

STATE OF NORTH CAROLINA
COUNTY OF BLADEN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11DOJ04831

DERRICK WAYNE KNOX, PETITIONER, V. NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, RESPONDENT.	
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DERRICK WAYNE KNOX, PETITIONER, V. NC CRIMINAL SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, RESPONDENT.	
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PROPOSAL FOR DECISION

THIS CONSOLIDATED CASE WAS HEARD on April 15-16, 2014 by Administrative Law Judge J. Randall May in Fayetteville, N.C.

APPEARANCES OF COUNSEL

J. Michael McGuinness
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ISSUES

1. Whether Petitioner's justice officer certification should be denied based upon the allegation that Petitioner lacks sufficient good moral character to serve as a justice officer?

A) Whether Petitioner has good moral character?

2. Whether Petitioner's justice officer certification should be denied based upon the allegation that Petitioner committed felonious assault, misdemeanor assault, kidnapping, unlawful restraint or kidnapping?

A) Whether all elements of the charges were established with substantial evidence?

FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses who testified at the hearing, the exhibits admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following findings of fact. In making these findings of fact, the undersigned has weighed all of the evidence, or the lack thereof, and has assessed the credibility and believability of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interests, biases or prejudices the witness may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, and whether the testimony of the witnesses are reasonable and consistent with other believable evidence in the case.

INTRODUCTION AND BACKGROUND

1. Respondents seek to deny Petitioner Derrick Knox a law enforcement certification. Probable cause was found that Petitioner had violated Respondent's good moral character rule and a number of other alleged offenses. These alleged offenses arose from Petitioner's service as a law enforcement officer or deputy sheriff for the Town of Robersonville, the Town of Bethel, the Town of Edenton and the Green County Sheriff. Petitioner had been charged with alleged criminal offenses for assault and felonious assault inflicting serious injury; however, all of those charges were dismissed. Petitioner was charged with assault on a female in 1994 which initially resulted in a prayer for judgment continued but later was dismissed. The undersigned has considered the evidence admitted in support of the allegations and Knox's responses and has attempted to weigh them singularly and then cumulatively.

TRIAL TESTIMONY

Edenton-Stepney

2. The first witness called by Respondent was Jay Fortenbery, the Chief of Police with the Town of Edenton since 2009. T26 Based on the criminal charges against Knox from

the State Bureau of Investigation, Chief Fortenbery had an internal affairs investigation began and he utilized Officer Michael Paul of the Rocky Mount Police Department to conduct the investigation. T31 The matter being examined were the allegations of excessive force regarding Mr. Stepney and Thomas Dale. T33

3. The allegations from Stepney and Dale were previously investigated by the prior Chief, who was Chief Bonner. T369 Chief Bonner exonerated Knox following his interviews. T369 Prior to Chief Fortenbery's arrival in Edenton, Chief Greg Bonner had served as the Chief, for many years as its long term chief. T80-81 Chief Bonner had been a respected Chief for a long time. T81 Chief Fortenbery did not confer with or interview with Chief Bonner about his knowledge regarding the matters involving Knox. T82 Chief Bonner stayed on with the Department as a reserve officer for several years. T83

4. Mr. Paul was given access to personnel files including Knox's personnel file and he was provided the SBI case file for purposes of his review. T85 Chief Fortenbery testified that Mr. Paul of the Rocky Mount Police Department "had access to the entire SBI case file. He had access to the files at the Edenton Police Department . . ." T33

5. There was no court order that authorized Mr. Paul to review the SBI file and there was no court order that authorized Mr. Paul to review Derrick Knox's personnel file. T86

6. Officer Paul of the Rocky Mount Police Department was not a sworn officer for the Town of Edenton and was not given any sort of special appointment by the Mayor or City Council. T84-85

7. Officer Knox observed Deshannon Stepney in violation of the terms of a judicial release order (T52); Stepney fled and Officer Knox chased him on foot and apprehended Stepney.

8. Chief Fortenbery had an "opinion" that Knox hit Mr. Stepney in the back of the head with a pistol. T51 However, there was no meaningful evidence, direct or circumstantial, to establish that Knox struck Mr. Stepney in the head, as Mr. Stepney was not called to testify and there was no evidence to support the contention, it was a "bare bones" contention.

9. There was no evidence offered pertaining to the weapon as to whether there was any blood, hair fragments or otherwise provided any corroborative effect to the "opinion" that Mr. Stepney was struck in the head by a gun. T51 Mr. Stepney was arrested because of a violation of the release order. T52

10. Chief Fortenbery acknowledged that Mr. Paul did not interview Mr. Stepney, and that he, Chief Fortenbery, did not interview Mr. Stepney. T86-87

11. Chief Fortenbery acknowledged that his officers in Edenton shared with him that Mr. Stepney was known to be a member of the Crips gang, that Edenton officers knew him as a drug dealer including a dealer for the distributor of crack cocaine and that Mr. Stepney was

known for hanging around in Town in areas that are known for narcotics distribution. T87 Mr. Stepney was known for loitering in those areas. T87

12. Chief Fortenbery was asked whether Mr. Stepney is a person that lacks credibility and truthfulness and he responded by indicating: "I don't know if he lacks credibility and truthfulness." T88 Chief Fortenbery claimed to not know if Stepney lacked credibility or truthfulness despite the fact that Chief Fortenbery's officers knew Stepney to be a member of the Crips gang, that he was known to be a drug dealer, including the distribution of crack cocaine and that Mr. Stepney was known for hanging around in Town in the areas that were known for narcotics distribution. T87 Chief Fortenbery acknowledged that Mr. Stepney had a quite extensive criminal history for many years. T88

13. Chief Fortenbery talked to Stepney about three weeks prior to trial. T88 Chief Fortenbery testified that Stepney wanted to come testify at trial but Stepney would not give Chief Fortenbery his phone number but he said he would get back in touch with Chief Fortenbery, but he did not. T89

14. Chief Fortenbery did not recall whether Stepney was asked to take a polygraph. T90

15. With regard to Mr. Stepney, Chief Fortenbery acknowledged that there were jail personnel who observed Mr. Stepney, who indicated that Mr. Stepney did not need any medical attention. Chief Fortenbery acknowledged that with the determination made that he did not need medical attention, that it could be hard to say that Mr. Stepney suffered a serious medical injury. T95 For purposes of the charge of felonious assault inflicting serious injury, the admission from Chief Fortenbery negates that element of proof. There was no other medical evidence to support this element.

16. Loitering is an offense in Edenton. T96 If someone is loitering on a corner, it can be appropriate for law enforcement officers to conduct an inquiry. T96

17. Chief Fortenbery learned that Judge Cole had issued an order in court that made very specific restrictions on Mr. Stepney's release. T96 Chief Fortenbery could not recall that Officer Paul had interviewed Judge Cole about his order. T97 No one on behalf of the Department interviewed Judge Cole about the order. T97 It was unclear what difference this would have made regarding Knox's arrest of Stepney.

18. Chief Fortenbery acknowledged that violation of a judge's order is a potential serious offense and is considered contempt of court and it can be a criminal offense. T97 Chief Fortenbery acknowledged that Knox observed a possible act of contempt of court in his presence. T97-98

19. Chief Fortenbery acknowledged that at the time that Knox made some sort of statement to the news media, that it was after Knox had been criminally charged, that Knox had retained counsel to assist him with the charge and it was public knowledge that Knox had been charged. T99

20. Chief Fortenbery acknowledged that in Knox's statement to the press that he did not either attack the chief or say anything about him, the Edenton Police Department or the City of Edenton. T100 Chief Fortenbery recalled that it was something indicating that there is something wrong with Stepney or the investigation. T100

21. Chief Fortenbery was asked about inquiries regarding Knox either from Lt. Pamela Ayers of the East Carolina University Police Department or anyone else by way of his work performance and whether the Chief response regarding Knox's work performance "above average?" T104 Chief Fortenbery indicated that it probably could have been him that indicated that Knox had above average work performance in terms of arrests and things like that. T104-105

22. When asked about whether he said to Lt. Ayers or anybody else at East Carolina that Knox was good officer generally, Chief Fortenbery responded "generally yeah, in the time I worked with him. . ." Chief Fortenbery further explained: "yeah, I didn't have any issues really with Derrick. He was a hard working officer, came to work on time, and he did - - he did those things well. Yes." T105

23. Chief Fortenbery indicated that Derrick Knox never disrespected him as a supervisor. T105 Chief Fortenbery indicated that Knox appeared to be studious when he was at work. T105-106 Knox had a professional demeanor. T106

24. Chief Fortenbery acknowledged that Knox had filed a grievance or wrote a letter complaining about the management of the police department, in a prior grievance. T106

25. Chief Fortenbery acknowledged that Exhibit 19, the Edenton Police Department Professional Standards Report, was authored by Officer Paul and Chief Fortenbery did not write it. T107

26. Chief Fortenbery acknowledged from Petitioner's Exhibit 14, the Edenton Police Department Career Criminal list, that the first person listed in that report is Deshannon Kentay Stepney. T116 Chief Fortenbery testified that based on those reports, that he deemed Stepney to be a career criminal, and that the cases criminal list report is true and accurate. T116

27. Chief Fortenbery acknowledged that Stepney's flight and running from Knox could be very dangerous. T118

Edenton-Dale

28. Chief Fortenbery testified, after examining and referencing page 3 of Exhibit 19, that the Thomas Dale incident occurred back in 2006 and that it involved a traffic check point in the town of Edenton. T39-41 Mr. Dale had been called to the scene after his friends were arrested and cited for underage drinking; they needed a ride, and Dale came to pick them up along with another person. Dale was told to leave the scene, and some words exchanged between him and Knox. T40 Knox informed Dale that he was under arrest and Dale responded "I'm not under arrest . . ." Dale would not get out of the car in response to Knox. T41

29. Chief Fortenbery and Mr. Paul did not interview Mr. Dale. T91

30. The fact that the Edenton re-investigation did not interview either Mr. Dale or Mr. Stepney raises legitimate and serious questions about the completeness of the re-investigation. A serious allegation necessitates a serious investigation. As purported victims and material witnesses, a complete investigation would warrant complete interviews of Stepney and Dale.

31. When Chief Fortenbery was asked how the charge brought by Knox against Mr. Dale was resolved in court, Chief Fortenbery testified “I think he pled guilty to it or it was dismissed. One of those two I can’t recall exactly.” T92 Chief Fortenbery testified that “I think” that Mr. Dale pled guilty to what he was charged with, resist, obstruct and delay.” T92

32. Chief Fortenbery was aware that Mr. Dale apologized for his conduct toward Knox at the station and at court. T92 Chief Fortenbery acknowledged that Mr. Dale indicated that he had been wrong in his behaviors and apologized. T92

33. Chief Fortenbery acknowledged that from observing the video tape, that Mr. Dale, for a considerable period of time in the vehicle, refused to get out of the vehicle upon request and command by Knox. T93 Chief Fortenbery acknowledged that Mr. Dale was non-compliant with the request by Knox for a while. T93 Chief Fortenbery acknowledged learning that Knox told Mr. Dale very clearly that Dale was delaying Knox in checking the license at the roadside. T93 Chief Fortenbery acknowledged that if someone delays an officer in checking licenses while roadside, that is a basis for a criminal offense and is an obstruct or delay. T94

34. Chief Fortenbery acknowledged that the charge brought by Knox against Mr. Dale was “probably appropriate.” T94

Bethel – Vance Stanley Testimony

35. The next witness called by Respondent was Vance Stanley who was employed as the Chief of Police in the Town of Bethel. T122 He came to be the Chief in Bethel when the former Chief of Police was arrested by the Federal Bureau of Investigation for selling drugs and guns out of the Bethel evidence locker. T123

36. Mr. Stanley served as a Lieutenant and Assistant Chief of Police for Bethel, which had between eight or nine officers. T125-126

37. Stanley testified that Knox was issued a warning allegedly for leaving the Town of Bethel unsecured on official business on January 17, 2003. T129 When Stanley was questioned about the particulars of the written warning, he qualified many of his answers such as when he indicated that “no one was left on the street in Town to the best of my recollection.” T130 When explaining a policy that Knox allegedly violated, Stanley testified that “we have a policy of remaining on duty. . .” T135 Stanley testified that “we weren’t allowed to leave town to the best of my knowledge.” T136 When Stanley was questioned as to whether or not Knox was the only one on duty, he responded “I believe so, but I can’t be hundred percent sure.” T130

38. Stanley was questioned about Respondent's Exhibit 22, a written document, that he indicated "was a verbal warning issued to Knox for violating a directive given to him regarding the use of voice recordings . . ." T131

39. On February 20, 2003, Knox allegedly failed to utilize a recorder on a call. T133 Stanley indicated that the agency started using those voice recorders in December, 2002. T133 When asked whether other officers were having a hard time remembering to turn them on, Stanley responded that "I do think we had to warn several people to do that." T133

40. Stanley testified about Respondent's Exhibit 23, a citizen complaint form, whereby he indicated "I don't recall a whole lot about, to be honest with you. It was an issue where it involved an accident with - - mechanic in Town and I think the complaint had to do with how he was treated. He - - he claimed he was treated unfairly by Knox. I can't remember the exact details of it." T137 The Court sustained the objection to Exhibit 23 and further testimony about it. T137

41. Lt. Stanley's memory was very sparse about this matter. T138 When asked about if there was any counseling involving the complaint, Stanley responded that "I can't recall seems like there was a verbal warning about it but I can't be one hundred percent sure." T138 This Court observed on the record that Stanley "really doesn't have a recollection of it." T140

42. Respondent's Exhibit 26 was identified as a write-up for violations of policy on October 1, 2003. T146 This write-up was that he had used poor judgment and when he was dispatched to barking dogs, there was no report done on that matter. T146-147 Stanley did not know what disciplinary action if any was imposed. T147

43. Respondent's Exhibit 27 was a write up against Knox for having failed to complete traffic stop reports on May 12, 2004. T148

44. Respondent's Exhibit 28 was a write up of Knox as a result of Knox not filling out a form that was involved in getting departmental identifications made. T149

45. Respondent's Exhibit 29 was a write up of Knox where Knox had not turned on his recorder for a matter on March 15, 2005. T150 Stanley was not aware of any disciplinary action regarding that write up. T150

46. Respondent's Exhibit 30 and 30A was a list of incidents that Knox was written up for, and Stanley testified that "I'm not familiar with this." T150

47. Respondent's Exhibit 31, the list of write ups that Knox had, was prepared by former Chief Reginald Roberts. T157 Former Chief Roberts was the Chief that was engaging in drug dealing from the Department and stealing evidence who went to federal prison. T158-159

48. Respondent's Exhibit 5 is Knox's first form F5-B, report of separation from the Bethel Police Department. The stated reason for separation was dismissal and the reason was for alleged insubordination. T160-161 Respondent's Exhibit 5A was an additional F-5B report of

separation form for Knox where the reason for separation was listed as resignation. T161 Exhibit 5A demonstrated that the agency would consider Knox for re-appointment and would recommend Knox's employment elsewhere as a criminal justice officer. T162

49. Stanley acknowledged that he had to write up other officers for insubordination in getting all their work done and their reports properly done. T166

50. Stanley acknowledged that he observed that there were times when Knox was a hard working officer. T169 Stanley indicated that there were times when Knox was a good officer. T169

51. Stanley admitted that "it may have been personal between the two of us" in referring to the dispute with Knox. T170

52. During Stanley's period of supervision of Knox, he did not file any complaint with the Training & Standards Commission regarding any of his contentions. T171

53. Lt. Jerome Cox was referenced by Stanley in connection with some of the alleged performance issues regarding Knox; Cox was also indicted with the Chief of Police and went to federal prison as well. T171-172

54. With regard to the personnel files, Stanley did not maintain those files, rather those were maintained by the Chief of Police. T172

55. Stanley acknowledged that there was no hearing provided where Knox had an opportunity to contest any of the allegations against him and tell his side of the dispute. T175 There was never a hearing regarding any of the allegations against Knox. T175

56. Regarding the allegation involving failing to complete the sheet for purposes of departmental identifications, Stanley couldn't say if that was willful or accidental. T179

57. Stanley agreed that the textbook definition of insubordination is a willful violation of a clear order by an authorized supervisor. T179

58. With regard to Respondent's Exhibit 29, and the issue of Knox's alleged failure to turn the tape recorder in that incident, Stanley could not indicate whether that was willful or inadvertent. T179

59. For the contention in Exhibit 22 that Knox did not turn on the recorder on February 20, 2003, Stanley could not say whether it was willful or not. T180

60. With regard to Respondent's Exhibit 26, involving barking dogs, Stanley could not indicate whether or not that report was not done willfully or inadvertently. T181

61. Stanley explained that later when the Town Manager in Bethel became involved, it was obvious that the Town Manager did not want Knox fired. T182

62. Most of the allegations of defective work performance in Bethel were conclusory and lacked detail and specificity. None of those allegations rise to the level of a lack of good moral character.

Robersonville – Darrell Knox

63. The next witness called was Darrell Knox, Chief of Police of Robersonville. T187 Officer Derrick Knox worked for the Robersonville Police Department for approximately three months in 2002. T187

64. When Chief Knox was asked what type of officer that Derrick Knox was, he indicated that “he complained a lot and wouldn’t quite follow orders like he should.” T190 Chief Knox explained that Derrick Knox “wanted to know a lot of times why we’ve got to do something a certain way. And I told him that’s the way it is.” T193

65. Chief Knox explained that “I believe sometimes you had to work by yourself if you were short of help. And he questioned about how dangerous it was working by yourself. We had - - it was during the summer time, and you have a lot of parties, a couple of little small clubs. People out cooking out, having 50 or 100 head in the yard, drinking, raising cane, you know. He kinda questioned some of the calls like that. They were kinda of dangerous to go by yourself.” T194

66. When Chief Knox was asked if there was any other issues that he had with Knox, Chief Knox explained: “well, the safety of vehicles. And he quit one night because he said the cars was not - - they were not in shape enough for him to drive.” T196 Knox indicated that he smelled some fumes in the police car. T196 Knox explained that when he resigned, that he told Chief Knox that he “I can’t work under that condition with that type of vehicle; it endangers my safety.” T196

67. When Chief Knox was asked about if Knox did have some good dedication, Chief Knox responded “Yes. I think he wanted more out the job than what me or the Town . . . was expecting back, as in equipment and security in things.” T201 Chief Knox described that “it seem like he [Knox] was thinking ahead of everything.” T202 Chief Knox explained that Knox had been questioning things that he thought might have been potentially dangerous. T202

68. As to the police car, Knox felt like it wasn’t safe to drive it like it was. T202-203 When Chief Knox was asked if there was exhaust actually coming in vents of the police vehicle, Chief Knox responded “I never checked.” T203 Chief Knox explained that they “kept on using that police car until it wore it down to where we sold it for \$300.00.” T203 Chief Knox explained that “we’re not used to a whole lot of fancy, you know.” T203

69. Chief Knox indicated that he thought that Knox was saying that the fumes were seeping up in the floor of the police car. T204 When Chief Knox was asked would he acknowledge that could be a safety hazard, he indicated that “it could be.” T204 Chief Knox further explained: “but if you went ten years back, the cars was - - they were a safety [inaudible] when I was there.” The Chief explained that car [with seeping exhaust fumes] “was one of the

better cars that they ever had at the time.” T204 Knox’s resignation, under these circumstances was properly within his discretion. His resignation clearly does not indicate any lack of good moral character.

70. Chief Knox indicated that when Knox resigned, that it was over the fumes in the police car. T205 Chief Knox never filed a complaint against Knox with the Training & Standards Commission. T205

71. Prior to being hired at the Robersonville Police Department, Knox went through a pre-employment assessment Dr. Kurt Luedtke, a professional psychologist. T207 Chief Knox acknowledged that it was a pretty good report and Knox was presented as very favorable candidate for law enforcement service. T208 Chief Knox found Dr. Luedtke’s reports to be accurate and helpful. T208

Vidant Company Police Chief Randal Walston

72. The next witness called was Randal White Walston, who is the Chief of Police for Vidant Company Police headquartered in Windsor, North Carolina. T220. Chief Walston has served in that capacity as Chief since 2007. T220 Vidant is a police department for a health care system in eastern North Carolina. T221 Chief Walston has served in law enforcement for about 22 years. T221

73. Knox served under Chief Walston’s command previously as a patrol officer. T222 Chief Walston observed Knox performing his duties and he “always performed exceptionally well.” T222 Chief Walston explained that Knox “was very well liked while he was working with our department. He had never received any complaints. He was respectful and professional. He was always very particular about the way he dressed, his appearance, and very professional in all of his interactions.” T223

74. Chief Walston heard “nothing but good reports” about Knox. Chief Walston never questioned his honesty or integrity. T223 Chief Walston never had an occasion to impose any type of disciplinary action upon Knox. T223 Chief Walston explained: “I have a very high regard for Knox. I have never known him to be in any unethical situations or dealing. I’ve never known him to be - - to misrepresent the truth or to intentional do something that would be unethical or illegal . . . he is of good character.” T224

74. Knox resigned his position with the Vidant Police Department when there were rumors that there may be criminal charges coming. T225 Knox was not asked to resign rather he resigned out of respect for the Chief. T225 Chief Walston recalled that Knox had resigned from the Robersonville Police Department because he had been asked to drive a patrol car that was unsafe. T229

Vidant Company Police Sergeant Christopher Emory

75. The next witness called for the Petitioner was Christopher Emory, a Sergeant serving with the Vidant Medical Center in Greenville, North Carolina. T241 Emory served as a

Sergeant with the Vidant police agency for three years and prior to that in other positions for ten years. T242 Emory has known Knox for approximately 12 years and served with him at Vidant for a while. T242 Emory observed Knox on the job including when Knox served with the Edenton Police Department. T243

76. Emory testified that Knox was known through the law enforcement community as “an officer’s officer.” T244 Emory explained that Knox was “very much very professional . . . I never once saw him act unprofessional towards anyone.” T244 Emory has never known Knox to be anything other than honest and trustworthy. T244

77. Emory has heard other members of the community in Windsor speak about Knox. T245 Emory explained: “throughout the whole community, Derrick Knox and his entire family is known for nothing but good things.” T245

Deputy Director Diane Konopka

78. The next witness called was Diane Konopka, who is the Deputy Director for the Sheriff’s Standards Commission. T251 In 2011, the Commission proposed to deny Knox’s application for certification. Respondent’s Exhibit 1. T252 When Knox applied for certification, his sponsor was the Bertie County Sheriff’s Office, when he applied in June, 2010. T253

79. Ms. Konopka testified that there was an error discovered in connection with the work of the Probable Cause Committee. T256 Konopka testified that the 1994 assault charge was not found by the Committee because they did not have evidence at that time and it should not have been included in the probable cause notification. T256

SBI Agent Brown

80. The next witness for Respondent was Walter Brown, an agent with the State Bureau of Investigation. T275 Mr. Brown described the scope of the investigation assigned to him suggesting that Knox was alleged to have used excessive force against Quantay Jernigan, Lonnie Wilson, Kentay Stepney, Ivy Bassnight, Terrence Copeland and Shakir Archer. T281

81. Brown confirmed that all of the criminal charges against Knox were dismissed. T291 Other than Stepney and Knox, Brown was unable to recall any of the other persons that he indicated he interviewed. T297 Brown acknowledged that when conducting an investigation where a law enforcement officer is a suspect, that investigator’s would want to very carefully evaluate the history and credibility of the accuser as well as the witnesses. T298

82. Brown recalled talking to Chief Bonner of the Edenton Police Department as part of his investigation. T299 Brown was aware that Bonner had conducted an inquiry about allegations against Knox. T299 Bonner shared with Brown that he did not find any violations by Knox. T299-300

83. Brown testified that Stepney had a long criminal history. T303

84. Brown indicated of the six individuals who were complainants, Knox had initiated criminal charges against each of those six or someone with the Edenton Police Department did. T304-305

85. Brown testified that the first person listed in the career criminal's list from the Edenton Police Department is Deshannon Stepney. T306-307

86. Each of the six individuals who made complaints regarding Knox resided in or immediately around the Town of Edenton, a small town. T307 When Brown was asked if it was determined that each of those six individuals were known to be affiliated with the Crips gang, whether or not that was a shock him, he responded "no, it wouldn't." T307

87. Brown testified that the scope of his investigation was whether excessive force was used and whether Knox used his gun or some other object to strike Stepney in the head. T309 Brown testified that whether Stepney was "a Crip or not or blood or not a most wanted in Edenton would not be the scope of my investigation." T309

88. Brown acknowledged the involvement of the court order that regulated the behavior of Stepney. T310 Brown testified nobody interviewed the judge that issued the court to learn to learn more about the order, its intent, its scope and purpose or who should have made an arrest for a violation of the judge's order. T310

89. Brown indicated that the allegation that Stepney was struck in the head did not come from Stepney, rather it came from Lassiter. T311 Brown testified that the relationship between Lassiter and Stepney was not explored. T311

90. Brown acknowledged that he did not consider a broader examination of possible criminal gang activity and possible retaliation against Knox because of enforcement activities against gang members in the Town of Edenton. T313 Brown testified that whether Stepney was "a gang member or not was not relevant to my investigation." T314

91. None of the prosecutors have ever brought any criminal charges to trial against Knox. T315

92. Stepney was not transported for any medical evaluation or treatment following his encounter with Knox. T316

93. Stepney had an extensive criminal history according to Agent Brown. T317

94. Of the six individuals who were purported accusers of Knox, there was never any grand jury finding or any charge made against Knox relating to allegations Quantay Jernigan. T321 There was never any grand jury determination or any charge brought against Knox as result of the contentions of Lonnie Wilson. T322 There was never any grand jury determination or charge brought against Knox based upon contentions by Ivy Basnight, Terrance Copeland or Shakir Archer. T322

95. Agent Brown testified that Stepney told him that he sold drugs. T323

Francis Russell, Character Witness

96. The next witness called by the Petitioner was Francis Russell, who was the next door neighbor of Knox for several years in Windsor. T328 Russell knew Knox for seven or eight years as a next door neighbor. T329

97. Russell found Knox to be a respectable young man. T331 Russell described Knox as being very friendly and an accommodating man. T331

98. Russell described himself and his wife as being somewhat handicapped and that Knox would come over and shovel the driveways during the winter and he would help mow the grass. T332 Russell described Knox as being “very communal and friendly.” T332

99. Knox was held in high regard in his other neighbors there and he never anybody else say anything contrary against Knox. T332

100. Russell observed Knox to a good family man in that he seemed to have good family relations and that he was a “model father when his child was born.” T333 Russell observed Knox doing things with his child that appeared to be favorable. T333

Officer Derrick Knox

101. Knox testified. T357 Knox is 43 years old and lives in Windsor. T357 He has been married for 14 years and has a 9 year old son. T357-358

102. T358 Knox is currently employed with Sandoz Pharmaceuticals in Wilson, North Carolina, where he serves in process quality assurance, which is part of the quality engineering department. T358 Knox has been employed with Sandoz Pharmaceuticals for approximately four years. T358

103. Knox attends church regularly when he can. Knox served in the United States Armed Services in the Army and served as a United States Calvary Scout in reconnaissance. T359 Knox is a combat Veteran having served in Desert Storm and he earned an honorable discharge. T359 Knox earned the Army Commendation Medal. T360

104. Knox earned a degree in Criminal Justice Administration from Mt. Olive College. T361 Knox attended Nash Community College and completed the basic law enforcement education curriculum in 2001. T362

105. Knox earned his law enforcement certification and subsequently earned an intermediate level certification. T362 Knox earned an instructor certification for 2012-2015. T363

106. Knox was administered an oath of office for Deputy Sheriff in Bertie County on June 8, 2010. T364

107. Knox has served in law enforcement for close to seven years and has very much enjoyed his law enforcement service. T365 Knox has never been disciplined in connection with his law enforcement certification. T365

108. Knox was charged with assault with a deadly weapon inflicting serious injury, which was dismissed. T366 The date of incident that gave rise to the alleged to felony charge was in September 2006. T366 Knox was criminally charged in February, 2009, for that alleged offense from September, 2006. T366

109. Knox was also charged with simple assault arising out of an encounter with Mr. Thomas Dale with the alleged date of offense being July, 2007. T367 Knox was later criminally charged for that in February, 2009. T367

110. As result of his encounter with Dale, Knox charged him with resist, delay and obstruct and Dale was found guilty of that offense. T368 Dale gave Knox several apologies both before and after court. T368

111. Knox was able to successfully serve as a law enforcement officer under Chief Greg Bonner's command and enjoyed a good professional working relationship with him. T368 Chief Bonner did not impose any significant discipline upon Knox in connection with his law enforcement service. T368-369

112. As result of allegations from Stepney, Bonner interviewed Knox regarding what happened. T369 Bonner exonerated Knox of the allegations by Stepney. T369

113. Later after Chief Bonner's retirement and Chief Fortenbery took over command of the police department, Chief Fortenbery began an additional inquiry into the matter involving Stepney. T370

114. The flight by Stepney occurred between 7:30 p.m. and 8:00 p.m. on a Sunday night in late September. T370 Stepney was observed within the Town of Edenton loitering in an area where loitering is not permitted. T371

115. When Knox saw Stepney, he remembered the court order issued five days prior to the occasion when Knox saw Stepney on the street. Knox had been in District Court where Judge Cole issued the order. T371-372

116. Knox mistakenly understood what Judge Cole said in open court to be a court order. The Clerk's office had forwarded a copy of the Judge's release order to the Edenton Police Department for each officer to have with them. The release order provided that Stepney was to be immediately picked up. T374

117. Knox testified that the official court order was the basis of his law enforcement action in investigating Stepney. T374 Knox explained that they have had the same orders issued for other individuals before and officers have picked up individuals under these same orders without any questions being asked. T374

118. The practice that Knox described of picking up individuals with those court orders was not materially different and was conducted by the Edenton Police Department and the Sheriff's Department. T375

119 On the occasion in question, Stepney fled from Knox. In the chase, Knox ultimately grabbed Stepney by the braids of his hair. T377 Knox was trying to get the handcuffs on Stepney as Stepney was moving underneath him. Stepney was trying to push himself up. T378 That is when another individual approached Knox from behind, Anthony Lassiter. T378 Knox had had dealings with Lassiter when Lassiter had been arrested for shooting someone point blank in the face. T378

120. Lassiter was approaching in a threatening manner and Knox felt concerned for his safety. T378 Knox displayed his service weapon. T378 Knox was trying to keep Stepney on the ground as Lassiter kept charging towards him. T379 Knox pulled out his weapon and pointed it at Lassiter, and Lassiter then retreated back to the street. T379

121. Knox carried a Berretta, a 92-F, 9mm pistol. T380 That handgun is not used to strike anyone and would be dangerous for the officer to strike anyone with that weapon. T380

122. When they got to the police department, Stepney was sitting in a chair and Stepney said that he was bleeding. T381 Office Knox then put some gloves on and checked his neck and saw a little red spot that looked like a finger prick of blood had dried. T381 Knox observed that there was a braid hanging, which was still in the rubber band, which had been pulled out from his head. T381

123. Knox mistakenly believed, based upon his training, education , and experience that his actions in attempting to apprehend Stepney were a proper part of his law enforcement duties. T383 Part of his reasoning in that regard was based upon the practice of having similarly apprehended others for release orders issued by other judges. T383 This practice or convention of Knox and possibly the law enforcement officers in Chowan County seems contrary to the training he should have had.

124. When Knox similarly apprehended others pursuant to the same type of court orders, his conduct has never been challenged by any supervisor, law enforcement officer or prosecutor. T383

125. There is a common practice in the in Edenton District for officers to arrest defendants who violate release orders pursuant to the directive of judges. T464 Every law enforcement agency in Chowan County did this. T465 The Edenton Police Department started getting orders for arrest only after the internal investigation involving Derrick Knox. T465

Policy changes took place while Knox was suspended such that officers began to get orders for arrest for violation of release orders. T465

126. Knox made an inquiry by a computer search to determine further information about Stepney and he found that Stepney had such an account. T384 Knox was the gang investigator for the Edenton Police Department, and therefore already had a file on the Crips and Bloods. T384 Stepney was already in the gang file from other officers that have conducted field interviews and had made arrest. T384

127. Knox discovered evidence on Stepney's Myspace account that contained an indicia of gang activity which included photographs of holding assault weapons, a blue bandana draped on his left side which is indicative of the Crips gang; Stepney has the local Crips gang tattoo, CCF, on his body; he has other gang related tattoos and on his Myspace account "Crip for life." T384-385

128. When Knox dealt with Stepney, he used the minimum quantity of force that was necessary and appropriate under the circumstances. T385 When Knox discussed his use of force with Chief Bonner, Chief Bonner had "no problem with it." T385

129. As to the encounter with Thomas Dale, the Edenton Police Department and the N.C. Alcohol Law Enforcement Agency were conducting a license check point. T386

130. Dale inquired if Petitioner was Derrick Knox and he replied yes; Dale replied that "I've got something for your ass." T388 Knox suggested that Dale go ahead and leave. T388 Dale and the others with him remained in that area shouting obscenities and derogatory comments at Knox. T388

131. Dale's actions obstructed Knox's ability to continue with the license check. T388 Knox again told Dale he needed to go ahead and leave. T389 Dale again stayed in the same location and continued shouting obscenities saying they were going to get Knox fired and Knox kept telling them to leave. T389 Knox afforded them every opportunity to leave and they refused to leave. T389

132. A lady that came through the traffic stop over heard one of the really nasty and vulgar remarks. T390 When Knox again told them to leave, Dale responded by asking "what was I going to do about it." T390 Knox responded by saying that if they didn't leave now that he was going to arrest him for delaying Knox. T390 At that point, the ALE Agent walked over and stated: "let's get them out of the car because they are not going to leave." T390

133. Knox then requested Dale to get out of the car and he refused; Knox asked him a couple more times and then informed him he was under arrest. T390 Dale responded that he was not under arrest and that Knox did not have any right to arrest him. T390

134. Dale continued to refuse to get out of the vehicle and then he grabbed the steering wheel with both hands and locked his arms. T391 Knox told him that if he did not get out of the car that he was going to tase him. T391 Dale responded that: "that taser ain't shit." T391 Knox

removed the cap from the taser and did a spark test to let him see that it was working and he reholstered. T391 Dale was asked one more time to get out the car and he refused again. T391

135. Knox grabbed Dale's wrist and eventually was able to pull him out of the car. T391 Dale would not allow Knox to handcuff him. T392 Knox gave him a warning that if he did not put his hands behind his back that he was going to tase him. T392 Knox tased him with a drive stun tase. T392 The taser was effective in bringing Dale into compliance. T392

136. Dale requested and was afforded a meeting with Chief Bonner. T393 After Chief Bonner heard both accounts, he did not initiate any disciplinary action against Knox. T394

137. Exhibit 11 was the charge brought against Knox by the SBI regarding Dale, which was a simple assault charge that was dismissed. T396

138. Petitioner's Exhibit 12, including the photographs of Stepney, were admitted. T406

139. Knox was employed with the Green County Sheriff's Department in 2002. T419 Prior to having obtained the position, he had been submitting other applications to other law enforcement employers. T420

140. After Knox was employed with Green County, there was an inquiry of the Sheriff's Department from another prospective employer. T420 The Sheriff became upset with Knox regarding the other application. T420 The Sheriff had received a call from the North Myrtle Beach Public Safety Department inquiry about Knox as an employment reference. T421 The Sheriff had become very upset. T421 Consequently, Knox decided to resign and wrote a letter of resignation. T421

141. Knox was next employed with Robersonville in 2002. T422 With regard to the malfunctioning police vehicle, Knox was told by the mechanic when he picked the car up, that he should not be driving the vehicle because it has an exhaust leak. T423 The exhaust leak had made Knox sick giving him a headache and causing him to vomit. T423

142. Knox inquired of the Chief about whether he could drive another vehicle because they had other vehicles. T423 The Chief responded to Knox by indicating "don't you know how to roll the damn the window down." T423 Knox then resigned as result of that safety hazard. T424

143. Knox explained how some of the things that he encountered in Robersonville were somewhat inconsistent with his expectations from his professional law enforcement training and BLET. T424 Knox had been trained in BLET to be particular cognizant of officer safety. T425 Knox was asked about the Chief's concerns that he was asking a lot of questions. T425 Knox explained that he did ask a lot of questions but that he was rookie officer, that he did not know much and he was trying to learn and gain information. T425 Knox did not ask any questions designed to be disrespectful. T425

144. Knox was next employed with the Bethel Police Department from October 2002 to April 2005. T425 While serving at the Bethel Police Department, he made some observations with what appeared to be possible improprieties. T427 Knox learned that a lot of the evidence that was needed in court was missing. T427 A lot of the drugs were not in the evidence and money was missing. T427 Knox spoke to Agent Dwight Ransom of the State Bureau of Investigation about it. T427

145. Knox observed that the Chief and the Lieutenant were coming in and out late at night dressed in all black. T428 People on the street began indicating that the Chief and the Lieutenant were selling drugs. T428 Knox gathered some evidence and went and met with the Mayor. T428

146. Knox explained the allegation that he was at the Country Mart Store leaving the Town of Bethel unsecured. T429-430 Knox explained that when transporting someone to the jail, the Chief would let them stop at that store on the way back into Town, because Bethel had no stores open past 10:00 p.m. T430 Knox's action in stopping at the store on that occasion was consistent with what he understood to be an accepted practice as every officer did it. T430 Management officials and the Chief did as well. T430

147. Knox explained the occasion when he was alleged to have not utilized his voice recorder. T431-432 Knox was serving a paper on the matter in question. T431 Knox was never intentionally insubordinate to any supervisor. T431

148. Knox explained the incident in question that arose from Exhibit 23. T432 An individual had backed his car into the porch of a house and left. Someone called and reported it and Knox went and investigated it and did not then cite him. T433 The Chief and the Lieutenant later indicated that Knox probably should charge him. Knox issued the citations and the person became mad about the citations. T433

149. Knox explained the incident involving Exhibit 25. T433 A citizen called about someone lying in the bushes and Knox went over there to assist the rescue squad to the person out of the bushes who was very intoxicated. T433 He assaulted one of the rescue squad members, who asked Knox to remove him from the scene because the crowd was drawing around them. T434 The person became combative again and assaulted someone of the rescue personnel at the police department. T434 The rescue squad personnel asked Knox to try to help restrain him and they could not get him to cooperate. T434 Knox gave him several warnings that he was going to be sprayed and the individual did not comply and was sprayed. T434

150. With regard to Exhibit 26, from October 1, 2003, Knox never saw that warning. T435 That situation arose out of a complaint that someone had made about barking dogs and that the problem was not resolved and the person told the Chief. T436

151. Exhibit 27 involves a matter from May 10 and 11, 2004, regarding completing traffic stop reports that Knox allegedly failed to do prior to May 10. T437 Knox had to leave earlier on that day and when he arrived the next day, the warning was waiting for him. Knox was not in any way willfully insubordinate. T438

152. Exhibit 28 involved Knox's failure to list his height and a weight on a departmental form. Knox was called and he drove back to the police department to include his height and weight on the form, and they still wrote him up for the inadvertent failure of not including the height and weight on the form. T439 Knox did not understand that there was another page to be addressed. T439

153. Knox addressed the F-5A Form which appears in Exhibit 5 and 5A. T442 The Chief referred to the Town Manager and when he had the discussions with the Town Manager, the Manager was more concerned about the conversation had with the Mayor about the illegal activity. T443

154. Petitioner's Exhibit 8, the official psychological assessment in Knox's personnel file was admitted into evidence. T449 That assessment provided that Knox possessed many positive traits that suggest the suitability of Knox to be a police officer.

155. On the occasion when Knox used pepper spray, the assault on rescue squad personnel involved, the person was "kicking and punching and actually spit on one of the EMS workers." 451

156. There is a common practice in the in Edenton District for officers to arrest defendants who violate release orders pursuant to the directive of judges. T464 Every law enforcement agency in Chowan County did this. T465 The Edenton Police Department started getting orders for arrest only after the internal investigation involving Derrick Knox. T465 Policy changes took place while Knox was suspended such that officers began to get orders for arrest for violation of release orders. T465 If this were the case it would seem to corroborate the Knox version.

157. Knox was pursuing Stepney for an investigative stop and also charged him with resist, delay and obstruct. T465

158. Ms. Peeden was Knox's girlfriend for approximately three years. T483-484 There was an alleged assault on a female charge against Knox on January 8, 1995. T484 Knox went to see her to get some of things back from her, and after she left work, they had a discussion. T484 They were arguing and went into Peeden's mother's house and Knox walked outside to leave. T484-485 Knox was charged but did not assault her. T486

159. Knox understood that if he would do some community service, that the matter would be dismissed. T486 When he inquired about doing it in Myrtle Beach or South Carolina, that offer was withdrawn because the prosecutor advised he could not do that and Knox was already living in South Carolina. T486 The prosecutor then advised that he could give him a PJC, which he indicated "it's like a dismissal." T487 The case was later dismissed by the Pitt County District Attorney. Knox indicated that if it was a dismissal, he would take it. T487 It was not until years later that the PJC was explained to Knox, by one of the attorney's in BLET that taught him. T487

160. Knox has not any time given his consent for the Town of Edenton or the Town of Bethel, in any way publically or otherwise to release his confidential personnel records. T523

161. The next witness called was Darren Loftin, who is the Operations Manager for Sandoz Pharmaceuticals. T409 Loftin has worked with Knox for about three years. T411 Loftin has found Knox to be a good, cooperative colleague employee when he has needed help or assistance. T412

162. Loftin has observed Knox's work performance to have been appropriate and good. T413 Loftin described Knox as very respectful. T414 Knox generally gets along well with colleague employees and has been respectful to his supervisors. T414 His supervisors hold him in high regard. T414 When Loftin was asked about Knox's traits for honesty, integrity and truthfulness, Loftin testified that Knox has a "high caliber" of honesty. T414

163. With regard to the assault charge from 1994, Ms. Peeden was not called to testify. There was not any substantial evidence that an assault ever occurred. The matter was initially resolved by a PJC, which Knox understood and was told was a dismissal. T487 Many years later, a dismissal was entered by the District Attorney of Pitt County.

Additional Findings of Fact

164. There is insufficient evidence that Knox committed any of the alleged offenses.

165. Knox did not act with any criminal intent or malice.

166. Knox is a person of good moral character.

167. Knox was not willfully insubordinate in Bethel. There was no evidence that Knox committed misconduct when he resigned from the Green County Sheriff's Department.

168. The instances of conduct in Bethel, Robersonville, and the Green County Sheriff's Office do not rise to the level required for a rule violation for a lack of good moral character.

169. There is no proper factual basis to deny Knox a law enforcement certification.

EXHIBIT SUMMARY

170. Appropriate consideration and weight has been given to all admitted exhibits by both parties.

PETITIONER'S EXHIBITS

171. Petitioner's Exhibit 1 is Petitioner's oath of office as a Deputy Sheriff in Bertie County which was executed on June 8, 2010.

172. Exhibit 2 included Petitioner's certification documents consisting of Petitioner's intermediate law enforcement certification, executed on November 5, 2008, Petitioner's Criminal Justice Instructor certification for the period March 17, 2012 through March 12, 2015 and Petitioner's instructor certification effective March 17, 2012 through March 17, 2015.

173. Petitioner's Exhibit 3 consists of some of Petitioner's military records including his honorable discharge from the United States Army, which certifies that Petitioner was "awarded as a testimonial of Honest and Faithful Service." Exhibit 3 also included Petitioner's "Army Commendation Medal" for "exceptional meritorious service . . . as part of Operation Desert Storm and the liberation of Kuwait . . . Knox's dedication during this effort is in keeping with the finest traditions of military services . . ." Petitioner's Exhibit 3 also included Petitioner's certificate of discharge which identified declarations, medals, badges, citations and campaign ribbons awarded consisting of the Army Service Ribbon, Army lapel button, National Defense Service ribbon, marksman expert, and Southeast Asia service medal with two bronze stars.

174. Petitioner's Exhibit 4 is Petitioner's diploma, a Bachelor of Science degree in Criminal Justice Administration awarded by Mt. Olive College in 2010.

175. Petitioner's Exhibit 5 consisted of several certifications for law enforcement training including Petitioner's BLET training in 2001, his diploma for successful completion of the Criminal Justice Instructor Training Program at Wilson Community College, training recertification certificate from TASER International executed on August 1, 2008 and several other training certificates from Pitt Community College.

176. Petitioner's Exhibit 7 is a reference letter from Officer Wilson of the Edenton Police Department, where he made observations about Knox's performance and conduct as a law enforcement officer employed by the Town of Edenton.

177. Petitioner's Exhibit 8 is a report of pre-employment police psychological assessment prepared by Dr. Kurt Luedtke of the Waynesboro Family Clinic in Goldsboro. Dr. Luedtke made a number of positive observations including that Petitioner's Knox produced a nearly "picture perfect" profile on one of the psychological test, and that there were other favorable conclusions appropriately fit for law enforcement service.

178. Petitioner's Exhibit 9 consisted of Department of Corrections records regarding Deshannon Stepney.

179. Petitioner's Exhibit 11 is a notice of dismissal in case number 09 CR 050080 where Knox was alleged to have committed a simple assault.

180. Petitioner's Exhibit 12 includes several photographs of Mr. Deshannon Stepney.

181. Petitioner's Exhibit 14 is a copy of a list prepared by the Edenton Police Department of "career criminals."

RESPONDENT'S EXHIBITS

182. Respondent's Exhibit 1 is the notification of probable cause issued to Petitioner's Knox as the Commission's basis to deny Knox's certification as a law enforcement officer. This notice set forth the charges against Knox which included that Knox allegedly committed or has been convicted of a felony, an alleged offense of assault with a deadly weapon inflicting serious injury. This allegation alleged occurred on September 24, 2006 by alleging that Petitioner assaulted Deshannon Stepney with a gun and that Petitioner kidnaped Mr. Stepney and subjected Mr. Stepney to a felonious restraint.

183. The notification of probable cause further charged that Petitioner had committed a Class B Misdemeanor, and alleged that Knox committed a misdemeanor of false imprisonment when he allegedly unlawfully restrained Deshannon Stepney.

184. The notification of probable cause further alleged that Petitioner had committed four or more crimes or unlawful acts. This charge was predicated upon the alleged assault and alleged false imprisonment against Mr. Stepney on September 24, 2006, and that Petitioner was allegedly convicted of drinking beer /wine while driving in 1994, that Petitioner allegedly committed a simple assault on July 13, 2007 by striking Thomas Allen Dale Jr. by tasing Mr. Dale, and that Petitioner allegedly committed an assault with a deadly weapon on July 22, 1994, and that Petitioner allegedly committed assault on a female in 1995 involving Ms. Nancy Peeden. The notification of probable cause further alleged a violation of a lack of good moral character.

185. Respondent's Exhibit 3 is a copy of an F-5 form issued by the Green County Sheriff's Office and executed on March 6, 2002. Respondent's Exhibit 3A is a letter dated March 7, 2002 regarding the report of separation submitted by the Green County Sheriff's Office.

186. Respondent's Exhibit 4 is a report of separation from the Robersonville Police Department executed on September 29, 2002, denominating resignation as the basis of separation.

187. Respondent's Exhibit 5 is a report of separation of Knox from the Bethel Police Department executed on April 5, 2005, indicating that Knox was dismissed from the Bethel Police Department.

188. Respondent's Exhibit 5A is a report of separation of Knox from the Bethel Police Department executed on April 29, 2005, which indicated the reason for separation of Knox's employment as being *resignation*. In this report of separation, the Chief of Police indicated that the Bethel Police Department would consider Knox for reappointment and that it would recommend employment elsewhere of Knox as a criminal justice officer.

189. Respondent's Exhibit 6 is a report of separation of Knox from the Edenton Police Department, which was executed on June 24, 2009 and denoted his separation as a dismissal.

190. Respondent's Exhibit 7 is a letter issued by William Morgan, Chief of Police Administrator for the Town of Roper, which was dated February 20, 2014 and noted as received by the Commission on February 24, 2014, advising that the Town of Roper was no longer interested in hiring/certifying Mr. Knox as an auxiliary police officer.

191. Respondent's Exhibit 7A is a letter dated April 10, 2014 from Mayor Sanders of the Town of Roper indicating that the Town of Roper was no longer interested in hiring Knox as an auxiliary police officer.

192. Respondent's Exhibit 8 is a letter from Sheriff John Holley of Bertie County dated April 9, 2014 indicating that he does not intend to hire Mr. Knox.

193. Respondent's Exhibit 8A is a report of separation for Knox from the Bertie County Sheriff's Office separating Knox as a part time deputy for the Bertie County Sheriff's Office executed on April 9, 2014.

194. Respondent's Exhibit 10 is Petitioner's personal history statement, executed on March 11, 2002.

195. Respondent's Exhibit 11 is Petitioner's personal history statement executed on May 19, 2005.

196. Respondent's Exhibit 12 is Petitioner's personal history statement, executed on February 22, 2005.

197. Respondent's Exhibit 13 is Petitioner's personal history statement, executed on October 13, 2010. This document includes an attached three page supplement statement whereby Knox explains the five matters.

198. Respondent's Exhibit 14 is a memorandum addressed to members of a committee whereby Knox provided a six page statement, apparently addressed to the Probable Cause Committee of the Sheriff's Commission. Knox explained the charges that had been brought against him.

199. Respondent's Exhibit 15 is a "statement of charges" prepared by Derrick Knox whereby he explained the criminal charges previously lodged against him.

200. Respondent's Exhibit 16 is a statement prepared by Knox in reference to charges of assault, assault on female and communicating threats that arose in 1994-1995.

201. Respondent's Exhibit 18 is a complainant information form of the Edenton Police Department Professional Standards investigation.

202. Respondent's Exhibit 19 is a "complaint report" from the Edenton Police Department.

203. Respondent's Exhibit 20 is a memorandum from Chief Fortenbery of the Edenton Police Department terminating the employment Knox.

204. Respondent's Exhibit 21 is a written warning issued to Knox in 2003 when he was employed with the Town of Bethel.

205. Respondent's Exhibit 22 purports to be a verbal warning for Knox in 2003 with the Bethel Police Department.

206. Respondent's Exhibit 25 is a use of force report from 2003.

207. Respondent's Exhibit 26 is a document prepared for Knox by the Bethel Police Department on October 1, 2003, that was not executed by Knox.

208. Respondent's Exhibit 27 is a document dated May 12, 2004 imposing disciplinary action on Knox in the form of a one day suspension.

209. Respondent's Exhibit 28 is a documented dated September 17, 2004 addressed to Petitioner's Knox alleging insubordination.

210. Respondent's Exhibit 29 is a document dated March 28, 2005 addressed Knox identifying an alleged violation relating to wearing and utilizing recorders.

211. Respondent's Exhibit 30 is a document denominated "citizens written complaints" which identified three incidents.

212. Respondent's Exhibit 30A is an untitled document listing purported "violations" but without any factual explanation.

213. Respondent's Exhibit 31 was a letter dated April 5, 2005, addressed to Knox, which was a summary of alleged violations. The document relieves Knox of his duties as a police officer with the Bethel Department. The document was executed by Stanley indicating that Knox refused to sign the document on April 4, 2005 even though the document was dated as apparently being prepared on April 5, 2005.

214. Respondent's Exhibit 32 is a notice of a probable cause meeting to be held on February 17, 2011.

215. Respondent's Exhibit 33 is a memorandum prepared by Investigator Richard Squires to members of the Probable Cause Committee of the Criminal Justice Standards Division. This memorandum summarizes information regarding Knox application for certification. This memorandum attaches approximately 85 pages of attachments consisting of various documents.

CONCLUSIONS OF LAW

1. The parties are properly before this Administrative Law Judge. Jurisdiction and venue are proper and both parties received proper notice of the hearing.

2. The North Carolina Criminal Justice and Sheriffs' Education and Training Standards Commissions (hereafter the Commission) has certain authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to suspend, revoke or deny certification under appropriate circumstances with valid substantial proof of a rule violation.

3. There is no factual or legal basis to conclude that Derrick Knox lacks good moral character. The totality of the evidence demonstrates that Knox is a person of good moral character.

4. Moral character is a vague and broad concept. E.g. *Jeffrey Royall v. N.C. Sheriffs' Education and Training Standards Commission*, 09 DOJ 5859; *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102 at page 11-12 (Gray, ALJ) and cases cited therein. See *Mims* at page 11.

5. The United States Supreme Court has described the term "good moral character" as being "unusually ambiguous." In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained:

The term good moral character ... is by itself ... *unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, *can be a dangerous instrument* for arbitrary and discriminatory denial ... (emphasis added).

6. Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character. *Royall* at page 13; *Mims, supra.* at page 12, Conclusion of Law 12. In *Mims*, the Respondent Commission offered the testimony of someone who claimed to be knowledgeable regarding moral character; he testified that there are six components to good moral character of law enforcement officers: trustworthiness, respect, responsibility, fairness, citizenship and being a caring individual. *Mims*, page 7 at Finding of Fact 48. Applying those criteria here, the evidence demonstrates that Knox met each of those criteria and other moral character components which demonstrated Knox's good moral character.

7. While having good moral character is an ideal objective for everyone to enjoy, the lack of consistent and clear meaning of that term within the Respondent's rule, and the lack of clear enforcement standards or criteria for application of the rule, renders enforcement actions problematic and difficult. *Royall, supra* at page 14; *Mims, supra.* at page 12, Conclusion of Law 4.

8. Because of these concerns about the flexibility and vagueness of the good moral character rule, any suspension or revocation of an officer's law enforcement certification based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. *Royall, supra* at 14, *Mims, supra.* at page 12 and 13.

9. Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. See *Royall, supra.*; *In Re Rogers*, 297 N.C. 48, 58 (1979) (“whether a person is of good moral character is seldom subject to proof by reference to one or two incidents.”; *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ).

10. The disparate conduct alleged in this case is insufficient to rise to the required level of proof to establish that Knox lacks good moral character. Under *In Re Rogers*, an instance of conduct amounting to poor judgment, especially where there is no malice or bad faith, would not ordinarily rise to the high level required to reflect a lack of good moral character.

11. In *Daniel Brannon Gray v. N.C. Sheriffs Education and Training Standards Commission*, 09 DOJ 4364 (March 15, 2010; May, ALJ), the good moral character rule was interpreted. “Good moral character has been defined as ‘honesty, fairness and respect for the rights of others and for the laws of state and nation.’ ” *Gray*, at page 18, Conclusion of Law 5, citing *In Re Willis*, 299 N.C. 1, 10 (1975). *Gray* further explained that “[g]enerally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct,” citing *In Re Rogers*, 297 N.C. 48, 59 (1979). Here, there is clearly no severe, egregious or clear misconduct warranting any finding of a lack of good moral character.

12. Police officers and others make occasional honest mistakes and sometimes exercise poor judgment. *Royall supra* at 15; *Andreas Dietrich v. N.C. Highway Patrol*, 2001 WL 34055881, 00 OSP 1039 (August 13, 2001, Gray, ALJ), (“Ideally, it is desired that law enforcement officers be near perfect; however, that is not a realistic standard”).

13. The totality of the facts and circumstances surrounding Knox’s conduct, in light of his exemplary history of good moral character and professionalism in law enforcement, does not warrant any finding that Knox lacks good moral character. The substantial evidence of Knox's very good moral character is clear and compelling. Therefore, the evidence demonstrates that there is no proper basis for denial of Knox’s law enforcement certification.

14. The totality of the facts and circumstances surrounding Knox’s conduct, in light of his otherwise exemplary history of good moral character and professionalism in law enforcement, do not warrant or justify denying Knox a law enforcement certification. There has been no violation of Respondent’s good moral character rule.

15. The elements of the alleged offenses are set out in Jessica Smith, *North Carolina Crimes*, at (2012 7th ed.):

Assault with a Deadly Weapon Inflicting Serious Injury Elements:

A person guilty of this offense

- (1) commits an assault
- (2) on another
- (3) with a deadly weapon *and*
- (4) inflicts serious injury.

Kidnapping Elements

A person guilty of this offense

- (1)
 - (a) confines,
 - (b) restrains, *or*
 - (c) removes from one place to another
- (2) a person
- (3)
 - (a) without the person's consent *or*,
 - (b) if the person is under 16, without consent of the person's parent or guardian,
- (4) for the purpose of
 - (a) holding the victim as hostage,
 - (b) holding the victim for ransom,
 - (c) using the victim as a shield,
 - (d) facilitating the commission of a felony,
 - (e) facilitating flight following the commission of a felony,
 - (f) doing serious bodily harm to the victim or any other person,
 - (g) terrorizing the victim or any other person,
 - (h) holding the victim in involuntary servitude in violation of G.S. 14-43.12,
 - (i) trafficking another person in violation of G.S. 14-43.11, *or*
 - (j) subjecting or maintaining the victim for sexual servitude in violation of G.S. 14-43.13 *and*
- (5)
 - (a) does not release the victim in a safe place,
 - (b) seriously injures the victim, *or*
 - (c) sexually assaults the victim.

Felonious Restraint Elements

A person guilty of this offense

- (1) unlawfully restrains
- (2) a person
- (3)
 - (a) without the person's consent *or*,

(b) if the person is under 16, without consent of the person's parent or guardian, *and*

(4) transports the person by motor vehicle or other conveyance from the place of initial restraint.

16. There was insufficient proof of elements of each alleged charge.

17. Knox did not commit any of the alleged offenses.

18. With respect to Mr. Stepney and Mr. Dale, Knox engaged in law enforcement actions that he reasonably believed were appropriate. Knox did not commit any assault as Knox had a good faith basis to pursue and apprehend Mr. Stepney for valid law enforcement purposes. N.C.G.S. 15A-401(b) and (d) authorized the actions of Knox with regard to his action involving Dale and Stepney.

19. Mr. Stepney did not sustain any serious injury. There was a speck of blood from some hair loss that was caused by Mr. Stepney's resistance and flight. A reasonable police officer could have reasonably believed that the apprehension of Mr. Stepney was appropriate and that the suspect Stepney was not your average good citizen of Edenton, N.C. There was no kidnapping or felonious restraint of Mr. Stepney.

20. With respect to Mr. Dale, Knox did not commit an assault on Mr. Dale. Mr. Dale resisted, obstructed and delayed Knox in the performance of his duties. Mr. Dale was found guilty of that offense and he apologized to Knox. Knox had a reasonable and good faith belief to use minimum force by taser to overcome Mr. Dale's resistance.

21. With respect to the alleged assault on a female involving Ms. Peeden which allegedly occurred in 1994, Respondents did not offer evidence from Ms. Peeden. Knox did not commit an assault on a female.

22. The Supreme Court has explained that "[p]olice officers have a duty to apprehend lawbreakers." *Parish v. Hill*, 350 N.C. 231, 513 S.E.2d 547, 550 (N.C. 1999); see *State v. McMahan*, 103 N.C. 379, 9 S.E. 489 (1889). "Police must pursue crime and constrain violence, even if the undertaking itself causes violence from time to time." *Menuel v. City of Atlanta*, 25 F.3d 990, 997 (11th Cir. 1994).

23. There are special rules of law that apply to police conduct disputes. The central issue in an alleged police misconduct dispute is whether an objectively reasonable officer *could have reasonably believed* that the action taken was appropriate under the circumstances. See N.C.G.S. 15A-401(d) and the interpreting decisional law. E.g., *Turner v. City of Greenville*, 197 N.C. App. 562, 677 S.E.2d 480 (2009) (justification for police conduct depends upon based what the officer "reasonably believes . . ."); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (could have believed standard); *Prior v. Pruett*, 550 S.E.2d 166, 168 (N.C. App. 2001) ("could have believed" standard); *Pittman v. Nelms*, 87 F.3d 116, 120 (4th Cir. 1996) (could have believed standard).

24. Courts now routinely apply the “could have believed” standard in police conduct. In *Hunter v. Bryant*, 502 U.S. 224, 227 (1991), the Supreme Court adopted the “could have believed” standard, which absolves the officer of liability, if a reasonable officer could have believed [the conduct in issue] to be lawful . . .”

25. Our Court of Appeals explained that “[a]n officer of the law has the right to use such force as he may reasonably believe necessary in the proper discharge of his duties to effect an arrest ... the officer is properly left with the discretion to determine the amount of force required under the circumstances as they appear to him at the time of the arrest.” *State v. Anderson*, 40 N.C. App. 318, 321, 253 S.E.2d 248 (1979).

26. An officer “has discretion to determine the amount of force required under the circumstances as they appear to him at the time he acted.” *Todd v Creech*, 23 N.C. App. 537, 209 S.E.2d 293, (1974); see *Myrick v. Cooley*, 91 N.C. App. 209, 371 S.E.2d 492 (1988).

27. North Carolina common law recognizes that “an officer is presumed to be acting lawfully while in the exercise of his official duties.” *State v. Anderson*, 253 S.E. 2d 48, 52 (N.C. App. 1979).

28. The reasonableness of arrest and force decisions are predicated upon what the officer on the scene perceived. E.g. *Graham v. Connor*, 490 U.S. 386, 395 (1989), which explained:

“The reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”

29. In *Saucier v. Katz*, 533 U.S. 194, 205 (2001), the Supreme Court reaffirmed the doctrine of *mistaken beliefs*, which seems crucial to the arrest of Stepney and as an insulating defense. As *Saucier* explained:

[P]olice officers are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation, the reasonableness of the officer’s belief as to the appropriate level of force should be judged from that on-scene perspective. We set out a test that cautioned against the “20/20 vision of hindsight: in favor of deference to the judgment of reasonable officers on the scene.

“If an officer reasonably, but mistakenly believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.”

30. The evaluation of use of force and arrest decisions involves an *objective* standard. *Scott v. Harris*, 550 U.S. 372, 381 (2007) (“The question we need to answer is whether Scott’s actions were objectively reasonable.”); *Graham v. Connor*, 490 U.S. 386, 396 (1989) (“The

reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”). Officer Knox’s actions were objectively reasonable.

31. The undersigned heard the evidence regarding the alleged instances of insubordination by Officer Knox while serving at Bethel. There were several matters that were characterized in documents created by Bethel as being some type of alleged insubordination. However, the testimony of Chief Stanley in several respects acknowledged that he did not know if the conduct in question was intentional or inadvertent. In making a determination as to insubordination, a crucial determination is whether or not the failure to carry out the order was intentional or inadvertent.

32. Insubordination is defined as the “willful failure or refusal to carry out a reasonable order from an authorized supervisor.” 25 N.C.A.C. 01J .0614(7). *Patrick Holmes v. Fayetteville State University*, 2014 WL 4206297, 13-OSP-18480 (Overby, ALJ). See *Mendenhall v. N.C. Department of Human Resources*, 519 N.C. App. 644, 651, 459 S.E.2d 820 (1995) (directive must be reasonable); *Thompson v. Wake County Bd. Of Education*, 31 N.C. App. 401, 424-25, 230 S.E. 2d 164 (1976), rev’d on other grounds, 292 N.C. 406, 233 S.E.1d 538 (1977). *Brandon Clay Taylor v. N.C. Department of Public Safety*, 2013 WL 8116104, 12 OSP 08465 (Elkins, ALJ, October 22, 2013).

33. Insubordination "imports a willful or intentional disregard of the lawful and reasonable instructions of the employer." See *Black's Law Dictionary* , citing *Porter v. Pepsi Cola Bottling Co.*, 247 S.C. 370, 147 S.E. 2d 620, 622 (1964).

34. Insubordination has been defined by North Carolina courts to constitute "a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders. *Thompson v. Wake County Board of Education*, 31 N.C. App. 401, 424-25 (1976). An alternative definition of insubordination is a "constant or continuing intentional refusal to obey a direct or implied order reasonable in nature and given by and with proper authority." *Lockhart v. Arapahoe*, 735 P. 2d 913, 915 (Col. 1986).

35. After hearing the evidence regarding those instances of alleged insubordination, the undersigned finds and concludes that Officer Knox was then a young and inexperienced officer, and that he was not willfully insubordinate. The matters in dispute were performance issues, involving the officer’s attempt to zealously perform his duties.

36. The use of the SBI investigation file and Knox’s personnel file by Officer Paul are problematic.

37. The apprehension and arrest of Stepney and Dale was in good faith and valid. The force used against Stepney and Dale was reasonable and not excessive. Knox did not commit misconduct.

38. There is no legal basis to deny Knox a law enforcement certification. There was insufficient substantial evidence to deny Knox a law enforcement certification.

PROPOSAL FOR DECISION

BASED UPON the foregoing findings of fact and conclusions of law, it is hereby proposed that the North Carolina Criminal Justice and Sheriffs Training and Standards Commissions find that there has been no rule violation and that there is no legitimate basis to deny Knox a law enforcement certification.

NOTICE

BEFORE THE AGENCY makes the final decision, it is required to give each party an opportunity to file exceptions to this PROPOSAL FOR DECISION, and to present written arguments to those in the agency who will make the final decision. N.C.G.S. 150B-40(e). The agencies that will make the final administrative decision in this case are the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission.

This the 19th day of November, 2014.

J. Randall May
Administrative Law Judge