

BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND  
TRAINING

1999 N Amidon Ste. 350  
Wichita, KS 67203

In the Matter

of

Marcus Johnson

Case No. 2022-0145

**ORDER**

Now on May 30, 2023, the above-referenced matter comes for hearing by the Kansas Commission on Peace Officers' Standards and Training (Commission) regarding the law enforcement certification of Marcus Johnson. Pursuant to the Kansas Administrative Procedure Act, the Commission has delegated its authority to serve as the Presiding Officer in the above-referenced matter to the Hearing Panel, which is comprised of the following Commissioners: Sherri Schuck, County Attorney of Pottawatomie County; Major Jody Prothe of the Johnson County Sheriff's Office, and Chief Don Scheibler of the Hays Police Department.

Marcus Johnson appeared in person and by counsel, Jeffrey S. Kratofil. The Commission was represented by its litigation counsel, Special Assistant Attorney General Michelle Meier. Also present was Jay Rodriguez, Assistant Attorney General, serving as legal counsel to the Hearing Panel in this matter.

Based upon its records and the evidence presented at the hearing, the Commission makes the following findings of fact, conclusions of law, and orders.

**FINDINGS OF FACT**

Procedural History

1. Marcus Johnson (Johnson) is currently employed by the Wyandotte County Sheriff's Office as a detention deputy, a position which does not require certification as a law enforcement officer. Wyandotte County Sheriff's Office made Johnson a conditional

offer of employment in a position that would require law enforcement certification under the Kansas Law Enforcement Training Act (KLETA) (K.S.A. 74-5617). On December 2, 2022, pursuant to K.S.A. 74-5605(c), Wyandotte County Sheriff Daniel Soptic requested a determination from the Commission that Johnson receive a provisional law enforcement certification. Subsequently, the Commission opened an investigation.

2. The Commission's Investigative Committee determined that Johnson should not receive a provisional certification because he violated the following provisions of the KLETA: K.S.A. 74-5616(b)(5)—engaging in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state, a misdemeanor crime of domestic violence as defined in the Kansas law enforcement training act at the time the conduct occurred, or a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission; and K.S.A. 74-5616(b)(1)—failing to meet and maintain the certification requirement of good moral character sufficient to warrant the public trust as required in K.S.A. 74-5605(b)(5).

3. Based upon these violations, the Commission issued a Summary Order of Certification Denial on December 21, 2022, denying Johnson a provisional certification as a law enforcement officer. Johnson requested a hearing on the order.

4. Prior to the hearing, the parties stipulated to three State exhibits and seven Respondent exhibits.

#### Hearing

5. The hearing was held on May 30, 2023. Johnson appeared in person and by counsel, Jeffrey S. Kratofil. Johnson was advised of his right to present evidence and witnesses. All witnesses were sworn prior to testifying. The Commission admitted State's exhibits 1-3, and Respondent's exhibits 1-7.

6. Johnson began employment in 2017 as a detention deputy at the Wyandotte County Adult Detention Center. This position does not require a law enforcement certification. Johnson is presently employed at the Detention Center as a detention deputy.

7. On September 5, 2019, Johnson was working at the Detention Center's intake desk when he became aware of his sergeant, David Toland, yelling at an inmate, M.F., in the elevator behind him. Johnson joined Toland in the elevator. While on the elevator, Toland assaulted the handcuffed M.F. Johnson immediately recognized that Toland's conduct was wrong and unjustified, and he was upset by it.

8. After witnessing Toland's assault, Johnson did not intervene or speak to Toland. He exited the elevator and got on to another elevator heading back downstairs. On this elevator, another deputy was transporting an inmate, M.L., to perform a strip

search. M.L. was yelling and cursing, and Johnson believed his fellow deputy did not have the situation under control. Johnson decided to assist the deputy.

9. On the elevator, and continuing once they exited the elevator, M.L. yelled and moved around and failed to comply with Johnson's verbal directives. Johnson was agitated, due to the assault he had witnessed moments earlier against a restrained inmate. In order to gain M.L.'s compliance, Johnson became verbally aggressive and demeaning, standing over M.L. and telling him to "shut the fuck up." This threatening conduct caused M.L. to feel afraid that Johnson was about to harm him. In his testimony, Johnson admitted that his conduct constituted a verbal assault and mistreatment of a confined person. He described his conduct as unprofessional.

10. Johnson then moved M.L. to the area of the detention center where strip searches are performed. He removed M.L.'s handcuffs and allowed the other deputy to perform a strip search. Johnson recognized that he had not been following his training in de-escalation and that he was not in an appropriate emotional state to deal with a non-compliant inmate due to the assault he witnessed. He returned to his desk.

11. Following a complaint by M.L., Johnson's conduct was referred to the Wyandotte County District Court for prosecution (Case No. 2019-CR-1285). He was also suspended from his position as detention deputy. Johnson resolved the criminal complaint with a Diversion Agreement on December 14, 2021, in which he agreed that he committed the charged conduct, although he did not accept the account of that conduct as described in the charging documents. After accepting the diversion agreement, Johnson returned to work as a detention deputy.

12. Johnson expressed remorse for his conduct and took responsibility for his actions against M.L. Since he returned to work following his diversion agreement, Johnson has received positive performance reviews. The Commission accepted four letters of recommendation supporting Johnson, as well as testimony on Johnson's behalf from the Wyandotte County Detention Center warden at the time of the 2019 incident. Johnson has not engaged in further criminal conduct or workplace misconduct since 2019.

### **CONCLUSIONS OF LAW**

13. Administrative proceedings to deny the certification of a law enforcement officer are conducted pursuant to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501, *et seq.* K.S.A. 74-5616(c). Under the KAPA, the Commission's Investigative Committee issued a Summary Order of Denial of Certification after concluding that Johnson had committed violations of two provisions of the KLETA. Johnson timely requested a hearing on the order. The Commission has jurisdiction over Johnson and this matter.

14. K.S.A. 74-5616(c) authorizes the Commission to deny a provisional certification of a law enforcement officer who has engaged in conduct for which a

certification may be revoked, suspended, or otherwise disciplined as provided K.S.A. 74-5616. Upon making a conditional offer of law enforcement employment to an applicant whose past conduct may be grounds for denying a certification, the prospective employer may request that the Commission determine whether a provisional certification should be issued to the applicant.

15. A law enforcement certification may be denied if a law enforcement officer fails to meet and maintain the requirements for certification as set forth in K.S.A. 74-5605 and amendments thereto.

16. Clear and convincing evidence was presented at the hearing to show Johnson violated the following two provisions of the KLETA: K.S.A. 74-5616(b)(5)—engaging in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state, a misdemeanor crime of domestic violence as defined in the Kansas law enforcement training act at the time the conduct occurred, or a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission; and K.S.A. 74-5616(b)(1)—failing to meet and maintain the certification requirement of good moral character sufficient to warrant the public trust as required in K.S.A. 74-5605(b)(5). These violations would be grounds for revoking or suspending the certification of a law enforcement officer.

Conduct which, if charged as a crime, constitutes a misdemeanor that reflects on the honesty, trustworthiness, integrity, or competence of the applicant

17. K.S.A. 74-5615(b)(5) prohibits conduct which, if charged as a crime, would constitute a misdemeanor crime that the Commission has determined reflects on the honesty, trustworthiness, integrity, or competence of the applicant. These crimes are described in K.A.R. 106-2-2a.

18. K.A.R. 106-2-2a(a)(5) prohibits law enforcement officers from engaging in conduct that constitutes assault. K.A.R. 106-2-2a(a)(7) prohibits them from engaging in conduct that constitutes mistreatment of a confined person.

19. Engaging in conduct that would constitute the misdemeanor crimes of assault and mistreatment of a confined person is a violation of KLETA and is grounds for revoking or suspending a law enforcement certification. Therefore, such conduct is also grounds for denying an application for law enforcement certification. K.S.A. 5606(c).

20. Johnson admitted in the hearing and as part of his diversion agreement that he engaged in conduct that constituted misdemeanor assault and mistreatment of a confined person.

21. Based on the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show that Johnson engaged in conduct which was charged as a misdemeanor crime that that Commission has determined reflects on the

honesty, trustworthiness, integrity, or competence of the applicant, in violation of K.S.A. 74-5615(b)(5).

Failure to maintain certification requirement of good moral character

22. KLETA authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605(b)(5), which requires law enforcement officers to have good moral character sufficient to warrant the public trust. K.S.A. 74-5616(b)(1).

23. K.A.R. 16-2-4(a) defines the term "good moral character" to include the following personal traits or qualities:

- (1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6.

The required oath for certification as a law enforcement officer is:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve. K.A.R. 106-3-6.

24. Any single incident or event is sufficient to show that an officer has failed to establish good moral character sufficient to warrant the public trust. K.A.R. 106-2-4(b).

25. Because they are vital members of the judicial system, law enforcement officers must adhere to a higher standard of conduct than what is expected of private citizens. For persons who uphold the law, this higher standard is not reflected in taking the path of least resistance, but by doing the unpleasant thing if it is right and not doing the pleasant thing if it is wrong. *Application of Walker*, 112 Ariz. 134, 138 (1975).

26. The practice of law enforcement is reliant upon the trait of good moral character sufficient to warrant the public trust. The trust that the public places in a law enforcement officer is based upon the expectation that an officer is honest, candid, fair, and respectful of the laws and individuals. Any officer failing to adhere to these standards has compromised his integrity.

27. The Commission hereby incorporates by reference the paragraphs numbered 7 through 21 above. The Commission determines those paragraphs show

Johnson's conduct clearly demonstrates a lack of good moral character sufficient to warrant the public trust due to Johnson's failure to observe the laws of the state and his misuse of his position for his personal gain. Johnson's conduct was conduct that would impair the public trust if he were granted certification as a law enforcement officer.

28. Based upon the totality of the evidence, the Commission concludes that there is clear and convincing evidence to show Johnson has failed to establish the requirements for certification as a law enforcement officer, specifically the requirement in K.S.A. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 74-5616(b)(1).

### Sanction


29. The Commission has concluded that the facts show that Johnson has violated two provisions of the KLETA. Johnson engaged in conduct that constitutes a misdemeanor which reflects on his integrity and competence as a law enforcement officer, and he failed to maintain the good moral character, warranting the public trust, that is required of his certification.

30. Based on the above violations, separately and collectively, the Commission determines that Johnson should be denied a law enforcement officer certification.

### ORDER

Upon consideration of the above findings of fact and conclusions of law, it is the decision and order of the Commission that the request for law enforcement certification of Marcus Johnson is denied.

IT IS SO ORDERED.

  
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Don Scheibler  
Commissioner and Chair of Hearing  
Panel  
As designated by and on behalf of the  
Kansas Commission on Peace  
Officers' Standards and Training

## **NOTICE OF ADMINISTRATIVE RELIEF**

The above Order denying the certification as a law enforcement officer requested of Marcus Johnson is a final order. Pursuant to K.S.A. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

## **NOTICE OF JUDICIAL RELIEF**

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The agency officer who may receive service of a petition for reconsideration, a petition for a stay, or a petition for judicial review on behalf of the Board is Doug Schroeder, Kansas Commission on Peace Officers' Standards and Training, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of June, 2023, a copy of the above Final Order and Notice of Administrative and Judicial Relief was deposited with the United States Postal Service, postage pre-paid, and addressed to:

Marcus Johnson



Jeffrey S. Kratofil  
McCauley & Roach LLC  
527 W. 39<sup>th</sup> St., Ste. 200  
Kansas City, MO 64111

I further certify that on the same day a copy of the above Order and Notices were personally delivered to:

Michelle R. Meier  
Special Assistant Attorney General  
Kansas Commission on Peace Officers'  
Standards and Training  
1999 N. Amidon, Suite 350  
Wichita, KS 67203

Original filed with:

Kansas Commission on Peace Officers' Standards and Training  
1999 N Amidon, Suite 350  
Wichita, KS 67203

  
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Staff  
Kansas Commission on Peace Officers'  
Standards and Training