

AGENDA POLICE STANDARDS ADVISORY COUNCIL

DATE: May 12, 2021
TO: Police Standards Advisory Council
FROM: Brenda L. Urbanek, Director
SUBJECT: Regular Meeting Wednesday, May 19, 2021, 9:00 A.M.
Library, Nebraska Law Enforcement Training Center,
3600 N. Academy Road, Grand Island, Nebraska 68801

- I. CALL TO ORDER
- II. APPROVAL OF March 17, 2021 P.S.A.C. MINUTES
- III. ACADEMY REPORTS
 - A. Director – N.L.E.T.C.
 - B. Deputy Director of Training – N.L.E.T.C.
 - C. Nebraska State Patrol
 - D. S.L.D.E.A.
- IV. CRIME COMMISSION REPORT
- V. OLD BUSINESS
 - A. 2020 Annual Waivers
Robert McFarland, Ashland Police Department

Attachment #1



VI. NEW BUSINESS

- A. PSD Judge/Evaluator/Certification Modifications**
- B. Revocation of Law Enforcement Certification – Voluntary Surrender
LR-152-18; Kenneth White**
- C. Academy Instructor Certifications **Attachment #2****

 - General Original**

Shane Belgum – NSP
Alan Eberle – NSP
 - General Recertification**

Jeff Hillabrand – Lincoln Police Department
 - Professional Original**

Matthew Brodecky – NSP
Greg Goltz – NSP
Nicholas Plate – NSP
Dean Riedel – NSP
 - Professional Recertification**

Jason Probasco – NSP

- D. Waiver of One-Year Management Requirement **Attachment #3**
Sheriff Dustin Spanel, Loup County Sheriff's Office**
- E. 2021 First Line Supervisor Course In-Lieu-Of N.L.E.T.C. Supervision **Attachment #4**
Omaha Police Department**
- F. Waiver of One-Year Basic Training Requirement **Attachment #5**
Deputy Andrea Murphy, Washington County Sheriff's Office**
- G. Waiver of NLETC Management Course Requirement **Attachment #6**
Chief Joel Smith, McCook Police Department**
- H. Waiver of One-Year Supervision Training Requirement **Attachment #7**
Officer Lisa Citta, North Platte Police Department**

VII. OTHER BUSINESS

A. Date, Time & Location of Next Meeting

June 16, 2021, 9:00; Library, Nebraska Law Enforcement Training Center,
3600 North Academy Road, Grand Island, Nebraska 68801

**REGULAR MEETING OF THE
POLICE STANDARDS ADVISORY COUNCIL
March 17, 2021**

I. CALL TO ORDER

Chairman, Chief Deputy Greg London called the regular monthly meeting of the Police Standards Advisory Council to order at 9:03 A.M. Legal notice of the meeting was published in the Lincoln Journal Star on Friday, March 5th, 2021.

Roll call of members; Chief Deputy Greg London, Sheriff Dan Osmond, Chief Timothy Larby, Mr. Matthew McCarthy, Chief Tracy Wolf, and Lieutenant Colonel Buck Duis.

Others present: Director Brenda Urbanek, David Stolz, Don Arp Jr., William Keeling, Captain Gregory Miller, Lieutenant Andrew Ecklund, and Kay Fielding.

II. APPROVAL OF February 17, 2021 P.S.A.C. MINUTES

MOTION

Sheriff Osmond motioned to approve the February 17, 2021 minutes. Chief Larby seconded the motion. Chief Deputy Greg London, Sheriff Dan Osmond, Chief Timothy Larby, Chief Tracy Wolf, Mr. Matthew McCarthy, and Lieutenant Colonel Buck Duis. Motion carried 6-0

III. ACADEMY REPORTS

A. Director – N.L.E.T.C.

Director Urbanek reported Mr. William Mathis accepted the Business Application System Technician position and would begin working March 29th. He will be very instrumental when we move forward with our new software database. We have been told by the consultant that this weekend they will migrate all of the data from a practice server to a production server so we will



D. S.L.D.E.A.

No Report

IV. CRIME COMMISSION REPORT

Executive Don Arp stated since the last meeting he had done some research on the Omaha Police Department's early differed retirement and an officer does retain their badge, credentials, and firearm and still has all of their police authority. So as we make decisions on training waivers, etc. they are still police capable, equipped and licensed law enforcement officers. They just do not have any duty requirements, are not scheduled for shifts, and if they do have to come in, they can be called to court and they are obtained over a time if they are called for court.

Gave a brief on some of the legislative bills that could affect law enforcement.

V. OLD BUSINESS

A. 2020 Firearms Waiver Request
Angelo Casarez, Lancaster County Sheriff's Office

Director Urbanek asked that the Council go into Executive Session. This is addition information the Council had asked for regarding some firearms waivers last month and its medical information.

MOTION

Sheriff Osmond: I would move that the council go into executive session based on the prevention of needless injury to the reputation of the people we will discuss. Chief Larby seconded the motion. Voting in favor; Sheriff Osmond, Chief Larby, Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis, and Chief Deputy London,. Motion carried 6-0. Those allowed to stay in the room are; all the Council members, Executive Director, Director Urbanek, Secretary, and Legal Advisor.

The Council went into executive session at 9:21 A.M.

MOTION

Chief Larby motioned to come out of executive session. Sheriff Osmond seconded the motion. Voting in favor; Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis, Chief Deputy London, Sheriff Osmond, and Chief Larby. Motion carried The Council came out of executive session at 9:44 A.M.

March 17, 2021
PSAC
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Chief Deputy London asked if there was a motion on the floor for 2020 firearms waiver request.

MOTION

Mr. McCarthy motioned to approve the firearms waivers for Angelo Casarez of the Lancaster County Sheriff's Office and from Omaha Police Department: James Bruning, Larry Cahill, Sheila Cech, Anthony Conner, Stefanie Fidone, James Guyott, Leighanne Loges, Bobbi Mallette, Shawna McClure. Chief Larby seconded the motion. Voting in favor: Lieutenant Colonel Duis, Chief Deputy London, Sheriff Osmond, Chief Larby, Chief Wolf, and Mr. McCarthy. Motion carried 6-0.

VI. NEW BUSINESS

Director Urbanek asked for a 10-minute break before beginning the hearing. The meeting broke at 9:46 AM.

A. 20 PSAC 81 Appeal; Denial to Basic Training	9:30 AM
Kelvin Grant, Walthill Police Department	
10:06 A.M. – 1:53 P.M.	

Case Number 20 PSAC 81

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Chair: The matter now before the Police Standards Advisory Council is the Village of Walthill v. the Nebraska Law Enforcement Training Center, Case Number 20 PSAC 81. I will now call this hearing to order at 10:06 a.m. I will note the following Council members are present:

- Myself, Chief Deputy Greg London
- Lt. Colonel Duis – Nebraska State Patrol
- Chief Timothy Larby – Atkinson Police Department
- Mr. Matthew McCarthy – Northeast Community College
- Sheriff Dan Osmond – Custer County Sheriff's Office
- Chief Tracy Wolf – Lexington Police Department

The Council has been asked by the Petitioner, the Village of Walthill to consider reversing Director Urbanek's denial of its applicant, Mr. Kelvin Grant, entrance into the Basic Law Enforcement Officer Certification.

The Council is here pursuant to its authority as stated in Nebraska Revised Statute §81-1403, its related statutes and Title 79 of the Nebraska Administrative Code.

I will note that the petitioner is represented by counsel, Matthew M. Munderloh.

Munderloh: Correct, thank you.

Chair: The petitioner's applicant, Kelvin Grant is present.

Chair: The Nebraska Law Enforcement Training Center's Director Brenda Urbanek is present. Mr. Jason Bergivin

Bergivin: Bergivin, thank you good morning.

Chair: I'm sorry how is that?

Bergivin: Bergivin (the "g" is pronounced with a "j")

1 Chair: Okay, sorry if I mispronounce that, of the Nebraska Attorney's General's Office is here
2 to represent the Training Center and Director Urbanek and he will present the reasons
3 for Director Urbanek's denial of the Petitioner's applicant admission into the Basic Law
4 Enforcement Officer Certification Course.

5 Chair: Does either party contest the Council's authority to hear this type of case?

6 Bergivin: No sir

7 Munderloh: No sir

8 Chair: Title 79 of the Nebraska Administrative Code, Chapter 8, addresses the requirements
9 that must be met by an applicant in order to be eligible for the Basic Law Enforcement
10 Officer Certification Course. Specifically, section 005.02A3 requires that the applicant
11 has not been adjudged or convicted of criminal violations with such frequency so as to
12 indicate a disrespect for the law; section 005.02A6b provides that an applicant hasn't
13 used marijuana for any purpose within the last two (2) years and, per section 005.04A
14 applicants are under a duty to disclose any and all information that may affect the
15 applicant's qualifications for entrance into certification training. Any deliberate
16 omissions, falsifications and/or misrepresentations made on the application or through
17 the application may be grounds for denial of entrance into a training academy.
18 Pursuant to Title 79, Chapter 8, section 009.02, upon request of an applicant or agency,
19 the Council will conduct a hearing in order to determine whether the applicant meets the
20 minimum qualification for admission into a certification course. The burden during the
21 appeal hearing is on the petitioner and/or the applicant to demonstrate by clear and
22 convincing evidence that the applicant meets admission qualifications. Per Title 79,
23 Chapter 13, section 004.02G, the issues of this appeal will be limited to those raised in
24 the request for review and reconsideration as provided in section 004.02C and the
25 director's written decision in response.

1 Chair: The decision of the Council is final.

2 Chair: I want to go over the rights that the Village and Mr. Grant have in this Administrative
3 Hearing.

4 Chair: You have the right to be heard, either in person or by counsel whom you have hired at
5 your own expense.

6 You have a right to notice; that is to receive a statement from the State, the Nebraska
7 Law Enforcement Training Center, detailing or justifying its actions in this matter.

8 Chair: Do you understand your rights?

9 Grant: Yes Sir

10 Chair: Thank you.

11 Chair: Did you receive such notice via the letters from Director Urbanek stating her reasons for
12 her denial of your basic officer application?

13 Munderloh: Yes we did.

14 Chair: Did you notice any defects in those letters that prejudiced you from presenting your
15 case?

16 Munderloh: No

17 Chair: Thank you.

18 Additionally, you have a right to present evidence at this hearing, a right to the Council's
19 findings and the right to seek judicial review thereafter.

20 Chair: Do you understand these rights?

21 Munderloh: Yes

22 Chair: The Police Standards Advisory Council shall act as the Hearing Board for this appeal.
23 Neither I, nor any other Council member, will be a witness for either side and I am not
aware of any matters which I believe may be grounds for challenge by either side against
25 me or the other members.

1 I have had personal information conveyed to me about this case and I will explain. I
2 talked to the Attorney, Dave Stolz, about this, the Hearing Guide, so that is what I am
3 reading, so he presented this information. I have not seen any of the exhibits, so that is
4 my involvement on what I know about this case.

5 Stolz: Mr. Chairman, if I may elaborate, when I do prepare the Hearing Guide, as Legal
6 Advisor to the Council, I have to premise and put in the guide what the case is about. I
7 was not involved in the decision process, I am not a staff employee of the Training
8 Center, I am the Crime Commission's attorney so I am not involved in any of that
9 decision making process. The information I had was from the officer's file which are
10 going to be offered as exhibits, I believe, so I wanted everyone to know that as well,
11 that's the information I gave to the Chair when we put together the hearing guide.

12 Chair: I haven't seen any of the exhibits and I have not talked to Director Urbanek about this
13 case at all. I'm going to go around the room and see if any of the members have any
14 knowledge of this case.

15 Chair: Lieutenant Colonel Buck Duis

16 Duis: No

17 Chair: Chief Tracy Wolf

18 Wolf: No

19 Chair: Mr. Matthew McCarthy

20 McCarthy: No

21 Chair: Chief Timothy Larby

22 Larby: No

23 Chair: Sheriff Dan Osmond

24 Osmond: No

1 Chair: Does either side have any further questions or challenge for cause against any member
2 of the Council?

3 Bergivin: No sir

4 Munderloh: No sir

5 Chair: Mr. Bergivin, do you have any procedural documents for this case and if so, please
6 present them to the Council.

7 Bergivin: Thank you, I have previously exchanged these exhibits with Petitioner's Counsel, Mr.
8 Munderloh, I'm going to summarize them for the record and then offer them in one
9 group.

10 Exhibit #1 is the Petitioner's Character Affidavit submitted on, or completed on
11 September 9th of 2020 and received by the Training Center on September 22nd of 2020.
12 Exhibit #2 is the Petitioner's Character Affidavit completed on October 13th of 2020 and
13 received by the Training Center on November 4th of 2020.

14 Exhibit #3 is an Omaha Tribal Court Background Result Inquiry regarding Kelvin L.
15 Grant Jr. the Petitioner received by the Training Center on September 24th, 2020.

16 Exhibit #4 is an Authority to Release Information completed by Kelvin Louis Grant Jr.
17 signed October 29th, 2020

18 Exhibit #5 is a Nebraska DMV Information printout from NCJIS regarding petitioner
19 Kelvin Grant

20 Exhibit #6 is a Nebraska Criminal History Summary from NCJIS regarding Petitioner
21 Kelvin Grant

22 Exhibit #7 is a Summary details regarding Dakota case CR 14 1702 printed from NCJIS

23 Exhibit #8 is Title 79 Chapter 8 of the Nebraska Administrative Code in its entirety

1 Exhibit #9 is Director Urbanek's letter to Petitioner in Walthill regarding her initial
2 decision to deny admission into basic certification law enforcement course dated
3 December 9th of 2020.

4 Exhibit #10 is Petitioners Counsel's letter to Director Urbanek indicating petitioners
5 desire to appeal her decision. Initial letter is December 14th of 2020 and then the
6 subsequent letter on December 29th of 2020. Contains the rational along with multiple
7 attachments for the request for reconsideration.

8 Exhibit #11 is Director Urbanek's letter to Mr. Munderloh and Petitioner in Walthill
9 explaining her decision after reconsidering the matter and it is dated January 13th of
10 2021.

11 Exhibit #12 is Mr. Munderloh's letter to Director Urbanek explaining that the Petitioner
12 desires to appeal her final decision not admitting the Petitioner into the basic
13 certification law enforcement course. Dated January 21st of 2021.

14 Chair: There are 12 exhibits?

15 Bergivin: 12 exhibits, I would offer them in their entirety at this time.

16 Chair: Mr. Munderloh, you have any objections to the receipt of these exhibits?

17 Munderloh: I have no objections.

18 Chair: Let the record reflect Exhibits 1 - 12 have been received and are entered into the record.

19 Stolz: Are you going to refer to those?

20 Bergivin: Yes, we intend to use them during the hearing and they have all been marked by the
21 secretary.

22 Munderloh: And I do have two (2) additional exhibits, I don't know if now would be the time to
23 discuss and offer those.

24 Stolz: This would be an appropriate time.

25 Munderloh: An appropriate time, okay, alright thank you.

1 So I have two (2) exhibits, I will identify them and offer them.

2 Exhibit #13 is a 16 page exhibit the first two (2) pages are a copy of an email from Mr.
3 Grant to myself, the balance of that exhibit is a private background report from Intelius
4 that Mr. Grant ordered for himself as he was completing the Character Affidavits.

5 Exhibit #14 is a Character Reference letter from the Executive Clinical Director of the
6 NEPSAC Treatment Organization in Gordon, Nebraska. This individual's name is
7 Victor Gehrig and I will offer 13 and 14 at this time.

8 Bergivin: No objection.

9 Chair: Okay, then I'm going to rephrase what I said earlier, let the record reflect Exhibits #1-
10 #14 have been received and are entered into the record.

11 Munderloh: Thank you.

12 Chair: Does either side wish to address any further preliminary matters?

13 Bergivin: No sir.

14 Munderloh: No sir.

15 Chair: Mr. Munderloh, on behalf of the petitioner, do you wish to make an opening statement at
16 this time?

17 Munderloh: I can make a brief opening statement.

18 So looking at the final denial letter from Director Urbanek, there are three (3) issues as I
19 see them. One is Mr. Grant's failure to disclose all of his criminal convictions. Our
20 presentation and argument today will be that there were no deliberate omissions when he
21 was completing his application to the contrary Mr. Grant is the only officer for this
22 agency in Walthill. Endeavored to figure out what his convictions were and he did so by
23 ordering this private background report through Intelius, which I just referred to as
24 Exhibit #13. There was no police chief in Walthill to do any kind of a background
25 report for him and so he simply used his private service to do that and we believe that

1 the evidence will demonstrate that the convictions on that Exhibit #13 are the
2 convictions that he disclosed on his character affidavits.

3 The other issues, the frequency of his convictions, Mr. Grant will give testimony of the
4 circumstances of each of these convictions. They date from, I believe 2005, when Mr.
5 Grant was all of 17-years old, he does have some convictions that are more recent, as
6 recent as 2017, he'll explain the circumstances of those, we think that those convictions,
7 we don't want to minimize them but we think that his age is evidence of each offense far
8 mitigating factors that we would ask you to consider.

9 The third issue, marijuana use. Mr. Grant did disclose on his application, he was
10 forthright about his marijuana use of the last two (2) years. Incidentally, the fact that he
11 was forthright about that something that really is not verifiable one way or the other
12 would also suggest that he wasn't deliberately dishonest or wanting to deliberately
13 misrepresent something about his criminal convictions, but his marijuana use yes, it v.
14 over the last few years but since then he completed treatment program in Gordon,
15 Nebraska, that was for alcohol related issues and marijuana use. His testimony, I
16 anticipate today, will be that he has not used since. He has a wonderful character
17 reference letter from Gehrig, the Executive Director of that treatment program in
18 Gordon, that's Exhibit #14. Most of his criminal convictions arise from alcohol use and
19 we believe that is something he now has under wraps and certainly we don't think there
20 is any evidence of a pattern of substance abuse as defined in Chapter 8. Thank you.

21 Chair: Thank you.

22 Mr. Bergivin, do you wish to make an opening statement?

23 Bergivin: Yes, thank you.

24 The evidence will show that Director Urbanek made her decision to deny Mr. Grant
25 admission into the basic officer course for three (3) reasons all related to his lack of good

1 character. First that he deliberately omitted criminal history information from both of
2 the Character Affidavits he completed. You will hear that he completed two (2); one (1)
3 because he's the only employee of Walthill and then a second one that is geared to
4 general applicants.

5 Next that his criminal history shows a disrespect for the law. You're going to learn that
6 Mr. Grant has a criminal history ranging from 2005 to 2017. 15 different charges
7 resulting in 11 convictions and finally that he freely admitted to substance abuse by
8 disclosing that he smoked marijuana in May of 2019, less than two (2) years from the
9 time that he applied for admission.

10 The Respondent will call two (2) witnesses; first Mr. Mark Stephenson, a staff instructor
11 here at the Training Center who will explain the work that he did to gather information
12 about Mr. Grant's background and criminal history and then Director Urbanek will
13 explain how she used that information and applied the regulations in Chapter 8 of Title
14 79 to come to the conclusion that Mr. Grant was not fit to be admitted for training and at
15 the end of this hearing the Respondent is going to ask the Council to affirm her decision.

16 Chair: Now is the time further evidence can be presented to the Council.

17 This may include written evidence, witness testimony and/or any unsworn statements by
18 yourself.

19 Mr. Munderloh, do you have any written evidence for us to consider on behalf of the
20 petitioner?

21 Munderloh: I will call Mr. Grant as a witness to testify.

22 Stolz: So then other than the two (2) exhibits you offered you have no other written evidence?

23 Munderloh: No, I'm sorry, no further written evidence.

Chair: My next question was, do you have any witnesses to testify?

- 1 Munderloh: I'm sorry, when you said written evidence, I must have just, I do have one (1) live
2 witness, that being Mr. Grant.
- 3 Chair: Okay.
- 4 Raise your right hand. Mr. Grant, do you swear that the testimony you are about to
5 make at this hearing shall be the truth, the whole truth, and nothing but the truth.
- 6 Grant: (Raised right hand) Yes sir.
- 7 Munderloh: Thank you
- 8 Mr. Grant, how old are you?
- 9 Grant: 22 now
- 10 Munderloh: What is your date of birth?
- 11 Grant: June 18th, 1988
- 12 Munderloh: Where do you live?
- 13 Grant: Walthill, Nebraska
- 14 Munderloh: How long have you lived in Walthill?
- 15 Grant: Since... four (4) years now.
- 16 Munderloh: Do you live alone?
- 17 Grant: Live with my mother
- 18 Munderloh: What is her name?
- 19 Grant: Bernice Cook Whitewater
- 20 Munderloh: So you've lived with her for four (4) years?
- 21 Grant: Yes sir
- 22 Munderloh: Alright, do you have a family?
- 23 Grant: I have a daughter
- 24 Munderloh: And what is her name?
- 25 Grant Cloe' Marie Grant Hauser

- 1 Munderloh: How old is she?
- 2 Grant: She just turned 13
- 3 Munderloh: Are you currently employed?
- 4 Grant: Yes
- 5 Munderloh: And how are you employed?
- 6 Grant: Employed through the Village of Walthill, Nebraska as a local police officer
- 7 Munderloh: Did the village board make that appointment in about September of 2020?
- 8 Grant: Yes
- 9 Munderloh: Was that appointment conditioned upon you completing the training within one (1) year
10 as required by Nebraska law?
- 11 Grant: Yep
- 12 Munderloh: Did you, after you received that appointment, then apply for admission to the Training
Center?
- 14 Grant: Yes
- 15 Munderloh: And before we talk about what you did in the application process are there other police
16 officers who work for the Village of Walthill?
- 17 Grant: No
- 18 Munderloh: Has there ever been another police officer employed with the village since your
19 appointment?
- 20 Grant: No
- 21 Munderloh: So since your appointment, your basically the only officer there, is that correct?
- 22 Grant: Correct
- 23 Munderloh: Let's talk a little bit about your application process. So Exhibits #1 and #2 are the
Character Affidavits that you submitted as part of the application, is that correct?
- 25 Grant: Correct

- 1 Munderloh: And #1 you submitted in September of 2020?
- 2 Grant: Yeah, right
- 3 Munderloh: And then Exhibit #2 you submitted October of 2020?
- 4 Grant: Yes
- 5 Munderloh: Your familiar with the portions of the Character Affidavits that ask you to disclose any
6 criminal convictions and their circumstances is that right?
- 7 Grant: Yes
- 8 Munderloh: What did you do, strike that. When you look at those Character Affidavits, did you
9 know that you had some criminal convictions?
- 10 Grant: Yep
- 11 Munderloh: Is that a yes?
- 12 Grant: Yes
- 13 Munderloh: Okay, thank you.
14 What if any action did you take to endeavor, to figure out which convictions you
15 actually had?
- 16 Grant: I went online and I purchased a report on the Intelius website as an attempt to gather all
17 the convictions that I accrued.
- 18 Munderloh: Alright so let's talk about that for a little bit.
19 (Displayed Exhibit #13 on overhead screen)
- 20 Mr. Grant this is Exhibit #13. Is this first page or two (2) an email that you sent to me
21 just yesterday?
- 22 Grant: Yes
- 23 Munderloh: Okay, does this, so you ordered this report, does this say September 8th of 2020?
24 (Tape 1 side 2)
- 25 Grant: Yes

- 1 Munderloh: And you ordered this prior to completing the Character Affidavit, is that right?
- 2 Grant: Yes
- 3 Munderloh: Thank you.
- 4 Now, page three (3) of this exhibit, I just want to ask you a question about the report
5 create a date because here it says March 12th of 2021, which would have been just a few
6 days ago and of course after you completed the Character Affidavit, is that correct?
- 7 Grant: Yes
- 8 Munderloh: Can you explain why that says March 12th of 2021?
- 9 Grant: That was the date that I printed off the report but that wasn't the date that initially made
10 the purchase for the report.
- 11 Munderloh: So you and I discussed how we might prepare for this hearing today, is that correct?
- 12 Grant: Yes
- 13 Munderloh: And you indicated that you had ordered this report last fall is that right?
- 14 Grant: Yes
- 15 Munderloh: You then accessed the report just a few days ago when we most recently discussed this,
16 is that right?
- 17 Grant: Yes
- 18 Munderloh: And so this March 12th, 2021 date is simply the date that you accessed it again.
- 19 Grant: Yep, that's right.
- 20 Munderloh: And going back to page one (1) the September 8th, 2020 date here, is that the date that
21 you first ordered the report and accessed it?
- 22 Grant: Yes
- 23 Munderloh: Thank you.
- 24 Can you explain what you did just as a part of ordering the report?

1 Grant: I ordered the report, I went over the report and I looked at all of the convictions and I put
2 on the Personal Character Affidavit everything that was on the report from Intelius. That
3 was the information that Character Affidavit.

4 Munderloh: Was there a particular reason why you decided to order the Intelius Report instead of
5 something else?

6 Grant: No, I just wanted to make absolutely sure that I had every conviction on the Character
7 Affidavit. That was my attempt to try and get every single thing on there.

8 Munderloh: Alright so this page, the bottom of this says page two (2), this indicates Kelvin Louis
9 Grant, and that's you, correct?

10 Grant: Yes

11 Munderloh: Okay and let's go to page nine (9), okay Mr. Grant this is a little bit difficult to see,
12 (overhead view of criminal records page 9) okay Mr. Grant, so the bottom of page nine
13 (9) of this Exhibit, this is your criminal records, is that correct?

14 Grant: Correct

15 Munderloh: And these were the records made available to you on this Intelius Report is that right?

16 Grant: Yes

17 Munderloh: So let's talk about the first one. This is July 28th of 2017. This is a Public Intoxication
18 charge and conviction in Monona County, Iowa. Is that right?

19 Grant: Yes

20 Munderloh: And you don't dispute that you have this conviction, correct?

21 Grant: Yes

22 Munderloh: There is another offense right below it also July 28th of 2017 for theft in the 5th degree
23 also in Monona County, Iowa. Do you dispute that you have that conviction?

24 Grant: No

25 Munderloh: Were those convictions? Did they stem from the same case?

1 Grant: Yep, those were mostly the same case.

2 Munderloh: Can you explain to the best of your recollection the circumstances of that theft in the
3 fifth degree and public intoxication.

4 Grant: That was something that I vaguely remember due to being intoxicated. I don't really
5 remember. I remember that day I was with my brother, he was currently living in Onawa
6 at the time but I don't, I hadn't seen him in so long so I went to go visit him and we
7 indulged in more than a few drinks, don't recollect going to the Casey's where that had
8 taken place, I was blacked out intoxicated, came to I was talking to an officer, and there
9 was a bottle of alcohol on his vehicle and that's all that I can really remember from that
10 case.

11 Munderloh: Is the theft in the fifth degree, is that related to the bottle of alcohol?

12 Grant: Yeah.

13 Munderloh: How so?

14 Grant: Alcohol that was the theft being committed there, the bottle.

15 Munderloh: Okay so the bottle of alcohol was taken from the Casey's without payment, right?

16 Grant: Right

17 Munderloh: Okay, other than those two (2) convictions in 2017 that stem from the same case, the
18 same incident, are there any other criminal convictions that appeared on this Intelius
19 Report, and we'll talk about traffic in a second, but was there anything else on the
20 criminal?

21 Grant: No

22 Munderloh: Okay, so let's talk about and maybe we can call it criminal maybe traffic, they're
23 offenses none the less, right, on page ten (10) of this report. This top one here, July 29th
24 of 2017 it says, "Charges Filed – Not Specified". To the best of your memory does that
25 also relate to the incident that you just described at Casey's?

- 1 Grant: No
- 2 Munderloh: No, do you know what that offense is about?
- 3 Grant: Not too sure.
- 4 Munderloh: The disposition date is the same as the theft and the public intox. Do you remember
5 anything about that?
- 6 Grant: No, just those two (2) the theft and the public intox. for that date are the only two (2) that
7 I can recollect on the report. I don't know what that is referring to.
- 8 Munderloh: And the incident at the Casey's, did you disclose that on your Character Affidavit?
- 9 Grant: Yes
- 10 Munderloh: Let's talk about these February 4th, 2005 offenses. How old were you in 2005?
- 11 Grant: I believe about 25
- 12 Munderloh: Were you 17?
- 13 Grant: Maybe 19, was it the shoplifting?
- 14 Munderloh: This is failure to prove security against liability – accident. Do you remember the
15 circumstances of that?
- 16 Grant: It was Dakota County then. I had to have been 20, 25, 26?
- 17 Munderloh: And this failure to have a valid license of permit, are those the same, or are those one in
18 the same incidents?
- 19 Grant: Yes
- 20 Munderloh: And did you disclose these on your Character Affidavit?
- 21 Grant: Yes
- 22 Munderloh: Have we talked about all of the convictions that were disclosed to you on this Intelius
23 Report?
- 24 Grant: Yes
- 25 Munderloh: And you reported these on your Character Affidavit?

1 Grant: Yes

2 Munderloh: Did you deliberately omit anything from your Character Affidavit?

3 Grant: No

4 Munderloh: You do have other convictions though, is that correct?

5 Grant: Yes

6 Munderloh: So, when your background was investigated, your background check or report showed a
7 2008 minor in possession conviction in Dakota County. Do you remember you and I
8 discussing that?

9 Grant: Yep

10 Munderloh: Is that a yes?

11 Grant: Yes

12 Munderloh: Do you remember the circumstances of what happened there?

13 Grant: I was driving with my father and my brothers, we got pulled over, I may have been 19 at
14 the time 21. I had two (2) of my brothers that were under the legal age of alcohol
15 consumption and I was charged with MIP, minor in possession, citation and then I was
16 placed under arrest there and received a citation or whatever and had to pay a fine.

17 Munderloh: And the fine was 250 dollars is that correct?

18 Grant: Yes

19 Munderloh: There is also a failure to appear unrelated to that case. Do you remember the
20 circumstances of the failure to appear?

21 Grant: No

22 Munderloh: Did you forget to show up for a court date?

23 Grant: Yeah, that was it.

24 Munderloh: You don't dispute that you had those convictions is that right?

25 Grant: Yes

- 1 Munderloh: And in 2008 you would have been approximately 20, correct?
- 2 Grant: Yes
- 3 Munderloh: And going back to my question when we were looking at Exhibit #13 and 2005
4 convictions you would have been 17 at the time, is that right?
- 5 Grant: Yes
- 6 Munderloh: Director Urbanek also indicated that she discovered a theft for shoplifting conviction
7 also in Dakota County for an offense dated 2012. Were you sentenced to a fine of
8 \$250.00? Did you deliberately omit that from your Character Affidavit?
- 9 Grant: No
- 10 Munderloh: What were the circumstances if you remember about that case?
- 11 Grant: That case I was at the Walmart in South Sioux City, I was still dating the mother of my
12 child.
- 13 Munderloh: And who is that person?
- 14 Grant: That is going to be Ashley Housman.
- 15 Munderloh: Okay.
- 16 Grant: I deliberately took a, I stole a pregnancy test. I got caught for that.
- 17 Munderloh: And you were given a citation?
- 18 Grant: Citation
- 19 Munderloh: And you were sentenced to a \$50.00, I'm sorry a \$250.00 fine. Is that right?
- 20 Grant: Yes
- 21 Munderloh: In 2012 you would have been age 24 is that right?
- 22 Grant: Yes
- 23 Munderloh: In addition to the shoplifting in 2012 also in Dakota County you received a citation for
24 driving during suspension is that correct?
- 25 Grant: Yes

- 1 Munderloh: And you received a jail sentence of seven (7) days for that, is that right?
- 2 Grant: Yes
- 3 Munderloh: And together with the driving under suspension there was a second charge in that case
4 for no operator's license, is that true?
- 5 Grant: Yes
- 6 Munderloh: You received a jail sentence of seven (7) days for that as well, is that right?
- 7 Grant: Yes
- 8 Munderloh: What is the status of your driver's license today?
- 9 Grant: It's valid
- 10 Munderloh: In 2014, also in Dakota County Court, you received a criminal trespassing second degree
11 citation. Is that correct?
- 12 Grant: Yes
- 13 Munderloh: Do you remember the circumstances of that?
- 14 Grant: I don't remember the circumstances of that one.
- 15 Munderloh: Is this incident where perhaps you mistakenly were trying to go to someone else's
16 apartment?
- 17 Grant: That night I was drinking with a friend we had a cab. I remember this maybe, I
18 remember he called a cab, before I knew it we were talking to the officer in charge, I
19 remember the lights, but I just remember that the rest of the night, later on the next
20 morning, no citation, paperwork or nothing. Something that I thought they were just
21 unaware of the next day.
- 22 Munderloh: Okay and the sentence was a fine of fifty dollars?
- 23 Grant: Yes
- 24 Munderloh: In 2011 were you found guilty of an open container in Omaha Tribal Court?
- 25 Grant: Yes

- 1 Munderloh: And in 2010 were you found guilty in Omaha Tribal Court of disorderly conduct?
- 2 Grant: Yes
- 3 Munderloh: All of those offenses that we just discussed, did they appear on your Intelius Background
4 Report that you ordered yourself?
- 5 Grant: No
- 6 Munderloh: So did you just not remember those convictions?
- 7 Grant: No
- 8 Munderloh: Do those convictions predate you entering into a treatment program in Gordon,
9 Nebraska?
- 10 Grant: Yes
- 11 Munderloh: When did you enroll in that treatment program? Was that in July or May of 2019?
- 12 Grant: May
- 13 Munderloh: Okay. Can you explain why you decided to enter into that treatment program?
- 14 Grant: I knew that I needed help with my alcohol problem. I needed something better in my
15 life. I was in a bad place with myself psychologically. I just wanted to feel better.
16 There is so much I could go into detail about.
- 17 Munderloh: Let me ask you this, did some court order you to ...
- 18 Grant: No, self-referral
- 19 Munderloh: This treatment program, the acronym is NEPSAC is that correct?
- 20 Grant: That's correct.
- 21 Munderloh: That stands for North East Panhandle Substance Abuse Center?
- 22 Grant: Yes
- 23 Munderloh: And that's located in Gordon, Nebraska, is that true?
- 24 Grant: Yes
- 25 Munderloh: So what type of treatment did you do there?

- 1 Grant: It was for alcohol and marijuana according to my treatment plan. Those were the main
2 topics that were going to be addressed in treatment.
- 3 Munderloh: So it was a residential treatment program?
- 4 Grant: Yes
- 5 Munderloh: And you completed it?
- 6 Grant: Yes
- 7 Munderloh: And was the Executive Director of that Program at that time and still now Victor
8 Gehrig?
- 9 Grant: Yes
- 10 Munderloh: Did you work pretty closely with him on completing that treatment in 2019?
- 11 Grant: Yes, he was my counselor through all of the process.
- 12 Munderloh: Did you also do, it looks like you did a parenting class in connection with that treatment
13 program too?
- 14 Grant: Yes
- 15 Munderloh: Is it your, can you assure this body today that you haven't' drank alcohol since you
16 completed the treatment program?
- 17 Grant: Yes, I haven't drank alcohol, no substance abuse. May 23rd I'll be two (2) years sober.
- 18 Munderloh: May 23rd of 2021, you'll be two (2) years sober?
- 19 Grant: Yes
- 20 Munderloh: And you did disclose on your Character Affidavit your abuse of marijuana within the
21 last two (2) years.
- 22 Grant: Yes
- 23 Munderloh: Have you ever illegally sold, produced, cultivated or transported marijuana or other
24 controlled substances for sale?
- 25 Grant: No

1 Munderloh: Have you ever used marijuana or other controlled substances other than ones prescribed
2 by a physician while employed or appointed as a peace officer or law enforcement
3 officer?

4 Grant: No

5 Munderloh: Have you ever illegally used any dangerous drugs or like narcotics other than marijuana
6 for any purpose?

7 Grant: No

8 Munderloh: Do you enjoy your work as a police officer for Walthill?

9 Grant: Yes I do.

10 Munderloh: Do you feel that you have the respect of the public from Walthill?

11 Grant: Yes

12 Munderloh: Is it your desire to complete the training so that you can remain employed as the one and
13 only police officer for Walthill?

14 Grant: Yes it is.

15 Munderloh: I don't have anything else.

16 Chair: Thank you.

17 Mr. Bergivin, you can cross.

18 Bergivin: So your name is Kelvin Louis Grant Jr.?

19 Grant: Yes

20 Bergivin: Your date of birth is June 18, 1988?

21 Grant: Yes

22 Bergivin: And your social security number is XXX-XX-XXXX?

23 Grant: Yes

24 Bergivin: So all of the exhibits with that identifying information pertain to you correct?

25 Grant: Yes

1 Bergivin: When you completed the Character Affidavit as part of your application process, you
2 read the directions at the beginning, right?

3 Grant: Yes

4 Bergivin: I want to point your attention to the last paragraph of Exhibit #1. Failure to list a
5 violation may result in termination of training, denial of certification, and possible
6 criminal penalties. Do you see that?

7 Grant: Yes

8 Bergivin: And you read and understand the English language?

9 Grant: Yes

10 Bergivin: And you read this before you completed the application?

11 Grant: Yes

12 Bergivin: Okay, so you were aware that it was your responsibility to list any and all criminal
13 convictions from your past and that's why you obtained the privately paid for
14 background check. Right?

15 Grant: Yes

16 Bergivin: Because according to your testimony you wanted to make sure that you had every
17 conviction in there.

18 Grant: Yes

19 Bergivin: And you relied on that background check.

20 Grant: Yes

21 Bergivin: And you did disclose some convictions in both Character Affidavits didn't you?

22 Grant: Yep, yes sir.

23 Bergivin: Okay, I'm pointing your attention on page four (4) of Exhibit #1 the first criminal
24 conviction that you disclosed was the public intoxication/theft case from 2017 in Iowa,
25 right?

- 1 Grant: Yes
- 2 Bergivin: And then down below you disclosed a minor in possession from Dakota County 2007.
- 3 Grant: Yes.
- 4 Bergivin: Right, Mr. Munderloh talked you through your criminal history that appeared in Exhibit
5 #13, the background check, remember that a few moments ago?
- 6 Grant: Yes
- 7 Bergivin: The MIP from Dakota County was not in that background check, was it?
- 8 Grant: No
- 9 Bergivin: What was that answer?
- 10 Grant: No
- 11 Bergivin: Now on page five (5) you listed some traffic cases, a traffic case from Dakota County in
12 2005, right?
- 13 Grant: Yes
- 14 Bergivin: And then down below a speeding ticket from Texas in 2009.
- 15 Grant: Yes
- 16 Bergivin: Like the MIP, that speeding case did not appear on the criminal history that you paid for
17 did it?
- 18 Grant: No
- 19 Bergivin: But you knew to disclose it?
- 20 Grant: Yes
- 21 Bergivin: Because that's something that you were a part of it.
- 22 Grant: Yes
- 23 Bergivin: And you would agree that when you go to court and you plead guilty to a crime that is a
24 significant event?
- 25 Grant: Yes

1 Bergivin: Right, that's something that you are going to remember?

2 Grant: Yes

3 Bergivin: Is that something that slips your mind?

4 Grant: Yes

5 Bergivin: It is something that slips your mind or it's not?

6 Grant: It's not something that slips your mind.

7 Bergivin: So that first Character Affidavit that I just asked you some questions about was the first
8 one that you did. You completed it on September 9th of last year and it was received by
9 the Training Academy on September 22nd. Now I want to ask you some questions about
10 a second Character Affidavit that you did on October 13th of 2020 and it was received
11 here on November 4th of 2020. Do you remember completing a second Character
12 Affidavit?

13 Grant: Yes

14 Bergivin: The first one that you did was geared for individuals who are the only employee of their
15 agency right?

16 Grant: Yes

17 Bergivin: And this one is the general Character Affidavit that all applicants fill out right?

18 Grant: Yes

19 Bergivin: At the bottom of Exhibit #2 in bold letters in all caps it has a similar notice to Exhibit #1
20 doesn't it?

21 Grant: Yes

22 Bergivin: This is the paragraph that I am referring to; failure to list information may result in
23 termination of training, denial of certification, and possible criminal penalties. Do you
see that?

25 Grant: Yes

- 1 Bergivin: Okay, and because you read and understand the English language and you read this
2 ahead of time, you knew that you were responsible for disclosing any criminal events
3 from your past. Right?
- 4 Grant: Yes
- 5 Bergivin: And you did disclose some, is that true?
- 6 Grant: Yes
- 7 Bergivin: And again, that's that the criminal history that's all you paid for Exhibit #13 one of the
8 things you disclosed from your past is the public intoxication/theft case from Iowa in
9 2017 right?
- 10 Grant: Yes
- 11 Bergivin: This second box is additional room for other cases from your past isn't it?
- 12 Grant: Yes
- 13 Bergivin: And that's blank, right?
- 14 Grant: Yes
- 15 Bergivin: The MIP that you disclosed in the first Character Affidavit from Dakota County is not
16 listed in the second Character Affidavit is it?
- 17 Grant: No
- 18 Bergivin: Did you forget about the MIP between September and October?
- 19 Grant: Yes
- 20 Bergivin: And then you also disclosed some traffic events on the second Character Affidavit. The
21 traffic case from Dakota County from 2005 right?
- 22 Grant: Yes
- 23 Bergivin: Another speeding case from Texas in 2010, right?
- 24 Grant: Yes

- 1 Bergivin: But we've already established that case from Texas in 2010 is not on the criminal history
2 that you paid for right?
- 3 Grant: Yes
- 4 Bergivin: So you knew about that even though it wasn't on your criminal history that you paid for?
- 5 Grant: Yes
- 6 Bergivin: Just like you knew about many of the other events from your past.
- 7 Grant: Yes
- 8 Bergivin: You testified on both Character Affidavits in the affirmative that you have used
9 marijuana within two (2) years of completing this Character Affidavit.
- 10 Grant: Yes
- 11 Bergivin: On both Exhibit #1 and Exhibit #2
12 In response to Mr. Munderloh's questions you were able to provide him details about
13 different events from your criminal history, correct?
- 14 Grant: Yes
- 15 Bergivin: So you knew about what had happened in those events?
- 16 Grant: Yes
- 17 Bergivin: And you knew that you were convicted in those cases and you chose not to disclose
18 them.
- 19 Grant: Yes
- 20 Bergivin: This is Exhibit #3, this is the record that was provided to the Training Center by the
21 Omaha Tribal Court about you. You ever seen that stuff?
- 22 Grant: Yes
- 23 Bergivin: Okay, this background inquiry has multiple criminal incidents on it. Do you see that?
- 24 Grant: Yes, yes sir.
- 25 Bergivin: And these are all things from your past.

1 Grant: Yes

2 Bergivin: So there's a conviction, do we know that there's a conviction because it says guilty in
3 this column, we have conviction for disorderly conduct and criminal contempt in 2010,
4 right.

5 Grant: Yes

6 Munderloh: I'm sorry, I know that we are not applying the rules of evidence, but I need to object
7 because that doesn't reflect what the exhibit reflects.

8 Bergivin: For the record what I'm reading says guilty-DC presumably for District Court
9 /Dismissed-CC. County Court 08/19/2010

10 Munderloh: I think the DC is Disorderly Conduct and CC is Criminal Content

11 Bergivin: Okay, I won't disagree and the Council can interpret it how they choose.

12 There is a conviction for Open Container on 11/03/2011. Do you see that?

13 Grant: Yes

14 Bergivin: And there is a conviction for Simple Assault on 04/19/2011, correct?

15 Grant: Yes

16 Bergivin: And those are all criminal convictions from your past?

17 Grant: Yes

18 Bergivin: Finally, I'm going to clear up one of your answers from your (inaudible) testimony. Mr.
19 Munderloh asked you, did you not remember the convictions. Remember that question?

20 Grant: Yes

21 Bergivin: And you testified no. Am I clear about what that answer means? Are you testifying
22 that you did not in fact remember those convictions?

23 Grant: Yes, that was it

24 Bergivin: But earlier ...

- 1 Grant: I said no, I remember where that went wrong there was the one (1) conviction with the
2 criminal trespass I don't remember, can't recollect that.
- 3 Bergivin: You have no memory of that event?
- 4 Grant: No
- 5 Bergivin: You have no memory of going to court?
- 6 Grant: No
- 7 Bergivin: You have no memory of saying guilty?
- 8 Grant: No
- 9 Bergivin: And that's the testimony you want this Council to believe?
- 10 Grant: Yes
- 11 Bergivin: Okay, thank you, that's all the questions I have.
- 12 Chair: Does anyone from the Council have any questions
- 13 Munderloh: Can I have an opportunity to redirect? I just have a few questions.
- 14 Chair: Yes
- 15 Munderloh: Mr. Grant was there something about the Texas speeding that you did disclose on your
16 Character Affidavit that was memorable to you?
- 17 Grant: No, I knew that one Texas, was back in Wheeler County, Texas panhandle but it was
18 significant for me because I was going to Gathering of Nations Powwow to sing there.
19 That's one that I vividly remember.
- 20 Munderloh: Is it the one and only traffic citation that you ever received in Texas?
- 21 Grant: Yes
- 22 Munderloh: And that's why you remembered it?
- 23 Grant: Yep
- 24 Munderloh: And that's why you disclosed it?
- 25 Grant: Yes

- 1 Munderloh: You were asked on cross examination about whether you remembered going to court and
2 entering pleas of guilty to at least one (1) of the offenses that you didn't disclose. Do
3 you remember that line of questioning?
- 4 Grant: Yes
- 5 Munderloh: Were at least one (1) of these cases, though resolved by waiver. In other words, you
6 didn't appear in court? If you know.
- 7 Grant: I'm not sure.
- 8 Munderloh: Was the shoplifting that you discussed in Dakota County resolved by waiver in May of
9 2012?
- 10 Grant: Not sure
- 11 Munderloh: So your testimony is at the time you were completing the applications, you didn't
12 remember these convictions. Is that correct?
- 13 Grant: Yes
- 14 Munderloh: After going through this process, you now remember those details, is that correct?
- 15 Grant: Yes
- 16 Munderloh: I don't have anything else.
- 17 Chair: Council, do you have any questions for the witness?
- 18 Larby: Procedural question, do we, are we only able to ask questions in regards to the two, or
19 can we go off
- 20 Stolz: No, you need to confine questioning to Mr. Grant, what was heard through direct and
21 cross and then redirect. Issues of instance involving of the record of the witnesses.
- 22 Larby: Okay, I have no questions.
- 23 Duis: I just want, I'm trying to get a clear understanding of the concept between the number of
24 arrests and convictions versus what you put on the Character Affidavit which is
25 reflective of the background that you paid for, okay. So earlier there was reference

1 during opening remarks that there being a total of 15 charges and 11 convictions, okay
2 and I know that you have explained through a couple of these events, in particular the
3 trespassing issue where you said you were extremely intoxicated and you don't
4 remember the details but you remember getting in the cab and there being lights and
5 certainly being in contact with law enforcement, right, you remember that, you
6 remember these events took place. You might not have that clear memory of the details
7 of those contacts because of the level of intoxication right?

8 Grant: Right

9 Duis: But you remember these events taking place.

10 Grant: Yes

11 Duis: Okay, so you had to have known that there had been a number of contacts with law
12 enforcement with charges at least, I would assume at some point you had to have known
13 how that came out, that you got convicted of something. My question is this, when you
14 got back the report that you paid for, for your criminal history and it listed those two (2)
15 charges, just those two (2) convictions was there any part of you that looked at that and
16 thought wow that seems odd, I sure feel, it sure feels like I've have more contact with
17 law enforcement than those two (2)....

18 Grant: Yes

19 Duis: So it seemed odd to you at the time?

20 Grant: Yes

21 Duis: So which immediately we believe that you had to have known there were more than
22 those two (2) things...

23 Grant: Yes

1 Duis: Okay so then what effort did you go through then to rectify that, to notify somebody that
2 hey I did this public records request on me it came back with only two (2) things here
3 but I know personally there's got to be more than that.

4 Grant: I went to the village office, I spoke with Lisa there in regards to, if she had anything
5 there, the agency there, the village if they had something a background report when I did
6 my initial application for police officer when I submitted the application through them if
7 they had anything, information that I could put on the Character Affidavit the initial
8 application for the academy. Lisa said she was the Treasurer and didn't have that
9 information she didn't do the background report.

10 Duis: Because of the fact when you looked at that there were only the two (2) convictions, you
11 knew that couldn't be accurate so you went to the village to try and find what else there
12 might be out there?

13 Grant: Yeah, that was the initial thing before I even purchased the, I looked at that and knew
14 that there had to be more but from what I can remember, I just figured okay so if that
15 hasn't pulled up anything, that system which I'm relying on is, you know that's what I
16 was going off, maybe that's something maybe that occurred, that didn't get on the
17 system, I'm not sure if it.

18 Duis: My point is when you put those two (2) things down on that Character Affidavit that you
19 got off of that report you knew inside that that's not all there was.

20 Grant: Yes

21 Chair: Any other questions from the Council?

22 (No Response)

23 Chair: Mr. Munderloh, Do you have any further evidence to offer?

24 Munderloh: No sir

- 1 Chair: Mr. Bergivin, do you have any other written evidence for us to consider besides the
2 exhibits?
- 3 Bergivin: No sir
- 4 Chair: Do you have any witnesses to testify?
- 5 Bergivin: Yes sir.
- 6 Chair: Please have them state their name and where they are from.
- 7 Bergivin: The Respondent will first call Mark Stephenson.
- 8 Chair: Mark do you swear that the testimony you are about to make at this hearing shall be the
9 truth, the whole truth, and nothing but the truth.
- 10 Stephenson: I do.
- 11 Bergivin: Spell you first and last name for the record.
- 12 Stephenson: My name is Mark M-A-R-K last name is S-T-E-P-H-E-N-S-O-N. I'm the Nebraska
13 Law Enforcement Training Center Staff Instructor.
- 14 Bergivin: What are your duties as a Staff Instructor at the Training Center?
- 15 Stephenson: My current duties are lead firearms instructor for the basic program, as well as, the lead
16 instructor for our advanced instructor programs.
- 17 Bergivin: Do you have additional duties on top of your training responsibilities?
- 18 Stephenson: Yes, there are occasions when we have investigations regarding misconduct or
19 background applications and those will come to us as staff instructors to do background
20 investigations.
- 21 Bergivin: Where you tasked with gathering background information about the Petitioner in this
22 case, Mr. Kelvin Grant?
- 23 Stephenson: I was.
- Bergivin: And who made that assignment?
- 25 Stephenson: Director Urbanek

1 Bergivin: When did that happen?

2 Stephenson: It was in the last week of October or 1st of November.

3 Bergivin: Was her request related to Mr. Grant's application to attend the basic certification
4 course?

5 Stephenson: It was.

6 Bergivin: And what actions did you take once she gave you that assignment?

7 Stephenson: Once Ms. Urbanek gave me the file and asked me to look over the application, I merely
8 confirmed the information in the packet, as well as, the Character Affidavits with a
9 criminal history check on Mr. Grant put the confirmation or lack thereof, of that
10 information into a summary report which was then turned into Ms. Urbanek.

11 Bergivin: I'm displaying what's been admitted as Exhibit #1 (on overhead projector) this is the
12 Character Affidavit that Mr. Grant completed in September. Did you review this as part
13 of your investigation?

14 Stephenson: Yes I did.

15 Bergivin: This is Exhibit #2, Character Affidavit Mr. Grant completed and submitted in October of
16 2020, did you also review this as a part of your investigation?

17 Stephenson: Yes I did.

18 Bergivin: This is Exhibit #3, the Omaha Tribal Court Background Result Inquiry regarding the
19 Petitioner Kelvin Grant, did you review the information on this document as part of your
20 investigation?

21 Stephenson: Yes I did.

22 Bergivin: Is it standard for an applicant to complete a release of information as part of a package?

23 Stephenson: Yes

24 Bergivin: I'm displaying Exhibit #4, Authority to Release Information for Kelvin Louis Grant
25 Did you review this document as part of your investigation?

- 1 Stephenson: Yes I did.
- 2 Bergivin: And does this document authorize the Training Center to obtain criminal history type
3 information of (end tape 1, side 2)
- 4 Stephenson: Yes I did.
- 5 Bergivin: Can you tell the Council about the type of information that you retrieved?
- 6 Stephenson: The standard criminal history from NCJIS and then once I reviewed the criminal history
7 then I began to get the details on the contents of the criminal history for the crimes.
- 8 Bergivin: This is Exhibit #6, this is criminal history information related to Mr. Grant. Did you
9 review the cases outlined in this document as part of the investigation?
- 10 Stephenson: Yes I did.
- 11 Bergivin: Okay, now I'm going to display Exhibit #7. This is the NCJIS information related to
12 Dakota County Case CR 14 1702 did you obtain this information as part of your
investigation?
- 14 Stephenson: Yes I did.
- 15 Bergivin: And can you tell the Council why you did that.
- 16 Stephenson: Because that procedural case showed that there was a Disposition and I pulled that to
17 confirm the details.
- 18 Bergivin: Would you agree that this trespassing conviction in the Dakota County case is not
19 included on the general NCJIS report?
- 20 Stephenson: Yes
- 21 Bergivin: So in order to see the specifics of that case, the Council will have to look at Exhibit #7
22 whereas the rest of the criminal history is on Exhibit #6 from Nebraska State Court.
- 23 Stephenson: Correct
- 24 Bergivin: And based on the details in Exhibit #7, about Dakota County Case CR 14 1702, was Mr.
25 Grant convicted of 2nd degree Criminal trespass?

1 Stephenson: Yes

2 Bergivin: After you reviewed the documents that you refer to, what was your next step?

3 Stephenson: Once I reviewed the documents, I compared them with his Character Affidavit and the
4 disclosures that he had made on that affidavit with regards to his criminal history and
5 just compared the two (2) documents. What had he disclosed, what did I locate through
6 that background that had not been disclosed. Once I made the, once I reviewed all the
7 documents I then did a summary report reflecting that the information. The information
8 that was obtained that Mr. Grant placed on his Character Affidavit which I was able to
9 verify through the criminal history check as well as the Omaha Tribe documents and
10 then the items that he did not disclose that were listed on his criminal history.

11 Bergivin: And were there criminal history events that you located during your investigation that
12 were not included on either Exhibit #1 or Exhibit #2 Character Affidavits?

13 Stephenson: Yes, there were.

14 Bergivin: Can you characterize, strike that. Did you prepare any documentation or give any kind
15 of a report for Director Urbanek to review?

16 Stephenson: I did, I created a summary report as well as highlighting I believe there were four (4)
17 items that were not disclosed, those were highlighted along with the background check
18 that showed the details of those four (4) cases and those were all provided to Director
19 Urbanek.

20 Bergivin: After you forwarded that information to her, did you have any other involvement with
21 this case?

22 Stephenson: No

23 Bergivin: Thank you, that's all the questions I have.

24 Chair: Mr. Munderloh, do you have any questions for this witness?

25 Munderloh: I think I have just a few.

- 1 Mr. Stephenson, you just testified that you think there were four (4) items that were not
2 disclosed, is that correct?
- 3 Stephenson: That's my approximation, yes, I don't have the document in front of me.
- 4 Munderloh: Did you investigate anything else about Mr. Grant's background like his employment for
5 example?
- 6 Stephenson: No sir, I did not.
- 7 Munderloh: So your goal is just in investigating the criminal background, is that right?
- 8 Stephenson: My goal is confirmation of information, yes sir.
- 9 Munderloh: Great, okay. I have no other questions.
- 10 Chair: Any other questions from either attorney?
- 11 Bergivin: Yes please, just on that line of questioning.
- 12 You testified on direct and cross examination about four (4) prior convictions not
13 disclosed?
- 14 Stephenson: Yes
- 15 Bergivin: Okay, this document, Exhibit #3, Omaha Tribal Court, lists multiple convictions
- 16 Stephenson: Yes
- 17 Bergivin: Were you factoring those in to the number of convictions that you characterized as not
18 exposed?
- 19 Stephenson: No, I was not.
- 20 Bergivin: So the Training Center was aware of those convictions?
- 21 Stephenson: Correct, since he attached that in, since that was in the packet when I received it, I
22 viewed that as being disclosed.
- 23 Bergivin: So your testimony that there were four (4) incidents not disclosed is in reference to the
four (4) state court convictions in Nebraska that you testified about?
- 25 Stephenson: Correct

- 1 Bergivin: That can be found upon Exhibit's #6, the Nebraska Criminal History from NCJIS and
2 case specific details from Dakota County CR 14 1702.
- 3 Stephenson: Yes
- 4 Bergivin: Thank you that's all the questions I have.
- 5 Munderloh: Mr. Stephenson, you raised a point that might warrant some highlighting, you indicated
6 that in the application materials you received, included in the application list the tribal
7 court convictions, is that right?
- 8 Stephenson: Yes
- 9 Munderloh: Okay, so there is no dispute that Mr. Grant did disclose those correct?
- 10 Stephenson: It is my understanding that when it came in the packet, he had disclosed that, he had sent
11 that.
- 12 Munderloh: Okay, thank you.
- 13 Chair: Counsel, do you have any questions for the witness?
14 (No Questions)
- 15 I know it's early, originally I said we could break at 11:45, but I think we should
16 probably break right now. It fits into the schedule. Tentatively let's try to be back in 30
17 minutes, at 11:55.
- 18 Chair: Let the record show it is 11:58 and we are reconvening and all parties are present.
19 We will pick up where we left off.
- 20 Bergivin: The Respondent calls Director Brenda Urbanek.
- 21 Chair: Do you swear that the testimony you are about to make at this hearing shall be the truth
22 the whole truth, and nothing but the truth.
- 23 Urbanek: I do.
- 24 Bergivin: Please state your name and where you're from.

- 1 Urbanek: Brenda Urbanek, U-R-B-A-N-E-K, Director of the Nebraska Law Enforcement Training
2 Center.
- 3 Bergivin: Thank you. Director Urbanek, what are your duties as the Director of the Training
4 Center?
- 5 Urbanek: Primarily my duties are the regulatory functions of certifications, admissions to training,
6 ensuring that all academies across the state are in compliance with what is established by
7 this body in terms of law enforcement certification. Additionally I am responsible for
8 maintaining records of the regulations regarding continuing education and firearms
9 qualifications on an annual basis.
- 10 Bergivin: Are you charged with determining whether applicants are admitted to the basic
11 certification training through the Training Center?
- 12 Urbanek: Yes
- 13 Bergivin: And are those decisions guided by Exhibit #8, which is Title 79, Chapter 8 of the
14 Nebraska Administrative Code?
- 15 Urbanek: Yes, Chapter 8 establishes all of the admission requirements for certification training.
- 16 Bergivin: At some point did you receive an application for Kelvin Grant Jr. to attend Basic
17 Certification Training?
- 18 Urbanek: Yes
- 19 Bergivin: Please tell the Council approximately when you first came to know about his
20 application.
- 21 Urbanek: Initially in either late August or early September we received a Change in Status form
22 from the Village of Walthill notifying us that Mr. Grant had been appointed as law
23 enforcement officer. According to our records that made him the only law enforcement
24 officer for that agency so we sent him the personal character affidavit for a single agency
25 head officer.

- 1 Bergivin: Was this August or early September of 2020?
- 2 Urbanek: Correct
- 3 Bergivin: Explain Exhibit #1, is this the Character Affidavit that you referred to as to being
4 completed by a single head of an agency?
- 5 Urbanek: Yes
- 6 Bergivin: Did you review the information that was provided in Exhibit #1?
- 7 Urbanek: Yes
- 8 Bergivin: At some point did he later complete and submit a second Character Affidavit?
- 9 Urbanek: Yes
- 10 Bergivin: What was the purpose of the second Character Affidavit?
- 11 Urbanek: I'm not really sure, I will say that on our website the application packet for admission
12 has a link, a PDF link, and it includes all documentation for the packet, we put this
13 Character Affidavit out there because typically it's not an agency head who is applyin,
14 for basic certification so it would be my assumption that he filled this out because it was
15 part of that, what we referred to as, the mega packet.
- 16 Bergivin: This is Exhibit #2, the second Character Affidavit, to your knowledge did anyone at the
17 Training Center direct him to complete the second Character Affidavit?
- 18 Urbanek: Not that I'm aware.
- 19 Bergivin: As part of his application, did you come in possession of Exhibit #3, the Omaha Tribal
20 Court Background Result Inquiry regarding Mr. Grant?
- 21 Urbanek: Yes
- 22 Bergivin: Please explain how you came to possess this document.
- 23 Urbanek: After we had received the initial Change in Status and Character Affidavit, I had
24 received a phone call from an individual from Thurston County, where Walthill is
25 located, who indicated they thought there was a possibility that Mr. Grant also had a

1 criminal record in Tribal Court. Following that phone call Mr. Munderloh and I had
2 exchanged some phone calls and I explained I didn't have the authority to require the
3 Omaha Tribal Council to provide me with the documentation and Mr. Munderloh, if my
4 memory is correct, Mr. Munderloh provided us with that document.

5 Bergivin: But this document Exhibit #3 was not included with the Character Affidavit that Mr.
6 Grant completed and submitted.

7 Urbanek: Not the first one, no.

8 Bergivin: Once you have the Character Affidavit and then the Omaha Tribal Court Record, did you
9 assign someone on your staff to do a background investigation as part of the review
10 process?

11 Urbanek: Yes, according to Title 79, Chapter 8 an agency head who is non-certified a background
12 investigation will be conducted by the Training Center Director or designee. I assigned
13 Mr. Stephenson to do the background investigation.

14 Bergivin: Was that Mark Stephenson that we heard testify earlier?

15 Urbanek: Yes

16 Bergivin: And did Mr. Stephenson gather materials that he later provided to you?

17 Urbanek: Yes

18 Bergivin: Did you review all those?

19 Urbanek: Yes

20 Bergivin: Did that include Mr. Grant's criminal history and traffic history?

21 Urbanek: Yes

22 Bergivin: Did you then make a decision about whether Mr. Grant should be accepted into Basic
23 Certification Training?

24 Urbanek: Yes I did.

25 Bergivin: What was that decision?

1 Urbanek: I denied his admission into the basic certification training.

2 Bergivin: Was that decision based on all the information that had been gathered and you reviewed
3 provost.

4 Urbanek: Correct

5 Bergivin: I am now displaying what they received as Exhibit #9, this is a letter dated December 9th
6 of 2020 to the Village of Walthill regarding Mr. Grant's application. Do you recall
7 sending this letter?

8 Urbanek: Yes

9 Bergivin: And what was the information you communicated in that letter?

10 Urbanek: The reasons for denial of Mr. Grant's application.

11 Bergivin: After sending that letter, did you receive any correspondence on behalf of the Village of
12 Walthill regarding Mr. Grant's application?

13 Urbanek: Yes, following Chapter 13, which is the Appeals process I was notified by the Village
14 Walthill's attorney, Mr. Munderloh, that they intended, that they would, were requesting
15 a reconsideration or an appeal of my initial denial.

16 Bergivin: This is Exhibit #10, this is a letter from Mr. Munderloh on behalf of the Village of
17 Walthill and Mr. Grant explaining, as you testified to, their intent to appeal your decision
18 on December 9th of 2020.

19 Urbanek: Correct

20 Bergivin: So the first letter was sent December 14th and then subsequently Mr. Munderloh sent a
21 second letter with more information more explanation about their position why Mr.
22 Grant should be admitted into the training program. Is that correct?

23 Urbanek: Yes

24 Bergivin: And this December 29, 2020 letter contains multiple attachments that they asked you to
25 consider as you reviewed the decision again?

- 1 Urbanek: Yes
- 2 Bergivin: Did you go through that process of reconsidering your earlier decision of denying his
3 admission?
- 4 Urbanek: Yes I did.
- 5 Bergivin: Okay, did you give weight to the materials they submitted?
- 6 Urbanek: Yes I did.
- 7 Bergivin: And after considering what you had already learned and the new information, what
8 decision did you come to about Mr. Grant's application?
- 9 Urbanek: In the initial application there were four (4) grounds for which he was denied admission.
10 After reviewing the materials supplied by Mr. Munderloh regarding the class I
11 conviction I changed my decision on that as a grounds for denial and I upheld the other
12 three (3) grounds for denial.
- 13 Bergivin: Okay, let's talk about that particular conviction in more detail. Are you referring to the
14 Omaha Tribal Court conviction for assault in 2011?
- 15 Urbanek: Yes
- 16 Bergivin: Is there something about that offense that made you originally think that was an
17 automatic disqualifying event?
- 18 Urbanek: According to Chapter 8, we look at any crimes punishable by a year or more
19 incarceration, the Class I misdemeanor. In Nebraska the domestic would amount to that
20 level so based on the initial domestic abuse charge that was the grounds for that initial
21 denial on that.
- 22 Bergivin: Okay, and this is the entry you are referring to? (Pointing to charge on overhead)
- 23 Urbanek: Correct.

1 Bergivin: The original charge with Domestic Assault and your thought process was then in a
2 Nebraska State Court that would equate to a Class I misdemeanor which carries up to
3 one (1) year in jail.

4 Urbanek: Correct

5 Bergivin: Which would mean an automatic disqualifier.

6 Urbanek: Correct

7 Bergivin: And upon closer examination, consideration of materials that Mr. Munderloh provided
8 you came to the conclusion that because it was reduced to a simple assault, it was no
9 longer an offense that would carry up to a year in jail in the Nebraska State Court.

10 Urbanek: Correct

11 Bergivin: Is that right?

12 Urbanek: Correct

13 Bergivin: And did you communicate your decision that you now testified to Mr. Munderloh aft
14 reconsidering the matter?

15 Urbanek: Yes

16 Bergivin: Exhibit #11, your letter dated January 13 of 2021, explaining as you testified that you
17 were standing by three (3) of the core grounds to deny Mr. Grant's admission. Correct?

18 Urbanek: Yes

19 Bergivin: And we'll talk about what the specific reasons in a moment. Following that did you
20 receive any more communication from Mr. Munderloh?

21 Urbanek: Yes, they, the Village would be appealing my final reconsideration to the Police
22 Standards Advisory Council.

23 Bergivin: And that is expressed in Exhibit #12, a letter from Mr. Munderloh on January 21st of
24 2021 indicating the Village of Walthill's intent to appeal your decision after
25 reconsideration to this Council?

- 1 Urbanek: Correct
- 2 Bergivin: That testimony is helpful both for the record and so that the Council understand how we
3 arrived at this place.
4 Now let's talk about the basis for your decision to not admit Mr. Grant into Basic
5 Certification Training.
6 I want to focus your attention on this paragraph at the bottom of page one (1) that
7 summarizes the first basis for denial.
- 8 Munderloh: What exhibit are we referring to?
- 9 Bergivin: This is Exhibit #11. Can you see that from there?
- 10 Urbanek: Yes
- 11 Bergivin: Okay, what was the first basis that you relied on in deciding that Mr. Grant should be
12 denied admission into the training program?
- 13 Urbanek: Section 005.04A2 requires that an individual disclose any and all information that may
14 affect their qualifications for entrance into this. In reviewing Mr. Stephenson's
15 summary report there were five (5) instances that were not reported by Mr. Grant of a
16 criminal nature therefore, I did not feel that he had disclosed any and all information that
17 might affect his qualifications.
- 18 Bergivin: Okay, and I am displaying Exhibit #8, the paragraph that you just referenced 005.04A2
19 which put an affirmative duty on the applicant to disclose any and all information that
20 may affect the applicant's qualifications for entrance into certification training.
- 21 Urbanek: Yes
- 22 Bergivin: And would you agree that the qualification at issue is the applicant's good character that
23 we are talking about not disclosing information.
- Urbanek: Definitely.

1 Bergivin: So the information that you determined, Mr. Grant withheld were the Nebraska State
2 Court convictions that Mr. Stephenson uncovered, is that correct?

3 Urbanek: That is correct.

4 Bergivin: And those are contained in Exhibit's #6, the NCJIS Criminal History and Exhibit #7, the
5 Court Case Details from Dakota County CR 14 1702, correct?

6 Urbanek: Yes

7 Bergivin: I'm going to hand you both of these documents and ask you to explain specific
8 convictions beginning with the oldest one and please provide the offense of the first
9 conviction, the date and the disposition.

10 Stolz: And these are exhibits, for the record, Exhibits #6 and #7.

11 Urbanek: 6 & 7. On Exhibit #6, which is NCJIS Nebraska Criminal History for Kelvin Louis
12 Grant the agency is Dakota County, the Court Disposition 09/04 of 2008 is a Minor in
13 Possession to sell, dispense, consume alcohol Class III misdemeanor. Disposition is
14 guilty by conviction. Individual is fined 250 dollars plus court costs. There is a second
15 charge on this, failed to appear or comply with the citation also disposition of guilty by
16 conviction. Jail sentence of five (5) days concurrent with no costs.

17 Arrest number two (2) is August 7 of 2012, again in Dakota County

18 Charge one (1) is Driving under Suspension before Reinstatement Class III misdemeanor
19 Guilty by Conviction. Jail sentence of seven (7) consecutive days plus court costs. 8-
20 14-2012 the suspension charge was for one year, one year credit for days served and
21 seven (7) days in jail at the Dakota County Jail.

22 Charge #2 No Operators License, this is the same date, charge #2, no operator's license,
23 Class III misdemeanor, guilty by conviction, Seven (7) days consecutive in court or in
24 jail.

1 Then in 5/17/2012, Dakota County Charge of Theft/Shoplifting misdemeanor guilty by
2 conviction sentence of court cost city fine of 250 dollars.

3 Bergivin: And then if you would please explain the same information from the case on Exhibit #7.

4 Urbanek: This case was filed on December 15th of 2014 in Dakota County Criminal Trespass-2nd
5 degree Class III misdemeanor the Plea is Guilty by admission.

6 Bergivin: That is sufficient. Thank you.

7 So going back to the Regs, according to 005.04A, who has the burden of proof of
8 demonstrating the applicant has good character?

9 Urbanek: The applicant

10 Bergivin: Do the regulations assess, provide a framework for helping you assess whether an
11 applicant had good character?

12 Urbanek: Yes

13 Bergivin: Okay folks and your attention upon this provision 005.02A3 it says "the applicant has
14 not been adjudged or convicted of criminal violations with such a frequency so as to
15 indicate a disrespect for the law and rights of others." Is that one of the things that can
16 indicate an applicant is not someone with good character?

17 Urbanek: Yes

18 Bergivin: Going back to Exhibit #11, your final decision in the case that your communication with
19 Mr. Munderloh, was that particular regulation one of the basis for your decision to deny
20 Mr. Grant's admission?

21 Urbanek: Yes it was.

22 Bergivin: And can you, and this is outlined in paragraph two (2) right?

23 Urbanek: Correct.

1 Bergivin: And it says from 2005 to 2017, Mr. Grant had 15 charges for various criminal violations.
2 Of those 15, 11 of the cases had a disposition of guilty. Can you walk the council
3 through what information you relied on in coming up with those numbers.

4 Urbanek: First of all it was everything that Mr. Grant had reported on his Character Affidavit's.
5 Second was a review of the criminal history's Mr. Stephenson ran and then taking into
6 consideration also the exhibit from Omaha Tribal Court listing out the charges in their
7 tribal council.

8 Bergivin: And when you compiled all of those different sources of information you came up with
9 those numbers?

10 Urbanek: Yes

11 Bergivin: I'll ask the question while the exhibit is still up here. The last basis that you used to
12 deny Mr. Grant's admission in Exhibit #11 is summarized in paragraph, is marked
13 number three (3), correct?

14 Urbanek: Yes

15 Bergivin: Alright, and what's his last name?

16 Urbanek: In section 005.02A6b states, the applicant "has not used marijuana for any purpose in the
17 last two (2) years". Mr. Grant actually disclosed he used marijuana in May of 2019
18 before he entering rehab.

19 Bergivin: And 005.02A6b is this paragraph that I highlighted here.

20 Urbanek: Correct.

21 Bergivin: Has not used marijuana for any purpose in the last two (2) years.

22 Urbanek: Correct.

23 Bergivin: That's an indicator of, if someone has used marijuana for any purpose in the last two (2)
24 years that indicates a pattern of substance abuse, which can be an indicator that perso
25 does not possess good conduct, character, excuse me?

- 1 Urbanek: Yes
- 2 Bergivin: I am displaying Exhibit #1 and highlighting page 8, the question, "Have you used
3 marijuana for any purpose in the last two (2) years? Mr. Grant checked "yes" and noted,
4 "Prior to going to treatment May 2019, had a short stint of use."
- 5 Urbanek: Yes, he submitted that.
- 6 Bergivin: Now this is Exhibit #2, the second paragraph that he submitted on page seven (7), I'm
7 focusing your attention to this question that's marked number two (2), have you used
8 marijuana for any purpose in the last two (2) years? Again, he checked "yes" and
9 provided the same explanation, "prior to going to treatment in May 2019, I had a short
10 stint of use." Correct?
- 11 Urbanek: Yes
- 12 Bergivin: I want to go back to the first basis. His deliberate omission of information about his
13 qualifications.
- 14 Urbanek: Okay
- 15 Bergivin: Referring to criminal history that he did not disclose.
16 The reg. uses the language deliberate omission. Why did you come to the conclusion
17 that these omissions were deliberate?
- 18 Urbanek: Because he had disclosed other information which on face could be as equally as
19 damning as the information that he didn't disclose.
- 20 Bergivin: Do you think it's plausible for a person to not have any memory of this many criminal
21 events?
- 22 Munderloh: I'm going to object on foundation. I understand the rules of evidence don't apply but I
23 do think that's, I'll still object on that basis.
- 24 Stolz: And I would ask Counsel to rephrase if he can.
- 25 Bergivin: Did you think about that language in the Reg. that the omissions had to be deliberate?

1 Urbanek: I focused on the first sentence that the applicant has the duty to disclose any and all
2 information. I don't try to decipher whether this was a deliberate attempt to not disclo-
3 information. It's just information that should be disclosed.

4 Bergivin: Next I want to draw your attention to paragraph 005.03A in Exhibit #8. Can you tell the
5 Council what this is?

6 Urbanek: It's fundamentally a checklist to balance what's recorded against any mitigating
7 circumstances. How old was the person at the time of the act, how recently the act
8 occurred, is the information reliable, how serious was the act when this was perpetrated.
9 Are there any factors underlining the conduct itself at the time that it took place? The
10 evidence and rehabilitation. How long ago was it? How, what has this person done in
11 that time frame since the last event until application? What kind of positive social
12 contributions have they made? Were they candid in their process by disclosing it? So,
13 it's kind of a checks and balance system against what was reported what happened an
14 could there be any mitigating reasons why, why it's happening and so I always review
15 that whenever I have something that comes up in a Character Affidavit is well as an
16 example when I was 17 this happened, I'm now 45, in the meantime, I've had a 25 year
17 career in the military, I've done, this, this and this. So even though the even may have
18 happened, what has happened since then?

19 Bergivin: This paragraph says that mitigating factors should be considered in conjunction with the
20 aggregating factors in order to determine whether a person has good character. Did you
21 go through that process of analyzing the mitigating factors in 005.02A when you
22 reviewed this case?

23 Urbanek: Yes

24 Bergivin: And, would you explain the conclusions you came to when applying these mitigating
25 factors to the facts of this case.

1 Urbanek: In terms of the Criminal behavior it was the period from 2007 or excuse me 2005 to
2 2017, 2017 was only four (4) years ago. The use of marijuana was within two (2) years.
3 Mr. Grant has indicated that he successfully completed rehab and I am very happy for
4 him in those regards I would like to see a longer prior of time from the completion of
5 rehab to demonstrate that that behavior no longer exists so that would of dealt with the
6 recency of the conduct.

7 The seriousness of the conduct; we're talking trespassing and theft. Theft is a crime of
8 deception which goes right into good character. So those were some of the things I
9 considered.

10 Bergivin: And when you waived these aggregating facts that you learned with the mitigating
11 factors that the Regulation asks you to consider, did you ultimately decide that your
12 decision to not accept Mr. Grant was the right one?

13 Urbanek: Yes

14 Bergivin: And you stand by that decision today?

15 Urbanek: Yes

16 Bergivin: Thank you. That's all the questions I have.

17 Chair: Thank you. Mr. Munderloh, do you have any questions for this witness?

18 Munderloh: I do. Thank you.

19 Director Urbanek, you were asked on direct examination about the Omaha Tribal Court
20 Domestic Assault conviction. Do you remember that line of questioning?

21 Urbanek: Yes

22 Munderloh: Okay, as we sit here today though, we all agree that Mr. Grant in fact does not have a
23 Class I misdemeanor conviction or an equivalent to that. Is that correct?

24 Urbanek: That is correct.

25 Munderloh: And that no longer is a basis for your denial of his admission to training. Is that true?

- 1 Urbanek: Yes
- 2 Munderloh: Alright, so I want to also review the regulations with you and let's first focus on
3 005.04A2.
- 4 Urbanek: Okay
- 5 Munderloh: That's the, I'll call it the first basis for your denial, is that right.
- 6 Urbanek: Yes
- 7 Munderloh: Now your testimony on direct examination was, I think, that you don't focus on or
8 determine whether there was any deliberate omission. Is that correct?
- 9 Urbanek: Right
- 10 Munderloh: Your focus is simply on the first sentence of that regulation that applications are under a
11 duty to disclose, is that correct?
- 12 Urbanek: Yes
- 13 Munderloh: But the second sentence expressly states, does it not, that it's only deliberate omission.
14 falsifications and or misrepresentations may be that would be grounds for denial of
15 entrance into a training academy suspension from training or termination of training.
- 16 Urbanek: The word is any not only and I do not have the capability to determine whether it is a
17 deliberate omission but I can tell it is a misrepresentation as a criminal record based on
18 what is disclosed and what is not.
- 19 Munderloh: A fair read of the regulation though requires the omissions, falsifications or
20 misrepresentations to be deliberate, isn't that true?
- 21 Urbanek: That's not the way I read that section.
- 22 Munderloh: Well so is it your testimony that an omission that is inadvertent would be grounds for
23 denial?
- 24 Urbanek: It would be grounds for further review.
- 25 Munderloh: But not grounds for denial?

- 1 Urbanek: Not only grounds for denial.
- 2 Munderloh: Okay, let me ask it another way. If an applicant does not deliberately omit something on
3 an application, do you agree with me that, that regulation would not provide grounds for
4 denial?
- 5 Urbanek: There are a lot of don'ts in there. Say it again.
- 6 Munderloh: If someone omits a conviction from an application, and that omission is not deliberate,
7 that's not grounds for denial, correct?
- 8 Urbanek: It could be. It's one of the factors, yes. If a person omits supplying information, it could
9 be grounds for denial.
- 10 Munderloh: But the omission has to be deliberate, correct?
- 11 Urbanek: I don't have the capability to know the intent and the mindset of the individual when
12 they complete the application form.
- 13 Munderloh: And I understand that and I don't mean to quibble with you, my question isn't requiring
14 you to get into the mindset of the applicant when filling out the application. My
15 question is, isn't it true that the omission falsification, or misrepresentation must be a
16 deliberate one in order to provide grounds for denial?
- 17 Stolz: I realize we're not following the rules of evidence, Mr. Munderloh, I think you have
18 made your point very clear here. Move on.
- 19 Munderloh: Okay, thank you. Director Urbanek you testified about then I think you said it's
20 omission in the process of the application that has to be deliberate, is that right?
- 21 Urbanek: An omission in the process?
- 22 Munderloh: Bad question. I'll strike it and start again. Your testimony was, that if there was an
23 omission whether deliberate or not, it might warrant some further investigation.
- Urbanek: That would be correct.

- 1 Munderloh: Alright, so what if any further investigation did you do when you determined that Mr.
2 Grant had convictions that were not on his application?
- 3 Urbanek: I'm not sure if we did them in this case but on occasion we will ask the individuals just
4 to supply an explanation of why was this left off and I cannot testify that we did that in
5 this case.
- 6 Munderloh: Well, in fact it wasn't done in this case, correct?
- 7 Urbanek: I, without reviewing the application and following the letters, I can't say one way or
8 another.
- 9 Munderloh: Have you talked to Mr. Grant prior to today about his application?
- 10 Urbanek: No.
- 11 Munderloh: Do you know whether Mr. Stephenson talked with Mr. Grant about his application?
- 12 Urbanek: I do not.
- 13 Munderloh: Alright. But it would be your duty, as the Director, to follow up to the extent any follow
14 up needs to happen, about the application, correct?
- 15 Urbanek: No
- 16 Munderloh: Okay, so it wouldn't be a part of your duty to reach out to Mr. Grant and ask him to
17 supply the explanations of circumstances that you just testified about?
- 18 Urbanek: It's not my duty, but we do it.
- 19 Munderloh: Okay, and that was not done in this case?
- 20 Urbanek: I would differ with that.
- 21 Munderloh: So when you received the first and second Character Affidavits and compared them to
22 the investigation that Mr. Stephenson had done, you, even though it is not your duty to
23 do so. You provided Mr. Grant no opportunity to explain why there was differences.
- 24 Urbanek: Right

- 1 Munderloh: Doesn't providing that opportunity to explain those differences go to the issue of
2 whether the initial omissions were deliberate or not?
- 3 Urbanek: It's possible
- 4 Munderloh: Mr. Grant submitted two (2) Character Affidavits correct?
- 5 Urbanek: Yes
- 6 Munderloh: Was your testimony on direct examination that the second one really wasn't necessary?
- 7 Urbanek: Correct
- 8 Munderloh: But you considered it anyway?
- 9 Urbanek: It was reviewed, yes.
- 10 Munderloh: And even though not necessary, it's being used today, by you as you support your
11 grounds for denial?
- 12 Urbanek: It was reviewed as part of a packet that was submitted. I can't say that I based my denial
13 fully on a second Character Affidavit.
- 14 Munderloh: Would it be appropriate to read the two (2) affidavits together?
- 15 Urbanek: Yes
- 16 Munderloh: So even though there may not have been a disclosure of one conviction on the second
17 affidavit when read with the first affidavit that would have that conviction disclosed he
18 disclosed that conviction. Can we agree on that?
- 19 Urbanek: I would.
- 20 Munderloh: Thank you.
- 21 Let's talk a little more about 005.02 that's the good character regulation, correct?
- 22 Urbanek: Yes
- 23 Munderloh: So the first part of that regulation, second sentence reads, "Besides the requirements
24 imposed by sections 005.01A through 005.01Q, a person of good character is someone
25 who generally can be defined as an individual who:" did I read that correctly?

- 1 Urbanek: Yes
- 2 Munderloh: And then after that there are a number of factors that according to this regulation defin.
3 what good character is, is that right?
- 4 Urbanek: Generally, yes.
- 5 Munderloh: So when you reviewed Mr. Grant's application, you did not find that he had a past
6 indicative of incompetence or neglect of duty; correct?
- 7 Urbanek: Correct
- 8 Munderloh: And you didn't find that he had a past indicative of physical, mental, or emotional
9 incapacity; correct?
- 10 Urbanek: Correct
- 11 Munderloh: You did find that 005.02A3 made him a candidate, well, made him not have good
12 character, right?
- 13 Urbanek: Right
- 14 Munderloh: Okay, but you did not find that 005.02A4 applied did you?
- 15 Urbanek: No
- 16 Munderloh: And you also didn't find that 005.02A5, well strike that. Let me ask it a different way.
17 If it was not a basis of your denial, that Mr. Grant had an issue with 005.02A5.
- 18 Urbanek: That was not one of the grounds, correct.
- 19 Munderloh: So you did not conclude that, I apologize for the double negative, he couldn't be
20 characterized as being dishonest, truthful and trustworthy. Correct?
- 21 Urbanek: I did not use that as one of the grounds for denial.
- 22 Munderloh: And 005.02A6 you concluded that one of those factors applied. Is that right?
- 23 Urbanek: Yes
- 24 Munderloh: So you concluded because Mr. Grant self-reported about his use of marijuana within :
25 last few years 005.2A6b should be a factor that disqualifies him, is that right?

- 1 Urbanek: Yes
- 2 Munderloh: That though is just one of several parts of that regulation, correct?
- 3 Urbanek: Yes
- 4 Munderloh: So, 005.02A6 requires that there be a pattern of substance abuse, is that right?
- 5 Urbanek: Yes
- 6 Munderloh: And there is no evidence that Mr. Grant has illegally sold, produced, cultivated o
7 transported marijuana or other controlled substance for sale; true?
- 8 Urbanek: Not to my knowledge.
- 9 Munderloh: And there is no evidence that he has used marijuana or other controlled substance, other
10 than one prescribed by a physician, while employed or appointed as a peace officer or
11 law enforcement officer, true?
- 12 Urbanek: Again, I don't have any knowledge that that's not a true statement.
- 13 Munderloh: And similarly there's no evidence that he's illegally used any dangerous drugs or
14 narcotics, other than marijuana, for any purpose in the last five (5) years. Is that correct?
- 15 Urbanek: That would be correct.
- 16 Munderloh: You testified on direct examination about this 005.03 and Mitigating and Extenuating
17 Circumstances and just like the regulation that we just discussed this also has several
18 factors or products to it correct, and only one of them that is the applicant's candor in
19 admission process, is that right?
- 20 Urbanek: Only one (1) of them deals with candor, yes.
- 21 Munderloh: So do you agree that to the extent Mr. Grant has convictions in 2005, he would have
22 been a teenager, right?
- 23 Urbanek: Yes
- 24 Munderloh: You are familiar with his date of birth being in 1998, I'm sorry, 1988.
- 25 Urbanek: Okay, yes

- 1 Munderloh: 1988
- 2 Urbanek: Yes
- 3 Munderloh: Okay, so he would have been 17 in 2005.
- 4 Urbanek: Correct.
- 5 Munderloh: So the fact that he was a teenager during those convictions shouldn't be a mitigating
6 factor should it not.
- 7 Urbanek: On the incidents in 2005, yes.
- 8 Munderloh: Right, what about the incidents in 2008, when he would have been about 20?
- 9 Urbanek: If I may be permitted to answer in this fashion and you may stop me at any time.
- 10 Munderloh: Well, let me ask it a different way then. Do you agree that someone being age 20, when
11 he is now 32 would be a mitigating factor?
- 12 Urbanek: It depends.
- 13 Munderloh: What does it depend on?
- 14 Urbanek: What's happened between 20 and 32.
- 15 Munderloh: Okay and what's happened between 20 and 32 for Mr. Grant includes undergoing
16 substance abuse treatment, right?
- 17 Urbanek: Within the last two years, yes.
- 18 Munderloh: You don't dispute that he did that and he successfully completed it. Correct.
- 19 Urbanek: No I don't.
- 20 Munderloh: Going back for a moment to the disclosures that Mr. Grant did make on his Character
21 Affidavits. I want to focus on statement #3. Mr. Grant did not initial that. And I am
22 sorry for the record, I am referring to Exhibit #1, page #3, statement 3. Mr. Grant did
23 not initial next to that statement. Is that right?
- 24 Urbanek: That is correct.

1 Munderloh: And then the Character Affidavit, page 3 of Exhibit #2, I think in all material respects is
2 identical but the format is a little bit different.

3 Urbanek: Correct

4 Munderloh: Because it has true and false answers right?

5 Urbanek: Correct

6 Munderloh: So looking at number three (3). Mr. Grant did initial that affidavit and wrote the letter
7 "F" is that true?

8 Urbanek: Yes

9 Munderloh: So Mr. Grant actually shall we say over reported what his convictions may be. Well let
10 me break it down. He doesn't have any felony convictions, right?

11 Urbanek: Right

12 Munderloh: And he doesn't have any convictions for any crimes which carry a possible penalty of
13 one (1) year or more imprisonment or any crime which would have carried such carried
14 penalty if committed in Nebraska in other words a Class I misdemeanor. He does not
15 have any of those types of convictions is that correct?

16 Urbanek: That's what we had established, yes.

17 Munderloh: Mr. Grant told you by submitting this application that he did have that more serious
18 conviction.

19 Urbanek: Point of reference, is this the first one or the second one?

20 Munderloh: This is the second one. Exhibit #2, file stamped received November 4th.

21 Urbanek: He does report it there, yes.

22 Munderloh: Right, but that's not accurate. Actually reported that, my point is, reporting that actually
23 hurts him doesn't it?

24 Urbanek: It could.

25 Munderloh: It could? It definitely would, wouldn't it, because isn't that an automatic disqualifier?

- 1 Urbanek: Yes
- 2 Munderloh: Okay, so Mr. Grant reported to you, however inaccurately in this second Character
3 Affidavit that he thinks or thought at the time that he had a conviction that would
4 automatically disqualify him from admission.
- 5 Urbanek: Okay, I won't argue that.
- 6 Munderloh: Okay, do you agree because you agree that a felony conviction or Class I misdemeanor
7 or its equivalent would in fact be an automatic disqualifier.
- 8 Urbanek: Yes
- 9 Munderloh: And by marking, false, and this is another double negative, I'm sorry but it's just a part
10 of the form, but I have not been convicted, he say's false, that would be an automatic
11 disqualifier.
- 12 Urbanek: Yes
- 13 Munderloh: And that wasn't the only time that he got it wrong because if we look at Exhibit #1 the
14 affidavit file stamped September 22nd, or call it the first one, go back to that. Number 3,
15 again he didn't initial that did he?
- 16 Urbanek: Correct
- 17 Munderloh: So just like in October or November the second time, he's reporting in September how
18 inaccurately that he had a conviction that was so serious that he would have
19 automatically been disqualified.
- 20 Urbanek: Correct.
- 21 Munderloh: This is finally on the issue of reporting, there is really no way in the application process
22 to verify whether someone has used marijuana for recreational purposes over the last two
23 (2) years is there?
- 24 Urbanek: Polygraph
- 25 Munderloh: Okay, was a polygraph done as a part of his application?

- 1 Urbanek: Not for admission.
- 2 Munderloh: Okay, none the less Mr. Grant reported that. That's something that can be agreed is not
3 readily verifiable as a criminal conviction, whether it be a court record.
- 4 Urbanek: Yes, we can agree.
- 5 Munderloh: Okay, and Mr. Grant, I haven't heard you testify, did anything to fort his, bad question.
6 Because he didn't talk with Mr. Grant to follow up on the disparity between his
7 application disclosures and the criminal convictions that you found he never was
8 dishonest to you on the phone or any other setting was he?
- 9 Urbanek: No
- 10 Munderloh: Because you didn't follow up and ask him why he didn't report those things?
- 11 Urbanek: No I did not.
- 12 Munderloh: Did you find the Texas speeding citation in your background check?
- 13 Urbanek: I'm not sure, our Registrar would verify with the Texas Department of Motor Vehicles.
- 14 Munderloh: Is the Texas conviction for speeding in any of the exhibits today other than the
15 paperwork that Mr. Grant himself filled out?
- 16 Urbanek: No
- 17 Munderloh: I don't have anything else.
- 18 Chair: Mr. Bergivin, do you have any cross?
- 19 Bergivin: Yes, Director Urbanek I would like to start by asking you some questions about Exhibit
20 #8, the provision question of 005.04A2 this was the first basis for your denial.
- 21 Urbanek: Yes
- 22 Bergivin: There were a number of questions during your cross examination about whether an
23 omission had to be deliberate in order to be a grounds for denial. You recall that?
- Urbanek: Yes

- 1 Bergivin: Okay. Is there anything in the Regulations that prejudice you or this Council from
2 looking at the facts of the case and making an interest in whether the omission was
3 deliberate or not?
- 4 Urbanek: I don't believe there is anything that is specific that allows or disallows for that.
- 5 Bergivin: Okay, you've expressed your discomfort with getting inside his head and guessing about
6 whether he did something on purpose or not. There is nothing in the Regs. that says you
7 or the Council can't look at the facts and make a conclusion about whether he did this on
8 purpose or not.
- 9 Urbanek: Correct
- 10 Bergivin: Setting aside the first basis, the omission of information from the application, the second
11 basis related to good character found in section 005.02A4 have not been adjudged or
12 convicted of traffic, strike that.
13 005.02A3 Has not been adjudged or convicted of criminal violations with such a
14 frequency so as to indicate a disrespect for the law and rights of others. Setting aside
15 what happened with the omission, would 15 charges and 11 convictions over
16 approximately 12 years in and of itself be a basis to deny someone admission?
- 17 Urbanek: Yes.
- 18 Bergivin: Why is that?
- 19 Urbanek: As a peace officer, you are sworn to uphold the law, everybody makes a mistake but
20 when there's 15 criminal charges, that's a pattern of behavior which indicates to me that
21 I really don't care about the law that you are going to swear to uphold.
- 22 Bergivin: I don't have any other questions.
- 23 Chair: Cross?

- 1 Munderloh: Is your testimony that you when applying 005.04A1, is your testimony that you deny
2 admission to the Training Center based on 005.04A2 whether or not the omissions,
3 falsifications, or misrepresentations are deliberate?
- 4 Urbanek: No
- 5 Munderloh: So in otherward you agree with me that the omissions, falsifications, and
6 misrepresentations have to be deliberate?
- 7 Urbanek: No, they just don't appear on the Character Affidavit. I don't know if it was deliberately
8 left off or it was accidently left off. It was left off.
- 9 Munderloh: And I appreciate that, so not knowing whether they were left off deliberately or not you
10 applied 005.04A2 to Mr. Grant to deny his admission at least on that basis.
- 11 Urbanek: Because he is under a duty to disclose any and all information.
- 12 Munderloh: Thank you. I don't have anything else.
- 13 Chair: Okay, thank you. Meanwhile, does the Council have any questions for the witness?
- 14 Stolz: Whatever has been the subject of questioning to this point?
- 15 Osmond: Question to Grant. Did you consider calling the Director about why she denied you so
16 you could maybe explain maybe your thought process?
- 17 Grant: I tried to reach out to the reception, it seemed like, or whoever the person was she made
18 it seem like I had to ask somebody, not personally me but somebody from the agency,
19 which I'm the only officer so it would have been me or somebody above me to directly
20 reach out to Brenda about anything regarding the dismissal. I was informed that I was
21 not supposed to do that. I was informed that I was not supposed to directly reach.
- 22 Bergivin: Director Urbanek you heard Mr. Grant's testimony just now, at any point during this
23 process of considering his application has he contacted you about his application?
- 24 Urbanek: Not Mr. Grant.
- 25 Bergivin: Has anyone contacted you on his behalf about your review of his application?

- 1 Urbanek: Mr. Munderloh and I spoke I think it was before the application was actually completed
2 and submitted.
- 3 Bergivin: And once you had the information about Mr. Grant's criminal history did anyone other
4 than Mr. Munderloh try to offer you an explanation about any of these events?
- 5 Urbanek: Not to me no.
- 6 Bergivin: Did you get any messages from anyone on your staff regarding someone other than Mr.
7 Munderloh wanting to talk to you about Mr. Grant?
- 8 Urbanek: No.
- 9 Bergivin: Thank you. That's all.
- 10 Munderloh: Chairman, I have a few questions.
11 Director Urbanek, This is just my memory. To the extent you and I discussed Mr.
12 Grant's application was the jest of our discussions the domestic assault issue in Omaha
13 Tribal Court.
- 14 Urbanek: That was the basis of our discussion I was under the impression that there could possibly
15 be some criminal records out of the Omaha Tribal Court and I didn't have the ability to
16 access them and I think at that point you provided those to us.
- 17 Munderloh: Okay, that maybe right. Thank you.
- 18 Chair: Mr. Bergivin, do you have anything further to offer?
- 19 Bergivin: I have no further evidence.
- 20 Chair: Mr. Munderloh, do you have anything additional to offer in light of the Training
21 Center's evidence?
- 22 Munderloh: No sir.
- 23 Chair: Mr. Munderloh, you may make your closing statement at this time.

1 Munderloh:

2 Thank you. The Village of Walthill and Mr. Grant personally are asking this body to
3 reverse Director Urbanek's decision to deny Mr. Grant admission to the Training Center.
4 I'll just take each ground for denial one by one.

5 Mr. Grant's testimony was he ordered this Intelius Background Report in efforts to
6 determine what his criminal convictions maybe. He did that on his own mostly because
7 he had no benefit of any agency head to do a background ground check on him in
8 advance. At most the application was completed probably carelessly but not in a way
9 where there were deliberate omissions and we know that they were not deliberate
10 because he ordered the background check to try to gather accurate information. He
11 reported at least one (1) conviction for speeding that apparently was not uncovered in the
12 background check that Director Urbanek did but he also, I'll say, over reported the
13 seriousness of his criminal history by indicating on Exhibits #1 and #2, the respective
14 Character Affidavits that he actually had an offense that would be an automatic
15 disqualifier. That simply is not the case and Director Urbanek agrees that he has no
16 felony and or Class I misdemeanor or its equivalent offense and so it's hard to argue that
17 he is deliberately omitting when he is in fact over reporting and in fact over reporting to
18 such an extent that he really wouldn't even be here if it were true if he had that Class I
19 misdemeanor because it would be an automatic disqualifier. So when you over report in
20 that way and report such serious conduct that would keep you out automatically, it's
21 hard to argue that you are deliberately omitting comparatively minor convictions for
22 MIP when we were under 21 in 2008 a Class III misdemeanor, a shoplifting when our
23 girlfriend, apparently asked us to steal a pregnancy test from a Walmart and we received
24 a fine and other Class III misdemeanors like driving under suspension and no operator's
25 license when we we're age 24 and now when we're age 32 we have a valid license. I
would submit that we also know that he also didn't deliberately omit falsify or

1 misrepresent because he self-reported the marijuana use that Director Urbanek agrees,
2 polygraph aside of course, assuming that those are reliable, and I don't know that we
3 should, there would be no way to verify that he used marijuana in the last two (2) years,
4 but instead he endeavored to be as honest and complete as he remembered at the time he
5 completed the application, say yes, I've used marijuana, but by the way, I went to
6 treatment.

7 On being adjudged or convicted of criminal violations with such frequency, I do almost
8 no criminal work these days, except in Federal Court, but it used to be almost all of what
9 I did. It occurs to me as I say this, I should be aware of my audience. His record is what
10 it is. That's what most any defense attorney would tell a Judge, his record is what it is,
11 and yes it takes time to distance yourself from your record but we're not going back to
12 2005, we're going back 16 years when Mr. Grant was a teenager when Mr. Grant was 17
13 and I would ask you to not prevent his admission to training for himself and for Walt
14 because of things that happened when he was 17. Now he admits that there was more to
15 it than that because things happened after he was 17 but his convictions also predate his
16 going to treatment and his convictions are also substantially related to his alcohol abuse
17 or abuse and since then he's done his treatment. Sure that was in 2019, it's now 2021
18 it's just two (2) years later, but he did it none the less and his testimony today, which is
19 not refuted in anyway, is that he has not had a drink, he's not used marijuana since he
20 completed that treatment. So I would submit that the record is sufficient for you to
21 determine that he's reformed himself and there are enough mitigators here for him to be
22 admitted and that's what I would ask you to do is to reverse Director Urbanek's decision
23 and permit that to happen.

24 Chair: Thank you.

25 Mr. Bergivin you may make a closing argument at this time.

1 Bergivin:

Thank you.

2 The omissions that Mr. Grant made on both of his Character Affidavits were significant,
3 they were material and they were deliberate. Mr. Munderloh's argument that they were
4 not deliberate because he over reported a felony or serious misdemeanor and admitted
5 marijuana use has a hole in it because there is no evidence that Mr. Grant was aware that
6 those were automatic disqualifiers so he shouldn't get the benefit of that argument when
7 there is no evidence that he was even aware that reporting a potential disqualifying
8 conviction or drug use would automatically not make him not eligible.

9 There are several Nebraska State Court cases documented in Exhibit #6 and #7 that he
10 did not report. The criminal history that he did provide on the affidavits includes
11 information on the report that he paid for but just because those are the cases on that
12 report doesn't justify him not including other cases. You can't say this is the report I
13 paid for, this is all it said, so therefore, that's all I have to report. Regardless of what a
14 privately obtained background report says, he knew there were other cases out there in
15 his past. He testified to that. He knew about them because he was the defendant. It's
16 not credible to say that he didn't disclose those cases because he didn't know about
17 them.

18 Director Urbanek explained that there is nothing in the Regs. that prevents you from
19 looking at all the facts of this case and drawing a conclusion about whether the
20 omissions were deliberate and that's the conclusion that we ask you to make.

21 The second basis is that he's been convicted of crimes with such frequency as
22 communicated and such disrespect for the law. Under the Regs. criminal history is the
23 way for the Director and this body to determine whether someone has good character
24 and Mr. Grant has 11 convictions between 2005 and 2017 documented on Exhibits #6
25 and #7. That's an average of about one (1) per year for that time period and what that

1 shows is that he has no real concerns for following the law. Is that someone that you
2 want enforcing the laws in Nebraska? Why would Director Urbanek let you into the
3 profession of law enforcement at this point with this past and no one has said that he
4 cannot reapply and attend training when he separated himself from these events in his
5 past over an amount of time, but now is not the time for him to attend training. Mr.
6 Munderloh has said his criminal record is what it is, well he is who he is, at this point in
7 his life and he is not at a point in his life where he should be attending training to
8 become a certified law enforcement officer. He is the only employee of the Walthill
9 Police Department right now, but if you reverse the Director's decision, he will become
10 certified and can obtain a law enforcement position anywhere in the State, so we ask you
11 to not let a problem that potentially created by him no longer being in Walthill be
12 something that leads you to reversing the Directors decision.

13 And the final basis for denial is his own admission that he used marijuana. The Reg.
14 says that using marijuana within two (2) years of application is an indicator of substance
15 abuse, which is a basis defined that he is not someone of good character. Director
16 Urbanek looked at his extensive criminal history and drug use and weighed those
17 aggravating facts against the mitigating factors in Reg. and she determined that that scale
18 was tipped in favor of finding that he does not define good character at this point. Good
19 character is a prerequisite to admission. That was a reasonable decision. You've heard
20 about another reasonable action that she took in this case after being provided more
21 information she ultimately determined that what she thought was a domestic assault
22 conviction or equivalent in Nebraska State Court was not that type of offense and was
23 not an automatic disqualifier and she removed that as a basis. She thought through this
24 case and she came to the appropriate conclusions. So the Respondent asks the Council

1 to consider all the facts, to apply the Regs. In Exhibit #8 and to back Director Urbanek's
2 decision to not admit Mr. Grant to training at this point in his life.

3 Thank you for your attention.

4 Chair: I would move that the Council go into Executive Session based on the prevention of
5 needless injury to the reputation of Kelvin Grant and for the purposes of Executive
6 Session we will allow the following to remain in the room. All Council Members,
7 Council Secretary, and Legal Advisory. Mr. McCarthy seconded the motion.

8 Fielding: Sheriff Osmond

9 Osmond: Yes

10 Fielding: Chief Larby

11 Larby: Yes

12 Fielding: Chief Wolf

13 Wolf: Yes

14 Fielding: Mr. McCarthy

15 McCarthy: Yes

16 Fielding Lieutenant Colonel Duis

17 Duis: Yes

18 Fielding: Chief Deputy London

19 London: Yes

20 Fielding: Motion carried 6-0

21 Chair: At this time I would remind all those present in executive session that they must restrict
22 their discussion in closed session to the issues currently before the Council.

23 We are now in executive session. The time is 1:22 P.M.

24 Chair: The meeting of the Police Standards Advisory Council will come to order, is there a
25 motion to come out of Executive Session.

- 1 Osmond: I'll make a motion.
- 2 McCarthy: I'll second.
- 3 Chair: The time is 1:51 P.M.
- 4 Fielding: Chief Wolf
- 5 Wolf: Yes
- 6 Fielding: Mr. McCarthy
- 7 McCarthy: Yes
- 8 Fielding Lieutenant Colonel Duis
- 9 Duis: Yes
- 10 Fielding: Chief Deputy London
- 11 London: Yes
- 12 Fielding: Sheriff Osmond
- 13 Osmond: Yes
- 14 Fielding: Chief Larby
- 15 Larby: Yes
- 16 Fielding: Motion carried 6-0
- 17 Chair: Is there a motion.
- 18 Osmond: I would make a motion that we uphold the denial of application for basic recruit
19 academy for Kelvin Grant based upon Director Urbanek's 3 decisions or things that she
20 outlined on Exhibit #11.
- 21 Chair: Do I have a second.
- 22 Wolf: Second
- 23 Fielding Lieutenant Colonel Duis
- 24 Duis: Yes
- 25 Fielding: Chief Deputy London

- 1 London: Yes
- 2 Fielding: Sheriff Osmond
- 3 Osmond: Yes
- 4 Fielding: Chief Larby
- 5 Larby: Yes
- 6 Fielding: Chief Wolf
- 7 Wolf: Yes
- 8 Fielding: Mr. McCarthy
- 9 McCarthy: Yes
- 10 Fielding: Motion carried 6-0
- 11 Chair: Mr. Munderloh and Mr. Grant, as you have heard the Council has upheld the Director's
- 12 decision and denied your request for admission into basic certification course.
- 13 Mr. Munderloh, the Council will prepare written findings of fact and conclusions of law
- 14 pertaining to today's hearing and the Council decision.
- 15 Do you want the findings sent to your office or to the Village's Office?
- 16 Munderloh: To my office please.
- 17 Chair: Is there anything else from either side that needs to be addressed?
- 18 Bergivin: No sir
- 19 Munderloh: No sir
- 20 Chair: This hearing is concluded. The time is 1:53 P.M.
- 21 Respectfully submitted.
- 22 Kay Fielding,
- 23 Secretary to the Council

B. Academy Instructor Certifications
General Original

Luke Splattstoesser – NSP

Lieutenant Colonel Duis stepped out of the meeting.

Deputy Director Keeling recommended approval.

MOTION

Mr. McCarthy made a motion that we approve the general original for Luke Splattstoesser of the NSP. Chief Deputy London seconded the motion. Voting in favor of the motion; Sheriff Osmond, Chief Larby, Chief Wolf, Mr. McCarthy, and Chief Deputy London. Lieutenant Colonel Duis was not present. Motion carried 5-0.

Lieutenant Colonel Duis rejoined the meeting.

General Recertification

Erin Sims – Lincoln Police Department

Deputy Director Keeling recommended approval.

MOTION

Chief Larby made a motion that we approve the General Recertification of Erin Sims from LPD. Sheriff Osmond seconded the motion. Voting in favor of the motion; Chief Deputy London, Sheriff Osmond, Chief Larby, Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis. Motion carried 6-0.

Professional Original

Timothy Dolberg – Lincoln Police Department

Andrew Ecklund – NSP

Rachel Kohlman – NLETC (Additional)

Kayla Puhmann – Lincoln Police Department

Deputy Director Keeling recommended approval.

MOTION

Chief Larby made a motion to accept the Professional Original for Timothy Dolberg Lincoln P. D., Andrew Ecklund - NSP, Rachel Kohlman – NLETC, Kayla Puhmann – Lincoln P.D. Sheriff Osmond seconded the motion. Voting in favor of the motion; Sheriff Osmond, Chief Larby, Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis, abstained and Chief Deputy London. Motion carried 6-0.

Deputy Director Keeling recommended approval.

Professional Recertification

Timothy Abele – Lincoln Police Department
Robert Brenner – Lincoln Police Department
Tyler Cooper – Lincoln Police Department
Launa Groves – Lincoln Police Department
Maxwell Hubka – Lincoln Police Department
Valerie Kinghorn – Lincoln Police Department
Todd Kocian – Lincoln Police Department
Michon Morrow – Lincoln Police Department
Michael Schmidt – Lincoln Police Department
Benjamin Seeman – Lincoln Police Department

MOTION

Chief Wolf made a motion to accept the Professional Recertification of Timothy Abele, Robert Brenner, Tyler Cooper, Launa Groves, Maxwell Hubka, Valerie Kinghorn, Todd Kocian, Michon Morrow, Michael Schmidt, and Benjamin Seeman all of the Lincoln Police Department. Chief Larby seconded the motion. Voting in favor of the motion; Chief Larby, Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis, Chief Deputy London, and Sheriff Osmond. Motion carried 6-0.

- C. Request for Waiver In-Lieu-Of NLETC Management
Completion of LPO provided by IACP - 5/4/2017
Lieutenant Toby Czaplá, Nebraska State Patrol**

MOTION

Sheriff Osmond motioned that we approve the waiver in-lieu-of NLETC Management provided he does the online version for Toby Czaplá. Chief Larby seconded the motion. Voting in favor of the motion; Chief Wolf, Mr. McCarthy, Chief Deputy London, Sheriff Osmond, and Chief Larby. Lieutenant Colonel Duis, abstained. Motion carried.

- D. Request for Waiver In-Lieu-Of NLETC Management
Completion of LPO provided by IACP - 12/11/2015
Lieutenant Kaleb Bruggeman, Nebraska State Patrol**

MOTION

Mr. McCarthy motioned to approve the request for the waiver in-lieu-of NLETC Management for Lieutenant Kaleb Bruggeman provided he has to take the online portion. Chief Larby seconded the motion. Voting in favor of the motion; Mr. McCarthy, Chief Deputy London, Sheriff Osmond, Chief Larby, and Chief Wolf. Lieutenant Colonel Duis, abstained. Motion carried.

- E. Request for Waiver In-Lieu-Of NLETC Management
Completion of LPO provided by IACP – 12/7/17
Completion of School of Police Staff & Command 9/8-11/20/20
Lieutenant Paul Hagen, Nebraska State Patrol**

MOTION

Chief Deputy London motioned to approve the request for the waiver in-lieu-of NLETC Management for Lieutenant Paul Hagen of the Nebraska State Patrol provided he does the online course. Chief Wolf seconded the motion. Voting in favor of the motion; Chief Deputy London, Sheriff Osmond, Chief Larby, Chief Wolf, and Mr. McCarthy. Lieutenant Colonel Duis, abstained. Motion carried.

- F. Request for Waiver In-Lieu-Of NLETC Management
Completion of LPO provided by IACP – 5/17/18
Completion of School of Police Staff & Command 9/8-11/20/20
Lieutenant Luke Splattstoesser, Nebraska State Patrol**

MOTION

Mr. McCarthy motioned to approve the request for the waiver in-lieu-of NLETC Management for Lieutenant Luke Splattstoesser of the Nebraska State Patrol.

Chairman London asked if he was required to take the online course.

Mr. McCarthy amended his motion to include that he had to take the online portion. Chief Larby seconded the motion. Voting in favor of the motion; Sheriff Osmond, Chief Larby, Chief Wolf, Mr. McCarthy, and Chief Deputy London. Lieutenant Colonel Duis, abstained. Motion carried.

- G. Request for Waiver of One-Year Management Requirement
Deputy Zach Welch, Brown County Sheriff's Office**

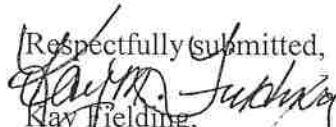
Director Urbanek recommended approval of the Management requirement and that he was currently attending the online course.

Mr. McCarthy motioned to approve the request of the waiver for Deputy Zach Welch. Chief Larby seconded the motion. Chief Larby, Chief Wolf, Mr. McCarthy, Lieutenant Colonel Duis, Chief Deputy London, and Sheriff Osmond. Motion carried 6-0

IX. OTHER BUSINESS

- A. Date, Time & Location of Next Meeting**
April 21, 2021, 9:00; Library, Nebraska Law Enforcement Training Center,
3600 North Academy Road, Grand Island, Nebraska 68801

Hearing no further business, Chairman London adjourned the meeting at 2:07 PM.

Respectfully submitted,

Kay Fielding,
Secretary to the Council