

**BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS'
STANDARDS AND TRAINING**

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In the Matter of)
)
TREY WINTERS)

Cert. No. 30589)

Case No. 2021-0151

ORDER

Now, on this 7th day of April 2023, the above-referenced matter comes for hearing by the Kansas Commission on Peace Officers' Standards and Training (the Commission). Under 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: Don Scheibler, Chief of the Hays Police Department; Roger Soldan, Sheriff of Saline County Sheriff's Office; and Sherri Schuck, Pottawatomie County Attorney.

Trey Winters did not appear, either in person or by counsel. The Commission was represented by Michelle Meler, Assistant Attorney General, who serves as its litigation counsel. Also present was Robert Hutchison, Associate Deputy Attorney General, who serves 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. Trey Winters (Winters) received his certification as a law enforcement officer on December 13, 2018. He obtained employment as a full-time law enforcement officer with the Kansas Highway Patrol (KHP). Winters was employed with the KHP from July 11, 2018 to September 29, 2020. He was not employed as a law enforcement officer at the time of the conduct specified in this order.

2. After an investigation was completed, the Commission's Investigative Committee issued a Summary Order of Revocation. The Investigation Committee determined Winters had committed the following violations of the KLETA: (1) has engaged in criminal conduct and (2) failed to maintain the certification requirement of

good moral character. Based upon these violations, the Investigative Committee revoked Winters' certification as a law enforcement officer. Winters requested a hearing on the Summary Order of Revocation.

3. Prior to the hearing, the parties stipulated to the admission of CPOST Exhibits 1 and 3 through 7 and Winters Exhibits 1 and 2.

Hearing

4. The hearing was held on April 7, 2023. A few minutes before the hearing was scheduled to begin, Winters sent an email stating that he would not be attending the hearing. The email stated he would withdraw his request for a hearing but also recognized the Hearing Panel could continue to have the hearing in his absence. At Ms. Meier's request, the Hearing Panel agreed to hold the hearing without Winters. The Hearing Panel took administrative notice of the Commission's file.

5. One witness testified, CPOST Investigator Michael Oliver. Investigator Oliver was sworn in prior to testifying. The hearing Panel admitted CPOST's exhibits 1 through 7, which included the bodycam footage in Exhibit 2 to which Winters did not stipulate prior to the hearing. The Hearing Panel also received two exhibits that Winters submitted prior to the hearing and the admission of which Ms. Meier stipulated to, namely a March 22, 2023 email from Ms. Meier to Winters indicating bodycam footage for the instant matter was received on that date and was shared with him electronically (Winters Ex. 1) and a flyer on "Campfire Safety" from the National Fire Protection Association (Winters Ex. 2).

6. On May 29, 2021, officers from the Hamilton County Sheriff's Office investigated an incident at the Syracuse Sand Dunes. Deputy Chase Stallbaumer's report (CPOST Ex. 1) and bodycam recording (CPOST Ex. 2) were presented to the Hearing Panel. In addition to speaking with Winters, Deputy Stallbaumer and Deputy Vergis also spoke with Tonya Clawson, Michael Russell, Vernon Smith (Winters' father-in-law), Annette Smith (Winters' mother-in-law), and Ashley Winters (Winters' wife).

7. Winters told Deputy Stallbaumer that Clawson was trying to put firewood in the fire at a campsite shared by Clawson, Russell, the Smiths, and the Winters. He told her not to, as he judged it to be too big, and put himself in front of her. As Clawson got closer to him, he said he put his arms out and, due to her inebriated state, she fell over. At that point, other family members present attacked him, including Vernon and Annette Smith, so he fought back in self-defense until they finally stopped and he left for the Sand Park office.

8. Russell told Deputy Stallbaumer that Winters began screaming at Clawson as she brought wood to the fire and shoved her back, grabbed her, shoved her to the ground, and began hitting her. Russell stated only Vernon Smith hit Winters.

9. Vernon Smith also reported to Deputy Stallbaumer that Winters yelled at Clawson, got into her face, and shoved her from the fire pit out into the road. Vernon Smith then indicated that he engaged Winters to defend Clawson, who is his niece. Once that altercation ended, Vernon Smith saw Winters getting into Smith's truck. He told Winters he could not take the truck and then pulled him out. During this second interaction, Winters struck Annette Smith. Vernon suggested Winters was intoxicated, asking Deputy Stallbaumer to hold Winters until he sobered up.

10. Annette Smith gave Deputy Stallbaumer a report consistent with Vernon Smith, adding that her glasses were broken when Winters hit her in the face. She also had injuries to her hands. According to Smith, she and her husband both struck Winters during the second encounter.

11. Ashley Winters' report was consistent with that given by Vernon and Annette Smith. When asked if she thought Winters was the "primary aggressor," she said "oh yeah." She also stated Winters was "obviously intoxicated."

12. Deputy Vergis spoke with Tonya Clawson, who stated that Winters shoved her back when she wanted to add wood to the fire. She reported he shoved her to the ground so hard she lost her breath and shoved her back down when she stood up. She fought back but Winters was stronger. Clawson indicated she had been kicked in the face.

13. Deputy Stallbaumer arrested Winters for domestic violence for the injury to Annette Smith, as they had previously resided together.

14. In a complaint filed on June 9, 2021, the Hamilton County Attorney charged Winters with two misdemeanor battery counts under K.S.A. 21-5413(a)(2), related to battery of Clawson and Smith, and one misdemeanor count of disorderly conduct, pursuant to K.S.A. 21-6203(a)(1). (CPOST Ex. 3).

15. Winters entered into a diversionary agreement with the Hamilton County Attorney, which was filed on February 14, 2022. (CPOST Ex. 5). In a document attached to the diversionary agreement, Winters stipulated to Deputy Stallbaumer's report and agreed he "was engaged in an argument causing physical contact with Tonya Renee Clawson and Annette Joy Smith which caused alarm, anger or disturbance to others causing a breach in peace." The diversion period ended November 14, 2022.

Conclusions of Law

16. The Commission issued a law enforcement certification to Trey Winters. The KLETC authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who commits a violation under subsection (b) of K.S.A. 74-5616. The Commission's Investigative Committee subsequently issued an order revoking Winters' certification after concluding he had violated two provisions under

K.S.A. 74-5616(b). Winters requested a hearing on the revocation of his certification. The Commission has jurisdiction over Winters and the subject matter of this hearing.

Conduct Constituting Misdemeanor battery

17. The KLETA authorizes the Commission to suspend, condition, or revoke the certification of a law enforcement officer who engaged in conduct which, if charged, would constitute a misdemeanor crime that reflects on the honesty, trustworthiness, integrity, or competence of a law enforcement officer as defined in a regulation adopted by the Commission. K.S.A. 74-5616(b)(5). One such misdemeanor crime is battery as defined in K.S.A. 2022 Supp. 21-5904. K.A.R. 106- 2-2a(a)(6).

18. The definition of the misdemeanor crime battery includes "knowingly causing physical contact with another person when done in a rude, insulting or angry manner." K.S.A. 2016 Supp. 21-5413(a)(2).

19. The statements collected by Deputies Stallbaumer and Vergis support the conclusion that Winters caused physical contact with Tonya Clawson and Annette Smith in a rude, insulting, or angry manner.

20. In the signed stipulation attached to the diversion agreement, Winters acknowledged that he "was engaged in an argument causing physical contact with Tonya Renee Clawson and Annette Joy Smith which caused alarm, anger or disturbance to others causing a breach in peace."

21. The totality of the evidence clearly showed Winters admitted to engaging in and knowingly engaged in conduct that constituted the misdemeanor crime battery and that his conduct violated K.S.A. 2016 Supp. 74-5616(b)(5).

22. The definition of the misdemeanor crime disorderly conduct is "[b]rawling or fighting" "that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace." K.S.A. 21-6203(a)(1).

23. The statements collected by Deputies Stallbaumer and Vergis support the conclusion that Winters brawled or fought and knew or should have known that that conduct would "alarm, anger or disturb others or provoke an assault or other breach of the peace."

24. In the signed stipulation attached to the diversion agreement, Winters acknowledged that his conduct caused "physical contact with Tonya Renee Clawson and Annette Joy Smith which caused alarm, anger or disturbance to others causing a breach in peace."

25. The totality of the evidence clearly showed Winters admitted to engaging in and knowingly engaged in conduct that constituted the misdemeanor crime disorderly conduct and that his conduct violated K.S.A. 2016 Supp. 74-5616(b)(5).

Failure to Maintain Certification Requirement of Good Moral Character

26. The Commission is authorized to suspend, condition, or revoke the certification of a police officer or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 and amendments thereto. K.S.A. 74-5616(b)(1). One requirement for certification as a law enforcement officer is good moral character sufficient to warrant the public trust. K.S.A. 74-5605(b)(5).

27. 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.

28. 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.

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

30. 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).

31. 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 their integrity.

32. The Commission hereby incorporates by reference the paragraphs

numbered 5 through 25 above. The Commission determines those paragraphs show Winters' conduct clearly demonstrates a lack of good moral character sufficient to warrant the public trust due to Winters' intoxicated brawling with family members, including hitting Annette Smith in the face and breaking her glasses.

33. Based upon the totality of the evidence, the hearing Panel concludes that there is clear and convincing evidence to show Winters has failed to maintain 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

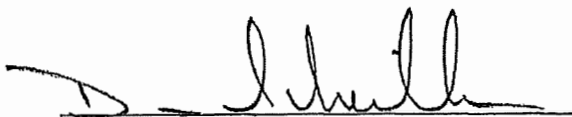
34. The Hearing Panel has concluded that the facts show that Winters has violated two provisions of the KLETA. First, Winters engaged in criminal conduct. Second, Winters failed to maintain the certification requirement in K.S.A. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 74-5616(b)(1).

35. Based upon the above violations, separately and collectively, the Hearing Panel determines that the law enforcement officer certification issued to Trey Winters should be revoked.

ORDER

After consideration of the above findings of fact and conclusions of law, it is the decision and order of the Hearing Panel that the law enforcement certification issued to Trey Winters should be and is hereby revoked. It is the further decision and order of the Commission that Trey Winters must surrender and return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.



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 revoking the certification as a law enforcement officer issued to Trey Winters 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.

Pursuant to K.S.A. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, 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 person who may receive service of a petition for reconsideration, a petition for stay of effectiveness, or a petition for judicial review on behalf of the Commission is: Doug Schroeder, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of April, 2023, a copy of the above Order and Notices were deposited in the United States mail, first-class postage prepaid, and addressed to:

Trey Winters


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

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



Staff
Kansas Commission on Peace Officers'
Standards and Training