:1-2; Resp. Exh 16, p.4. Williams saw them enter and stay in the business for “a little over an hour.” 1T.78:2-3, 4-5. When they returned to leave in the red car, Petitioner “did another security sweep just as [Williams] described before. ...And [Petitioner] was surveilled leaving the Rec Center

all the way to his home. ...[W]e followed him all the way to where he turned onto the road to go to his house. We did not follow him down—all the way to his house. It would have been too obvious, but we did follow his car to where he...made a turn onto his road called Lambs Grove Road.” 1T78:6-7, 11-19.

28. Although Petitioner admitted it was him and his wife that the task force saw arrive at and visit the Rec Center on September 25, 2019, Petitioner denied doing a security sweep. 2T381:19 – 382:7.

29. Search warrants were executed against Markham’s businesses after September, 2019 and resulted in his entering a guilty plea. 1T.81:2-6, 18, 23 – 82:6.

30. Williams testified that Markham was known by law enforcement “to operate...an illegal gambling operation[and h]e ha[d] been charged with it before in Elizabeth City.” 1T79:3-5. Teachey was “a known drug/cocaine user, previously [sic] cocaine dealer...[and] known to hang out with known prostitutes.” 1T79:5-9. Williams believed this information about Markham and Teachey was “widely known amongst the law enforcement professionals in th[e] area[.]” 1T79:15,-16, 19-20. Moreover, based on his knowledge, training and experience, Williams believes Petitioner knew of Markum and Teachey’s criminal history.² 1T.90:2-9.

31. However, although Petitioner testified that he had been born and raised in Elizabeth City and, at the time of the task force investigation, almost all (specifically, 24 years) of his law enforcement experience had been in Elizabeth City, Petitioner denied knowing anything about Markham’s or Teachey’s backgrounds prior to the internal investigation against Petitioner. 2T.337:11-13, 338:12-14.

32. Petitioner came to the attention of Assistant Special Agent in Charge, Steven Norman (“Norman”), of the NC State Bureau of Investigation (“SBI”) when Williams advised him that Petitioner “had been observed at an illegal gambling establishment....” 1T.82: 10-20; 1T93:24-1T94:1-13.

33. Markham was interviewed as part of the FBI investigation of his businesses and he, too, indicated that Petitioner frequented his gaming establishment and that he had asked Petitioner to do security for the business. 1T.80:5-12.

34. Sometime in January, 2020, the task force raided the Rec Center. 1T.85:12-19.

35. Petitioner testified that he only “found out that there was an issue with [his] frequenting these establishments” and that “the [ECPD] believed there was an issue with [him] going to these establishments[.]” when he learned of the internal affairs investigation.

² Upon upholding Petitioner’s demotion, Chief Buffaloe also stated he believed Petitioner knew of Markham’s and Teachey’s criminal backgrounds especially since the ECPD had raided one of Markham’s gaming businesses in 2014. Resp. Exh 19, p.2.

2T306:15 – 307:4. “That’s the first time I found out anything about the game room and dealing with the Police Department...” 2T307:2-3. In an exchange with his attorney:

Mr. Hartzog: And let’s talk about this investigation here. When you found out that there was an issue with you frequenting these establishments, did you cooperate in that investigation?

Petitioner: Yes, I cooperated 100 percent when it was brought to my attention that I was under the internal affairs investigation, which is when I found out. I didn't know that my name was tied to anything prior to the internal affairs investigation.

Mr. Hartzog: So that’s the first time you found out that there -- that the Elizabeth City Police Department believed there was an issue with you going to these establishments?

Petitioner: That’s the first time I found out *anything* about the game room and dealing with the Police Department, yes, sir.

Mr. Hartzog: Did you know that anyone was investigating these establishments prior to that?

Petitioner: No, not prior to not actually being pulled in, other than the fact that *there was a raid done*. I didn’t know anything prior to that.

Mr. Hartzog: And the raid you’re talking about, was that the raid back in -- hold on one second -- back in 2014?

Petitioner: No, sir.

Mr. Hartzog: The raid in January of 2020, you’re talking about?

Petitioner: Yes, sir. I knew nothing about one prior to that.

Mr. Hartzog: And after the raid in January of 2020, did you ever go back to that establishment?

Petitioner: No, sir, I did not.

Mr. Hartzog: Okay. So, the first time you knew there was an issue with that establishment was the raid?

Petitioner: Yes, sir.

Mr. Hartzog: And following the raid, you never went back?

Petitioner: No, sir, never went back.

2T306:15 – 307:22 (emphasis added).

36. Yet, Petitioner admitted to having contact with Markham after the raid about Markham's gaming establishment in Virginia. 2T318:5-8. Petitioner recalled, "after the raid, I had one contact with Dempsey Teachey about my wife getting money on the game [to play] and one call to Curtis Markham about the Virginia business[.]" 2T319:4-8.

Petitioner testified he didn't know anyone was investigating these establishments prior to that. "No, [I didn't know] prior to not actually being pulled in, *other than the fact that there was a raid done*. I didn't know anything prior to that." 2T307:5-9.

"... the first time [I] knew there was an issue with that establishment [the Rec Center] was the raid[, ...a]nd following the raid, I...never went back." 2T307:18-22.

37. On March 4, 2020, via memorandum, Agent Norman sent an official request "for...service records pertaining to...Petitioner" to Chief Buffaloe. Resp. Exh 2. The request specifically asked for September 18, 2019, and September 19, 2019 "CAD Reports, Time Sheets, E-mails, and Shift Reports" pertaining to Petitioner and stated Petitioner "has been referenced as potentially being privy to a case in which the [SBI] has been requested to provide investigative assistance." *Id.*

38. Upon receipt of Norman's memorandum, Chief Buffaloe: a) requested a copy of all radio traffic from September 18-19, 2019 from Paquotank-Camden Central Communications (Resp. Exh 3); b) obtained the radio traffic audio (Resp. Exh 5); c) obtained the Pasquotank Central Dispatch CAD List of Events for the requested dates (Resp. Exh 6); d) obtained the requested shift reports (Resp. Exh 7-10), and; e) sent the obtained materials to Norman accompanied by a memorandum acknowledging the submission. Resp. Exh 4.

39. As a result of Norman's request for information and indication that Petition was possibly entangled with a case falling within the SBI's purview, on April 23, 2020 Chief Buffaloe formally requested the Wilson Police Department to assist his department by conducting an Internal Affairs investigation into Petitioner's involvement with the suspects and establishments that were being investigated by the SBI. Resp. Exh 13.

40. Eric "E.G." Smith, Deputy Director of the Office of Special Investigations for DPS was, during the time in question, a Captain for Wilson PD and the Professional Standards Commander. 1T.112:13-18. He testified that after receiving the request for investigative assistance from Chief Buffaloe, he conducted the IA investigation and, thereby, worked with Sgt. LaToya Flanigan of the Pasquotank Sheriff's Department. 1T.113:14-18.

41. ECPD Lieutenant Latoya Flanigan (Lt. over Professional Standards) served as a liaison between the Elizabeth City Police Department and the Wilson Police Department for purposes of the IA investigation (1T.138:11-13) and, provided Respondent's Exhibits 3 and 5-10 to Captain Eric Smith of the Wilson Police Department. *See* 1T.138:7-19;

42. On April 29, 2020, Chief Buffalo notified Petitioner via memorandum that, on that same date, “an official internal affairs investigation...ha[d] been initiated...” (Resp. Exh 14) and, that he was required to “cooperated fully with the assigned investigator and answer *any* and *all* questions truthfully.” *Id.* (emphasis in original).

43. In a second memo sent the same day, Administrative Captain Larry James directed Petitioner to appear on Friday, May 01, 2020 at 10:45 a.m. to be interviewed. Resp. Exh 15.

44. Captain Smith called Agent Norman on May 1, 2020 to gain understanding of the SBI’s criminal investigation that was going on. 1T.115:1-5; Resp. Exh 16, p.2. Norman told Smith of Williams’ observations of Petitioner during the SBI’s illegal gaming investigation of Markham and Teachey (Resp. Exh 16, p.2-3), the same observations to which Williams testified at trial. Then Smith called Williams. 1T.115:8-22.

45. Agent Norman testified that the subjects of the investigation were Curtis Markham and Dempsey Teachey “with the understanding that there was a potential law enforcement nexus, being Mr. Spellman.” 1T.105:19-23. (Respondent-)Investigator Judy Kelley’s summary of the SBI’s investigation was admitted into evidence as Respondents Exhibit 20.³

46. Agent Norman sought to obtain pen registers, which request was granted by order of a Superior Court Judge, for Markham’s and Teachey’s cell phone numbers. 1T.97:10 -- 98:12. A pen register is “a real-time record of incoming and outgoing calls and text messages from a cellular device by telephone number.” 1T.97:11-16.

47. The pen registers in this case revealed that, although Petitioner “had sparse communication with Mr. Markham, who was the reported owner of the establishments[,... he had] nearly daily communication[.]”⁴ with Mr. Teachey, who was believed to be the manager of the establishments. 1T.98:15-21; Resp. Exh 20, p.1-2. Agent Norman said the registers revealed that the amount of Petitioner’s phone contact with Teachey “was second only to Mr. Teachey’s wife in the frequency.” 1T.106:18-20.

48. Agent Norman credibly testified that, in his attempt to interview Petitioner, Norman and another agent went to Petitioner’s residence “at a time of day where we assumed he would have been awake, knowing that he worked second or third shift. It appeared he was home but did not come to the door. Then I also made a phone call or two and left a voice mail [sic] that was not returned.” 1T.99:1-11. Norman believed “[a]ll the vehicles that we knew him to use were home...I think that the patrol vehicle was home as well[but] I can’t recall for certain[.]” *Id.* at lines 12-15.

49. Contrarily, Petitioner took the position that Agent Norman was lying about coming to his home (2T.355:1-6) because his wife “most likely would have been home and...would have answered the door[.]” 2T.353:10-15. Petitioner claimed to never having seen Agent Norman on

³ Respondent’s Exhibit 20 was admitted into evidence over Petitioner’s objections but only as much as it corroborated Respondent-Investigator Judy Kelley’s and SBI Agent Norman’s testimonies at trial. 1Tp. 195:1-15.

⁴ In his IA interview with Smith, Petitioner confirmed his cell phone number and that he had had the same number for some 3-4 years. Resp. Exh 17 @ 43:50, 45:33.

his camera at his home and because Agent Norman “testified there was on patrol car in [Petitioner’s] yard possibly[,] I wouldn’t have been home.” 2T.353:23 –354:4.

50. Petitioner further testified that he didn’t “remember having—recall having a voice mail [sic] or anything on [his] phone[]” from Agent Norman. ...[I]f someone calls my phone and I don’t know the number, if you leave a message, I will return your call or get back in touch with you. But if a random number just pops up on my phone, I don’t always call that number back. So, to my knowledge, he never called me that I know of. ...I don’t recall getting a voice mail [sic] message or anything.” 2T.386:5-18.

51. In January of 2020, the Pasquotank County Sheriff’s Office performed a raid of the Rec Center and seized over \$37,000.00 in United States Currency and several computers. Resp. Exh 11, p.5. As a result, Markham was charged.

52. On May 6, 2020, Captain Smith and Sgt. Glenn Neal of Wilson PD engaged in a recorded interview with Petitioner at the Elizabeth City Police Department, after gaining Petitioner’s signed and dated agreement to the disclosures (including that he had *no* right to remain silent but must answer truthfully and fully and, no answers given could be used in any criminal procedure against him). 1T.116:3-10.

53. An audio recording of that IA interview with Petitioner (as outlined in FOF #50) was admitted into evidence as Respondent’s Exhibit 17, and revealed the following:

- a. At the time of the interview, including Petitioner, there were seven (7) ECPD officers on Petitioner’s same night shift—but only one (1) other sergeant besides himself. Resp. Exh 17 @ 15:27.
- b. Petitioner acknowledged Curtis Markham owns the Rec Center gaming establishment and he knew him “from going to the business.” Resp. Exh 17 @ 21:40
- c. **Petitioner had known Markham for two (2) years “maybe” (*Id.* @ 25:54) and only from going to the game room—he didn’t know Markham prior to going to the game room. *Id.* @ 26:12.**⁵
- d. Petitioner also acknowledged knowing “Dempsey [Teachey] that works there.” Resp. Exh 17 @ 29:22. Petitioner named other folks who worked there: Tom and Shawn, but did not know their last names.
- e. Petitioner did not know there were illegal games at the Rec Center. Resp. Exh 17 @ 33:25.
- f. Petitioner had gone through the parking lot while on duty “but not just to be riding through...I’ve gone to check on my wife. They have poor reception there and, if I call my wife and can’t get up with her and already knew she was there, I’d just check on her. Outside of that, no. Didn’t check on the business, ask nobody ‘bout the business, none of

⁵ However, at trial, Petitioner contrarily stated he had only been going to the Rec Center for 3-4 months—presumably the months during which he was surveilled. 2T.307:23-308:5, 340:8-13.

that.” Resp. Exh 17 @ 35:20. He’d never done a security check—“not for the business, no. ...Wasn’t related to the business at all.” Resp. Exh 17 @ 36:00.

- g. Petitioner remembered encountering Dep. Williams in the SECU parking lot and stated that he was checking the back of the SECU building. Resp. Exh 17 @ 37:53. Petitioner acknowledged that “a lot of times there’s a deputy parked across the street by the business...even when I was off, I know a deputy is often there...sitting out there watching the business.” Resp. Exh 17 @ 39:28. Petitioner never got out of the vehicle to check doors at the Rec Center (Resp. Exh 17 @ 40:00), but always gets out to check doors when he’s doing security checks at the SECU. However, he only *sometimes* calls in his security checks at SECU.
- h. Petitioner knew the Rec Center was *not* within the city limits. Resp. Exh 17 @ 22:40. He also knew it was *not* within his law enforcement jurisdiction (Resp. Exh 17 @ 22:57) but there is some property (SECU) that has been annexed into the city right next to it. Resp. Exh 17 @ 23:03.
- i. Petitioner and his wife went to play there, though he could not say how often —sometimes together, sometimes apart. Resp. Exh. 16, p.6. Petitioner indicated that he visited the establishment frequently enough to get to know Markham, and Petitioner’s wife went to school with Teachey. Resp. Exh 17 @ 42:28; *see also* Resp. Ex. 16 at pp. 6-7; 2T.371:22 – 372:6.
- j. Petitioner only had conversations with Markham about the game room—when they were open, if he had a problem with a game, only about the game room. “...If I thought the games were illegal, I wouldn’t have gone there. I’d been to others around the State.” Resp. Exh 17 @ 51:00. Markham gave Petitioner free playing time sometimes...on his birthday or when the game froze up and when it came back up, his money wasn’t there. Resp. Exh 17 @ 57:05. (Petitioner called Markham and Teachey to discuss issues with the games and get assistance when there were glitches, or the games froze. (Resp. Ex. 16 at pp. 6-8)).
- k. Gambling is the only thing he and his wife do in their spare time—“we don’t drink, we don’t party, we don’t do none of that. ...We go to Dover (Delaware), Harrington (Delaware), stuff like that—when we get the chance to go.” Resp. Exh 17 @ 59:20; *see also* Resp. Ex. 16 at p. 8.
- l. When asked for Markham’s phone number, Petitioner complied and admitted he had spoken to Markham just the night before (Resp. Exh 17 @ 1:02:05) so his wife could play a game at home. The game was one from Markham’s gaming business called Stateline (in Hickory, Virginia). Resp. Exh 17 @ 1:03:35.
- m. When asked if he and Markham were friends, Petitioner said they were associates “because of the business. ...We’re not friends...I don’t go to his house and he don’t [sic] come to mine.” Resp. Exh 17 @ 1:08:39 . “I got the other guys numbers, too. I got Tom and Shawn’s numbers. Resp. Exh 17 @ 1:10:29.

- n. Markham and Teachey asked Petitioner at one point if he could do security for the business, but he advised them he could not because ECPD handled all security within the city limits and since they were in the county, they would have to contact the Sheriff's Office for security. Resp. Exh 17 @ 1:14:31.
- o. Petitioner was familiar with Mildred's and knew it was "part of Curtis [Markham]'s...business." Resp. Exh 17 @ 1:17:17. There was no signage at that gaming business location. "It hadn't been there long." Resp. Exh 17 @ 1:18:40. And to Petitioner's knowledge, there was no gaming establishment still open there near Elizabeth City. Resp. Exh 17 @ 1:19:50.
- p. Petitioner "thinks" he went to Mildred's once while on duty "to pick up some food." Resp. Exh 17 @ 1:21:14. The guy that runs the place cooks sometimes and invited him [Petitioner] to stop buy and pick up some food so he did. "Sometime you just go and pick it up because they're being generous...even if you don't eat it." He had been out there "to check on his wife" and would just drive through "but that's it." Resp. Exh 17 @ 1:24:49. "Not for the business...never committed to do anything for the business..." Resp. Exh 17 @ 1:25:05. The businesses never gave Petitioner anything except food.
- q. When asked how often he had conversations with Teachey, Petitioner responded: "Oh shoot. Hardly ever. Like I said, always related to the business and...not many times." Resp. Exh 17 @ 1:33:10.
- r. As for whether he knew Teachey was a convicted felon, Petitioner stated, "I know he's been in trouble with the law but I don't know if he's a convicted felon."⁶ Resp. Exh 17 @ 1:33:35. (Petitioner admitted at trial that he had heard Teachey tried to be a "little muscle man[]" (2T.327:10-14) but, Petitioner claimed he meant Teachey "liked to fight. He had a reputation that he would fight, *or* he thought he was tough, not that he was a bouncer or a bodyguard." 2T.327:16-19.)
- s. When asked if he played while on duty, Petitioner said, "On the internet...at least one (1) time...I know I have...sitting on the side of the road on break...on [my] cell phone." Resp. Exh 17 @ 1:37:17.
- t. Even though Petitioner claimed to realize there was a problem with the games *after* the establishments were closed down, in response to when the last time was that he played while on duty, Petitioner admitted, "I think...**this morning before I got off**, I played some—20 or 30 minutes, I'm not sure. ...It all depends...if I'm real busy through the night, I'm not going to stop and play. If it's a dead night...I'll play—not taking another lunch break." Resp. Exh 17 @ 1:38:42; *see also* Resp. Ex. 16 at p.8, 10.
- u. While on duty, Petitioner sometimes paid Markham to play the games. Resp. Exh 17 @ 1:43:12.

⁶ The record reflects Teachey had been arrested 14 times for various assault and drug charges. Resp. Exh 16, p.14.

- v. Petitioner said he made it known at the ECPD that he played at these gaming establishments, “It wasn’t a secret.” Resp. Exh 17 @ 1:46:57. “Everybody knew I played.” Resp. Exh 17 @ 1:47:19. “I questioned if there was anything illegal about it...I asked the Chief...I told him, ‘if it’s illegal, I don’t need to be there.’ (Resp. Exh 17 @ 1:48:17) ...**The Chief did tell me that (I don’t remember the exact wording but) it was under review or being looked into, but it hadn’t yet been deemed illegal.**⁷ But I don’t want to put words in his mouth.” Resp. Exh 17 @ 1:45:45. Petitioner understood there were questions as to the gaming establishments’ legality.

54. Thereafter, Smith attempted to interview Markham by producing questions he wished him to answer. But by that time, having already been charged, Markham was represented by counsel and the District Attorney “was not inclined to give [him] any credit or leniency for answering [Smith’s] questions.” Resp. Exh 16, p.11-12. So, Markham declined to be interviewed or to answer the questions provided.

55. At hearing, Petitioner again acknowledged that North 17 Rec Center was outside of his jurisdiction and stated that when he went by the business while on duty, he did not perform security checks. Resp. Ex. 16 at p. 6.

56. Petitioner demonstrated a detailed knowledge of Markham’s business operations, specifically, Petitioner knew that Markham operated a game room called “State Line,” located in Hickory, Virginia, near Chesapeake. Petitioner also knew that Markham operated a game room in the Mildred’s Plaza strip mall even though there was no signage there, and that location was geared toward the “younger crowd.” Resp. Ex. 16 at p. 8. In his IA interview, Petitioner defined “older” as 30 years of age and older.

57. Even *after* the raids and the businesses were shut down, knowing the games were illegal, Petitioner remained in contact with Markham (and his associates) and continued to play the online versions of Markham’s games on his phone. 2T.372:8 – 373:4.

58. Once the IA investigation was completed, Smith reduced his investigative findings to writing on June 9, 2020. *See* Resp. Exh 16, p.1.

59. Smith’s investigation report cited the following actions and policy violations:

- a) Petitioner travelled outside his law enforcement jurisdiction to both the Rec Center and Mildred’s while on duty (Resp. Exh 16, p.13), in violation of ECPD General Order #2 Code of Conduct 2:26 Jurisdiction: “Members shall not go beyond the municipal limits

⁷ At trial, Petitioner testified he asked the Chief “in passing [one] night”... “Well, Chief, I just want to bring it to your attention because I don’t want to violate any policies or anything of the Police Department. ...I do go to the game rooms...I want you to know that I do go to the game room and play. ...The reason I asked [the Chief] is because I know that before there had been some questions, and I wasn’t aware of any judgment or anything that made them absolutely illegal. ...And he did—**he did make a comment back to me that there was still—there was still questions.** ...He just told me that it had not been determined by the Courts that they were illegal.” 2T.309:20, 310:12-16, 25, 311:1-2, 5-11. To the contrary, Chief Buffalo could recount no such conversation with Petitioner. 1T.52:14-18, 59:24-60:4.

while on duty except in fresh pursuit of violators of criminal law, traffic infractions, or when authorized or directed by competent authority.” Resp. Exh 16, p.15.

- b) Petitioner failed to avoid regular and/or continuous associations and dealings with persons he knew or should have known were either: under criminal investigation or indictment or who had a reputation in the community or department for present involvement in felonious or criminal behavior. The report found that: a) Petitioner had both Markham and Teachey’s contact information in his cell phone; b) Petitioner had spoke with Markham just the night before the IA interview—which was months after the Rec Center (owned by Markham) had been raided and closed; and, c) Petitioner knew Teachey had been in trouble with the law. Resp. Exh 16, p.14. All of these acts were in violation of ECPD General Order #2 Code of Conduct 2:37.8:

“Employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the department for present involvement in felonious or criminal behavior, except as necessary to the performance of official duties, or where unavoidable because of other familiar relationships of the employee.”

Resp. Exh 16, p.15.

- c) Petitioner continued to play the internet sweepstakes games “even after he knew that law enforcement officers were investigating.” Resp. Exh 16, p.14. This was also in violation of ECPD General Order #2 Code of Conduct 2:37.8.
- d) Petitioner devoted on-duty time to play internet sweepstakes games and drove out of the jurisdiction to check on his wife while she was playing at the gaming establishments (Resp. Exh 16, p.14-15), in violation of ECPD General Order #2 Code of Conduct 2:6.1 Professional Conduct and Responsibilities: Employees shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Department, including, but not limited to conduct prohibited by this Directive, and; in violation of ECPD General Order #2 Code of Conduct 2:19: General Conduct: 2.19.14: Employees shall not shop while on duty, nor devote any of their on-duty time to any activity other than that which relates directly to their work or as may be directed by competent authority, and; General Conduct: 2.19.9: No employee shall engage in any activities or personal business while on duty that may cause neglect or inattention to duty, including, but not limited to, the use of department owned equipment for personal use.” Resp. Exh 16, p.15.

60. Since 2018, ECPD Deputy Chief James Avens has been responsible for the day-to-day operations of the Department, and the IA lieutenant reports directly to him. 1T.159:6-12. Petitioner’s IA investigation was farmed out to other agencies because ECPD’s practice was that “[i]f...other agencies [were] involved [already], [ECPD] like[s] to get an agency that’s not involved or even have [sic] any idea about the case or familiar with the players.” 1T.159:1-3.

Avens utilized Smith's investigation report to assist him in determining what needed to happen in the matter. 1T160:21 – 161:9.

61. As a result of the findings and conclusions of the IA investigation, Petitioner was demoted in rank from Sergeant to Police Officer II. Resp. Exh. 18, p.1.

62. In his July 24, 2020 notice of demotion to Petitioner, Dep. Chief Avens cited several issues, including but not limited to:

- a) Petitioner admitted to conducting business checks and not calling them in to Central Communications—which is what Petitioner *claimed* had occurred at the SECU the night of September 18, 2019 when Williams observed Petitioner. However, Dep. Avens noted that a “records check for the [SECU] and the Doctor’s Office...show the last business check [Petitioner] called in...was on *April 10, 2018*” and that Petitioner had only 5 other business checks at the SECU—“from May 2015 until June 2016...[and] none at the Doctor’s Office....” Resp. Exh. 18, p.2-3.
- b) Petitioner admitted to going out of jurisdiction to Mildred’s to check on his wife and to pick up food but had not obtained permission to do so. “As a front-line supervisor[.]” Petitioner was “very familiar with [the policy] and had even issued disciplinary actions to [his] subordinates...for violation of the same policy. These inconsistencies [affect] your ability to lead effectively...[are] cause for concern.”⁸ Resp. Exh. 18, p.3.
- c) Petitioner admitted to pulling his patrol car aside to play internet sweepstakes games “a couple times a week...for ‘maybe thirty minutes or so’ while on patrol. ...His attention to playing internet sweepstakes game[s] while on duty distracts [him] from completing tasks efficiently, to include supervisory tasks and being a mentor to the officers who are looking to you for guidance and example. ...[T]his...cannot be tolerated.” Resp. Exh. 18, p.3-4.
- d) Regarding his relationship with Markham and Teachey, Dep. Avens wrote:

“As a seasoned officer of the law enforcement profession, and having spent your nearly thirty-year career in the Elizabeth City/Pasquotank/Perquimans county region of North Carolina, I find it improbable that you were unaware of the criminal activities of these men—as both men have criminal histories which span approximately twenty-five years or more[, including that] Markham was the owner of the gambling establishment that was located at 108 North Poindexter Street in 2014; and the [ECPD] Officers executed a search warrant on th[at] establishment, seizing gambling machines, narcotics, and weapons. This is information that you undoubtedly had first-

⁸ At trial, Petitioner attempting to distinguish his leaving the jurisdiction from that of his subordinate whom he disciplined by stating, “he was told not to go there is why he was wrote up for being out of his jurisdiction.” 2T.379:5-6. Yet Petitioner failed to acknowledge that, by Chief Buffalo’s 2014 Memorandum, Petitioner had also been told not to go to the gaming establishments. See Resp. Exh. 29.

hand knowledge of, as an officer of the [ECPD....and you] kn[e]w [Teachey has] been in trouble with the law[...describe[ing him]...as someone who has tried ‘to be a little muscle man.’

It is important to note that your interactions with both men [Markham and Teachey] have not just been in passing, [n]or limited to brief or random interactions. You acknowledge seeing them both while in the gaming businesses, and also interacting with them (via cell phone) outside of the gaming business[es]—this is by your own admission. Even after the raids on the...Rec Center and Mildred’s Plaza, you continued to have contact with the owners *knowing that they were being investigated by local law enforcement.*

Lastly, your actions and behaviors of continuing gambling at the...Rec Center, and continuing associations with two felons that are connected to this same business, shed a negative light on not only the [ECPD], but on you as an officer and as an individual. These same decisions have caused other Law Enforcement Officers, both Local and State Officers, to question whether you are involved [in] or assisting in a gambling criminal enterprise. The citizens who patronize these gambling establishments see you and your connection to the owners, employees and the business which puts the [ECPD]’s (and your) reputation in question. Finally the Officers under your command see your violation of policy and procedure which causes these Officers to think they can also violate policy and procedure. For the numerous violations of departmental policy and bringing into questions your ability to lead because of the bad decisions you have made, you are demoted to the rank of Police Officer II, to be effectively [sic] immediately.”

Resp. Exh. 18, p.4-5 (emphasis in original).

63. On July 29, 2020, Petitioner timely grieved his demotion by requesting Chief Buffaloe to reconsider Dep. Avens’ decision.

64. Chief Buffaloe directly met with Petitioner and gave him “opportunity to express any thoughts, comments, or concerns[.]” he wanted the Chief to consider. Resp. Exh 19, p.1. After full consideration of “the totality of policies violated[.] and the impact those violations have[.]” in a Memorandum to Petitioner dated July 30, 2020, Chief Buffaloe upheld Petitioner’s demotion and indicated he had many issues with Petitioner’s behavior but that his biggest concern was Petitioner’s association with Markham and Teachey and

“the negative light that [such] association...has shed not just on [Petitioner] as an Officer, but on our Department as a whole.

While you say that you were unaware that it was Curtis Makham who owned and operated the gaming business located at 108 North Poindexter Street, which was

raided by our department in 20214 resulting in money, games and drugs seized, **clearly you were aware that on January 23, 2020, the gaming businesses that you admit to going to often were both raided; and both shut down by law enforcement. At that point, even if you did not know before that Markham and Teachey were involved in criminal activity, you knew then that they were under investigation of law enforcement.** You made the decision at that point to continue to be in contact with both men, which was a very poor decision. When interviewed on May 6, 2020, by [WPD] investigators, you advised that the last conversation you had had with Markham was the “*night before*” (May 5th) and the last conversation you had with Teachey was a “*couple weeks before*” (which would have been sometime in April 2020). It should have been abundantly clear to you during this time frame that you should distance yourself from these two men and it is unfortunate that you did not do so immediately following the January 2020 law enforcement raid of their businesses. [Yet, by your own admission, you were still in contact with them in April and May 2020.]”

Resp. Exh 19, p.1-2 (some emphasis in original, some emphasis added).

65. Despite upholding the demotion, Chief Buffaloe “agree[d] with [Petitioner] that the recommendation for pay deduction was too severe[and, as such he] recommended that the reduction only be a five percent reduction, which place[d Petitioner] in the top range of Police Officer II pay, rather than bottom range. [Chief Buffaloe wrote:] I believe given your tenure with this agency that this recommendation is fair and adequate[...but] I will not overturn the recommendation and decision of your demotion, given the totality of your actions and behaviors and the policies that were violated.” Resp. Exh 19, p.2.

66. Petitioner thereafter exhausted his administrative remedies before the City Manager and the Personnel Appeals Committee. Thereafter, Petitioner left ECPD to begin his work as Chief of Police for Winfall.

The Commission’s Determination

67. Because law enforcement officers’ certification is contingent on their job with a law enforcement agency, Respondent was notified when Petitioner separated from the ECPD. In Petitioner’s case, there was “a memorandum regarding an investigation where the [ECPD] had requested the Wilson PD [to] do that investigation [of Petitioner].” 1T.179:10-12.

68. The Criminal Justice Standards Division assigned Investigator Judy Kelley “[t]o investigate alleged violations of the Commission’s rules or...the North Carolina Administrative Code.” 1T.179:2-8.

69. Ms. Kelley reviewed Petitioner’s statement and requested the internal investigation from ECPD. 1T.179:20-23. She also reviewed the SBIT investigation—but only as the specific parts related to Petitioner which were provided by SBI’s attorney. 1T.180:1-4.

70. There were three (3) allegations against Petitioner before the Commission: a) a Class B misdemeanor offense of gambling; b) a Class B misdemeanor of willful failure to discharge duties, and; c) a lack of good moral character.

71. Upon completing her investigation, Ms. Kelley sent her Committee Memorandum to the Probable Cause Committee “the Committee”) for consideration. 1T.180:21-25; Resp. Exh 1.⁹

72. Upon consideration, the Committee found no probable cause on the first two (2) allegations against Petitioner but found probable cause on the third allegation, specifically, that Petitioner lacked good moral character. 1T206:12-14.

73. On March 10, 2022, in its Proposed Suspension Letter (mailed certified) to Petitioner, Respondent stated that the Committee:

“found that probably cause exists to suspend [Petitioner’s] law enforcement officer certification based upon [his] failure to comply with the minimum standards for certification as a law enforcement officer set forth in 12 NCAC 09A .0204(b)(2) and 12 NCAC 09B .0101 (3)(h) which provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer fails to meet or maintain one or more of the minimum standards required by 12 NCAC 09B .0100 for the category of the officer’s certification. 12 NCAC 09B .0101 (3)(h) requires that every criminal justice officer employed by an agency in North Carolina shall be of good moral character pursuant to N.C. Gen. Stat. § 17C-10 and not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves ‘moral turpitude[]’ [which] is conduct that is contrary to justice, honesty or morality[.]...”

Resp. Exh 27, p.1.

74. Based on its findings, the Committee determined it should “suspend [Petitioner’s] certification as a law enforcement officer for an indefinite period of time for lack of good moral character.” Resp. Exh 27, p.1.

75. Petitioner filed his Petition with the Office of Administrative Hearings on May 4, 2022.

76. At trial, Petitioner called several character witnesses to testify on his behalf.

77. Kem Spence, Mayor *Pro Tempore* of Elizabeth City and a retired officer with the Department of Corrections, served on the Elizabeth City council during the time that Petitioner served in the police department. 1T.217:6-17. He testified that he has known Petitioner since

⁹ Along with Ms. Kelley’s Committee Memorandum, the Probable Cause Committee considered all the documents labeled Respondent’s Exhibits *except* exhibits 5, 17, 27, 28, and 29. 1T183:10-14.

probably 8th grade. *Id.* at lines 23-25. He testified that Petitioner has always been honest and straight up. 1T.219:1-3, 10-14.

78. Spence believed Petitioner to have good moral character but admitted that he does not interact with Petitioner since Petitioner left ECPD and even when he did, Spence “just saw him—[they did] not hang[] out or anything[...and they] don’t...work together[or] attend the same church[.]” 1T.224:16 – 225:4. Moreover, Spence did not know Petitioner gambled or went to gaming establishments. When asked if he thought going to those businesses “might...shed a poor light on you as a public servant[.]” Spence answered for himself saying, “Well, that too, plus I’m a minister, so I wouldn’t be gambling.” 1T.227:2-5.

79. Lt. James Adams, of the Pasquotank County Sheriff’s Department, testified that he worked for the ECPD for thirty (30) years prior to working the last eighteen (18) years for the PCSD. During his time at ECPD, he worked with Petitioner directly for about four (4) years when Petitioner was a traffic officer and Adams was commander of the Traffic Patrol. 1T.230. Adams said he continued to have some other “periodic” interaction with Petitioner thereafter for some years as well, mainly talking on the phone. 1T.235:19 – 236:9. He found Petitioner to be “honest, forthwith – coming, and no nonsense.” 1T.231:1-2. Adams also testified that he never knew Petitioner to be untruthful. *Id.* at lines 3-4.

80. Adams further testified that he was a mentor for Petitioner and Petitioner had discussed his demotion with him when it happened, but Petitioner had not told him about his going to the game rooms until Petitioner was under IA investigation:

“THE COURT: ...So I heard you say that you didn’t know that Petitioner was going to the game rooms until he told you about the investigation?”

THE WITNESS: Right.

THE COURT: So, he called you about the investigation?

THE WITNESS: He called me -- yes, he called me to tell me what was involved. He also elaborated the fact that he did nothing wrong. And I just listened, and I didn't make any comment besides the point that -- you know, I don't judgmental [sic] anyone.

But it was a bad situation for him because that's not his moral character -- something like this. I never known him to do anything like that. We had other game rooms out of the city that got shut out after a while, but I mean him going and being in a game room, it was kind of shocking to me. ...I was shocked.

THE COURT: And that was because you believed what?

THE WITNESS: Because I knew him and not knowing [inaudible] involving any gambling or anything like that since I've been knowing him for the 30 years there

and the 18 years at the Sheriff's Department. And I also realize people make a mistake sometimes, but it was a bad decision.

THE COURT: Okay. But you do believe that this poor judgment---

THE WITNESS: Yes, because based on policy and procedure, which is what it would come under and -- yes. And I'm a firm believer, if you are wrong, well, there's consequences.

THE COURT: And you believe he was wrong?

THE WITNESS: Yes. But not -- but I will still reiterate that sometimes the decision we make is not the best decision, but that's out of character for him.

1T.236:10-22, 244:5-21, 245:9-16, 246:22 – 247:6. And though Adams believed there should be some disciplinary action against Petitioner, he stated, “not to the magnitude of taking his [law enforcement] certification.” 1T.246:19-21.

81. Town Clerk for the Town of Winfall, Valerie Jackson testified that she saw Petitioner “basically everyday” he was on duty as Winfall Chief of Police. 2T.254:20 – 255:2. Petitioner came into the office to check for mail and the two talked sometimes. 2T.255:2-4. Ms. Jackson even bent Petitioner's ear about her three grandchildren who got into trouble sometimes and Petitioner would have talks with them to discourage them from ever wanting to be in the court system. *See* 2T.255. Ms. Jackson often relied on Petitioner's advice and found Petitioner to be an honest and moral person. 2T.257:13-23. , after which time Ms. Jackson no longer had dealings with Petitioner. 2T.259:18 –260:4.

82. Magistrate Leonardo Custis of Pasquotank County testified that, while Petitioner was on the ECPD, “every once in a while, [Petitioner] would bring defendants before the magistrate's office, and I would process those defendants based on the information that he g[a]ve[] me. ...Other times Officer Spellman would come to the office to monitor his officers that he supervises. He[wa]s just there to observe to see what his officers [were] doing, and I would interact with him during those time frames also.” 2T.272:8-11, 15-18. However, Magistrate Custis did not work with Petitioner at all when Petitioner was Winfall Police Chief. 1T.272:19-21.

83. Custis found Petitioner to be an honest police officer and “very credible when he was providing testimony to [Custis]. ...He[wa]s very succinct, very brief...He just provide[d] the facts as they are or as they were during that time.” 2T.273:11-13, 15, 22-23. Custis opined that Petitioner was “the epitome of what I think a police officer should be.” 2T.275:21-22. However, Custis admitted that “the extent of [his] knowledge and experience of [Petitioner was] confined to [his] engagements with [Petitioner] pursuant to [his] role as a magistrate.” 2T.277:18-21. *See also* 2T.278:1-2.

84. On direct examination, when asked on direct about Petitioner's dealings with the gaming establishments:

Mr. Custus: It is my understanding that for -- the times that Officer Spellman went to these gaming establishments were in the capacity of his duties doing security checks. I know that Elizabeth City police officers are required or were required to do at least 20 security checks of buildings or establishments during their shift, and I believe that to be the times that he would go to those particular gaming halls.

Mr. Hartzog: And you're referring to when he's on duty, correct?

Mr. Custus: That's correct. ...

Mr. Hartzog: Does the fact that Mr. Spellman may have visited these establishments or spoken with their owners change your opinion in any way?

Mr. Custus: It does not, but only again because I believe that to be in the capacity of him doing his security checks at those particular establishments.

Mr. Hartzog: And if he had gone off duty and frequented this establishment at times, would that change -- does that change your testimony in any way?

Mr. Custus: If the gaming establishment is a legally established hall -- gaming hall, then I have no issues with anybody going to those -- to those things off duty.

Mr. Hartzog: So, if it was open and operating as far as Mr. Spellman knew, legally, that wouldn't change your opinion?

Mr. Custus: It would not.

2T.276:1-10, 17-25, 277:1-7

85. But on cross-examination, the following exchange took place:

Ms. Chester: Does it surprise you to know that Mr. Spellman while off duty actually visited the gaming room?

Mr. Custus: It does not surprise me because I'm not interested in what anybody does off duty during their time whether you're police officers or teachers or what have you. I'm not concerned with those kinds of things.

Ms. Chester: So, if you were to learn that this game room that Mr. Spellman frequented was owned and managed by a person who was a convicted felon, would that concern you at all?

Mr. Custus: That would bother me a little bit, yes.

2T.278:9-18.

(Following Petitioner's objection and Respondent's reading into the record parts of Resp. Exh 16, 18 and 19 which had already been admitted into evidence, Petitioner's objection was overruled, and Mr. Custus' cross-examination continued.)

Ms. Chester: Magistrate Custis, what I'm after is, would it concern you if you learned that Mr. Spellman had contact with this person who ran this business after the business was raided and shut down by law enforcement?

Mr. Custus: Yes, that would cause me some concern.

Ms. Chester: And why does that cause you concern?

2T.283:24 – 284:4.

Mr. Custus: For me personally -- again, only in my capacity as a magistrate -- well, maybe even as a citizen -- that would give me pause, cause me some concern about why one of our officers are associating with known felons or associating with the illegal gaming hall if they're illegal.

2T.287:19-23.

86. Winfall Mayor Frederick Yates worked with Petitioner for about three years including when Petitioner was Winfall Police Chief. 2T.294:1-7, 296:8-12. Mayor Yates said the town decided to hire Petitioner as police chief “[b]ecause he was...available and he was kind and courteous.” 2T.294:22-25. At the time they hired Petitioner, Mayor Yates knew nothing of the IA investigation or its outcome. 2T.295:22. Mayor Yates found Petitioner to be an “outstanding” police chief for Winfall—he had a good reputation with the citizens and carried himself in a “gentlemanly fashion[.]” 2T.296:10-16, 297:2-3. The town wanted to keep Petitioner as police chief but could not afford it. 2T.298:2-7.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (“OAH”) has jurisdiction over this contested case pursuant to 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.

2. Further, the parties stipulated that OAH has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. All Parties are properly before the Office of Administrative Hearings and there is no question as to joinder or misjoinder. There was no objection from either Party to the Tribunal hearing this contested case.

3. 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. The court 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, 436 S.E.2d 588 (1993).

4. 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.

5. Respondent found no probable cause existed that Petitioner committed the class B misdemeanor of gambling, in violation of N.C.G.S. § 14-292, and; Respondent found no probable cause existed that Petitioner committed the class B misdemeanor of willful failure to discharge his duties, in violation of N.C.G.S. § 14-230.

6. However, Respondent did find probable cause existed that Petitioner lacked good moral character, in violation of 12 NCAC 9B .0101 and, on that basis, Respondent found “probable cause exists to suspend [Petitioner’s] law enforcement officer certification for an **indefinite period of time** for [his] failure to meet or maintain the minimum employment standard that every law enforcement officer shall be of good moral character pursuant to N[CGS] § 17C-10, 12 NCAC 09A .0204(b)(2), 12 NCAC 09B .0101(3)(h), and 12 NCAC 09A .0205(c)(2).” Resp. Exh 27, p.2 (emphasis in original).

7. N.C.G.S. § 17C-10 and 12 NCAC 9B .0101(12) require that Petitioner, as a law enforcement officer, “be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E. 2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.”

8. Moreover, “12 NCAC 09B .0101(3)(h) requires that every criminal justice officer employed by an agency in North Carolina shall be of good moral character pursuant to N.C.G.S § 17C-10 and not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves ‘moral turpitude.’ ‘Moral turpitude’ is conduct that is contrary to justice, honesty or morality....” Resp. Exh 27, p.1.

9. Thus, in finding a lack of good moral character,

“The Commission *may* suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer: ...fails to meet or maintain one or more of the minimum employment standards

required by 12 NCAC 9B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 9B .0200 or 12 NCAC 9B .0400 for the category of the officers certification[.]”

12 NCAC 9A .0204(b)(2)(emphasis added).

10. The uncontradicted facts reveal:

- a) Petitioner was an almost thirty (30) year veteran law enforcement officer, with twenty-four (24) of those years having been on the Elizabeth City Police Department.
- b) Prior to the incidents which gave rise to this contested case, Petitioner had a good reputation as a law enforcement officer—honest and no nonsense.
- c) Every member of the ECPD, including Petitioner was advised in January 2014 by Chief Buffaloe that the internet sweepstakes gaming establishments “**have been deemed illegal.**” Further, Chief Buffaloe directed that: “**no employee from the agency [ECPD] shall patronize such an establishment in accordance with our policies and procedures prohibiting Department members from being involved with illegal activity.**” Resp. Exh 29 (emphasis in original).
- d) Although the courts oscillated back and forth on the legality of these gaming establishments, Chief Buffaloe's directive did not pretend to stand on court precedence but on their District Attorney's intention to keep the District's law enforcement officers clean from the fray by simply not patronizing those businesses at all.
- e) Petitioner said he did not remember the memo directive from Chief Buffaloe.
- f) Curtis Markham and Dempsey Teachey had reputations of being involved with criminal activity, had criminal records resulting from their criminal activity in Elizabeth City and surrounding areas and owned and managed, respectively, the Rec Center and Mildred's gaming establishments.
- g) Petitioner claimed not to know anything about either man's criminal history until after the January 2020 raid.
- h) Curtis Markham owned another gaming business within Elizabeth City's city limits, which business the ECPD raided in 2014 and therefrom seized money, games and drugs.
- i) Petitioner claimed to know nothing of this earlier raid.

- j) Petitioner patronized the Rec Center (and possibly Mildred's) some 2-3 times per week, for anywhere from 3-4 months to 2 years—Petitioner having stated at trial it was 3-4 months but having told the IA investigators he knew Markham for 2 years, but only “from going to the business. ...Just from going to the game room.” 2T.341:17-25.
- k) When asked about the discrepancy of how long he had known Markham, Petitioner responded: “I didn’t know for sure, and I just gave you that number, but I don’t recall telling him two years either.” 2T.342:9-17.
- l) Petitioner built a relationship with Markham and Teachey such that he had both their cell phone numbers as well as most of their staff numbers in his cell phone and, Petitioner called one or the other of the men almost “daily.” 1T.98:17-21.
- m) Petitioner said he “d[id]n’t know exactly to say” how often he talked with either men but “ I do know two or three times a week maybe because even if I wasn’t actually playing the game, I would call to see had the jackpots went off, but it was still related to the game.” 2T316:14-25.
- n) Petitioner was observed by non-ECPD law enforcement officers three (3) times in the same week doing security sweeps in the parking lots of the Rec Center and Mildred's in September 2019. These observations were made while the FBI task force was surveilling the gaming establishments and it gave rise to those officers being concerned that Petitioner was a “law enforcement nexus” with the businesses. There was no reason any of these officers should make up said observation about Petitioner.
- o) Petitioner denied that the sweeps occurred stating he never did *any* security sweeps and, in one instance, Petitioner attempted to say his turning around in the parking lot may have *looked* like a security sweep but it was not a security sweep.
- p) SBI Agent Norman went with another officer to see Petitioner at his home but no one answered the door. Norman called Petitioner and left a voicemail on Petitioner's cell phone which was never returned.
- q) Petitioner denied Agent Norman came to his house, asserting instead that Agent Norman had been untruthful about being there. Petitioner further claimed not to remember receiving any voicemails from Agent Norman.
- r) Petitioner claims to have gone, at some point, to ask Chief Buffaloe if the games were illegal and to tell the Chief he was playing the games; but Petitioner's attempt only supports a conclusion that Petitioner himself understood there *may well have been* a problem with the games.
- s) Chief Buffaloe has no memory of such a conversation.

- t) Even after the raid of the Rec Center in January 2020, Petitioner remained in contact with Markham and Teachey. Although he did not patronize the Rec Center thereafter—because it was closed down—he patronized another of their businesses, the Stateline gaming establishment in Virginia.
- u) Even the night before his IA interview (May 5, 2020), Petitioner had had a conversation with them about a game.
- v) Petitioner put forward several character witnesses during the hearing, all of whom had glowing things to say about him but none could opine as to Petitioner’s character related to the gaming establishments and his relationships with Markham or Teachey. Moreover, upon learning the reason for the contested case in which they appeared, most of Petitioner’s witnesses expressed concern that Petitioner—as a law enforcement officer—had consistently patronized a gaming establishment that was deemed illegal and/or that Petitioner would entangle himself in an ongoing relationship with suspected criminals.

11. The main issue arising with Petitioner in the present case is that he, as a law enforcement officer, had an ongoing relationship with Markham and Teachey “who owned and operated...a gaming establishment that law enforcement believed had in it illegal gaming devices[and that Petitioner] continually visited the gaming establishment with the knowledge that [these men] had been in trouble with the law....” Resp. Exh 27, p2. Simply put, in violation of NCGS § 17C-10, 12 NCAC 09A .0204(b)(2), 12 NCAC 09B .0101(3)(h), and 12 NCAC 09A .0205(c)(2), Petitioner continued associations with men he knew or should have known were criminals (or had criminal histories) and not because he had a familial obligation to do so, to the detriment of his own reputation and that of the ECPD. Based on Petitioner’s testimonies and the evidence related hereto, Respondent found Petitioner to be lacking good moral character.

12. Ordinarily, Petitioner would have the burden of presenting a *prima facie* case showing of good moral character. *Matter of Elkins*, 308 N.C. 317, 327, 302 S.E.2d 215, 221 (1983). However, this contested case is conducted pursuant to Article 3A of the Administrative Procedure Act, N.C.G.S. § 150B *et al.* and, there is no statutory allocation of the burden of proof in a contested case heard under Article 3A. In the absence of constitutional or statutory direction, the burden of proof is allocated on considerations of “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).

13. In the present case, Respondent alleges that Petitioner lacks good moral character to hold a North Carolina law enforcement officer certification. Petitioner held such a certification for thirty (30) years, and; to obtain it, he had to demonstrate good moral character. Respondent now contends Petitioner lacks it. While in some cases conviction of a criminal offense of moral turpitude is *prima facie* evidence of lack of good moral character, Petitioner was convicted of nothing. Thus, applying *Peace*, the burden of proof

is properly on Respondent to show that Petitioner's previous good moral character is now absent.

14. Truthful conduct is a requirement of law enforcement officers. "The world in which we live has become more tolerant and accepting of untruthfulness and outright lies. While it may be acceptable in some corners, it is not acceptable for everyone. With some occupations, there is a higher expectation for honesty and integrity, e.g., the judiciary and law enforcement officers. Those with power and authority have a greater responsibility." *Wetherington v. NC Dep't of Pub. Safety*, 270 N.C. App. 161, 193, 840 S.E.2d 812, 834 (2020). Yet, the *Wetherington* court found reason to hold that not all acts of untruthfulness should carry the same penalty and overruled the petitioner's termination for lying about how he lost his hat.

15. In the present case,

"the sanction sought by Respondent goes well beyond loss of specific employment. It entails barring Petitioner, perhaps forever, from working in law enforcement in North Carolina. "Loss of a professional license is more than a monetary loss; it is a loss of a person's livelihood and loss of a reputation." *Johnson v. Bd. of Governors of Registered Dentists of State of Okl.*, 1996 OK 41, 913 P.2d 1339, 1345 (1996).

Moreover, "[t]he right to work and to earn a livelihood is a property right that cannot be taken away except under the police power of the State in the paramount public interest for reasons of health, safety, morals, or public welfare." *Roller v. Allen*, 245 N.C. 516, 518-19, 96 S.E.2d 851, 854 (1957). "The right to conduct a lawful business or to earn a livelihood is regarded as fundamental." *McCormick v. Proctor*, 217 N.C. 23, 6 S.E.2d 870, 876 (1940). Further, there "is a well-recognized gap between the regulation of a business or occupation and restrictions preventing persons from engaging in them to which courts must pay careful attention." *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854, 863 (1940)."

Joe Travis Locklear v. North Carolina Criminal Justice Education and Training Standards Commission, 2023 WL 2711303.

16. Our Supreme Court long ago opined:

"For a definition of good character, we turn to another case in which character was a direct issue: Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents. In the words of Chief Justice Stacy in *In re Applicants for License*, *supra*, 191 N.C. [235] at 238, 131 S.E. [661] at 663:

'[Good moral character] is something more than the absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should or does.

Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing, if it is right, and the resolve not to do the pleasant thing, if it is wrong.”

State v. Benbow, 309 N.C. 538, 548, 308 S.E.2d 647, 653 (1983).

17. Although Petitioner’s prior moral character is unblemished, *all* of Petitioner’s testimony and behavior relating to these gaming establishments was evasive, self-serving and, in many respects, contradictory. Petitioner’s “[m]isrepresentations and evasive or misleading responses, which could obstruct full investigation...[and, m]aterial false statements can be sufficient to show the applicant lacks the requisite character and general fitness” as required to be a law enforcement officer. *Matter of Elkins*, 308 N.C. 317, 327, 302 S.E.2d 215, 221 (1983).

18. Good moral character must be determined on a case-by-case basis, that is, it must be viewed in the context of or “‘in regard to [Petitioner’s law enforcement] job.’” *Crumpp*, 74 N.C.App. at 80, 327 S.E.2d at 601.” *Barringer v. Caldwell Cnty. Bd. of Educ.*, 123 N.C. App. 373, 379, 473 S.E.2d 435, 439 (1996).

19. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. *In re Rogers*, 297 N.C. at 59, 253 S.E. 2d at 919. However, in the case at bar, Petitioner’s actions were not isolated. By his own admission at trial, Petitioner went to the game room for a period of three to four months, frequented the game room two or three times a week and, spoke with Markham two to three times per week. **Even more telling, by his own admission during the IA investigation interview, Petitioner had been going to the gaming establishments for some two (2) years.**

20. Additionally, there is other evidence suggesting Petitioner’s frequenting of the game rooms was much longer than three or four months, as he testified. Lt. Williams understood from his discussion with Petitioner in the parking lot of the State Employees’ Credit Union that Petitioner was checking on the business, not due to any employment, but as a kindness or courtesy. This fact supports the inference that a relationship existed between Petitioner and Markham prior to September of 2019 and is more consistent with the statements Petitioner made to Smith that he had known Markham for two years.

21. Petitioner’s association with Markham and Teachey was not just in passing or limited to brief or random interactions. (Resp. Ex. 18 at p. 4) Petitioner frequented their gaming business, knew a great deal about their enterprise and had their phone numbers saved in his personal phone. A simple offender search on the North Carolina Department of Public Safety database would have revealed that these individuals were convicted felons, but Petitioner should have known, as a native and law enforcement professional for over 25 years in the same locale, that these individuals were involved with the criminal justice system and had a reputation for engaging in criminal activity in the community.

22. Lastly, by Petitioner’s own admission, he questioned whether or not it was appropriate for him to go to the game rooms. The fact that he felt the need to question the

legality of a place he was frequenting indicates a full awareness that his patronization of the gaming establishments was problematic. Petitioner knew, as a law enforcement officer, he should have avoided even the appearance of impropriety.

23. 12 NCAC 09B .0101 requires that every criminal justice officer employed by an agency in North Carolina shall:

(3) be in good moral character pursuant to N.C. Gen. Stat. § 17C-10 as evidenced by the following:

(h) **not engage in any conduct that brings into question the truthfulness or credibility of the officer or involved moral turpitude.**

Moral turpitude is conduct that is contrary to justice, honesty or morality, including conduct as defined in *In re Willis*, 288 N.C. 1, 215 S.E. 2d 711 appeal dismissed 432 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746. 6 S.E. 2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E. 2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decision that cite these cases as authority.

12 NCAC 09B .0101(3)(h)(emphasis added).

24. The North Carolina Supreme Court has long held character and general fitness requirements and good moral character requirements are constitutionally permissible standards. *In re Willis*, 288 N.C. at 15, 215 S.E.2d at 779.

25. Good moral character has been defined as “honesty, fairness, and respect for the rights of others and for the laws of the state and nation.” *Id.*

26. Petitioner acknowledged, as some of his character witnesses did, that he used poor judgment in going to the game rooms and associating with Markham and Teachey; but for Petitioner, it was more than poor judgment. As a law enforcement officer, Petitioner simply ignored his obligation not to associate with criminals because of his love for gaming.

27. The findings of the Probable Cause Committee of the Commission were supported by the preponderance of the competent and substantial evidence and were not arbitrary and capricious.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this case sustains the finding of the Commission in its initial decision to suspend Petitioner’s law enforcement certification. The Undersigned further finds that Petitioner’s prior service and longevity should give cause for the Respondent to utilize its discretion, pursuant to 12 NCAC 9A .0204(b)(2), and review their decision before final action is taken.

NOTICE OF APPEAL

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.

IT IS SO ORDERED.

This the 27th day of April, 2023.



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.

Dan M Hartzog Jr.
Hartzog Law Group LLP
dhartzogjr@hartzoglawgroup.com
Attorney For Petitioner

Ameshia Cooper
North Carolina Department of Justice
acooper@ncdoj.gov
Attorney For Respondent

Erika N Jones
NC Department of Justice
enjones@ncdoj.gov
Attorney For Respondent

This the 27th day of April, 2023.



Chesseley A Robinson
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850