

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 7924

COUNTY OF STANLY

Billy Ray Burleson, )  
Petitioner, )  
vs. )  
North Carolina Criminal Justice Education )  
And Training Standards Commission, )  
Respondent. )

**PROPOSAL FOR DECISION**

**THIS MATTER** came before the undersigned Selina M. Brooks, Administrative Law Judge, for hearing on May 4, 2015 in Charlotte, North Carolina. This case was heard at Respondent's request pursuant to N.C. Gen. Stat. § 150B-40(e) for the designation of an Administrative Law Judge to preside at a hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

**For Petitioner:**

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Bowling Law Firm PLLC  
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**For Respondent:**

Matthew L Boyatt  
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**ISSUE**

Whether Respondent had probable cause to find that Petitioner's certification as a law enforcement officer should be suspended?

**APPLICABLE LAW**

The applicable statute and rules:

N.C. Gen. Stat. § 14-33(c)(2)  
12 NCAC 09A .0103(23)(b)  
12 NCAC 09A .0204(b)(3)(A) & (c)  
12 NCAC 09A .0204(c)  
12 NCAC 09A .0205(b)(1)

## **EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner's Exhibits 1 and 2 were admitted.

Respondent's Exhibits 1 through 14 were admitted.

### **WITNESSES**

**For Petitioner:** Billy Ray Burleson, Petitioner  
Kenneth Austin, Charlotte-Mecklenburg Police Department  
John Hartsell, Friend  
Sgt. Ken Jones, Charlotte-Mecklenburg Police Department

**For Respondent:** Julie Moore Burleson  
Sgt. Matthew Russell, Stanly County Sheriff's Office  
Sgt. Michael Sloop, Charlotte-Mecklenburg Police Department

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits 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 Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know 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. In the absence of a transcript, the Undersigned relied upon her notes in writing this decision.

### **FINDINGS OF FACT**

1. Petitioner and Julie Moore Burleson have been married for 21 years.
2. During the five years prior to August 2013, Petitioner and his wife had separated on two occasions in which Mrs. Burleson had moved to her parent's home in Greensboro.
3. In August 2013, Petitioner and his wife continued to have difficulties, and Petitioner became fearful that she would leave him again.
4. In August 2013, Petitioner worked first shift as a law enforcement officer for the Charlotte-Mecklenburg Police Department while Mrs. Burleson worked third shift as a certified nursing assistant at a local hospital.
5. On August 23, 2013, Petitioner decided to take a vacation day from his job and parked his car nearby at his mother's house.

6. Meanwhile, Mrs. Burleson returned home from work, observed that Petitioner's car and uniform were missing, and she thought that Petitioner had gone to work. She packed some of her belongings in her car with the intention of leaving her husband the next day.
7. Petitioner called Mrs. Burleson from his cellphone and asked her whether she was planning to leave him. She confirmed that she was and an argument ensued.
8. Petitioner told Mrs. Burleson that he was at work, but in actuality he was walking into the garage attached to their home. Mrs. Burleson was in the garage and when she saw Petitioner walk in she hung up the phone.
9. Petitioner picked up a pogo stick and began hitting Mrs. Burleson's car with it, breaking windows and denting the body of the car. (R. Ex. 13)
10. Mrs. Burleson testified that it was a child's pogo stick, approximately one foot long.
11. Petitioner did not swing the pogo stick at Mrs. Burleson or threaten her with it.
12. Petitioner did not physically assault his wife.
13. Petitioner directed his anger at his wife's car, a Chevrolet Malibu, which had been recently purchased by the couple for Mrs. Burleson but which Petitioner felt that they could ill afford and was meant to appease his wife.
14. Mrs. Burleson ran inside the house, locked herself in the bathroom, and called 911.
15. Mrs. Burleson heard Petitioner enter the house from the garage and heard the sounds of him opening the gun safe.
16. Mrs. Burleson also heard Petitioner tell her that "I'm not going to hurt you."
17. Petitioner did not verbally threaten his wife.
18. Petitioner knew that Mrs. Burleson had called the police and that upon their arrival, the police would remove all firearms from the house. Petitioner took his father's firearms from the gun safe and took them nearby to his brother's house so that they would not be impounded. Petitioner left his personal firearms in the gun safe.
19. Petitioner returned home and waited in the living room for the arrival of the police and met them on the front porch.
20. After twenty to thirty minutes, Officers from the Stanfield Police Department and the Stanly County Sheriff's Office arrived and Mrs. Burleson came out of the bathroom. (R. Ex. 4)
21. Petitioner cooperated with the officers and admitted to damaging the car.

22. In his Incident Report on August 23, 2013, Deputy Russell reported that Mrs. Burleson stated that Petitioner “started hitting and breaking the windows of the vehicle and swinging the pogo stick at her.” (R. Ex. 4)
23. The deputy sheriff took Mrs. Burleson to a magistrate where she filed a Victims First Domestic Violence Incident Report and a Warrant For Arrest was issued for Petitioner. (R. Exs. 5 & 8)
24. Petitioner was taken into custody and detained in the Stanly County Jail. He was released on August 25, 2013 and served with a Domestic Violence Order of Protection. (R. Ex. 7)
25. On August 29, 2013, Petitioner informed his superior officers of the criminal investigation. He cooperated fully with the Charlotte-Mecklenburg Police Department’s internal investigation and with Respondent’s investigation. (R. Ex. 14)
26. Mrs. Burleson filed a Complaint for a Domestic Violence Order of Protection on August 27, 2013 at the urging of her father and an Ex Parte Domestic Violence Order of Protection was entered. (R. Exs. 9 & 10)
27. The Domestic Violence Order of Protection entered on October 2, 2013, states that the Parties “agree and consent ... [that] the minor children of the parties reside with the [Petitioner]”. (R. Ex. 11; *and see* R. Ex. 2)
28. On October 13, 2013, Petitioner was suspended by Charlotte-Mecklenburg Police Department for Unbecoming Conduct for a period of 40 hours without pay, 24 hours active and 16 hours inactive for a one-year period pending no additional sustained violations.
29. The Report of the Internal Affairs Bureau for the Charlotte-Mecklenburg Police Department, dated October 16, 2013, states that “[a]lthough Mrs. Burleson was not physically assaulted during this incident she felt threatened.” (R. Exs. 6 & 7)
30. On December 5, 2013, Mrs. Burleson filed a Motion To Set Aside the Domestic Violence Order of Protection which was granted. (R. Ex. 12)
31. On September 10, 2014, Respondent’s Probable Cause Committee notified Petitioner of its intention to suspend his law enforcement certification on the ground that probable cause exists to believe that he committed the offense of Assault On A Female when “by holding a large metal pogo stick and swung the metal stick toward [Mrs. Burleson]”.
32. In the administrative hearing, Mrs. Burleson testified that Petitioner swung the pogo stick at the car and did not testify that he swung at her or threatened her with it.
33. Mrs. Burleson testified that she “felt threatened” because Petitioner was hitting the car and not because he threatened to hit her.

34. Mrs. Burleson testified that she does not fear Petitioner, and since the incident they have reconciled.
35. Petitioner has remained an active police officer with the Charlotte-Mecklenburg Police Department since October 31, 2013 with no further sustained violations of policy.
36. Petitioner's personnel record spans 24 years during which he has met or exceeded expected performance ratings as well as received numerous letters of commendation and recognition. (P. Ex. 1)
37. After careful consideration of all of the evidence, including the demeanor and testimony of the witnesses, and giving particular attention to the testimony of Mrs. Burleson, the alleged victim, the Undersigned finds as fact that the Petitioner did not threaten or harm Mrs. Burleson.

### **CONCLUSION OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of Proposed Suspension of Law Enforcement Officer Certification through a letter mailed by Respondent on September 10, 2014.

3. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under 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 to revoke, suspend, or deny such certification. The Commission may take such action when the certified officer

(3) ... has committed or been convicted of a: (A) criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor.

12 NCAC 09A .0204(b)

4. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B 23(a) by a preponderance of the evidence. N.C.G.S. § 150B 29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B 34(a).

5. Assault on a Female in violation of N.C.G.S. § 14-33 (c)(2) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

6. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner did not assault Mrs. Burlison on August 23, 2013.

7. The findings of the Probable Cause Committee of the Respondent are not supported by substantial evidence and are arbitrary and capricious.

8. Respondent has not met the burden of proof in the case at bar. Respondent has not shown by a preponderance of the evidence that Petitioner committed the offense of Assault On A Female.

### **PROPOSAL FOR DECISION**

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's criminal justice certification NOT be suspended.

### **NOTICE**

The agency making the final decision in this contested case 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 agency that will make the final decision in this contested case is North Carolina Criminal Justice Education and Training Standards Commission

This the 30th day of July, 2015.

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Selina M. Brooks  
Administrative Law Judge