

LAW ENFORCEMENT OFFICERS
STANDARDS AND TRAINING COMMISSION
MICKELSON CRIMINAL JUSTICE CENTER
Commission Conference Room
Pierre, SD
December 13, 2018

The South Dakota Law Enforcement Officers Standards and Training Commission meeting was called to order by Chairman Zeeb at the hour of 10:05 a.m. CST on December 13, 2018, in the Commission Conference Room of the George Mickelson Criminal Justice Center in Pierre, South Dakota.

Chairman Zeeb asked for a roll call. The following members responded to roll call: Matt Burns, Sioux Falls Chief of Police; Mike Leidholt, Hughes County Sheriff; Tom Wollman, Lincoln County State's Attorney; Craig Price, Superintendent, SD Highway Patrol; Marty Jackley, Attorney General; Robert Perry, Special Agent, FBI; Jo Vitek, Lake Area Technical Institute; and Steve Allender, Rapid City Mayor. Commission Member David Lawrence, Chief of Police, Standing Rock Sioux Tribe, joined the meeting at 10:15 am. Others present included Brian Zeeb, Chairman; Chad Mosteller, Executive Secretary; Kim Knecht, Assistant Training Administrator; and Dave Harris, Basic Training Administrator, and various news media personnel. Commission Member Randall Rosenau, Lawrence County Commissioner, was absent.

In accordance with SDCL1-25(1), official meetings open to the public, time was allowed by Chairman Zeeb for public comments on the agenda items. No public comments were heard or received reference the agenda items.

Chairman Zeeb declared a quorum present and started the order of business with the review of the previous meeting's minutes.

- November 7, 2018 minutes of the South Dakota Law Enforcement Officers Standards and Training Commission were approved on a **motion** by Commission Member Perry, **second** by Commission Member Wollman.

The commission proceeded with the scheduled hearing of **Korey Ware**. Chairman Zeeb turned the proceedings over to Hearing Officer Paul Bachand. It was stated for the record, this is the time and place for the hearing to determine whether Ware engaged in conduct unbecoming of a law enforcement officer, to wit, while located at a bar in Aberdeen, Ware assaulted an individual without provocation, causing the individual to suffer injuries to his face.

Ware is present with counsel, Thomas Sannes. Kelly Marnette, Assistant Attorney General, is acting legal counsel for the State. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost thereof. See file for exhibits.

Legal Counsel reached an agreement on continuance of this matter with the stipulation that the certification of Ware is hereby suspended and will remain suspended until a hearing before the commission. Ware will go to trial in February or March.

Several questions and discussion regarding the legality of being sworn in as sheriff without current certification as a law enforcement officer; review of sheriff's statute chapter 7-12 resulted in a **motion** by Commission Member Liedholt to recess the hearing and to have legal staff review conditions of law, **second** by Commission Member Allender, motion **approved** [10:40 am].

Members continued with the following certification reinstatement requests:

Chad Strobel, Pennington County Sheriff's Office. Tony Verchio, Pennington Co SO Training Manager, along with Strobel are before the commission seeking certification reinstatement. Strobel attended the Eight-Week Basic Training Session and was certified in December 1998. Strobel's certification expired in September 2010. Strobel was employed by the Rapid City Police Department until September 2008, at which time he went to work in a family-owned business until July 2016. In November 2016, Strobel appeared before the commission requesting certification reinstatement. The request was approved contingent upon completing the reciprocity training week. Strobel resigned in January 2017 from the Rapid City Police Department due to commitment to his business and did not attend or complete the required reciprocity training week. Strobel is currently a sworn reserve deputy with the Pennington County Sheriff's Office, has completed his reserve officer training and received reserve certification in June 2018. Verchio advised Strobel has been hired in a part-time Deputy position contingent upon the reinstatement of his South Dakota Law Enforcement Certification. Based on Strobel's experience and training throughout his 22 years of law enforcement service, Pennington County Sheriff's Office is requesting his certification be reinstated.

Motion by Commission Member Allender to approve the certification reinstatement request for Chad Strobel contingent upon the attendance and completion of the one-week reciprocity training, **second** by Commission Member Jackley, motion **approved**.

Tony Aas, Lake Norden Police Department, is present requesting certification reinstatement. Aas attended the 12-Week Session and was certified in April 2002. Aas's certification expired in December 2012. Aas is employed full-time with the Watertown Fire Department. He completed the EMT paramedic program at Lake Area Tech. Staff recommendation is the attendance of the reciprocity training week in January 2019. **Motion** by Commission Member Leidholt to approve the reinstatement request pending successful completion of the reciprocity training week, **second** by Commission Member Burns, motion **approved**.

Neal Moad, Lake Andes, is before members requesting reinstatement of his South Dakota Law Enforcement certification. Moad is not currently employed by a law enforcement agency but is seeking reinstatement to be eligible to be hired by an agency. Moad attended the 12-Week Basic Session and was certified in November 2005, his certification lapsed in December 2017. In November 2015, Moad was involved in an auto accident and received injuries that would not allow him to work. As a result of this accident, Moad was terminated from the Charles Mix County Sheriff's Office because his driver's license had expired. Staff recommendation is the attendance of the one-week reciprocity training session. **Motion** by Commission Member Price to approve the certification reinstatement request contingent upon being hired by a law enforcement agency, **second** by Commission Member Jackley, motion **approved**.

Michael Marquette, Marshall County Sheriff's Office, is present requesting reinstatement of his South Dakota Officer's certification. Marquette completed the 12-Week Basic Training and was certified in November 2008. Marquette's certification expired in November 2014. Marquette was employed with the Marshall County Sheriff's Office from 2007 to 2012. In 2009, he was presented the opportunity to purchase a farm site and he resigned his full-time position with Marshall County but continued as a part-time officer until he became manager for a parts shop. The Sheriff's Office had an opening and he returned to full-time status in October 2018. Staff recommends the attendance and completion of the reciprocity training week in January 2019. **Motion** by Commission Member Burns to approve the certification reinstatement request pending the completion of the reciprocity training week, **second** by Commission Member Perry, motion **approved**.

Introductions were made of Law Enforcement Training's new member, Dave Harris. Harris was the Director of the Douglas Wyoming Academy for the past 12 years.

The scheduled hearing for Korey Ware reconvened at 11:20 am with a quorum present. Hearing Officer Bachand has visited with both parties [legal counsel for Law Enforcement Training and legal counsel for Korey Ware] regarding legal matters, and they have reached the following agreement:

- Continuance would be granted.

Conditions of continuance:

- Administrative work only within the Roberts County Sheriff's Office, restricted as set forth in the December 4, 2018 Roberts County Board of Commissioners correspondence.

That would be a condition of the continuance that would remain in effect until there is a hearing on this.

- Immediately upon after being sworn in, Ware's certification is suspended by agreement between the parties.
- Roberts County has to appoint an interim sheriff or acting sheriff at that point in time so Ware is not fulfilling the job of sheriff.
- Suspension will remain in effect until further order of this commission or until a hearing has occurred with this commission. Restrictions placed on work, in essence, Ware will not function as a law enforcement officer during the pendency until there is a hearing in this case or until further order of the commission.

Motion by Commission Member Perry to grant a continuance based upon the stipulations as just agreed to between both parties, **second** by Commission Member Allender, motion **approved**.

Members recessed for lunch at 12 pm and reconvened at 1:05 pm with a quorum present.

Chairman Zeeb along with commission members thanked Attorney General Jackley and Col. Price for all their work with the commission. This is their last commission meeting.

The following canine teams have met requirements of certification or recertification:

- Canine Team Darrell O'Connor and K9 Cooper, Roberts County Sheriff's Office, have met the requirements for Drug Dog Detection certification on November 21, 2018.
- Canine Team Paul Sheldon and K9 Mack, Jerauld County Sheriff's office, have met the requirements for Patrol Dog certification on December 6, 2018.

Motion by Commission Member Leidholt to approve O'Connor and Sheldon Canine Team certifications as presented by the Executive Secretary, **second** by Commission Member Wollman, motion **approved**.

Executive Secretary Mosteller presented the following reciprocity requests:

Seth Brown, Sioux Falls Police Department, completed the 195th 643-Hour Basic Training Class at the Nebraska Law Enforcement Center in March 2017. Brown has completed all requirements for peace officer certification and is in good standing with the State of Nebraska. He was employed with the Butler County Sheriff's Office. Background check revealed no adverse information. Brown successfully completed the reciprocity exam in November 2018 and is scheduled to attend the January 2019 reciprocity training week.

Motion by Commission Member Perry to approve the reciprocity request contingent upon the successful completion of the reciprocity training week, **second** by Commission Member Allender, motion **approved**.

Jennifer Dingman, Pennington County Sheriff's Office, completed the course of study at Minnesota State University Mankota and completed the skills training at Hibbing Community College. Dingman completed

the Minnesota Peace Officer licensing requirements in 2018 and is eligible for a peace officer license. Records showed no disciplinary action taken against prospective licensee by the POST Board. Dingman's background revealed no adverse information. Dingman successfully completed the reciprocity exam in December 2018 and is scheduled to attend the January 2019 reciprocity training week. **Motion** by Commission Member Price to approve the reciprocity request contingent upon the successful completion of the reciprocity training week, **second** by Commission Member Burns, motion **approved**.

The next item on the agenda is the scheduled hearing of **Dale Elsen**, Marshall County Sheriff. Hearing Officer Paul Bachand stated for the record, this is the time and place for the hearing to determine whether Elsen engaged in conduct unbecoming of a law enforcement officer by engaging in a pattern of sexual harassment. Elsen admitted to the complaint. [Note for the record - Commission Member Price was called away].

Elsen is present with counsel, Brad Schreiber. Brent Kempema, Assistant Attorney General, is acting legal counsel for the State. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost thereof. See file for exhibits.

Hearing Officer Bachand advised Elsen of the hearing procedure and due process. The hearing commenced with opening statements by counsel, and continued with witness testimony, presentation of evidence and exhibits, cross-examination and questions by commission members and the hearing officer. Upon conclusion of testimony, review of records, questions and discussion, the evidentiary portion of the hearing concluded.

Members took a short break and entered into executive session on a **motion** by Commission Member Leidholt, **second** by Commission Member Perry to further discuss their consideration, motion **approved**.

Members moved out of executive session and back into regular session on a **motion** by Commission Member Wollman, **second** by Commission Member Lawrence. Proceedings resumed before the commission.

Motion made by Commission Member Perry to revoke the certification of Sheriff Elsen as a result of finding that he engaged in conduct unbecoming of a law enforcement officer. In addition, to allow the chairman to sign the Findings of Facts, Conclusions of Law and Order on behalf of the commission. Motion **second** by Commission Member Vitek. Motion **approved** by verbal response in the affirmative by all members. **Action: 8-0 Aye** (Wollman, Burns, Leidholt, Jackley, Perry, Vitek, Lawrence, and Allender).

Assistant Attorney General Kempema will prepare the Findings of Fact, Conclusions of Law and Order. The hearing proceedings were concluded.

Hearing Officer Bachand proceeded with the scheduled hearing in the matter of the dismissal of **Garrett Welsh** from the South Dakota Law Enforcement Basic Certification Course. It was stated for the record, this is the time and place for the hearing to determine whether Garrett Welsh's conduct violated any restriction or rule established by the Law Enforcement Training Executive Secretary to administer or maintain order during the basic training course and/or whether Welsh engaged in conduct which would be grounds for revocation or suspension of certification if he were certified. Welsh was assigned to complete an investigations case study and was specifically instructed to complete an incident case report on a "missing child" case. Welsh was advised in writing and in person the report must be his "own report" and must be done individually. Welsh asked another student for a copy of that student's incident case report. Upon receiving it, Welsh made minimal changes to the document and submitted the document as his own.

When asked about the document, Welsh advised he made significant changes to the other student's case report. Welsh admitted knowing the case report must be his original work product. Welsh was dismissed from the 168th Basic Training Session and terminated from the SD Highway Patrol.

Note for the record: Commission Members Wollman and Price are recused.

Welsh is present with counsel, Brad Schreiber. Kelly Marnette, Assistant Attorney General, is acting legal counsel for the State. The record will reflect a stenographic transcription of the hearing will be made and copies of the transcription will be available upon request and tender of the cost thereof. See file for exhibits.

Hearing Officer Bachand advised Welsh of the hearing procedure and due process. The hearing commenced with opening statements by counsel, and continued with witness testimony, presentation of evidence and exhibits, cross-examination and questions by commission members and the hearing officer. Upon conclusion of testimony, review of records, questions and discussion, the evidentiary portion of the hearing concluded.

Members entered into executive session on a **motion** by Commission Member Burns, **second** simultaneously by Commission Members Perry and Vitek to further discuss their consideration, motion **approved**.

Members moved out of executive session and back into regular session on a **motion** by Commission Member Leidholt, **second** by Commission Member Perry. Proceedings resumed before the commission.

Motion by Commission Member Burns to move that we (commission) uphold the dismissal based upon a determination that Section 6 of the student handbook was violated, and the actions brought discredit upon yourself, your agency, and Law Enforcement Training. Commission Leidholt added to the motion to allow the chairman to sign the Findings of Facts, Conclusions of Law and Order on behalf of the commission, **second** by Commission Member Lawrence. Motion **approved** by verbal response in the affirmative by all members. **Action: 6-0 Aye** (Burns, Leidholt, Perry, Vitek, Lawrence, and Allender).

There being no further business to come before the meeting body, the meeting was adjourned on a **motion** by Commission Member Perry, **second** by Commission Member Burns, motion **approved**.