

STATE OF NORTH CAROLINA  
COUNTY OF SCOTLAND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
21 DOJ 03747

<p>Daniel June Campbell Petitioner,</p> <p>v.</p> <p>NC Criminal Justice Education and Training Standards Commission Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
--	-------------------------------------

This contested case was heard on May 23, 2022, by Michael C. Byrne, Administrative Law Judge, in Fayetteville, North Carolina.

**APPEARANCES**

Mr. J. Michael McGuinness  
The McGuinness Law Firm  
P.O. Box 952  
Elizabethtown, N.C. 28337  
Counsel For Petitioner

Ms. Erika Jones  
Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, N.C. 27699-9001  
Counsel for Respondent

**WITNESSES**

For Petitioner:

Daniel June Campbell  
Darwin Williams

For Respondent:

M.L. Montalvo  
Judy Kelly

## **ISSUES**

1. Whether Petitioner Daniel June Campbell's Justice Officer certification should be revoked or suspended based upon the North Carolina Criminal Justice Education and Training Standards Commission finding probable cause that Petitioner committed criminal offenses?
2. Whether Petitioner Daniel June Campbell's Justice Officer certification should be revoked or suspended based upon the North Carolina Criminal Justice Education and Training Standards Commission finding probable cause that Petitioner lacks good moral character?

## **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 Tribunal makes the following findings of fact. In making these findings of fact, the Tribunal has weighed all evidence of record 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.

### **Parties, Witnesses, and Agency Action**

1. Petitioner Daniel June Campbell ("Petitioner") is certified as a Justice (law enforcement) Officer by the Respondent North Carolina Criminal Justice Education and Training Standards Commission ("Respondent"). (Res. Ex. 9). Petitioner testified as a witness in this contested case. Petitioner was a credible witness barring certain testimony discussed below, which the Tribunal finds to be not credible.
2. Respondent, the North Carolina Criminal Justice Education and Training Standards Commission, is responsible for certifying law enforcement and Justice officers of various kinds in North Carolina pursuant to Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code. Chapter 09A of the Code authorizes Respondent to certify law enforcement officers, and to revoke, suspend, or deny such certification upon an appropriate showing.
3. As a result of a report to Respondent that Petitioner was charged with criminal offenses, Respondent initiated an investigation. Judy Kelly ("Kelly"), a long service investigator for Respondent, conducted the investigation. Kelly testified as a witness in this contested case. Kelly was a credible witness.
4. Darwin Williams ("Williams") is the retired Chief of Police for the City of Laurinburg,

North Carolina. Williams has approximately three decades of law enforcement experience. Williams served as Chief of Police in Laurinburg for eight years. He has known Petitioner all of Petitioner's life and served as his supervisor with the City of Laurinburg Police. Williams testified as a character witness for Petitioner. Williams was a credible witness.

5. The report to Respondent that Petitioner was charged with criminal offenses originated from charges initiated by Detective M.L. Montalvo ("Montalvo"), a former detective with the Greensboro Police Department. Montalvo has many years of relevant law enforcement experience, including substantial experience investigating fraud. Montalvo had recently retired as of the date of the contested case hearing. Montalvo testified at the contested case hearing. Montalvo was a credible witness.
6. Respondent's Probable Cause Committee found probable cause that Petitioner had committed four Commission rule violations. (Res. Ex. 12). Petitioner requested an administrative hearing to review the probable cause findings. In response to that request, Respondent requested the Office of Administrative Hearings to assign an Administrative Law Judge to hear the resulting contested case pursuant to N.C.G.S. 150B-40(e)

#### **Petitioner's Background and Character**

7. Petitioner grew up in Scotland County, North Carolina and resides there. Petitioner completed high school in Scotland County. Since Petitioner was a young man, he wanted to be a law enforcement officer. When Petitioner was around fifteen years old, he participated in the Laurinburg Police Department Police Explorer Program, where he was active in police ride alongs and related activities. (Testimony of Williams and Petitioner).
8. Petitioner completed the Basic Law Enforcement Training Program at Sandhills Community College. Petitioner was employed as an officer by the Laurinburg Police Department around 2001, where he served as a full-time officer for about ten years. Petitioner thereafter began to serve as an auxiliary officer for the Laurinburg Police Department. (Testimony of Petitioner).
9. Williams has known Petitioner for his entire life. Williams has observed Petitioner in his service as a Laurinburg police officer since around 2001. Williams offered extensive testimony about Campbell's work performance, conduct, and overall character. (Testimony of Williams).
10. Petitioner provided meritorious service as a police officer for the City of Laurinburg both when he was full time and as an auxiliary officer. As a law enforcement officer, Petitioner has been professional and successful. This includes regular volunteer service as an auxiliary officer, including during emergencies. (Testimony of Williams).

#### **The Real Estate Transaction and Related Actions**

11. In 2019, Petitioner purchased some real property ("the property") in Greensboro, North Carolina. (Res. Ex. 3). This real estate transaction, and Petitioner's actions related thereto,

are the subject of this case. The owner of the property was Ms. Wilma Byrd (“Byrd”), who was born on February 4, 1926. (Res. Ex. 1).

12. Petitioner learned of this real estate from Toryana Baldwin (“Baldwin”), who was an acquaintance of Petitioner for several years. Petitioner had met Baldwin when he was searching to obtain a camper. Baldwin found a camper that Petitioner purchased.
13. From time to time, Petitioner has invested in various real estate related ventures including property and rental homes. Baldwin contacted Petitioner and advised him that someone was interested in selling a piece of property in Greensboro. Baldwin claimed to be a friend and caretaker for Byrd. The evidence showed clearly that Baldwin was not acting in Byrd’s best interests with respect to the property sale.
14. However, there is no evidence that Petitioner was aware of Baldwin’s highly questionable conduct at the time Petitioner purchased the property. Moreover, neither side called Baldwin as a witness at the contested case hearing. Accordingly, the Tribunal was deprived of information as to any consequences for Baldwin’s conduct, other than that she was subsequently removed from any involvement with Byrd’s affairs.
15. Petitioner paid \$10,126.00 for Byrd’s property. At the time Petitioner bought the property its tax value was \$111,400.00. (Res. Ex. 1). The Tribunal finds as a fact that Petitioner was aware of the property’s tax value at the time of the purchase. Petitioner declined to offer more than \$1,000 per acre to purchase the property. Petitioner justified this offer by claiming that the condition of the home present on the property was such that it would require total demolition and removal, with associated costs (Pet. Ex. 7).
16. At the time she sold the property to Petitioner, Byrd was 94 years old and was suffering from Alzheimer’s disease. (Res. Ex. 1). Prior to the property sale, Byrd had been adjudicated as incompetent. The real estate transaction for the property sale was done electronically, and Petitioner neither met Byrd nor had an opportunity to assess her mental fitness or condition. Petitioner testified credibly, and the Tribunal finds as a fact, that at the time he participated in the transaction for the sale of the property Petitioner did not know that Byrd was incompetent or otherwise legally incapable to manage her affairs.
17. The deed for the property was prepared by attorney Richard Yelverton (“Yelverton”) of Pinehurst, North Carolina. (Res. Ex. 3). Yelverton was employed by the seller of the property (Byrd). (Testimony of Montalvo). Byrd executed the deed to Petitioner for the real property on April 17, 2019, by notarized signature. (Res. Ex. 3).
18. Petitioner testified at the hearing that he intended to develop the property to serve the public interest by providing various opportunities for persons in the Greensboro area. The Tribunal does not find this testimony credible. Petitioner is not from Guilford County, but from Scotland County. He has no apparent connection with Guilford County or with anything or anyone in it. Petitioner produced no evidence of any actual plans, such as creation of a non-profit organization, supporting his claimed intentions for the property.

19. Petitioner's purchase of the property came to the attention of the Greensboro Police Department. Montalvo was assigned to investigate the matter and had conversations with Petitioner about the property purchase. During these conversations, Montalvo informed Petitioner that Byrd was legally incompetent at the time Petitioner purchased the property. At no time during these conversations did Petitioner tell Montalvo that Petitioner himself was a certified or sworn law enforcement officer.
20. Montalvo then inquired of Petitioner whether Petitioner would undo the transaction. Petitioner refused to commit to undoing the transaction even when Montalvo informed Petitioner that the matter could lead to Petitioner being criminally charged. Petitioner responded to this information by stating, in these or similar words, "Do what you have to do." Petitioner then hung up the phone on Montalvo.
21. On July 24, 2019, Petitioner was criminally charged with obtaining property by false pretense (N.C.G.S. 14-100), conspiracy to obtain property by false pretense and exploitation of an older or disabled adult (N.C.G.S. 14-112.2(c)). (Res. Ex. 6).
22. After Petitioner was criminally charged, Montalvo again spoke with Petitioner and asked whether Petitioner was now willing to undo the real property transaction. Petitioner said that he would, in these or similar words, "think about it."
23. Petitioner testified that his hesitation to undo the transaction stemmed from wanting to follow advice of legal counsel. Williams, for his part, corroborated that Petitioner acted on his advice in waiting on concurrence from legal counsel regarding his actions on the property transaction.
24. The Tribunal finds these purported justifications neither convincing nor credible. Petitioner had ample evidence, both before and after the criminal charges, sufficient to show a reasonable person that the real property transaction, which involved purchasing land from an incompetent person at approximately one tenth of its value, was problematic.
25. An ethical person does not need advice of counsel to determine right from wrong. Petitioner knew, and at the hearing admitted he knew, that purchasing real property from an incompetent individual was a problem. Rather than acting promptly to undo that problem, Petitioner refused to do the right thing – until a combination of criminal charges and potential civil liability caused him to reverse course. This was not ethical conduct.
26. The criminal charges did not result in Petitioner promptly moving to undo his purchase of Byrd's property. Petitioner only acted to undo the transaction after, in addition to the criminal charges, he was sued civilly by Byrd's legal representatives regarding the purchase. Petitioner agreed to undo the transaction only as a part of the settlement of this civil lawsuit.
27. On September 24, 2020, the Guilford County District Attorney dismissed all of the criminal charges against Petitioner. (Pet. Ex. 1). Notably, the dismissal states that the criminal charges are being dismissed because Petitioner agreed to undo the transaction and return

the property to Byrd.

28. On April 22, 2021, Superior Court Judge Susan Bray entered an order expunging all of the three charges against Petitioner. (Pet. Ex. 2).

### **Respondent's Investigation of Petitioner**

29. Based upon notification of the criminal charges, Respondent initiated an inquiry. Kelly was assigned to investigate. Petitioner cooperated in Respondent's investigation and provided statements.
30. Kelly retrieved various documents relating to the transaction, conferred with the detective (Montalvo) who investigated the criminal allegations, and interviewed witnesses including Petitioner.
31. A summary of the interview between Kelly and Petitioner appears as Petitioner's Exhibit 6. Petitioner submitted a further written statement to Kelly on January 4, 2021, by email. (Res. Ex. 10). Petitioner's statements to Ms. Kelly were consistent.
32. In Petitioner's statements, and during the hearing before the undersigned, Petitioner addressed and explained the material allegations against him.
33. Petitioner gave full cooperation with Kelly during Respondent's investigation of his conduct regarding the property sale. (Testimony of Kelly).
34. Kelly conducted a complete and professional investigation of Petitioner's conduct.

### **Character Evidence**

35. Williams testified extensively, and credibly, to his observations as to Petitioner's moral character. Williams' testimony regarding Petitioner's moral character is, as explained below, a critical factor in the Tribunal reaching its ultimate conclusion in this case.
36. Williams has known Petitioner for all (or almost all) of Petitioner's life. Williams knew Petitioner's parents and is familiar with Petitioner's upbringing. Williams also has first-hand knowledge of Petitioner's conduct as a law enforcement officer from working with and supervising Petitioner at the Laurinburg Police Department.
37. Petitioner's conduct as a law enforcement officer, per the evidence, shows no incidents worthy of question or reproach. Rather, the evidence shows that in the performance of his duties as a police officer, Petitioner conducts himself credibly and has done so throughout his service. (Testimony of Williams).
38. Petitioner's general conduct over the course of his career, again per the evidence, shows no indication of the kind of conduct Petitioner exhibited with respect to the aftermath of the property purchase. (Testimony of Williams).

39. Petitioner admitted into evidence a letter from his criminal defense attorney defending Petitioner's actions. This letter is hearsay and self-serving, and the Tribunal gives it minimal weight.
40. Notably, there was no evidence before the Tribunal of any other incidents in Petitioner's career where he conducted himself in a questionable or unethical fashion, or that he acted in such a manner as to demonstrate lack of good moral character.

### **CONCLUSIONS OF LAW**

1. Both parties are properly before the Tribunal. Jurisdiction and venue are proper and both parties received proper notice of the hearing.
2. Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A authorizes Respondent, North Carolina Criminal Justice Education and Training Standards Commission, to certify law enforcement officers, and to revoke, suspend, or deny such certification.
3. 12 NCAC 09A .0204(b)(2) states that Respondent may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer: (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification.
4. Respondent has 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 proof of a rule violation.

### **Criminal Charge Determinations**

5. The evidence in this contested case, including all circumstantial evidence, is insufficient to establish that Petitioner "committed" the crimes obtaining property by false pretense (N.C.G.S. 14-100), conspiracy to obtain property by false pretense and exploitation of an older or disabled adult (N.C.G.S. 14-112.2(c)).
6. That Petitioner paid approximately one tenth of the tax value for Byrd's property certainly raises issues. However, offering a low price – even a very low price – to a seller is not in itself a criminal offense: the prospective seller, if competent, is free to reject it. Here, the seller was not competent – but the evidence does not show that Petitioner, who never met Byrd in the course of a transaction conducted solely by electronic means, knew of Byrd's incompetent status at the time he purchased her real property.

7. Further, Byrd had a licensed North Carolina attorney involved in the sale on her behalf. There is no evidence that, at the time of the transaction, that attorney objected or raised concerns about the transaction.
8. The offense of obtaining property by false pretense, N.C.G.S. 14-100, requires five elements of proof that:
  - a. makes a representation about a past or existing fact or a future event; and
  - b. that is false, and
  - c. is calculated and intended to deceive, and
  - d. the representation does in fact deceive another person, and
  - e. the person thereby obtains or attempts to obtain money, goods, property, services, chose in action, or any other thing of value from the other person.

See Jessica Smith, North Carolina Crimes: A Guidebook on the Elements of Crime at 417-421 (7<sup>th</sup> ed. 2012); State v. Parker, 354 N.C. 268, 284 (2001). A false representation by the defendant is a required element of obtaining property by false pretense. Id.

9. In Parker, the Supreme Court held: “This Court has previously set out the elements of obtaining property by false pretenses: (1) a false representation of a subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which one person obtains or attempts to obtain value from another. State v. Cronin, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980). An essential element of the offense is that the defendant acted knowingly with the intent to cheat or defraud. See State v. Blue, 84 N.C. 807, 809 (1881).” Id.
10. There is no evidence before the Tribunal that in the course of purchasing the real property, Petitioner made a false representation to anyone, including one made with an intent to deceive anyone. As noted, Petitioner neither met with nor communicated with Byrd except through electronic transactions through attorneys.
11. Thus, bearing in mind as well that Petitioner was never convicted or pleaded guilty to any crime in connection with this matter, the evidence does not support the conclusion that Petitioner committed the criminal offense of obtaining property by false pretense in the real estate transaction with Byrd.
12. The criminal offense of conspiracy requires these elements:
  - a. Enters into an agreement with at least one other person; and
  - b. To commit an unlawful act; and
  - c. With the intent that the unlawful agreement, be carried out.

See Jessica Smith, North Carolina Crimes: A Guidebook on the Elements of Crime at 72 (7<sup>th</sup> ed. 2012); State v. Horton, 275 N.C. 651, 656 (1969). In State v. Gallimore, 272 N.C. 528, 158 S.E.2d 505, the Court defined a “conspiracy” as: “A criminal conspiracy is the unlawful concurrence of two or more persons in a wicked scheme—the combination or



agreement to do an unlawful thing or to do a lawful thing in an unlawful way or by unlawful means. (Citing many cases)’ State v. Goldberg, 261 N.C. 181, 134 S.E.2d 334; State v. McCullough, 244 N.C. 11, 92 S.E.2d 38.” State v. Gallimore, 272 N.C. 528, 532, 158 S.E.2d 505, 508 (1968).

13. Conspiracy is a common law offense requiring “an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” State v. Bindyke, 288 N.C. 608, 615, 220 S.E.2d 521, 526 (1975).
14. That a crime actually took place does not, without more, prove the existence of a conspiracy. State v. Arnold, 329 N.C. 128, 142, 404 S.E.2d 822, 831 (1991). Although conspiracies may be proved by circumstantial evidence, “there must be such evidence to prove the agreement directly or such a state of facts that an agreement may be legally inferred.” State v. Phillips, 240 N.C. 516, 521, 82 S.E.2d 762, 766 (1954).
15. “[T]he State must prove an agreement to perform every element of the crime.” State v. Suggs, 117 N.C. App. 654, 661, 453 S.E.2d 211, 215 (1995). “If the conspiracy is to be proved by inferences drawn by the evidence, such evidence must point unerringly to the existence of a conspiracy.” State v. Massey, 76 N.C. App. 660, 662, 334 S.E.2d 71, 72 (1985) (“Conspiracies cannot be established by a mere suspicion, nor does a mere relationship between the parties or association show a conspiracy.”).
16. The apparent theory supporting the alleged criminal conspiracy in this case is that Petitioner entered into an agreement with Baldwin to obtain Byrd’s real property in an unlawful manner, with the intent to do so.
17. The evidence before the Tribunal does not establish such an agreement. The evidence suggests, and the Tribunal so finds, that Baldwin brought the Byrd property to Petitioner’s attention. It may well be that Baldwin did so in the hope of some kind of gain or benefit for herself – but there is no evidence of that in the record. Moreover, merely alerting Petitioner to a potential real property purchase opportunity does not, without more, establish a criminal conspiracy. Petitioner offered Byrd, who had a legal representative involved in the transaction, a very low price for Byrd’s real property. That this bid was low, or even represented sharp practice on the part of Petitioner, does not establish a criminal conspiracy with Baldwin or anyone else.
18. The evidence does not support the conclusion that Petitioner committed the criminal offense of conspiring to obtain property by false pretense in the real estate transaction with Byrd.
19. The offense of exploitation of a disabled or elder adult, N.C.G.S. 14-112.2, has six elements:
  - a. The defendant stands in a position of trust and confidence or has a business relationship, and
  - b. with an older or disabled adult, and

- c. Knowingly, and
- d. By deception or intimidation, and
- e. Obtains, uses, or endeavors to obtain or use an elder or disabled adult's funds, assets or property, and
- f. With the intent to deprive temporarily or permanently the older or disabled person of the use, benefit or possession of the funds, assets or property, or benefit someone other than the elder or disabled adult.

See Jessica Smith, North Carolina Crimes: A Guidebook on the Elements of Crime at 421 (7<sup>th</sup> ed. 2012).

20. To establish that Byrd is an elder adult for purposes of N.C.G.S. § 14–112.2(b), it must be shown that Byrd was not able to provide for the financial services necessary to safeguard her rights and resources. State v. Martin, 242 N.C. App. 253, 775 S.E.2d 926 (2015). No such showing occurred in this case. To the contrary, Byrd had legal counsel representing her interests in the real property transaction with Petitioner.
21. Petitioner likewise was not a “caretaker” of Byrd. State v. Forte, 206 N.C. App. 699, 706, 698 S.E.2d 745, 750 (2010), rev. denied, 364 N.C. 619, 705 S.E.2d 356 (2010). The Tribunal’s review of the cases under the relevant statute reveal that the usual fact pattern involves an ongoing relationship between the defendant and the older or disabled adult, as a result of which the older or disabled adult was exploited or cheated. See, e.g., State v. Norwood, 257 N.C. App. 389, 808 S.E.2d 625 (2018), rev. denied, 371 N.C. 111, 812 S.E.2d 847 (2018) (victim had written checks to defendant totaling \$35,000, and that she had executed a power of attorney in which she named defendant as her attorney-in-fact).
22. Here, Petitioner participated in an electronic, arm’s length real estate transaction in which he never met Byrd, let alone stood in a position of trust and confidence with Byrd or had a “business relationship” with her under a reasonable, plain-meaning reading of that term. It is entirely possible that Baldwin met this standard; however, this case concerns Petitioner’s conduct.
23. The evidence does not support the conclusion that Petitioner committed the criminal offense of Exploitation of an Older Adult or Disabled Adult in the real estate transaction with Byrd.

### **The Good Moral Character Charge**

24. 12 NCAC 09B .0101(3) states that every criminal justice officer employed by an agency in North Carolina shall be of good moral character pursuant to N.C.G.S. 17C-10, and as determined by a background investigation. 12 NCAC 09A .0204(b)(2) requires that justice officers certified in North Carolina shall be of good moral character. See, e.g., Marcum v. N.C. Criminal Justice Education and Training Standards Commission, 2016 WL 68330998, 15 DOJ 07702 (Lassiter, ALJ).
25. Evidence of lack of good moral character is considered a minimum employment standard,

and, as such, authorizes revocation or suspension of officer certification under 12 NCAC 10B .0204(b)(2). William Robert Casey v. North Carolina Sheriffs' Education and Training Standards Commission, 11 DOJ 11632 (May, ALJ).

26. There are several cases that have recently interpreted the Commission's good moral character rule. See Derrick Wayne Knox v. N.C. Criminal Justice Education and Training Standards Commission, 11 DOJ 04831, 2014 WL 10794970 (May, ALJ). In Knox, Judge May provided a detailed explanation of the law of good moral character as applied to police officers. Judge May explained:

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.

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).

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.

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.

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.

27. Most importantly in this case, “[I]solated 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). Because of these concerns about the flexibility and vagueness of the good moral character rule, any denial, 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. Mims, supra. at page 12 and 13.
28. Applying these considerations to the present case requires separating the real property transaction into two parts. In the first part – the decision to purchase the property – Petitioner demonstrated no lack of moral character at all. It is not bad moral character to make a low – even lowball – offer on a piece of real property, especially under circumstances where the seller has legal representation and the buyer (Petitioner) had never met the seller and had no prior knowledge of her state of incompetence.
29. It is the second part of the property transaction that is problematic. As discussed in the Findings of Fact, once Petitioner learned that Byrd was incompetent, he should have acted promptly to address the issue by undoing the transaction. He did not. Only criminal charges and potential civil liability, the Tribunal concludes, caused Petitioner to do what morality required in the first place – undo the transaction.
30. In summary, the Tribunal concludes as a matter of law that Petitioner failed to act with good moral character related to the property purchase after learning that Byrd was incompetent when Petitioner purchased her property. As our Supreme Court has stated, good moral character:

[I]s something more than an absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should, or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often **in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is wrong.**

In re Farmer, 191 N.C. 235, 131 S.E. 661, 663 (1926) (emphasis supplied).

31. However, as noted, isolated instances of misconduct are insufficient to properly conclude that someone lacks good moral character. 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).

32. In this case, the evidence is devoid of any act of questionable character on Petitioner's part other than his conduct in the aftermath of learning that Byrd was incompetent. His career as a law enforcement officer, which is the primary consideration in a case like this, is by all evidence of record wholly free of any misconduct. Under those facts, the Tribunal cannot conclude that the events of this case demonstrate that Petitioner lacks good moral character. To do so would be contrary to both the evidence and the governing law.
33. In making this conclusion the Tribunal does not condone Petitioner's conduct in the aftermath of the real estate purchase. It does not. Respondent's actions in finding probable cause were neither arbitrary nor capricious. However, the evidence in this contested case shows one lapse of character in the course of a law enforcement career demonstrating no comparable conduct and, again per the evidence, many positive actions to the contrary.

### **PROPOSAL FOR DECISION**

The Tribunal proposes that Respondent take no action against Petitioner's certification.

### **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. N.C.G.S. 150B-40(e).

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

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. 150B-42(a).

**SO ORDERED.**

This the 30th day of June, 2022.



Michael C. Byrne  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Joseph Michael McGuinness  
McGuinness Law Firm  
jmichael@mcguinnesslaw.com  
Attorney For Petitioner

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

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

This the 30th day of June, 2022.



---

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