

MINUTES
OF
THE NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING STANDARDS COMMISSION

DATE: December 09, 2021

TIME: 12:00 P.M.

SUBMITTED BY: Diane Konopka, Director, Sheriffs' Standards Division

I. CALL TO ORDER

Sheriff Alan Cloninger

The North Carolina Sheriffs' Education and Training Standards Commission's Final Agency Decision meeting was called to order by Sheriff Alan Cloninger on Thursday, December 9, 2021, at 12:00 pm. The Final Agency Decision meeting was held at the Guilford County Sheriff's District 2 Office, 440 Millstream Rd., McLeansville, NC 27420.

Chairman Cloninger requested a roll call of Commission members. Alex Radford recorded the following:

MEMBERS PRESENT

Sheriff Shelton White
Sheriff Landric Reid
Sheriff Alan Cloninger
Sheriff Mike Roberson
Sheriff Alan Norman
Sheriff Ed McMahan
Sheriff Jack Smith
Sheriff Ricky Oliver
Sheriff Alan Jones
Sheriff David Mahoney
Sheriff Terry Johnson
Mr. Jamie Markham
Retired Sheriff David Smith
Sheriff John Ingram

MEMBERS ABSENT

Ms. Tracy McPherson
Mr. Marc Nichols
Sheriff Doug Doughtie

STAFF

Diane Konopka - Director - Sheriffs' Standards Division
Alex Radford - Sheriffs' Standards Division
John Congleton - NC Dept. of Justice
Bob Pickett - NC Dept. of Justice

Chairman Cloninger announced that a quorum was present.

In the first order of business, Legal Counsel John Congleton read the Ethics Reminder which states:

All members have a duty to avoid conflicts of interest and appearances of conflict. Commission members have an affirmative duty to fully disclose any conflict of interest or potential conflict of interest between the member's service on the Commission and his or her private interests. One of the most basic rules is that members cannot knowingly use their position on the Commission in a manner that will result in a financial benefit to the person, a member of the person's family, or a business with which he or she is associated. [N.C.G.S. 138A-31]. Commission members are also prohibited from accepting gifts from persons doing or seeking to do business with the Commission, persons engaging in activities that are regulated or controlled by the Commission, or persons having a financial interest that may be substantially affected by the member's official duties.

Legal Counsel John Congleton then asked whether any member had a known conflict or appearance of conflict with respect to any matters coming before the Commission at this time. Sheriff Jack Smith said he would recuse himself once the Commission hears the case regarding Tysheika Tyshae Lewis.

Chairman Cloninger welcomed everyone to the meeting. Sheriff Cloninger then asked visitors to stand and introduce themselves.

VISITORS

Bob Pickett	North Carolina Attorney General's Office
Leslie Cooley-Dismukes	North Carolina Department of Justice
Sgt. Ryan Muse	Pamlico County Sheriff's Office
Bridgett Bonner	Pamlico County Sheriff's Office
Sgt. Donovan Ruth	Dare County Sheriff's Office
Christopher Ruth	Dare County Sheriff's Office
Tysheika Lewis	Northampton County Sheriff's Office
Hart Miles	Attorney
Amanda Woodson	Nash County Sheriff's Office

OATHS

Chairman Cloninger asked Alex Radford to administer the oaths to the Sheriffs who were re-appointed to their seats on the Commission. Sheriff Alan Norman and Retired Sheriff David Smith were both sworn in.

II. FINAL AGENCY DECISION

Bob Pickett

***Bridgett Elizabeth Bonner**

Legal Counsel Bob Pickett addressed the Sheriffs' Commission Members and stated that this matter would determine if Ms. Bonner's telecommunicator certification should be revoked. Ms. Bonner is currently certified through the Pamlico County Sheriff's Office. Prior to this, from December 19th 2012 to August 2020 she was certified through Beaufort County Sheriff's Office. The issue is whether or not she tested positive for marijuana in violation of rules 12 NCAC 10B .0204(b)(5) and NCAC 10B .0205(2)(g). In this case she received a positive drug test result for marijuana which was 0000027.000 nanograms per milliliter which is above the threshold that would show a positive test. This was her first positive test in over nine (9) years working as a telecommunicator. Ms. Bonner conducted her own research to try to determine how she received a positive drug screen result. She believed that there was a possibility that one of her prescription medications and the CBD lotion that she was using could have been responsible for the false positive for THC.

Sergeant Ryan Muse with the Pamlico County Sheriff's office spoke with Carson Jowers from Nationwide Testing Association, Inc. on January 4, 2021, and memorialized that telephone conversation which was admitted into evidence by stipulation. Sergeant Muse found out that given the low amount of THC within the drug sample, it would be possibly consistent with either CBD products or marijuana usage about three to four weeks prior to the drug screen. However at the hearing, this information was not presented in form of expert testimony, it was essentially noted as a conversation that Sergeant Muse had with another person.

The recommendation from the Administrative Law Judge suggested that there should be a six (6) month probation period which Ms. Bonner would have to pass a new drug screen within that time frame.

Chairman Cloninger asked if Ms. Bonner would speak on her own behalf. Ms. Bonner said she had never failed a drug test since she has worked in a sworn law enforcement capacity since 1997 until this recent event. She stated that she does not smoke marijuana and would like to keep her certification. Sergeant Muse was present and spoke very highly of Ms. Bonner. He also confirmed that he was told in the conversation he had with Nationwide Testing Association, Inc. that the low amount of THC could have come from the CBD product she was using at the time.

A **MOTION** was made by Sheriff Terry Johnson to enter a closed session; seconded by Sheriff Alan Norman. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Shelton White to enter open session; seconded by Sheriff Alan Norman. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Shelton White in the matter of Ms. Bridgett Elizabeth Bonner to accept the counsel's recommendation that the petitioners justice officer certification be denied; however in lieu of denial, petitioner be granted certification subject to a probationary period of six (6) months with the condition during the period the petitioner not violate any laws and that the petitioner receive a random drug test; seconded by Sheriff Mike Roberson **MOTION CARRIED. [Attachment #1]**

III. FINAL AGENCY DECISION

Bob Pickett

***Tysheika Tyshae Lewis**

Sheriff Jack Smith recused himself to avoid any conflict of interest since Ms. Lewis is an applicant with Northampton County Sheriff's Office.

Legal Counsel Bob Pickett addressed the Sheriffs' Commission Members and stated that Ms. Tysheika Tyshae Lewis is a Justice Officer applicant through the Northampton County Sheriff's Office. She has briefly worked for two other criminal justice agencies prior to this matter. She was employed with the Edgecombe County Sheriff's Office from November 2017 to November 2018. She was also employed with the Pinetops Police Department from April 2019 to September 2019. The two issues before the Commission are, whether she committed a Class B Misdemeanor after the date of appointment, in violation of rule 12 NCAC 10B .0204(d)(1); and whether she failed to notify Sheriffs' Training and Standards of her charge as required under rule 12 NCAC .0301(a)(8).

On October 9, 2019, Ms. Lewis was traveling in a car as a passenger that was stopped by Stantonsburg Police Chief, Orlando Rosario for a traffic infraction. In an effort to get out of the traffic ticket she told the chief that she was currently working for the Pinetops Police

Department. Chief Rosario called Chief Harrell with Pinetops PD and asked if Ms. Lewis was still employed with his agency. Chief Harrell then confirmed to Rosario that the statement she made was untrue. Chief Rosario then charged the petitioner with a violation of N.C.G.S. 14-277(a)(1) for Impersonating a Law Enforcement Officer.

Ms. Lewis has maintained throughout that she never represented that she was still working at Pinetops Police Department, essentially maintaining that both Chiefs Rosario and Harrell were fabricating evidence. It is worth noting that her two previous employers indicated that she was separated due to untruthfulness. During the course of investigation, Ms. Lewis provided a statement that she had notified Criminal Justice Standards of the charge, but there was no record of this notification. Deputy Director Sirena Jones then reviewed Sheriffs' Training and Standards records and found no evidence to show proper notification. There was testimonial evidence supporting the idea that she notified Criminal Justice Standards, but none that she notified Sheriffs' Standards.

Legal counsel offered two main exceptions to the proposed recommendations from the Administrative Law Judge. First, Mr. Pickett asked for consistency with the Commission's position that the burden of proof be placed on the petitioner. Second, the judge seemed to be operating under misunderstanding that Criminal Justice Education and Training Standards worked the same as the Sheriffs' Training and Standards; but in fact they are two separate statutorily created entities with different responsibilities. Even if she had reported to Criminal Justice Standards that would not be enough to show that she reported to Sheriffs' Standards. Legal counsel would ask that the finding of fact be changed relating to her failure to properly notify the Sheriffs' Standards Commission. The judge did feel that there was some confusion on her end by not notifying both CJ Standards and Sheriffs' Standards.

The Administrative Law Judge's recommendation is to deny her certification for three (3) years, as she had already been "hung up" for two (2) years prior to this hearing. Legal counsel supports this recommendation.

Chairman Cloninger asked the Commission if there were any questions. Negative response.

A **MOTION** was made by Sheriff Alan Norman to enter a closed session; seconded by Sheriff Terry Johnson. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Mike Roberson to enter open session; seconded by Sheriff Alan Norman. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Landric Reid in the matter of Tysheika Tyshae Lewis that her justice officer certification shall be denied for five (5) years for commission of the offense of Impersonating a Law Enforcement Officer in violation of N.C.G.S. 14-277 and that no action be taken against the petitioner's certification regarding the allegation of failure to notify; seconded by Sheriff Terry Johnson **MOTION CARRIED. [Attachment #2]**

IV. FINAL AGENCY DECISION

Bob Pickett

***Christopher Donovan Ruth**

Legal Counsel Bob Pickett addressed the Sheriffs' Commission Members and stated that Mr. Ruth is an applicant for certification through the Dare County Sheriff's Office. Mr. Ruth received a summary denial for his application for certification based upon a positive marijuana drug screen. A closer examination of the results showed only 0000013.000 nanograms per milliliter, which should have not been categorized as a positive drug screen. Additionally there was evidence that showed that Mr. Ruth did not intentionally consume marijuana, but he that he was with a bunch of his friends who were smoking it and it got blown into his face while he was sleeping.

Chairman Cloninger asked the Commission if there were any questions. Sheriff Terry Johnson asked Mr. Ruth if he had ever smoked marijuana, Mr. Ruth stated that he had not.

A **MOTION** was made by Sheriff Terry Johnson to enter a closed session; seconded by Sheriff Mike Roberson. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Shelton White to enter open session; seconded by Sheriff Landric Reid. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Terry Johnson in the matter of Mr. Christopher Donovan Ruth that he is eligible for certification because no positive drug test occurred; seconded by Sheriff Landric Reid. **MOTION CARRIED. [Attachment #3]**

V. FINAL AGENCY DECISION

Bob Pickett

***Amanda Nicole Woodson**

Legal Counsel Bob Pickett addressed the members of the Sheriffs' Commission stating that Ms. Woodson is an applicant for certification through the Nash County Sheriff's Office. The issue in is whether or not she violated rule 12NCAC 10B .204(d (5) by committing four or more class A or B misdemeanors. She was convicted of one (1) class A misdemeanor, Second Degree Trespassing on August 4, 2015. Additionally, she admitted to committing a misdemeanor larceny on October 6, 2012, which was dismissed upon completion of a deferred prosecution agreement. In that matter, she had stolen DVDs from Wal-Mart which were educational in nature for her child. Her record also contains a July 28, 2015, Injury to Real Property charge and a November 10, 2015, Simple Assault charge, neither of which were convictions.

The Judge found that she did not commit the offense of Simple Assault; and as such, she does not have a combination of A and B misdemeanors. While they were disputable, the facts in this case do support the judge's findings. Aside from the one incident at Wal-Mart back in 2012, the rest of these crimes arose from a relationship she had with a Christopher Barefoot with whom she had a child. In or around 2015 they were going through a tough split up. His testimony was that he was a really bad drunk at the time and caused a lot of trouble. Every time they got into a fight, he would take out a warrant against her.

The Injury to Real Property charge was from when she was knocking on the trailer door at Mr. Barefoot's residence and it broke because it was a cheaply made door. She did pay restitution and the charge was dismissed. The Simple Assault charge happened when Mr. Barefoot and Ms. Woodson were arguing and he got in her face so she pushed him back and threw a reading light at his head. In this case, the judge felt Ms. Woodson possibly acted in self-defense. Therefore, without the fourth misdemeanor to support the violation there are only three (3) misdemeanors, which does not rise to a rules violation.

Legal counsel noted two exceptions to the judge's ruling. Namely, Mr. Pickett asked for consistency with the Commission's position that the burden of proof be placed on the petitioner. Secondly, he took exception to the Administrative Law Judge's recommendation that the petitioner be placed on a one year period of probation because, based on the evidence, there is no violation of the Commission's rules.

Chairman Cloninger asked the Commission if there were any questions for Ms. Woodson and her lawyer Mr. Miles. Negative Response.

A **MOTION** was made by Sheriff Shelton White to enter a closed session; seconded by Sheriff Mike Roberson. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Mike Roberson to enter open session; seconded by Sheriff Jack Smith. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Alan Norman in the matter of Ms. Amanda Nicole Woodson that her certification be granted with a one (1) year probation period; seconded by Retired Sheriff David Smith. **MOTION CARRIED. [Attachment #4]**

VI. FINAL AGENCY DECISION

Bob Pickett

***Heather Chatel Blair**

Legal Counsel Bob Pickett addressed the Sheriffs' Commission Members and stated that Ms. Heather Chatel Blair was not present. She is an applicant for Deputy Sheriff and Detention Officer Certification through the Buncombe County Sheriff's Office (BCSO). She was previously certified through the BCSO and is seeking re-employment with them. The alleged violations in her case involve the commission of a class B misdemeanor after the date of appointment (Accessing Computers) and the commission of a felony (Accessing Government Computers). These alleged violations occurred in September of 2015. Also for consideration is a possible lack of good moral character.

At the hearing, Deputy Director Jones testified on behalf of the Commission and Ms. Blair testified on her own behalf. The evidence indicated that Lieutenant Hilliard with the Buncombe County Sheriff's Office received a phone call from the Asheville ALE Division Special Agent in Charge (SAC) Cox. SAC Cox told Lieutenant Hilliard that she believed a deputy was giving confidential information to a known drug dealer. Ultimately it was determined that on September 24, 2015, Ms. Blair ran a license plate tag and provided the name of the registered owner to a Mr. Donel Gains who was known to be engaged in criminal activity. An investigation was conducted by the BCSO Professional Standards Division. During that investigation the petitioner was interviewed, and it was determined that Ms. Blair and Mr. Gains were friends. On

the date in question, Mr. Gains was at the Charlotte Street Pub in Asheville, North Carolina. He called Ms. Blair while she was on duty, read to her a license plate number and asked her for the name of the registered owner. Ms. Blair indicated she thought that Mr. Gains had witnessed an altercation where a party had left the area after causing some damage and Mr. Gains wanted to seek a warrant on the individual. Ms. Blair testified that she called in the tagged information to dispatch and that she was given the name of the owner. She then gave that individual's information to Mr. Gains. Subsequent to the investigation, Ms. Blair's employment was terminated in May of 2016.

It was clear that Ms. Blair requested and disseminated the information, but that she herself did not type the information into a computer or any other type of system. As a result, we were unable to establish that she accessed a computer in violation of a criminal statute. Additionally, the petitioner submitted several character letters establishing that she has good character. Administrative Law Judge Sutton recommended that she be granted certification.

A **MOTION** was made by Sheriff Shelton White to enter into a closed session; seconded by Sheriff Jack Smith. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Mike Roberson to enter into open session; seconded by Sheriff Jack Smith. **MOTION CARRIED**

A **MOTION** was made by Terry Johnson in the matter of Ms. Heather Chatel Blair to deny certification; seconded by Sheriff Alan Norman. **MOTION CARRIED. [Attachment #5]**

VII. PETITION FOR JUDICIAL REVIEW

Leslie Cooley-Dismukes

***Maurice Anthony DeValle**

In regards to the matter of Maurice Anthony DeValle versus the North Carolina Sheriffs' Education and Training Standards Commission, Sheriff Cloninger asked the Commission to make a decision as to whether or not to request NCDOJ to appeal the ruling of Judge James G. Bell in Columbus County.

A **MOTION** was made by Sheriff Roberson to enter into a closed session; seconded by Sheriff Terry Johnson. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Mike Roberson to enter into open session; seconded by Sheriff Shelton White. **MOTION CARRIED.**

A **MOTION** was made by Sheriff Terry Johnson in the matter of Maurice Anthony DeValle to ask DOJ to appeal the ruling of James G. Bell; seconded by Sheriff Alan Norman. **MOTION CARRIED. [Attachment #6]**

VIII. LEGAL COUNSEL'S REPORT

Mr. Bob Pickett summarized Legal Counsel's Report. This report is available for review and includes administrative case files that are currently in the Office of Administrative Hearings. Mr. Pickett reviewed the various stages of litigation for the administrative cases as follows:
[See Attachment #7]

- 20 cases including 6 FADs heard today
- 2 new cases since September
- 4 PJR cases

IX. ADJOURNMENT

A **MOTION** was made to adjourn the December 2021 Sheriffs' Final Agency Decision meeting; Seconded. **MOTION CARRIED.**

Attachment 1

FINAL AGENCY DECISION VOTE

FILE:

Bridgett Elizabeth Bonner

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith		X		
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahon				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid		X		
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>		X		

CERTIFIED TALLY: Yes (5) No (3)

DATE: 12/09/2021

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02455

Bridgett Elizabeth Bonner Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This case came on for a virtual hearing on September 24, 2021, before Administrative Law Judge Stacey Bice Bawtinhimer. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 17E of the North Carolina General Statutes.

APPEARANCES

Petitioner: Bridgett Elizabeth Bonner, *pro se*
10978 NC Highway 306 South
Aurora, NC 27806

Respondent: Erika N. Jones
Attorney for Respondent
North Carolina Department of Justice
Special Prosecutions and Law Enforcement Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Whether Petitioner's justice officer certification should be revoked for producing a positive result for marijuana?

RULES AT ISSUE

12 NCAC 10B .0301(a)(6)
12 NCAC 10B .0410(a)
12 NCAC 10B .0204(b)(5)
12 NCAC 10B .0205(2)(g)

PROPOSED FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **PROPOSED FINDINGS OF FACT**.

In making the **PROPOSED FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of each witness by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on April 19, 2021.

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify law enforcement officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Bridgett Elizabeth Bonner ("Petitioner") is an applicant for telecommunicator certification through the Pamlico County Sheriff's Office. She was previously certified as a telecommunicator through the Beaufort County Sheriff's Office from December 19, 2012 to August 21, 2020. Respondent's Exhibit 1.

4. On December 22, 2020, in furtherance of her application for certification through Respondent, Petitioner submitted to a drug test. The test was positive for marijuana metabolites. Respondent's Exhibit 3.

5. Petitioner testified on her own behalf and her credible testimony included the following:

- a. Petitioner has been certified as an Emergency Medical Technician ("EMT") for 23 years.
- b. Petitioner denied smoking marijuana prior to the positive drug screen on December 22, 2020.
- c. Petitioner provided a list of her current medications to Major Scott Houston with the Pamlico County Sheriff's Office.

- d. After doing her own research, Petitioner believed there was a possibility that one of her prescription medications caused a false positive for THC.
- e. Petitioner later believed that a hemp lotion containing CBD could be responsible for the positive drug screen.
- f. Petitioner used the hemp lotion on her hand/wrist area to aid in pain relief and swelling due to a cyst in the tendon of her hand.
- g. Prior to this incident, Petitioner had never failed a drug screen.

6. Sergeant Ryan Muse (“Sgt. Muse”) with the Pamlico County Sheriff’s Office spoke with Carson Jowers from Nationwide Testing Association, Inc. on January 4, 2021, and memorialized that telephone conversation in a letter which was admitted into evidence by stipulation.

- a. Sgt. Muse made efforts to get into contact with Medical Review Officer, Dr. Jerome Cooper, to “speak further about the possibility that a medication that Bonner is prescribed (40mg Protonix) possibly causing a false positive for the presence of Marijuana in her system during her drug test.”
- b. Sgt. Muse was transferred to and ultimately spoke with Carson Jowers who was Dr. Jerome Cooper’s assistant.
- c. Carson Jowers stated that Protonix would not cause a false positive on a regular drug screen but it could cause a false positive on a rapid drug screen that has the “strip on the side of the cup.”
- d. Carson Jowers further stated that CBD products could cause a false positive and that Petitioner’s result of 0000027.000 is on the low end of the spectrum and thus could be indicative of the use of CBD products which do contain low levels of THC.
- e. Carson Jowers also stated that actual marijuana usage would generally yield a higher quantitative level unless a person last smoked marijuana three to four weeks prior.
- f. Carson Jowers was not tendered as an expert witness by Respondent and thus his opinion was not considered definitive.

7. Although Petitioner bears the burden of proof, neither party presented scientific evidence dispositive of the effect of CBD products on marijuana screening results.

8. The Probable Cause Committee had probable cause to revoke Petitioner’s certification; however, mitigating factors merit a reduction or suspension of that denial.

PROPOSED CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.

3. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

4. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

5. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006).

6. 12 NCAC 10B .0301 provides that:

(a) Every Justice Officer employed or certified in North Carolina shall:

(6) have produced a negative result on a drug screen administered according to the following specifications...

(C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites...

7. 12 NCAC 10B .0410 provides that:

(a) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all positive results of drug screening obtained from applicants or lateral transfers pursuant to 12 NCAC 10B .0301(6) unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

8. 12 NCAC 10B .0204 provides that:

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer...

(5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a certified justice officer, corrections officer as defined in 12 NCAC 09G .0102

or a criminal justice officer as defined in 12 NCAC 09A .0103(6) unless the positive result is due to a medically indicated cause...

9. Although Petitioner credibly asserted that she utilized a hemp cream containing CBD on her hand/wrist area, no credible evidence was presented by her to prove that the hemp cream, in fact, caused the positive drug test result. Additionally, marijuana use is not legal in the state of North Carolina, therefore, Petitioner's positive drug screen is not medically indicated.

10. 12 NCAC 10B .0205 provides that:

When the commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(2) not less than five years where the cause of sanction is:

(g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

The Commission may either reduce or suspend the period of sanction under this item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated 12 NCAC 10B .0204(b)(5) when she tested positive for marijuana in December 2020.

12. Mitigating circumstances exist for a reduction or suspension of the sanction in this case such as the possibility that the hemp lotion could have caused a false positive result, and the fact that Petitioner had no previous positive drug screens.

13. Rather than the immediate denial of Petitioner's telecommunicator certification, in light of the mitigating circumstances, Petitioner's certification should be granted for a probationary period of six (6) months subject to conditions imposed by this Commission or the North Carolina Criminal Justice Education and Training Standards Commission, including but not limited to random drug testing.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's justice officer certification be **DENIED**, however, in lieu of denial, Petitioner be **GRANTED** certification subject to a **PROBATIONARY PERIOD OF SIX (6) MONTHS** on the condition that during that period of probation, Petitioner not violate any laws (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission and that Petitioner be subjected to random drug testing.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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

IT IS SO PROPOSED.

This the 13th day of October, 2021.

A handwritten signature in black ink, reading "Stacey Bice Bawtinheimer", written over a horizontal line.

Stacey Bice Bawtinheimer
Administrative Law Judge

CERTIFICATE OF SERVICE

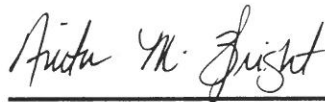
The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to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

Bridgett Elizabeth Bonner
10978 NC Highway 306 South
Aurora NC 27806
Petitioner

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

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

This the 13th day of October, 2021.



Anita M Wright
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02455

BRIDGETT ELIZABETH BONNER,)

Petitioner,)

v.)

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,)

Respondent.)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed May 25, 2021, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (21 DOJ 02455) were filed May 27, 2021. The parties received proper Notice of Hearing and the Administrative Hearing was held remotely on September 24, 2021, before the Honorable Stacey Bice Bawtinheimer, Administrative Law Judge.

The Petitioner was represented *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General, Erika N. Jones.

On October 13, 2021, Judge Bawtinheimer filed her Proposal for Decision. On October 14, 2021, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 9, 2021.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

PROPOSED FINDINGS OF FACT

~~BASED UPON careful consideration of the sworn testimony of the witnesses~~

~~presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **PROPOSED FINDINGS OF FACT.**~~

~~In making the **PROPOSED FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of each witness by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.~~

1. Both parties are were properly before this the Administrative Law Judge, in that jurisdiction and venue are were proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on April 19, 2021.

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify law enforcement officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Bridgett Elizabeth Bonner ("Petitioner") is an applicant for telecommunicator certification through the Pamlico County Sheriff's Office. She was previously certified as a telecommunicator through the Beaufort County Sheriff's Office from December 19, 2012 to August 21, 2020. Respondent's Exhibit 1.

4. On December 22, 2020, in furtherance of her application for certification through Respondent, Petitioner submitted to a drug test. The test was positive for marijuana metabolites. Respondent's Exhibit 3.

5. Petitioner testified on her own behalf and her credible testimony included the following:

- a. Petitioner has been certified as an Emergency Medical Technician ("EMT") for 23 years.
- b. Petitioner denied smoking marijuana prior to the positive drug screen on December 22, 2020.
- c. Petitioner provided a list of her current medications to Major Scott Houston with the Pamlico County Sheriff's Office.
- d. After doing her own research, Petitioner believed there was a possibility that one of her prescription medications caused a false positive for THC.
- e. Petitioner later believed that a hemp lotion containing CBD could be

- responsible for the positive drug screen.
- f. Petitioner used the hemp lotion on her hand/wrist area to aid in pain relief and swelling due to a cyst in the tendon of her hand.
- g. Prior to this incident, Petitioner had never failed a drug screen.

6. Sergeant Ryan Muse ("Sgt. Muse") with the Pamlico County Sheriff's Office spoke with Carson Jowers from Nationwide Testing Association, Inc. on January 4, 2021, and memorialized that telephone conversation in a letter which was admitted into evidence by stipulation.

- a. Sgt. Muse made efforts to get into contact with Medical Review Officer, Dr. Jerome Cooper, to "speak further about the possibility that a medication that Bonner is prescribed (40mg Protonix) possibly causing a false positive for the presence of Marijuana in her system during her drug test."
- b. Sgt. Muse was transferred to and ultimately spoke with Carson Jowers who was Dr. Jerome Cooper's assistant.
- c. Carson Jowers stated that Protonix would not cause a false positive on a regular drug screen but it could cause a false positive on a rapid drug screen that has the "strip on the side of the cup."
- d. Carson Jowers further stated that CBD products could cause a false positive and that Petitioner's result of 0000027.000 is on the low end of the spectrum and thus could be indicative of the use of CBD products which do contain low levels of THC.
- e. Carson Jowers also stated that actual marijuana usage would generally yield a higher quantitative level unless a person last smoked marijuana three to four weeks prior.
- f. Carson Jowers was not tendered as an expert witness by Respondent and thus his opinion was not considered definitive.

7. Although Petitioner bears the burden of proof, neither party presented scientific evidence dispositive of the effect of CBD products on marijuana screening results.

8. The Probable Cause Committee had probable cause to revoke Petitioner's certification; however, mitigating factors merit a reduction or suspension of that denial.

PROPOSED CONCLUSIONS OF LAW

~~1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.~~

2.1. The Office of Administrative Hearings has had personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.

3.2. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

4.3. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence.

N.C.G.S. § 150B-34(a).

5.4. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006).

6.5. 12 NCAC 10B .0301 provides that:

(a) Every Justice Officer employed or certified in North Carolina shall:

(6) have produced a negative result on a drug screen administered according to the following specifications...

(C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites...

7.6. 12 NCAC 10B .0410 provides that:

(b) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all positive results of drug screening obtained from applicants or lateral transfers pursuant to 12 NCAC 10B .0301(6) unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

8.7. 12 NCAC 10B .0204 provides that:

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer...

(5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a certified justice officer, corrections officer as

defined in 12 NCAC 09G .0102 or a criminal justice officer as defined in 12 NCAC 09A .0103(6) unless the positive result is due to a medically indicated cause...

9.8. Although Petitioner credibly asserted that she utilized a hemp cream containing CBD on her hand/wrist area, no credible evidence was presented by her to prove that the hemp cream, in fact, caused the positive drug test result. Additionally, marijuana use is not legal in the state of North Carolina, therefore, Petitioner's positive drug screen is not medically indicated.

10.9. 12 NCAC 10B .0205 provides that:

When the commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(2) not less than five years where the cause of sanction is:

- (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

The Commission may either reduce or suspend the period of sanction under this item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11.10. A preponderance of the evidence presented at the administrative hearing established that Petitioner violated 12 NCAC 10B .0204(b)(5) when she tested positive for marijuana in December 2020.

12.11. Mitigating circumstances exist for a reduction or suspension of the sanction in this case such as the possibility that the hemp lotion could have caused a false positive result, and the fact that Petitioner had no previous positive drug screens.

13.12. Rather than the immediate denial of Petitioner's telecommunicator certification, in light of the mitigating circumstances, Petitioner's certification should be granted for a probationary period of six (6) months subject to conditions imposed by this Commission or the North Carolina Criminal Justice Education and Training Standards

Commission, including but not limited to random drug testing.

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ~~proposed~~ hereby **ORDERED** that Petitioner's justice officer certification be **DENIED**, however, in lieu of denial, Petitioner be **GRANTED** certification subject to a **PROBATIONARY PERIOD OF SIX (6) MONTHS** on the condition that during that period of probation, Petitioner not violate any laws (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission and that Petitioner be subjected to random drug testing.

IT IS SO ORDERED.

This the _____ day of _____, 2021.

Alan Cloninger, Chairman

North Carolina Sheriffs' Education and Training
Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner** by mailing a copy to the address below:

**Bridgett Elizabeth Bonner
10978 NC Highway 306 South
Aurora, NC 27806**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Erika N. Jones
Erika N. Jones
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02455

BRIDGETT ELIZABETH BONNER,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Stacey Bice Bawtinheimer, Administrative Law Judge, and filed in the Office of Administrative Hearings on October 13, 2021, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Proposed should be deleted from Findings of Fact to reflect the position of the Commission.

PROPOSED FINDINGS OF FACT

~~BASED UPON~~ careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **PROPOSED FINDINGS OF FACT**.

In making the **PROPOSED FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of each witness by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the

~~witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.~~

3. Proposed should be deleted from Conclusions of Law, and Conclusions of Law No. 1 should be deleted to reflect the position of the Commission. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.

PROPOSED CONCLUSIONS OF LAW

- ~~1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.~~
4. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ~~proposed~~ hereby **ORDERED** that Petitioner's justice officer certification be **DENIED**, however, in lieu of denial, Petitioner be **GRANTED** certification subject to a **PROBATIONARY PERIOD OF SIX (6) MONTHS** on the condition that during that period of probation, Petitioner not violate any laws (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission and that Petitioner be subjected to random drug testing.

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Erika N. Jones

Erika N. Jones
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6725
N.C. State Bar No.: 44504
enjones@ncdoj.gov
ATTORNEY FOR THE RESPONDENT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon the **Petitioner** by mailing a copy to the address below:

**Bridgett Elizabeth Bonner
10978 NC Highway 306 South
Aurora, NC 27806**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Erika N. Jones
Erika N. Jones
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

Attachment 2

FINAL AGENCY DECISION VOTE

FILE:

Tysheika Tyshae Lewis

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith				X
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahan				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid	X			
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>	X			

CERTIFIED TALLY: Yes (7)

DATE: 12/09/2021

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02504

<p>Tysheika Tyshae Lewis Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This contested case was heard before Michael C. Byrne, Administrative Law Judge, on September 20, 2021, at the Office of Administrative Hearings in Raleigh NC, following the request of Respondent NC Sheriffs Education and Training Standards Commission pursuant to N.C.G.S. 150B-40(e) for an administrative law judge to hear this case under N.C.G.S. 150B, Article 3A following the request of Petitioner Tysheika Tyshae Lewis ("Petitioner") for an administrative hearing.

APPEARANCES

Tyshieka Tyshae Lewis
Petitioner, Pro Se

Robert J. Pickett
Assistant Attorney General
North Carolina Department of Justice
Attorney for Respondent

WITNESSES

For Petitioner: None

For Respondent:
Sirena Jones
Tyshieka Tyshae Lewis (Petitioner)
Chief Orlando Rosario
Chief Stacy Harrell
Christopher Batten

ISSUES

Whether Respondent was correct in finding probable cause that Petitioner committed the Class B misdemeanor offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. 14-277 on October 9, 2019.

Whether Respondent was correct in finding probable cause that Petitioner violated 12 N.C.A.C. .0301(a)(7) by failing to report the misdemeanor charge in question to Respondent within five (5) business days.

Based on the testimony of witnesses, the governing law, and all evidence in the record, the Tribunal makes the following:

FINDINGS OF FACT

1. Both parties received notice of hearing. Petitioner received by mail the proposed denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on or about April 19, 2021. (Res. Ex. 2).
2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. Petitioner is an applicant for certification as a sheriff's deputy in Northhampton County, North Carolina. Petitioner holds a general certification as a Deputy Sheriff issued by Respondent on or about January 31, 2019 (Res. Ex. 15).
4. Petitioner worked for the Edgecombe County Sheriff's Office as a deputy from November 2017 to November 2018. Petitioner was terminated from that job for making untruthful statements related to her job duties (Res. Ex. 12).
5. Petitioner was employed with the Pinetops, NC police department from April 2019 to September 2019. Petitioner resigned from that department in September 2019 following a determination that she made untruthful statements related to her job duties regarding a traffic stop. Pinetops police Chief Stacy Harrell ("Harrell") testified that he would not re-hire Petitioner due to her untruthfulness issues.
6. On October 9, 2019, Statonsburg Police Chief Orlando Rosario ("Rosario") conducted a traffic stop in Statonsburg, NC. During this traffic stop, Petitioner represented to Rosario that she was a police officer employed by the Pinetops police department. Rosario telephoned Harrell, who confirmed that Petitioner had been separated from the Pinetops police department in September 2019. With Harrell listening on Rosario's cell phone, Rosario asked Petitioner when her next shift as an officer would take place. Petitioner stated that she was working the following Friday. Harrell then confirmed to Rosario that this statement was untrue.

7. Rosario charged Petitioner with a violation of N.C.G.S. 14-277(a)(1) for impersonating a law enforcement officer. While the charge was brought for trial, Petitioner was not convicted of the offense. The charge was dismissed after Petitioner completed some community service and wrote a letter of apology to Rosario.
8. Rosario was unequivocal in his trial testimony, including in response to questions from the Tribunal, that Petitioner affirmatively represented that she was currently employed by the Pinetops police department. This testimony was supported by Harrell, who also heard Petitioner, or someone he reasonably believed to be Petitioner, making statements that her next police officer shift was the following Friday.
9. As of October 9, 2019, Petitioner was not a sworn law enforcement officer employed by any law enforcement department or agency.
10. Petitioner denied, both at the hearing and previously, that she stated she was currently (as opposed to previously) employed by Pinetops police department at the time of the traffic stop of October 9, 2019 (Res. Ex. 8). Petitioner's denial is not credible. First, Petitioner has an established history of making false statements connected to her duties as a law enforcement officer and was twice terminated from law enforcement employment for doing so. Second, two credible police chiefs testified to the Tribunal that Petitioner, at the traffic stop, stated that she was currently employed by the Pinetops police department. The Tribunal sees no evidence supporting the premise that two sitting North Carolina police chiefs would collude to make false statements regarding the Petitioner's representations on October 9, 2019.
11. In the course of Petitioner seeking the certification at issue in this case, Petitioner's criminal charge of October 9, 2019 became known to Respondent. Respondent's staff member Sirena Jones ("Jones") found no record of Petitioner notifying Respondent of the charge. However, Petitioner on May 7, 2020 wrote to Respondent and indicated that she verbally notified a male staff member of Respondent of the charge a week after it occurred (Res. Ex. 9). That Jones found no record of this event does not constitute proof that it failed to occur.
12. Moreover, Christopher Batten ("Batten"), a field representative for Respondent, investigated the criminal charge against Petitioner. Batten prepared and submitted a summary of investigation. (Res. Ex. 5). This summary did not address the failure to report allegation. There no evidence of any follow-up on Respondent's part to determine the truth or falsity of Petitioner's claim that she verbally notified Respondent of the October 9, 2019 criminal charge, other than Jones finding no record of it.
13. No representative of Petitioner's current prospective employer appeared at the hearing to testify on her behalf, nor did Petitioner submit letters or testimonials of recommendation from serving law enforcement officers.

14. However, Batten testified that he had spoken to the Sheriff of Northhampton County, who indicated that he wished to employ Petitioner and that Petitioner's prior legal issues had been resolved to his apparent satisfaction. Though this was hearsay testimony, the Tribunal considered it under N.C.G.S. 150B-41 in the absence of objection from either party.

CONCLUSIONS OF LAW

1. The Tribunal has personal and subject matter jurisdiction over this contested case. The parties received proper notice in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. Respondent has the authority, pursuant to 12 NCAC 10B .0204(d)(1), to suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the application for certification or the certified officer has committed or been convicted of a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment.
3. A violation of N.C.G.S. 14-277(a)(1) is a Class 1 misdemeanor. N.C.G.S. 14-277(d1)(1).
4. A violation of N.C.G.S. 14-277(a)(1) occurs when the person, among other actions, "Verbally informs another that he is a sworn law enforcement officer, whether or not the representation refers to a particular agency."
5. The greater weight of the evidence shows that on October 9, 2019, Petitioner committed the offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. 14-277.
6. The greater weight of the evidence does not show that Petitioner violated Respondent's rule requiring certified persons to report criminal charges to Respondent within five business days.
7. While the allegations here do not include lack of good moral character, the Tribunal observes that telling the truth is perhaps the most important character trait of a law enforcement officer. Wetherington v. NC Dep't of Pub. Safety, 270 N.C. App. 161, 162, 840 S.E.2d 812, 816, review denied, stay dissolved, 374 N.C. 746, 842 S.E.2d 585 (2020).
8. While not every act of untruthfulness is grounds to terminate a law enforcement career, Id., Petitioner was removed from two law enforcement positions for untruthfulness (the last removal being relatively recent, in late 2019) and, in this case, is found to have once again been untruthful regarding her actions on October 9, 2019 – this time about her status as an employed law enforcement officer. This history cannot be ignored in determining Petitioner's credibility with respect to the conflicting evidence in this case.

9. Respondent is entitled to revoke, suspend, or deny Petitioner's certification. Given the two year passage of time between the violation at issue and the holding in this case, the Tribunal recommends that Respondent suspend Petitioner's certification for three (3) years. Such a sanction would give Petitioner time for presumed growth and to, parenthetically, rehabilitate herself as a truthful member of the North Carolina law enforcement community. In re Willis, 288 N.C. 1, 13, 215 S.E.2d 771, 779 (1975).

PROPOSAL FOR DECISION

The Tribunal recommends that Respondent **SUSPEND** Petitioner's certification for three (3) years for committing the offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. 14-277. The Tribunal recommends that Respondent take **NO ACTION** against Petitioner's certification regarding the allegation that Petitioner failed to timely report the criminal charge concerned.

NOTICE

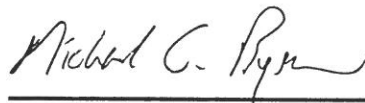
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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

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

SO ORDERED.

This the 20th day of September, 2021.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Tysheika Tyshae Lewis
100 Hunger Hill Road Apt 8G
Tarboro NC 27886
Petitioner

NC Sheriffs Education and Training Standards Commission
PO Box 629
Raleigh NC 27602
Respondent

Robert J Pickett (by email on September 20, 2021)
NC Department of Justice
rpickett@ncdoj.gov
Attorney For Respondent

This the 21st day of September 2021.



Daniel Chunko
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02504

TYSHEIKA TYSHAE LEWIS,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed May 26, 2021, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (21 DOJ 02504) were filed May 28, 2021. The parties received proper Notice of Hearing and the Administrative Hearing was held in Raleigh, North Carolina on September 20, 2021, before the Honorable Michael C. Byrne, Administrative Law Judge.

The Petitioner was represented *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General, Robert J. Pickett.

On September 20, 2021, Judge Byrne filed his Proposal for Decision. On September 21, 2021, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 9, 2021.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Both parties received notice of hearing. Petitioner received by mail the

proposed denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on or about April 19, 2021. (Res. Ex. 2).

2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. Petitioner is an applicant for certification as a sheriff's deputy in Northhampton County, North Carolina. Petitioner holds a general certification as a Deputy Sheriff issued by Respondent on or about January 31, 2019 (Res. Ex. 15).

4. Petitioner worked for the Edgecombe County Sheriff's Office as a deputy from November 2017 to November 2018. Petitioner was terminated from that job for making untruthful statements related to her job duties (Res. Ex. 12).

5. Petitioner was employed with the Pinetops, NC police department from April 2019 to September 2019. Petitioner resigned from that department in September 2019 following a determination that she made untruthful statements related to her job duties regarding a traffic stop. Pinetops pPolice Chief Stacy Harrell ("Harrell") testified that he would not re-hire Petitioner due to her untruthfulness issues.

6. On October 9, 2019, Statonsburg Police Chief Orlando Rosario ("Rosario") conducted a traffic stop in Statonsburg, NC. During this traffic stop, Petitioner represented to Rosario that she was a police officer employed by the Pinetops pPolice dDepartment. Rosario telephoned Harrell, who confirmed that Petitioner had been separated from the Pinetops pPolice dDepartment in September 2019. With Harrell listening on Rosario's cell phone, Rosario asked Petitioner when her next shift as an officer would take place. Petitioner stated that she was working the following Friday. Harrell then confirmed to Rosario that this statement was untrue.

7. Rosario charged Petitioner with a violation of N.C.G.S. § 14-277(a)(1) for impersonating a law enforcement officer. While the charge was brought for trial, Petitioner was not convicted of the offense. The charge was dismissed after Petitioner completed some community service and wrote a letter of apology to Rosario.

8. Rosario was unequivocal in his trial testimony, including in response to questions from the Tribunal, that Petitioner affirmatively represented that she was currently employed by the Pinetops police department. This testimony was supported by Harrell, who also heard Petitioner, or someone he reasonably believed to be Petitioner, making statements that her next police officer shift was the following Friday.

9. As of October 9, 2019, Petitioner was not a sworn law enforcement officer employed by any law enforcement department or agency.

10. Petitioner denied, both at the hearing and previously, that she stated she was currently (as opposed to previously) employed by Pinetops police department at the

time of the traffic stop of October 9, 2019 (Res. Ex. 8). Petitioner's denial is not credible. First, Petitioner has an established history of making false statements connected to her duties as a law enforcement officer and was twice terminated from law enforcement employment for doing so. Second, two credible police chiefs testified to the Tribunal that Petitioner, at the traffic stop, stated that she was currently employed by the Pinetops police department. The Tribunal sees no evidence supporting the premise that two sitting North Carolina police chiefs would collude to make false statements regarding the Petitioner's representations on October 9, 2019.

11. In the course of Petitioner seeking the certification at issue in this case, Petitioner's criminal charge of October 9, 2019 became known to Respondent. Respondent's staff member Sirena Jones ("Jones") found no record of Petitioner notifying Respondent of the charge. ~~Petitioner, on May 7, 2020 wrote to Respondent and indicated that she verbally notified a male staff member of Respondent of the charge a week after it occurred (Res. Ex. 9). That Jones found no record of this event does not constitute proof that it failed to occur.~~ The absence of a record of a regularly conducted business activity in business records, in this case recording the reporting of the charge, is probative to showing the notification did not occur. See N.C.G.S. § 8C-1, Rule 803(7).

12. ~~However, Petitioner, on May 7, 2020 wrote to Respondent and indicated that she verbally notified a male staff member of Respondent the North Carolina Criminal Justice Education and Training Standards Commission of the charge a week after it occurred (Res. Ex. 9). That Jones found no record of this event does not constitute proof that it failed to occur. Respondent is a separate statutorily created entity from the North Carolina Criminal Justice Education and Training Standards Commission. See N.C.G.S. §§ 17C and 17E. Petitioner held certification at the time of the charge from both entities and was required to notify Respondent as well, which she failed to do. 12 NCAC 10B.0301(7)(A) and 12 N.C.A.C. 09B.0101(8)(a).~~

12. ~~Moreover, Christopher Batten ("Batten"), a field representative for Respondent, investigated the criminal charge against Petitioner. Batten prepared and submitted a summary of investigation. (Res. Ex. 5). This summary did not address the failure to report allegation. There no evidence of any follow up on Respondent's part to determine the truth or falsity of Petitioner's claim that she verbally notified Respondent of the October 9, 2019 criminal charge, other than Jones finding no record of it.~~

13. No representative of Petitioner's current prospective employer appeared at the hearing to testify on her behalf, nor did Petitioner submit letters or testimonials of recommendation from serving law enforcement officers.

14. However, Batten testified that he had spoken to the Sheriff of Northampton County, who indicated that he wished to employ Petitioner and that Petitioner's prior legal issues had been resolved to his apparent satisfaction. Though this was hearsay testimony, the Tribunal considered it under N.C.G.S. § 150B-41 in the absence of objection from either party.

CONCLUSIONS OF LAW

1. The Tribunal Office of Administrative Hearings has had personal and subject matter jurisdiction over this contested case. The parties received proper notice in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Respondent has the authority, pursuant to 12 NCAC 10B .0204(d)(1), to suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the application for certification or the certified officer has committed or been convicted of a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment.

3. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

3.4. A violation of N.C.G.S. § 14-277(a)(1) is a Class 1 misdemeanor. N.C.G.S. § 14-277(d1)(1).

4.5. A violation of N.C.G.S. § 14-277(a)(1) occurs when the person, among other actions, "Verbally informs another that he is a sworn law enforcement officer, whether or not the representation refers to a particular agency."

5.6. The greater weight of the evidence shows that on October 9, 2019, Petitioner committed the offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. 14-277.

6.7. The greater weight of the evidence ~~does not~~ shows that Petitioner violated Respondent's rule requiring certified persons to report criminal charges to Respondent within five business days.

7.8. While the allegations here do not include a lack of good moral character, the Tribunal observes that telling the truth is perhaps the most important character trait of a law enforcement officer. Wetherington v. NC Dep't of Pub. Safety, 270 N.C. App. 161, 162, 840 S.E.2d 812, 816, review denied, stay dissolved, 374 N.C. 746, 842 S.E.2d 585 (2020).

8.9. While not every act of untruthfulness is grounds to terminate a law enforcement career, Id., Petitioner was removed from two law enforcement positions for untruthfulness (the last removal being relatively recent, in late 2019) and, in this case, is found to have once again been untruthful regarding her actions on October 9, 2019 – this time about her status as an employed law enforcement officer. This history cannot be ignored in determining Petitioner's credibility with respect to the conflicting evidence in this case.

9-10. Respondent is entitled to revoke, suspend, or deny Petitioner's certification. Given the two year passage of time between the violation at issue and the holding in this case, the Tribunal recommends that Respondent suspend Petitioner's certification for not less than three five (35) years. Such a sanction would give Petitioner time for presumed growth and to, parenthetically, rehabilitate herself as a truthful member of the North Carolina law enforcement community. In re Willis, 288 N.C. 1, 13, 215 S.E.2d 771, 779 (1975).

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** ~~The Tribunal recommends that Respondent **SUSPEND** Petitioner's justice officer certification should be **SUSPENDED DENIED** for **THREE (3)** years for committing the offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. § 14-277, and that The Tribunal recommends that Respondent take **NO ACTION** be taken against Petitioner's justice officer certification regarding the allegation that Petitioner failed to timely report the criminal charge concerned.~~

IT IS SO ORDERED.

This the _____ day of _____, 2021.

Alan Cloninger, Chairman
North Carolina Sheriffs' Education and Training
Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner** by mailing a copy to the address below:

**Tysheika Lewis
100 Hunter Hill Road, Apt. G
Tarboro, NC 27886**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02504

TYSHEIKA TYSHAE LEWIS,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Michael C. Byrne, Administrative Law Judge, and filed in the Office of Administrative Hearings on September 20, 2021, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Finding of Fact No. 11 should be amended to accurately reflect the facts of the case.
 11. In the course of Petitioner seeking the certification at issue in this case, Petitioner's criminal charge of October 9, 2019 became known to Respondent. Respondent's staff member Sirena Jones ("Jones") found no record of Petitioner notifying Respondent of the charge. The absence of a record of a regularly conducted business activity in business records, in this case recording the reporting of the charge, is probative to showing the notification did not occur. See N.C.G.S. § 8C-1, Rule 803(7).
3. Finding of Fact No. 12 should be deleted and replaced to accurately reflect the facts of the case.
 12. ~~Moreover, Christopher Batten ("Batten"), a field representative for Respondent, investigated the criminal charge against Petitioner. Batten prepared and submitted a summary of investigation. (Res. Ex.~~

~~5). This summary did not address the failure to report allegation. There no evidence of any follow up on Respondent's part to determine the truth or falsity of Petitioner's claim that she verbally notified Respondent of the October 9, 2019 criminal charge, other than Jones finding no record of it.~~

12. However, Petitioner, on May 7, 2020 wrote to Respondent and indicated that she verbally notified a male staff member of Respondent the North Carolina Criminal Justice Education and Training Standards Commission of the charge a week after it occurred (Res. Ex. 9). That Jones found no record of this event does not constitute proof that it failed to occur. Respondent is a separate statutorily created entity from the North Carolina Criminal Justice Education and Training Standards Commission. See N.C.G.S. §§ 17C and 17E. Petitioner held certification at the time of the charge from both entities and was required to notify Respondent as well, which she failed to do. 12 NCAC 10B.0301(7)(A) and 12 N.C.A.C. 09B.0101(8)(a).

4. Conclusion of Law No. 1 should be revised to reflect the position of the Commission.

1. The Tribunal Office of Administrative Hearings has had personal and subject matter jurisdiction over this contested case. The parties received proper notice in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

5. Conclusion of Law No. 3 should be added to align with Respondent's position on burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.

3. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

6. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** ~~The Tribunal recommends that Respondent~~ **SUSPEND** Petitioner's justice officer certification should be **SUSPENDED DENIED** ~~for THREE (3) years~~ for committing the offense of "Impersonation of a law-enforcement or other public officer" in violation of N.C.G.S. § 14-277, and that The Tribunal recommends that Respondent take **NO ACTION** be taken against Petitioner's justice officer certification regarding the allegation that Petitioner failed to timely report the criminal charge concerned.

IT IS SO ORDERED.

This the 19th day of November, 2021.

/s/ Robert J. Pickett

Robert J. Pickett

Assistant Attorney General

N.C. Department of Justice

9001 Mail Service Center

Raleigh, North Carolina 27699-9001

Telephone: (919) 716-6725

State Bar No.: 38427

COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing EXCEPTIONS have been duly served upon the **Petitioner** by mailing a copy to the address below:

**Tysheika Lewis
100 Hunter Hill Road, Apt. G
Tarboro, NC 27886**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

Attachment 3

FINAL AGENCY DECISION VOTE

FILE:

Christopher Donovan Ruth

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith	X			
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahon				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid	X			
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>	X			

CERTIFIED TALLY: Yes (8)

DATE: 12/09/2021

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02407

<p>Christopher Donovan Ruth Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION (AMENDED)</p>
--	---

This contested case was heard before Michael C. Byrne, Administrative Law Judge, via remote means at the Office of Administrative Hearings in Raleigh, North Carolina following the request of Respondent NC Sheriffs Education and Training Standards Commission ("Respondent") for appointment of an Administrative Law Judge to hear the case of Petitioner Christopher Donovan Ruth ("Petitioner") pursuant to N.C.G.S. 150B-140(e).

APPEARANCES

John C. Graham, III
Sharp, Graham, Baker & Varnell, LLP
P. O. Drawer 1027
Kitty Hawk NC 27949
Attorney for Petitioner

Mr. Robert Pickett
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

EXHIBITS

Petitioner's Exhibits 1-5 were admitted into evidence

Respondent's Exhibits 1-9 were admitted into evidence

WITNESSES

For Petitioner:
Christopher Ruth
Kevin Scott Burton
Donovan Ruth
Zachary Hedrick Paul
Terry Ed Cottrell
Doug Doughtie

For Respondent:
None

ISSUE

Whether Respondent was correct in summarily denying certification on the grounds that Petitioner tested positive for marijuana during a drug test on March 12 and 13, 2021?

STIPULATIONS

By their filing of September 23, 2021, which was entered into the record at the hearing of this contested case on September 24, 2021, Petitioner and Respondent stipulated:

1. It is stipulated that the parties are properly before Administrative Law Judge Michael C. Byrne and that the Office of Administrative Hearings has jurisdiction of the parties and of the subject matter.
2. It is stipulated that Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances, with valid proof of a rule violation.
3. It is stipulated that Petitioner is an applicant for justice officer certification through the Dare County Sheriff's Office and that he has not previously held certification with either Respondent or the North Carolina Criminal Justice Education and Training Standards Commission.
4. It is stipulated that the issues in this matter are: (a) Whether Petitioner tested positive for marijuana during a drug test on March 12 and 13, 2021? (b) Whether Petitioner involuntarily ingested marijuana prior to that date?
5. It is stipulated that Respondent's Exhibits 1-9 and Petitioner's Exhibits 1-5 are authentic and admissible.
6. It is stipulated that Petitioner submitted a urine sample for drug testing on March 12, 2021 and answered a number of questions about his medical history and medication usage. See Res. Exs. 3-9.

7. It is stipulated that the sample was tested on March 13, 2021, and that Petitioner's confirmatory drug test revealed a content of 13 ng/ml of cannabis. See Res. Ex. 3

8. It is stipulated that the threshold used by the drug testing company LabCorp for a positive result for cannabis was 10 ng/ml. The drug screen was reported as positive to the Dare County Sheriff's Office and Respondent. It is further stipulated that the level of cannabinoids on the test was below 15 ng/ml. See Res. Ex. 3

9. It is stipulated that Rule .0301(a)(6)(A) and (D), Chapter 10B of Title 12 of the North Carolina Administrative Code states: (a) Every Justice Officer employed or certified in North Carolina shall: (6) have produced a negative result on a drug screen administered according to the following specifications: (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>]; (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are incorporated by reference, including subsequent amendments and editions

10. It is stipulated that Rule .0205(2)(g), Chapter 10B of Title 12 of the North Carolina Administrative Code states: When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be: (2) not less than five years where the cause of sanction is: (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an inservice drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified. The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11. It is stipulated that Petitioner was summarily denied certification based upon the drug screen, which was reported as positive to Respondent. See Res. Ex. 2

12. It is stipulated that the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 82 Fed. Reg. 7920, 7941 (Jan. 23, 2017), sets a confirmatory test cutoff concentration of 15 ng/ml for cannabis.

13. It is stipulated that Respondent's actions, in this case, were taken in good faith reliance upon the evidence provided to it and were neither arbitrary nor capricious.

Based upon the testimony of the witnesses, the stipulations, consideration of all the admitted exhibits, and all evidence of record, the Tribunal makes the following:

FINDINGS OF FACT

1. Based on the stipulations and the evidence of record, Petitioner did not have a “positive” drug screen result, as his result was below the minimum threshold of 15 ng/ml for cannabis.
2. Based on the preponderance of the evidence, the amount of cannabis found in Petitioner’s drug screen was more likely than not the results of accidental exposure to marijuana smoke.

Based on these Findings of Fact, the Tribunal makes these:

CONCLUSIONS OF LAW

1. The parties are properly before the Tribunal, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.
2. It is not necessary for the Tribunal to make findings on every fact presented at the hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), affirmed, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. To the extent the Findings of Fact contain Conclusions of Law, or vice versa, they should be so considered without regard to the given labels. Matter of V.M., 848 S.E.2d 530, 534 (2020).
4. Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, authorize Respondent to certify justice officers, and to revoke, suspend, or deny such certification.
5. The Tribunal concludes as a matter of law that Petitioner did not have a “positive” drug screen, and there is accordingly no barrier to Petitioner’s certification as a deputy sheriff.

PROPOSAL FOR DECISION

The Tribunal proposes that Respondent **GRANT** Petitioner certification as a deputy sheriff.

NOTICE

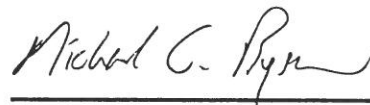
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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

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

IT IS SO ORDERED.

This the 24th day of September, 2021.

A handwritten signature in cursive script, reading "Michael C. Byrne". The signature is written in black ink and is positioned above a solid horizontal line.

Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Christopher Donovan Ruth
512 Loblolly Court
Kill Devil Hills NC 27948
Petitioner

John C Graham III
Sharp, Graham, Baker & Varnell, LLP
donna@ncobxlaw.com
Attorney For Petitioner

NC Sheriffs Education and Training Standards Commission
PO Box 629
Raleigh NC 27602
Respondent

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

Robert J Pickett
NC Department of Justice
rpickett@ncdoj.gov
Attorney For Respondent

This the 24th day of September, 2021.



Daniel Chunko
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02407

CHRISTOPHER DONOVAN RUTH,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed May 18, 2021, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (21 DOJ 02407) were filed May 25, 2021. The parties received proper Notice of Hearing and the Administrative Hearing was held in Raleigh, North Carolina on September 24, 2021, before the Honorable Michael C. Byrne, Administrative Law Judge.

The Petitioner was represented counsel, John C. Graham III. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General, Robert J. Pickett.

On September 24, 2021, Judge Byrne filed his Proposal for Decision. On September 30, 2021, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 9, 2021.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

STIPULATIONS

By their filing of September 23, 2021, which was entered into the record at the hearing

of this contested case on September 24, 2021, Petitioner and Respondent stipulated:

1. It is stipulated that the parties are properly before Administrative Law Judge Michael C. Byrne and that the Office of Administrative Hearings has jurisdiction of the parties and of the subject matter.

2. It is stipulated that Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances, with valid proof of a rule violation.

3. It is stipulated that Petitioner is an applicant for justice officer certification through the Dare County Sheriff's Office and that he has not previously held certification with either Respondent or the North Carolina Criminal Justice Education and Training Standards Commission.

4. It is stipulated that the issues in this matter are: (a) Whether Petitioner tested positive for marijuana during a drug test on March 12 and 13, 2021? (b) Whether Petitioner involuntarily ingested marijuana prior to that date?

5. It is stipulated that Respondent's Exhibits 1-9 and Petitioner's Exhibits 1-5 are authentic and admissible.

6. It is stipulated that Petitioner submitted a urine sample for drug testing on March 12, 2021 and answered a number of questions about his medical history and medication usage. See Res. Exs. 3-9.

7. It is stipulated that the sample was tested on March 13, 2021, and that Petitioner's confirmatory drug test revealed a content of 13 ng/ml of cannabis. See Res. Ex. 3

8. It is stipulated that the threshold used by the drug testing company LabCorp for a positive result for cannabis was 10 ng/ml. The drug screen was reported as positive to the Dare County Sheriff's Office and Respondent. It is further stipulated that the level of cannabinoids on the test was below 15 ng/ml. See Res. Ex. 3

9. It is stipulated that Rule .0301(a)(6)(A) and (D), Chapter 10B of Title 12 of the North Carolina Administrative Code states: (a) Every Justice Officer employed or certified in North Carolina shall: (6) have produced a negative result on a drug screen administered according to the following specifications: (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>]; (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are incorporated by reference, including subsequent amendments and editions

10. It is stipulated that Rule .0205(2)(g), Chapter 10B of Title 12 of the North Carolina Administrative Code states: When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be: (2) not less than five years where the cause of sanction is: (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an inservice drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified. The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11. It is stipulated that Petitioner was summarily denied certification based upon the drug screen, which was reported as positive to Respondent. See Res. Ex. 2

12. It is stipulated that the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 82 Fed. Reg. 7920, 7941 (Jan. 23, 2017), sets a confirmatory test cutoff concentration of 15 ng/ml for cannabis.

13. It is stipulated that Respondent's actions, in this case, were taken in good faith reliance upon the evidence provided to it and were neither arbitrary nor capricious.

Based upon the testimony of the witnesses, the stipulations, consideration of all the admitted exhibits, and all evidence of record, the Tribunal makes the following:

FINDINGS OF FACT

1. Based on the stipulations and the evidence of record, Petitioner did not have a "positive" drug screen result, as his result was below the minimum threshold of 15 ng/ml for cannabis.

2. Based on the preponderance of the evidence, the amount of cannabis found in Petitioner's drug screen was more likely than not the results of accidental exposure to marijuana smoke.

~~Based on these Findings of Fact, the Tribunal makes these:~~

CONCLUSIONS OF LAW

1. The parties ~~are~~ were properly before the Tribunal in that jurisdiction and venue ~~are~~ were proper, and both parties received Notice of Hearing.

2. It is not necessary for the Tribunal to make findings on every fact presented at the

hearing, but rather those which are material for resolution of the present dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, (1993), affirmed, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. To the extent the Findings of Fact contain Conclusions of Law, or vice versa, they should be so considered without regard to the given labels. Matter of V.M., 848 S.E.2d 530, 534 (2020).

4. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

4.5. Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, authorize Respondent to certify justice officers, and to revoke, suspend, or deny such certification.

5.6. The Tribunal concludes as a matter of law that Petitioner did not have a "positive" drug screen, and there is accordingly no barrier to Petitioner's certification as a deputy sheriff.

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that ~~The Tribunal proposes that Respondent~~ **GRANT** Petitioner's justice officer certification as a deputy sheriff **is GRANTED**.

IT IS SO ORDERED.

This the _____ day of _____, 2021.

Alan Cloninger, Chairman
North Carolina Sheriffs' Education and Training
Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Petitioner's counsel** by mailing a copy to the address below:

John C. Graham III
Sharp, Graham, Baker & Varnell, LLP
4417 N. Croatan Hwy
Kitty Hawk, NC 27949

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF DARE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02407

CHRISTOPHER DONOVAN RUTH,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision (Amended)** prepared by the Honorable Michael C. Byrne, Administrative Law Judge, and filed in the Office of Administrative Hearings on September 24, 2021, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Conclusions of Law No. 1 should be revised to reflect the position of the Commission.
 1. The parties ~~are~~ were properly before the Tribunal in that jurisdiction and venue ~~are~~ were proper, and both parties received Notice of Hearing.
3. Conclusion of Law No. 4 should be added to align with Respondent's position on burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential number of paragraphs.
4. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

4. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that The Tribunal proposes that Respondent GRANT Petitioner's justice officer certification as a deputy sheriff is GRANTED.

IT IS SO ORDERED.

This the 19th day of November, 2021.

/s/ Robert J. Pickett

Robert J. Pickett

Assistant Attorney General

N.C. Department of Justice

9001 Mail Service Center

Raleigh, North Carolina 27699-9001

Telephone: (919) 716-6725

State Bar No.: 38427

COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon the **Petitioner's counsel** by mailing a copy to the address below:

**John C. Graham III
Sharp, Graham, Baker & Varnell, LLP
4417 N. Croatan Hwy
Kitty Hawk, NC 27949**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

Attachment 4

FINAL AGENCY DECISION VOTE

FILE:

Amanda Nicole Woodson

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith	X			
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahon				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid	X			
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>	X			

CERTIFIED TALLY: Yes (8)

DATE: 12/09/2021

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02462

<p>Amanda Nicole Woodson Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
---	-------------------------------------

This contested case was heard remotely by consent of the parties before Michael C. Byrne, Administrative Law Judge, on September 22, 2021, at the Office of Administrative Hearings in Raleigh NC, following the request of Respondent NC Sheriffs Education and Training Standards Commission pursuant to N.C.G.S. 150B-40(e) for an administrative law judge to hear this case under N.C.G.S. 150B, Article 3A following the request of Petitioner Amanda Nicole Woodson ("Petitioner") for an administrative hearing.

APPEARANCES

Joel Hart Miles Jr.
Cheshire Parker Schneider, PLLC
Attorney for Petitioner

Robert J. Pickett
Assistant Attorney General
North Carolina Department of Justice
Attorney for Respondent

WITNESSES

For Petitioner:
Amanda Nicole Woodson
Robert Goldbach
Angela Cherry
Christopher Barefoot

For Respondent:
Sirena Jones

EXHIBITS

For Petitioner:

None

For Respondent:

Respondent's Exhibits 1-17, by stipulation

ISSUE

Whether Respondent was correct in finding probable cause to deny Petitioner criminal justice officer certification on the grounds that Petitioner committed or has been convicted of any combination of four or more crimes or unlawful acts defined in 12 N.C.A.C. 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 N.C.A.C. 10B .0103(10)(b) as a Class B misdemeanor.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Tribunal makes the following Findings of Fact.

FINDINGS OF FACT

1. Petitioner Amanda Nicole Woodson ("Petitioner") received by mail the proposed denial of Justice Officer's Certification letter mailed by Respondent NC Sheriffs Education and Training Standards Commission ("Respondent") on or about April 14, 2021. (Res. Ex. 1). Petitioner requested an administrative hearing and Respondent accordingly requested assignment of an Administrative Law Judge pursuant to N.C.G.S. 150B-40(e) (Res. Ex. 2).
2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. Respondent found probable cause to deny Petitioner criminal justice officer certification on the grounds that Petitioner committed or has been convicted of any combination of four or more crimes or unlawful acts defined in 12 N.C.A.C. 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 N.C.A.C. 10B .0103(10)(b) as a Class B misdemeanor.
4. Petitioner works as a detention officer for the Sheriff of Nash County. Petitioner has been promoted twice since she began work as a detention officer. She has received no disciplinary action during her employment. She wishes certification to have a stable law enforcement career.
5. Robert Goldbach, a former employer of Petitioner, testified as to her character as an excellent employee with a reputation for truthfulness.

6. In 2012 Petitioner was caught attempting to shoplift DVDs from Wal-Mart. Petitioner served 24 hours of community service and the case was dismissed. She was 21 years of age at the time. Petitioner accepted full responsibility for the incident (Res. Ex. 5).
7. The sole additional criminal activity involving Petitioner all stem from her clearly tumultuous relationship with one Christopher Barefoot, with whom she had two children. Angela Cherry, a longtime friend of Petitioner, testified as to Petitioner's good character and described the contentious relationship Petitioner had with Barefoot.
8. Barefoot testified that he "used to drink real bad," and there were conflicts between Petitioner and himself. These included an incident where Petitioner caused damage to a door at Barefoot's mother's house and some other property. Barefoot filed a criminal complaint about the issues and the charges were dismissed after mediation and Petitioner paying for a new door.
9. Barefoot also subsequently had Petitioner charged with trespassing. On, August 31, 2015, Petitioner, without counsel, subsequently pleaded guilty to "Second Degree Trespass" in violation of N.C.G.S. 20-138.1. This was a Class A misdemeanor conviction. However, facts disclosed at the hearing, including (a) Barefoot himself did not own or lease the property in question, and (b) Barefoot himself testifying that Petitioner had permission to be on the property in question, cast serious doubt as to whether Petitioner "committed" this criminal offense, despite her guilty plea. Tommy Keith Lymon, Petitioner, v. North Carolina Criminal Justice Education and Training Standards Commission, Respondent, 2012 WL 3548148, 09 DOJ 03751 (2012) ("Although Petitioner was convicted of two (2) Class B misdemeanors, the preponderance of the evidence demonstrates that Petitioner did not 'commit' either of the crimes as a matter of law").
10. In November 2015 Barefoot initiated another criminal charge of assault against Petitioner. Barefoot said he "got in her face talking junk" and Petitioner responded by "pushing him off" and throwing a small light at him. This charge was also dismissed. Barefoot stated at the hearing, apparently in contrast to his prior statements to Respondent's representative, that during the "assault" Petitioner was to some extent acting in self-defense.
11. The Tribunal finds as a fact that Petitioner was in a recurring and unstable relationship with Barefoot. Barefoot himself was at the time a habitual and aggressive drunk, who engaged with (or initiated) repeated confrontations with Petitioner and then (again repeatedly) sought criminal charges against Petitioner following those events. The Tribunal finds that in no sense was Barefoot a "victim" of criminal conduct by Petitioner (the door Petitioner broke was the property of Barefoot's mother, not Barefoot).
12. Barefoot today, the Tribunal finds, appears to regret his earlier actions regarding Petitioner. Barefoot spoke highly of Petitioner's parenting skills and character. Barefoot wishes Petitioner to be certified.
13. Petitioner took ownership of her own actions regarding Barefoot both at the hearing and in prior submissions to Respondent. (Res. Ex. 9; Res. Ex. 14)

14. The most recent criminal activity of any kind by Petitioner was in 2015.

CONCLUSIONS OF LAW

1. The parties are properly before the Tribunal and jurisdiction and venue are proper.
2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of hearing.
3. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).
4. A court or other hearing authority need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
5. On August 31, 2015, Petitioner pleaded guilty to the criminal offense of "Second Degree Trespass," in violation of N.C.G.S. 20-138.1. The Tribunal finds as mitigating factors that the alleged victim (Barefoot) neither owned nor leased the property in question, and that Barefoot himself testified that Petitioner had general permission to be on the property. These facts raise serious doubts about the legal propriety of the conviction concerned.
6. The greater weight of the evidence demonstrates, and the Tribunal concludes, that on or about October 6, 2012, Petitioner committed the misdemeanor criminal offense of "Misdemeanor Larceny."
7. The greater weight of the evidence demonstrates, and the Tribunal concludes, that on or about July 28, 2015, Petitioner committed the misdemeanor criminal offense of "Injury to Real Property" in violation of N.C.G.S. 14-127.
8. The greater weight of the evidence demonstrates (primarily through the testimony of Barefoot, the alleged victim), and the Tribunal concludes, that on or about November 10, 2015, Petitioner did **not** commit the misdemeanor criminal offense of "Simple Assault" in violation of N.C.G.S. 14-33(a).
9. The Tribunal concludes as a matter of law that Petitioner has **not** committed or has been convicted of any combination of four or more crimes or unlawful acts defined in 12 N.C.A.C. 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 N.C.A.C. 10B .0103(10)(b) as a Class B misdemeanor.
10. Despite these findings, the Tribunal concludes there there was sufficient evidence before Respondent's Probable Cause Committee to proceed and the findings of the Probable Cause Committee were not arbitrary or capricious.

11. Even if Petitioner had committed or been convicted of the criminal offenses at issue, there are mitigating factors that weigh in Petitioner's favor, including most importantly being forthright about the wrongfulness of her actions in circumstances where she was not actually convicted of a criminal offense, as well as the age and factual circumstances of the offenses at issue. Trey-Vaughn Xavier Lewis v. NC Sheriffs Education and Training Standards Commission, 2021 WL 2779124, 20 DOJ 03448 (March 10, 2021).
12. Given the admitted acts by Petitioner, the appropriate action is to grant Petitioner certification subject to some period of probation so that she may continue to demonstrate she is fully a person of good character and an appropriate member of the North Carolina law enforcement community.

PROPOSAL FOR DECISION

The Tribunal proposes that Petitioner's justice officer certification be **GRANTED SUBJECT TO A PROBATIONARY PERIOD OF ONE (1) YEAR** due to the mitigating circumstances brought out at the administrative hearing, on the condition that during that period of probation, Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

NOTICE

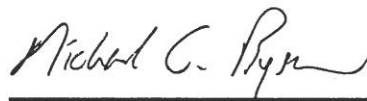
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

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

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

IT IS SO ORDERED.

This the 22nd day of September, 2021.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Amanda Nicole Woodson
5132 Joe Ellen Road
Battleboro NC 27809
Petitioner

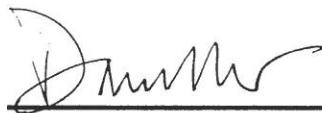
Joel Hart Miles Jr. (by email on September 22, 2021)
Cheshire Parker Schneider, PLLC
hart.miles@cheshirepark.com
Attorney For Petitioner

NC Sheriffs Education and Training Standards Commission
PO Box 629
Raleigh NC 27602
Respondent

Ameshia Cooper (by email on September 22, 2021)
North Carolina Department of Justice
acooper@ncdoj.gov
Attorney For Respondent

Robert J Pickett (by email on September 22, 2021)
NC Department of Justice
rpickett@ncdoj.gov
Attorney For Respondent

This the 23rd day of September 2021.



Daniel Chunko
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02462

AMANDA NICOLE WOODSON,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
)
 _____)

PROPOSED FINAL AGENCY
DECISION

THIS MATTER was commenced by a request filed May 25, 2021, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (21 DOJ 02462) were filed May 27, 2021. The parties received proper Notice of Hearing and the Administrative Hearing was held virtually on September 22, 2021, before the Honorable Michael C. Byrne, Administrative Law Judge.

The Petitioner was represented by counsel, Joel Hart Miles, Jr. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General, Robert J. Pickett.

On September 22, 2021, Judge Byrne filed his Proposal for Decision. On September 30, 2021, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 9, 2021.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Petitioner Amanda Nicole Woodson ("Petitioner") received by mail the

proposed denial of Justice Officer's Certification letter mailed by Respondent NC Sheriffs Education and Training Standards Commission ("Respondent") on or about April 14, 2021. (Res. Ex. 1). Petitioner requested an administrative hearing and Respondent accordingly requested assignment of an Administrative Law Judge pursuant to N.C.G.S. 150B-40(e) (Res. Ex. 2).

2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. Respondent found probable cause to deny Petitioner criminal justice officer certification on the grounds that Petitioner committed or has been convicted of any combination of four or more crimes or unlawful acts defined in 12 N.C.A.C. 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 N.C.A.C. 10B .0103(10)(b) as a Class B misdemeanor.

4. Petitioner works as a detention officer for the Sheriff of Nash County. Petitioner has been promoted twice since she began work as a detention officer. She has received no disciplinary action during her employment. She wishes certification to have a stable law enforcement career.

5. Robert Goldbach, a former employer of Petitioner, testified as to her character as an excellent employee with a reputation for truthfulness.

6. In 2012 Petitioner was caught attempting to shoplift DVDs from Wal-Mart. Petitioner served 24 hours of community service and the case was dismissed. She was 21 years of age at the time. Petitioner accepted full responsibility for the incident (Res. Ex. 5).

7. The sole additional criminal activity involving Petitioner all stem from her clearly tumultuous relationship with one Christopher Barefoot, with whom she had two children. Angela Cherry, a longtime friend of Petitioner, testified as to Petitioner's good character and described the contentious relationship Petitioner had with Barefoot.

8. Barefoot testified that he "used to drink real bad," and there were conflicts between Petitioner and himself. These included an incident where Petitioner caused damage to a door at Barefoot's mother's house and some other property. Barefoot filed a criminal complaint about the issues and the charges were dismissed after mediation and Petitioner paying for a new door.

9. Barefoot also subsequently had Petitioner charged with trespassing. On, August 31, 2015, Petitioner, without counsel, subsequently pleaded guilty to "Second Degree Trespass" in violation of N.C.G.S. 20-138.1. This was a Class A misdemeanor conviction. However, facts disclosed at the hearing, including (a) Barefoot himself did not own or lease the property in question, and (b) Barefoot himself testifying that Petitioner had permission to be on the property in question, cast serious doubt as to whether

Petitioner "committed" this criminal offense, despite her guilty plea. Tommy Keith Lymon, Petitioner, v. North Carolina Criminal Justice Education and Training Standards Commission, Respondent, 2012 WL 3548148, 09 DOJ 03751 (2012) ("Although Petitioner was convicted of two (2) Class B misdemeanors, the preponderance of the evidence demonstrates that Petitioner did not 'commit' either of the crimes as a matter of law").

10. In November 2015 Barefoot initiated another criminal charge of assault against Petitioner. Barefoot said he "got in her face talking junk" and Petitioner responded by "pushing him off" and throwing a small light at him. This charge was also dismissed. Barefoot stated at the hearing, apparently in contrast to his prior statements to Respondent's representative, that during the "assault" Petitioner was to some extent acting in self-defense.

11. The Tribunal finds as a fact that Petitioner was in a recurring and unstable relationship with Barefoot. Barefoot himself was at the time a habitual and aggressive drunk, who engaged with (or initiated) repeated confrontations with Petitioner and then (again repeatedly) sought criminal charges against Petitioner following those events. The Tribunal finds that in no sense was Barefoot a "victim" of criminal conduct by Petitioner (the door Petitioner broke was the property of Barefoot's mother, not Barefoot).

12. Barefoot today, the Tribunal finds, appears to regret his earlier actions regarding Petitioner. Barefoot spoke highly of Petitioner's parenting skills and character. Barefoot wishes Petitioner to be certified.

13. Petitioner took ownership of her own actions regarding Barefoot both at the hearing and in prior submissions to Respondent. (Res. Ex. 9; Res. Ex. 14)

14. The most recent criminal activity of any kind by Petitioner was in 2015.

CONCLUSIONS OF LAW

1. The parties are were properly before the Tribunal and jurisdiction and venue are were proper.

2. The Office of Administrative Hearings has had personal and subject matter jurisdiction over this contested case. The parties received proper notice of hearing.

3. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

4. A court or other hearing authority need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

5. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

5-6. On August 31, 2015, Petitioner pleaded guilty to the criminal offense of "Second Degree Trespass," in violation of N.C.G.S. 20-138.1. The Tribunal finds as mitigating factors that the alleged victim (Barefoot) neither owned nor leased the property in question, and that Barefoot himself testified that Petitioner had general permission to be on the property. These facts raise serious doubts about the legal propriety of the conviction concerned.

6-7. The greater weight of the evidence demonstrates, and the Tribunal concludes, that on or about October 6, 2012, Petitioner committed the misdemeanor criminal offense of "Misdemeanor Larceny."

7-8. The greater weight of the evidence demonstrates, and the Tribunal concludes, that on or about July 28, 2015, Petitioner committed the misdemeanor criminal offense of "Injury to Real Property" in violation of N.C.G.S. 14-127.

8-9. The greater weight of the evidence demonstrates (primarily through the testimony of Barefoot, the alleged victim), and the Tribunal concludes, that on or about November 10, 2015, Petitioner did **not** commit the misdemeanor criminal offense of "Simple Assault" in violation of N.C.G.S. 14-33(a).

9-10. The Tribunal concludes as a matter of law that Petitioner has **not** committed or has been convicted of any combination of four or more crimes or unlawful acts defined in 12 N.C.A.C. 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 N.C.A.C. 10B .0103(10)(b) as a Class B misdemeanor.

10-11. Despite these findings, the Tribunal concludes there there was sufficient evidence before Respondent's Probable Cause Committee to proceed and the findings of the Probable Cause Committee were not arbitrary or capricious.

11-12. Even if Petitioner had committed or been convicted of the criminal offenses at issue, there are mitigating factors that weigh in Petitioner's favor, including most importantly being forthright about the wrongfulness of her actions in circumstances where she was not actually convicted of a criminal offense, as well as the age and factual circumstances of the offenses at issue. Trey-Vaughn Xavier Lewis v. NC Sheriffs Education and Training Standards Commission, 2021 WL 2779124, 20 DOJ 03448 (March 10, 2021).

12-13. Given the admitted acts by Petitioner, the appropriate action is to grant Petitioner certification ~~subject to some period of probation so that she may continue to demonstrate she is fully a person of good character and an appropriate member of the North Carolina law enforcement community.~~

PROPOSAL FOR DECISION

The Tribunal proposes Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that Petitioner's justice officer certification be is GRANTED. SUBJECT TO A PROBATIONARY PERIOD OF ONE (1) YEAR due to the mitigating circumstances brought out at the administrative hearing, on the condition that during that period of probation, Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This the _____ day of _____, 2021.

Alan Cloninger, Chairman

North Carolina Sheriffs' Education and Training
Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon **Petitioner's counsel** by mailing a copy to the address below:

**J. Hart Miles
Cheshire Parker Schneider
Post Office Box 1029
Raleigh, NC 27602**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02462

AMANDA NICOLE WOODSON,)

Petitioner,)

v.)

NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)

Respondent.)
_____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable Michael C. Byrne, Administrative Law Judge, and filed in the Office of Administrative Hearings on September 22, 2021, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.
2. Conclusions of Law Nos. 1 and 2 should be revised to reflect the position of the Commission.
 1. The parties ~~are~~ were properly before the Tribunal and jurisdiction and venue ~~are~~ were proper.
 2. The Office of Administrative Hearings has had personal and subject matter jurisdiction over this contested case. The parties received proper notice of hearing.
3. Conclusion of Law No. 5 should be added to align with Respondent's position on burden of proof. All remaining paragraphs should be renumbered to reflect proper sequential numbering of paragraphs.
5. Petitioner has the burden of proof in the case at bar. Overcash v. N.C. Dep't. of Env't & Natural Resources, 172 N.C. App 697, 635 S.E.2d 442 (2006).

4. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

PROPOSAL FOR DECISION ORDER

The Tribunal proposes Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Petitioner's justice officer certification ~~be is~~ **GRANTED. SUBJECT TO A PROBATIONARY PERIOD OF ONE (1) YEAR** due to the mitigating circumstances brought out at the administrative hearing, on the condition that during that period of probation, Petitioner not violate any law (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This the 19th day of November, 2021.

/s/ Robert J. Pickett

Robert J. Pickett

Assistant Attorney General

N.C. Department of Justice

9001 Mail Service Center

Raleigh, North Carolina 27699-9001

Telephone: (919) 716-6725

State Bar No.: 38427

COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner's counsel** by mailing a copy to the address below:

**J. Hart Miles
Cheshire Parker Schneider
Post Office Box 1029
Raleigh, NC 27602**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

Attachment 5

FINAL AGENCY DECISION VOTE

FILE:

Heather Chatel Blair

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith	X			
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahan				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid	X			
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>	X			

CERTIFIED TALLY: Yes (8)

DATE: 12/09/2021

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 04027

<p>Heather Chatel Blair Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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This case came on for hearing on May 5, 2021, before Administrative Law Judge David F. Sutton remotely via Microsoft Teams, pursuant to N.C.G.S. § 150B-40(e) and Respondent's request for designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes to hear Petitioner's appeal of Respondent's proposed denial of her justice officer certification.

APPEARANCES

Petitioner: Heather Chatel Blair, *Pro Se*
3226 Charlyne Drive,
Hendersonville, NC 28792

Respondent: Ameshia A. Cooper
Assistant Attorney General
Attorney for Respondent
North Carolina Department of Justice
Special Prosecution and Law Enforcement Section
Raleigh, North Carolina

ISSUES

1. Whether there was sufficient evidence presented at hearing to support Respondent's proposed denial of Petitioner's justice officer certification for a period of five years for commission of the class B misdemeanor offense of "Accessing Computer" in violation of N.C.G.S. § 14-454(b)?

2. Whether there was sufficient evidence presented at hearing to support Respondent's proposed permanent denial of Petitioner's justice officer certification for commission of the felony offense of "Accessing Government Computer" in violation of N.C.G.S. § 14-454.1(b)?

3. Whether there was sufficient evidence presented at hearing to support Respondent's proposed denial of Petitioner's justice officer certification for failing to maintain the minimum standards required for justice officer certification under 12 NCAC 10B .0204(b)(2) and for lack of good moral character in violation of 12 NCAC 10B.0301(a)(8)?

STATUTES AND RULES AT ISSUE

N.C.G.S. §§ 14-454(b) and 14-454.1(b)
12 NCAC 10B .0204(a)(1), (b)(2) & (d)(1)
12 NCAC 10B .0205(1)(a), (2)(a) & (3)(b)
12 NCAC 10B .0301(a)(8)

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner: numerous letters of reference

Respondent: 1, 2, 3A, 3B, 3C, 4 and 5

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of each witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.

2. Respondent Commission ("the Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. On July 28, 2020, Respondent Commission notified Petitioner, via certified mail, that its Probable Cause Committee had found that probable cause exists to deny Petitioner's justice officer certification for three reasons:

- (1) Commission of the Class B misdemeanor offense of "Accessing Computer," in violation of N.C.G.S. § 14-454(b), when around September of 2015 the petitioner accessed the Division of Criminal Information (DCI) system, and willfully did run a vehicle tag number for an unauthorized individual who is a convicted felon.
- (2) Commission of the felony offense of "Accessing Government Computer," in violation of N.C.G.S. § 14-454.1(b), when around September of 2015 the petitioner used a government computer to access the Division of Criminal Information (DCI) system, and willfully did run a vehicle tag number for an unauthorized individual who is a convicted felon.
- (3) No longer possessing the good moral character required of a justice officer based on the facts and circumstances surrounding the commission of the above-referenced offense, and the totality of Petitioner's actions, while holding a justice officer certification.

Respondent's Exhibit 1

4. Petitioner became employed with the Buncombe County Sheriff's Office as a Deputy in March 2004 and then was employed as a Buncombe Detention Officer on July 26, 2010. Petitioner was terminated on May 10, 2016 following allegations and an investigation performed by the Buncombe County Sheriffs' Office of Professional Standards for unprofessional conduct by a Law Enforcement Officer. Respondent's Exs. 2 and 3B.

5. Sirena Jones, Deputy Director, North Carolina Department of Justice, Sheriffs' Standard Division testified at the hearing on behalf of the Respondent. Ms. Jones investigated the possible rule violations of Petitioner, including a review of the following documents:

- a. Investigative summary dated November 9, 2015, prepared by Lt. Roney Hilliard, III of the Buncombe County Sheriff's Office of Professional Standards;
- b. Notice of Termination of Employment dated May 10, 2016, prepared by then Buncombe County Sheriff Van Duncan; and
- c. Rules of Conduct of the Office of the Buncombe County Sheriff.

Respondent's Exs. 3A, 3B and 3C

6. Petitioner testified during the contested case hearing.

7. Prior to September 2015, Petitioner was a friend of convicted felon, Donniel Gaines. Petitioner had known Mr. Gaines for years. Mr. Gaines and Petitioner's husband had been friends since childhood. Petitioner knew on September 24, 2015, that Mr. Gaines had started to get into trouble and that "he was bad news".

8. On September 24, 2015, Mr. Gaines was at the Charlotte Street Pub in Asheville, NC, when he called Petitioner, who was on duty at the time, and gave her tag information of a vehicle and requested that Petitioner provide her the identity of the vehicle owner.

9. Petitioner understood from Mr. Gaines that he had witnessed a fight, that an individual involved in the altercation had left the scene in the vehicle for which Mr. Gaines had requested the tag information, and that Mr. Gaines wanted to know the identity of the individual in order to obtain a warrant on the individual.

10. Petitioner called in the tag information, was given some identifying information, and then provided the same to Mr. Gaines.

11. There was no evidence produced at the contested case hearing as to who obtained the information for Petitioner, or what system, program, or network - computer, government computer, or otherwise - was used to obtain the information Petitioner provided to Mr. Gaines.

12. Petitioner was terminated from her position with the Buncombe Sheriff's Department for policy violations related to Body Worn Cameras, Standard of Conduct and Personal Associations. Only the violations of Standard of Conduct and Personal Associations were related to the incident involving Mr. Gaines. The specific policy related to the Release of Information (Respondent Ex. 3C, Policy 1.12) was not cited as a basis for her termination.

13. Criminal charges were never pursued against Petitioner for the incident on September 24, 2015.

14. Petitioner understands that she was wrong to provide the information she did to Mr. Gaines, and that she will not make the same mistake again. There is no evidence that Petitioner had ever before provided tag information to any other individual in the same manner that she did to Mr. Gaines.

15. Petitioner has been in law enforcement for 21 years and values her career as a law enforcement officer and wishes to continue with her career in law enforcement.

16. Petitioner produced numerous letters of reference from family members, community members, and co-workers, including one from Quentin Miller, the elected Sheriff of Buncombe County, all of whom, in some respect, attested to her integrity, work ethic, devotion to community, and good moral character.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings in that the Office of Administrative Hearings has subject matter and personal jurisdiction in this matter, and each party received proper notice of hearing.
2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).
3. Respondent Commission has the authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify justice officers and to suspend, revoke, or deny certification under appropriate circumstances with substantial proof of a rule violation.
4. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

Commission of a Class B Misdemeanor and Commission of a Felony

5. 12 NCAC 10B .0204 provides that:
 - (d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:
 - (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment;
6. N.C.G.S. § 14-454 provides in pertinent part:
 - (b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer program, or computer network, for any purpose other than those set forth in subsection (a) of this section is guilty of a Class 1 misdemeanor.
7. 12 NCAC 10B .0204 provides that:
 - (a) The Commission shall revoke, or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a felony; . . .

8. N.C.G.S. § 14-454.1 provides in pertinent part:

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

9. The preponderance of the evidence produced during this contested case hearing did not demonstrate that Petitioner accessed a government computer or other computer, computer program or computer network to obtain information she provided to Mr. Gaines. While one could assume that a computer system was used to obtain the information, such assumption is not evidence. Therefore, the facts of this case do not satisfy the requirements to show that Petitioner committed either the Class B misdemeanor or felony.

Good Moral Character

10. 12 NCAC 10B .0301(a)(8) states that:

(a) Every Justice Officer employed or certified in North Carolina shall:

(8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority . . .

11. 12 NCAC 10B .0204(b)(2) states that:

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300 . . .

12. The term good moral character “by itself, is unusually ambiguous,” however, it has been defined as “honesty, fairness, and respect for the rights of others and for the law of the state and nation.” *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 775-77 (1975).

13. “Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents.” *In re Rogers*, 297 N.C. 48,58, 253 S.E.2d 912, 918 (1979) (explaining that

character encompasses both a person's past behavior and the opinion of his community arising from it).

14. A preponderance of the evidence presented at the administrative hearing and through the numerous character reference letters admitted into evidence establishes that Petitioner possesses the good moral character required of every justice officer in North Carolina.

15. Petitioner fully accepted responsibility for her lapse in judgment and understands that she cannot engage in such conduct in the future.

16. Petitioner has been in law enforcement since 2000. She is respected, well-liked and valued among members of her community and among her law enforcement colleagues.

17. Additionally, Petitioner enjoys her work as a detention officer and desires to remain in the profession.

PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent **GRANT** Petitioner's justice officer certification.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. §150B-40(e).

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

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

IT IS SO ORDERED.

This the 25th day of June, 2021.

A handwritten signature in black ink that reads "David F. Sutton". The signature is written in a cursive style and is positioned above a solid horizontal line.

David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

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

Heather Chatel Blair
3226 Charlyne Drive
Hendersonville NC 28792
heather.blair@buncombecounty.org
Petitioner

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

This the 25th day of June, 2021.



Judith M Lupa-Johnson
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 04027

HEATHER CHATEL BLAIR,)
)
Petitioner,)
)
v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
)
Respondent.)
_____)

**PROPOSED FINAL
AGENCY DECISION**

THIS MATTER was commenced by a request filed October 13, 2020, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (20 DOJ 04027) were filed October 15, 2020. The parties received proper Notice of Hearing and the Administrative Hearing was held electronically via Microsoft Teams on May 5, 2021, before the Honorable David F. Sutton, Administrative Law Judge.

The Petitioner was represented *pro se*. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Assistant Attorney General Ameshia A. Cooper.

On June 25, 2021, Judge Sutton filed his Proposal for Decision. On June 29, 2021, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before the Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 9, 2021.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Both parties ~~are~~ were properly before this Administrative Law Judge and are now properly before the Commission, in that jurisdiction and venue are proper, and both parties

received Notice of Hearing.

2. Respondent Commission (~~"the Commission"~~) has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. On July 28, 2020, Respondent Commission notified Petitioner, via certified mail, that its Probable Cause Committee had found that probable cause exists to deny Petitioner's justice officer certification for three reasons:

- (1) Commission of the Class B misdemeanor offense of "Accessing Computer," in violation of N.C.G.S. § 14-454(b), when around September of 2015 the petitioner accessed the Division of Criminal Information (DCI) system, and willfully did run a vehicle tag number for an unauthorized individual who is a convicted felon.
- (2) Commission of the felony offense of "Accessing Government Computer," in violation of N.C.G.S. § 14-454.1(b), when around September of 2015 the petitioner used a government computer to access the Division of Criminal Information (DCI) system, and willfully did run a vehicle tag number for an unauthorized individual who is a convicted felon.
- (3) No longer possessing the good moral character required of a justice officer based on the facts and circumstances surrounding the commission of the above- referenced offense, and the totality of Petitioner's actions, while holding a justice officer certification.

Respondent's Exhibit 1.

4. Petitioner became employed with the Buncombe County Sheriff's Office as a Deputy in March 2004 and then was employed as a ~~Buncombe~~-Detention Officer on July 26, 2010. Petitioner was terminated on May 10, 2016 following allegations and an investigation performed by the Buncombe County Sheriffs' Office of Professional Standards for unprofessional conduct by a Law Enforcement Officer. Respondent's ~~Exhibits~~: 2 and 3B.

5. Sirena Jones, Deputy Director, North Carolina Department of Justice, Sheriffs' Standard Division testified at the hearing on behalf of the Respondent. Ms. Jones investigated the possible rule violations of Petitioner, including a review of the following documents:

- a. Investigative summary dated November 9, 2015, prepared by Lt. Roney Hilliard, III of the Buncombe County Sheriff's Office of Professional Standards;
- b. Notice of Termination of Employment dated May 10, 2016, prepared by then Buncombe County Sheriff Van Duncan; and

c. Rules of Conduct of the Office of the Buncombe County Sheriff.

Respondent's Exhibits- 3A, 3B and 3C

6. Petitioner testified during the contested case hearing.

7. Prior to September 2015, Petitioner was a friend of convicted felon, Donniel Gaines. Petitioner had known Mr. Gaines for years. Mr. Gaines and Petitioner's husband had been friends since childhood. Petitioner knew on September 24, 2015, that Mr. Gaines had started to get into trouble and that "he was bad news".

8. On September 24, 2015, Mr. Gaines was at the Charlotte Street Pub in Asheville, NC, when he called Petitioner, who was on duty at the time, and gave her tag information of a vehicle and requested that Petitioner provide ~~her~~ him the identity of the vehicle owner.

9. Petitioner understood from Mr. Gaines that he had witnessed a fight, that an individual involved in the altercation had left the scene in the vehicle for which Mr. Gaines had requested the tag information, and that Mr. Gaines wanted to know the identity of the individual in order to obtain a warrant on the individual.

10. Petitioner called in the tag information, was given some identifying information, and then provided the same to Mr. Gaines.

11. There was no evidence produced at the contested case hearing as to who obtained the information for Petitioner, or what system, program, or network - computer, government computer, or otherwise - was used to obtain the information Petitioner provided to Mr. Gaines.

12. Petitioner was terminated from her position with the Buncombe Sheriff's Department for policy violations related to Body Worn Cameras, Standard of Conduct and Personal Associations. Only the violations of Standard of Conduct and Personal Associations were related to the incident involving Mr. Gaines. The specific policy related to the Release of Information (Respondent's Exhibit- 3C, Policy 1.12) was not cited as a basis for her termination.

13. Criminal charges were never pursued against Petitioner for the incident on September 24, 2015.

14. Petitioner understands that she was wrong to provide the information she did to Mr. Gaines, and ~~that she~~ will not make the same mistake again. There is no evidence that Petitioner had ever before provided tag information to any other individual in the same manner that she did to Mr. Gaines.

15. Petitioner has been in law enforcement for 21 years and values her career as a law enforcement officer and wishes to continue with her career in law enforcement.

16. Petitioner produced numerous letters of reference from family members, community members, and co-workers, including one from Quentin Miller, the elected Sheriff of

Buncombe County, all of whom, in some respect, attested to her integrity, work ethic, devotion to community, and good moral character.

CONCLUSIONS OF LAW

1. The parties ~~are~~ were properly before the Office of Administrative Hearings and are now properly before the Commission in that ~~the Office of Administrative Hearings~~ has subject matter and personal jurisdiction ~~in this matter~~ are proper, and each party ~~received~~ proper notice of hearing was received.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

3. Respondent Commission has the authority under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B to certify justice officers and to suspend, revoke, or deny certification under appropriate circumstances with substantial proof of a rule violation.

4. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

Commission of a Class B Misdemeanor and Commission of a Felony

5. 12 NCAC 10B .0204 provides that:

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment;

6. N.C.G.S. § 14-454 provides in pertinent part:

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer program, or computer network, for any purpose other than those set forth in subsection (a) of this section is guilty of a Class 1 misdemeanor.

7. 12 NCAC 10B .0204 provides that:

(a) The Commission shall revoke, or deny the certification of a justice officer

when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

(1) a felony; . . .

8. N.C.G.S. § 14-454.1 provides in pertinent part:

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.

9. The preponderance of the evidence produced during this contested case hearing did not demonstrate that Petitioner accessed a government computer or other computer, computer program or computer network to obtain information she provided to Mr. Gaines. While one could assume that a computer system was used to obtain the information, such assumption is not evidence. Therefore, the facts of this case do not satisfy the requirements to show that Petitioner committed either the Class B misdemeanor or felony.

Good Moral Character

10. 12 NCAC 10B .0301(a)(8) states that:

(a) Every Justice Officer employed or certified in North Carolina shall:

(8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority . . .

11. 12 NCAC 10B .0204(b)(2) states that:

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300 . . .

12. The term good moral character “by itself, is unusually ambiguous,” however, it has been defined as “honesty, fairness, and respect for the rights of others and for the law of the state and nation.” *In re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 775-77 (1975).

13. “Whether a person is of good moral character is seldom subject to proof by

reference to one or two incidents.” *In re Rogers*, 297 N.C. 48,58, 253 S.E.2d 912, 918 (1979) (explaining that character encompasses both a person’s past behavior and the opinion of his community arising from it).

14. A preponderance of the evidence presented at the administrative hearing and through the numerous character reference letters admitted into evidence establishes that Petitioner possesses the good moral character required of every justice officer in North Carolina.

15. Petitioner fully accepted responsibility for her lapse in judgment and understands that she cannot engage in such conduct in the future.

16. Petitioner has been in law enforcement since 2000. She is respected, well-liked and valued among members of her community and among her law enforcement colleagues.

17. Additionally, Petitioner enjoys her work as a detention officer and desires to remain in the profession.

18. The findings of the Probable Cause Committee were not arbitrary or capricious.

PROPOSAL FOR DECISION ORDER

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the undersigned proposes that Respondent ~~GRANT~~ Petitioner’s justice officer certification is **GRANTED**.

This the ____ day of _____, 2021.

Alan Cloninger, Chairman
North Carolina Sheriffs’ Education
and Training Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been served upon the **Petitioner** by mailing a copy to the address below:

**Heather Chatel Blair
3226 Charlyne Drive
Hendersonville, NC 28792**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 04027

HEATHER CHATEL BLAIR,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA SHERIFFS')
 EDUCATION AND TRAINING)
 STANDARDS COMMISSION,)
)
 Respondent.)
 _____)

EXCEPTIONS

The following **Exceptions** to the **Proposal for Decision** prepared by the Honorable David F. Sutton, Administrative Law Judge, and filed in the Office of Administrative Hearings on June 25, 2021, are hereby submitted to the North Carolina Sheriffs' Education and Training Standards Commission for consideration in its Final Agency Decision.

1. **Counsel has made minor typographical and grammatical changes as necessary to make the proposal appropriate for Final Agency Decision.**
2. **Finding of Fact No. 1 should be amended to reflect that this is a final agency decision.**
 1. Both parties ~~are~~ were properly before this Administrative Law Judge and are now properly before the Commission, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.
3. **Finding of Fact No. 8 should be amended to accurately reflect the evidence presented at trial.**
 8. On September 24, 2015, Mr. Gaines was at the Charlotte Street Pub in Asheville, NC, when he called Petitioner, who was on duty at the time, and gave her tag information of a vehicle and requested that Petitioner provide ~~her~~ him the identity of the vehicle owner.
4. **Finding of Fact No. 14 should be amended to remove superfluous language.**

14. Petitioner understands that she was wrong to provide the information she did to Mr. Gaines, and ~~that she will~~ not make the same mistake again. There is no evidence that Petitioner had ever before provided tag information to any other individual in the same manner that she did to Mr. Gaines.
5. **Conclusion of Law No. 1 should be amended to reflect that this is a final agency decision.**
1. The parties ~~are~~ were properly before the Office of Administrative Hearings and are now properly before the Commission in that ~~the Office of Administrative Hearings~~ has subject matter and personal jurisdiction ~~in this matter~~ are proper, and ~~each party received~~ proper notice of hearing was received.
6. **Conclusion of Law No. 18 should be added to reflect the position of the Commission.**
18. The findings of the Probable Cause Committee were not arbitrary or capricious.
7. **Proposal for Decision should be revised to reflect the final decision of the Commission as follows:**

PROPOSAL FOR DECISION ORDER

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the undersigned proposes that Respondent ~~GRANT~~ Petitioner's justice officer certification is **GRANTED**.

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
Telephone: (919) 716-6725
State Bar No.: 38427
COUNSEL TO THE COMMISSION

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner** by mailing a copy to the address below:

**Heather Chatel Blair
3226 Charlyne Drive
Hendersonville, NC 28792**

This the 19th day of November, 2021.

JOSHUA H. STEIN
Attorney General

/s/ Robert J. Pickett
Robert J. Pickett
Assistant Attorney General
ATTORNEY FOR THE COMMISSION

Attachment 6

PETITION FOR JUDICIAL REVIEW VOTE

FILE:

Maurice Anthony DeValle

	Affirm	Negate	Abstain	Absent
Sheriff Shelton White	X			
Sheriff Jack Smith	X			
Sheriff David Mahoney				X
Sheriff Mike Roberson	X			
Sheriff Ricky Oliver				X
Sheriff Alan Jones				X
Sheriff John Ingram				X
Sheriff Ed McMahon				X
Sheriff Alan Norman	X			
Sheriff Doug Doughtie				X
Sheriff Terry Johnson	X			
Sheriff Landric Reid	X			
Retired Sheriff David Smith	X			
Mr. Marc Nichols				X
<i>Sheriff Alan Cloninger - Chairman</i>	X			

CERTIFIED TALLY: Yes (8)

DATE: 12/09/2021

Attachment 7

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
Chabot, Robert Jason (JC) <u>Counsel:</u> William L. Hill 2307 W. Cone Blvd Ste 260 Greensboro, NC 27408 (336) 378-9411 whill@frazierlaw.com	Randolph 19 DOJ 02703 May	<u>0204(d)(5)</u> : COMM four or more Class A or Class B misd.	CASE ON HOLD (CLOSED IN OAH 11/14/2019)		8/9/19: Notice of Hearing 9/24/19: Order on Post-Hearing 10/11/19: R-Verified Exhibits 10/22/19: R-Amended PFD 11/14/19: ALJ PFD 11/19/19: NOR Letter 12/13/19: CD submitted to OAH
Blair, Heather Chatel	20 DOJ 04027 Henderson Sutton	<u>0301(a)(8)</u> : LGMC <u>0204(d)(1)</u> : Class B Misd. after certification <u>0205(a)</u> : COMM of felony		5/5/2021 MS Teams	10/14/2020: Case opened 10/15/2020: Initial docs 11/17/2020: R-PHS filed 12/23/2020: R-MTD 12/29/2020: 2nd Order PHS 12/30/2020: Order Continuance 1/25/2021: 3d Order for PHS 1/25/2021: Amended Sched Order 2/15/2021: P-PHS 2/16/2021: Order denying MTD 4/12/2021: NOH/Order (Remote) 6/25/2021: ALJ PFD 6/29/2021: NOR Letter 11/19/2021: FAD Mtg Notice

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
<p>Toliver-Evans, Bessie Counsel: Allison Tomberline Beechler Tomberlin PLLC 380 Knollwood Street Suite 305 Winston-Salem, NC 27103 336-723-1110 ali@beechlerlaw.com</p>	<p>Forsyth 21 DOJ 01432 Dills</p>	<p>0204(c)(1) and (2): Mat. Misrepresentation</p>		<p>9/29/2021 High Point</p>	<p>3/17/2021: Case opened 3/19/2021: Initial docs 3/29/2021: R-PHS 4/19/2021: P-PHS 6/14/2021: NOH 6/30/2021: Order reassignment and Continuance 7/8/2021: R-MTC filed 7/12/2021: Order Continuance & Reassignment 8/27/2021: NOH 9/27/2021: Order Reassignment 9/28/2021: Joint Stipulations 10/11/2021: Post-Hearing Order 10/19/2021: P-Motion to Withdraw & Order granting motion 10/21/2021: Motion granted 10/29/2021: P-NOA 11/1/2021: R-PFD 11/5/2021: P-Response to PFD</p>

Petitioner	County OAH Case No.	Violation(s)	Scheduling Order	Hearing Date	Status
Walker, Rita (AAC)	21 DOJ 01691 Pender Turrentine	<u>0204(d)(5)</u> : Class A and B misd. Combination convictions		9/15/2021 MS Teams	4/6/2021: Case opened 4/7/2021: Initial docs 4/29/2021: P-PHS/Hearing Asst. 5/10/2021: NOH (Remote) 5/10/2021: Order re Exhibit & Witness Lists 5/11/2021: R-PHS 7/9/2021: R-MTC filed 7/9/2021: Order Continuance & Reassignment 8/27/2021: NOH/Prehearing Order 9/10/2021: Joint Stipulations 9/13/2021: R-email re ALJ issue PFD based on joint stipulations 9/22/2021: R-PFD 9/10/2021: Joint Stipulations 11/2/2021: ALJ PFD 11/4/2021: NOR Ltr
Oxendine, Brian Counsel: Jennifer Knox 4600 Marriott Drive Suite 200 Raleigh, NC 27612 919-624-5171 jennifer@jenniferknoxlaw.com	21 DOJ 01692 Robeson Ward	<u>0204(d)(5)</u> : Class A and B misd. Combination convictions		10/13/2021 MS Teams	4/6/2021: Case opened 4/8/2021: Initial docs 4/19/2021: P-PHS filed 5/10/2021: R-PHS filed 5/24/2021: Responses to P discovery emailed to Ps counsel 7/9/2021: R-MTC filed 7/14/2021: Order Continuance & Reassignment 9/17/2021: NOH 10/11/2021: P-Motion to Stay 10/14/2021: Order for Stay/Status 11/5/2021: Joint Prop Decision 11/5/2021: Joint Stipulations 11/5/2021: ALJ PFD 11/15/2021: NOR Ltr

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
Caudill, Nathan <u>New address:</u> 5763 Davis County Road Randleman, NC 27317	21 DOJ 01689 Randolph Dills	<u>0204(d)(1)</u> : Class B misd. after appointment <u>0301(a)(8)</u> : LGMC		10/27/2021 High Point	4/6/2021: Case opened 4/7/2021: Initial docs 5/3/2021: P-PHS filed 5/10/2021: R-PHS filed 6/30/2021: Order Reassignment 7/9/2021: R-MTC filed 7/12/2021: Order Continuance & Reassignment 8/27/2021: NOH 9/22/2021: R-MTC & Order denying MTC 9/24/2021: MTC b/h of Petitioner 9/24/2021: Order Continuance 9/27/2021: Order Reassignment 10/7/2021: NOH 10/28/2021: Post Hearing Order 11/30/2021: R-PFD
Strickland, Vernon	21 DOJ 01690 Robeson Ward	<u>0204(d)(5)</u> : Class A and B misd. Combination convictions		10/14/2021 MS Teams	4/6/2021: Case opened 4/8/2021: Initial docs 5/5/2021: PHS/Hearing Asst 5/7/2021: R-PHS 7/9/2021: R-MTC filed 7/9/2021: Order Continuance 7/13/2021: Order Reassignment 9/17/2021: NOH 10/4/2021: Amended NOH 9/17/2021: NOH 11/8/2021: R-PED

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
Core, Joshua	21 DOJ01688 Wake Ward	<u>0204(c)(1)(2)</u> : Mat. Misrepresentation		9/28/2021 Raleigh	4/6/2021: Case opened 4/7/2021: Initial docs 5/7/2021: P-PHS/Hearing Asst 5/10/2021: R-PHS filed 7/9/2021: R-MTC filed 7/12/2021: Order re Response to Respondent's MTC [7-10-2021] 7/21/2021: Order Continuance 7/29/2021: Order Reassignment 8/26/2021: NOH 9/29/2021: P-Community Ltrs 10/28/2021: R-PFD
Lee, Michael (ENJ) Counsel: Tom Morris King Law 364 Butler Road Forest City, NC 28043 tmorris@kinglawoffices.com (828) 286-3332	21 DOJ01874 Wilkes Sutton	<u>0204(c)(1)(2)</u> : Mat. Misrepresentation <u>0204(a)(1)</u> : Comm of a felony <u>0301(a)(8)</u> : LGMC	12/29/2021: PFD due	10/6/2021 Morganton	4/16/2021: Case opened 4/19/2021: Initial docs 5/21/2021: R-PHS filed 5/27/2021: P-PHS filed 7/9/2021: NOH 7/9/2021: R-MTC filed 7/12/2021: Order Continuance 8/13/2021: NOH/Conduct of Hearing 8/27/2021: P-NOA 8/31/2021: Joint MTC 9/1/2021: Order Continuance 9/10/2021: NOH 10/11/2021: Post-hearing Order 11/1/2021: MXT/Prop Order 11/4/2021: Order XT to file PFD 11/29/2021: Transcript filed

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
Ruth, Christopher Counsel: John C. Graham, III Sharp, Graham et al. 4417 N. Croatan Hwy Kitty Hawk, NC 27949 donna@ncobxlaw.com	21 DOJ 02407 Dare Byrne	<u>0204(c)(1)(2)</u> : Mat. Misrepresentation		9/24/2021 MS Teams	5/24/2021: Case opened 5/25/2021: Initial docs 6/18/2021: P-PHS/Hearing Asst 6/24/2021: R-PHS filed 7/16/2021: NOH 7/22/2021: P-Motion for remote hearing 8/6/2021: Order remote hearing 9/23/2021: Joint Stipulations/OIC 9/24/2021: ALJ PFD/Amended 9/30/2021: NOR Letter 11/19/2021: FAD Mtg Notice
Laws, Michael Counsel: Britt Springer 756 W. King St. Boone, NC 28607 britt@appalachianlawcenter.com	21 DOJ 02458 Avery Sutton	<u>0204(d)(5)</u> : Class A and B misd. Combination convictions <u>0204(d)(1)</u> : Class B misd. after appointment		10/6/2021 Morganton	5/26/2021: Case opened 5/27/2021: Initial docs 6/25/2021: P-PHS filed 6/28/2021: R-PHS filed 8/11/2021: Notice of Change of Venue 8/13/2021: NOH/Conduct of Hearing 8/18/2021: NOA [RP] 8/19/2021: R-MTC 8/24/2021: Order Continuance 9/10/2021: Order Conduct of Hearing/NOH 10/11/2021: Post-Hearing Order 10/29/2021: R-PFD filed 11/30/2021: ALJ PFD 12/1/2021: NOR Ltr

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
<p>Woodson, Amanda Counsel: J. Hart Miles Cheshire Parker Schneider PO Box 1029 Raleigh, NC 27602 (919) 833-3114 hart.miles@cheshirepark.com</p>	<p>21 DOJ 02462 Edgecombe Byrne</p>	<p><u>0204(d)(5)</u>: Combination of Class A & B misd.</p>		<p>9/22/2021 MS Teams</p>	<p>5/26/2021: Case opened 5/27/2021: Initial docs 6/25/2021: P-PHS/Hearing Asst 6/28/2021: R-PHS filed 7/16/2021: NOH 9/8/2021: NOH 9/22/2021: ALJ PFD 9/24/2021: P-Resp to ALJ PFD 9/30/2021: NOR Letter 10/27/2021: P-request oral arg 11/18/2021: FAD Mtg Notice</p>
<p>Lewis, Tysheika</p>	<p>21 DOJ 02504 Edgecombe Byrne</p>	<p><u>0204(d)(2)</u>: Class B misd. Within 5 years of appointment</p>		<p>9/20/2021 Virtual</p>	<p>5/27/2021: Case opened 5/28/2021: Initial docs 6/28/2021: R-PHS filed 6/28/2021: P-PHS/Hearing Form 7/19/2021: NOH 9/8/2021: NOH 9/15/2021: R-MTC 9/15/2021: Order re MTD 9/20/2021: ALJ PFD 9/21/2021: NOR Ltr 11/18/2021: FAD Mtg Notice</p>

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
Bonner, Bridgett Elizabeth (ENJ)	21 DOJ 02455 Beaufort Bawtinheimer	0204(b)(5): Positive drug screen		9/24/2021 MS Teams	5/26/2021: Case opened 5/27/2021: Initial docs 6/11/2021: NOH (Remote) 6/22/2021: P-PHS/Hearing Asst 6/28/2021: R-PHS filed 9/24/2021: Post-hearing Order 10/13/2021: R-PFD filed 10/13/2021: ALJ PFD 10/14/2021: NOR Letter 11/18/2021: FAD Mtg Notice
Brown, Jesse Counsel: Timothy J. Rohr Wilson Lackey Rohr & Hall 606 College Ave. SW Lenoir, NC 28645 828-758-9110 tj@lenoirlawyers.com	20 DOJ 02270 Burke Sutton	0204(b)(4): Refusal to submit to drug screen		11/2/2021 Morganton	6/25/2021: Filed Order & Transcript; Emailed same to OC 6/28/2021: Case Remanded to OAH/Reopened 7/19/2021: Order to File NOA & File Affidavits 7/21/2021: P-Notice of Non- representation 7/28/2021: NOA 7/28/2021: P-Affidavits (Peggy & Johnny Wehunt) 10/4/2021: Order denying MTD 10/5/2021: NOA [RP] 10/7/2021: NOH and Order on Conduct Hearing 10/28/2021: Resched Hearing 11/8/2021: P-PFD 11/23/2021: ALJ PFD 12/1/2021: NOR Ltr

Petitioner	County OAH Case No.	Violation(s)	Scheduling Order	Hearing Date	Status
Hands, Marcus Lamonte Counsel: Jennifer Knox 4600 Marriott Dr, Ste 200 Raleigh, NC 27612 jenknox74@gmail.com jennifer@jenniferknoxlaw.com	21 DOJ 03746 ALJ New Hanover Bawtinheimer	<u>0301(a)(8)</u> : LGMC		1/5-6/2022 Bolivia	8/31/2021: Case opened 9/3/2021: Initial docs 9/22/2021: P-PHS 10/4/2021: R-PHS 10/28/2021: NOH 11/2/2021: P-MTC 11/3/2021: Order Continuance and Notice of Rescheduled Hearing
Costner, Caleb Dean Counsel: William A. Anthony III 223 W. Main Street PO Box 981 Gastonia, NC 28053 bogleandanthony@gmail.com	21 DOJ 03745 Gaston Malherbe	<u>0301(a)(8)</u> : LGMC		1/26/2021 WebEx	8/31/2021: Case opened 9/3/2021: Initial docs 10/4/2021: R-PHS 10/13/2021: 2nd Order PHS 10/21/2021: P-PHS/Hearing Asst 11/10/2021: NOH (Virtual) 11/19/2021: R-MTC 11/24/2021: Order Continuance
Tilley, Tawanda	21 DOJ 04957 Wilson Byrne	<u>0301(A)(7)</u> : Failure to notify <u>0204(c)(1)(2)</u> : Mat. Misrepresentation	12/20/2021: PHS period ends 2/28/2022: Discovery period ends 3/7/2022: Dispositive motions period ends	Week of 3/21/2022 Greenville	11/18/2021: Case opened 11/19/2021: Initial docs 12/6/2021: P-PHS
Deese, Scottie	21 DOJ 05195 Robeson Bawtinheimer	<u>0204(a)(1)</u> : COMM of felony	1/6/2022: PHS period ends 3/21/2022: Discovery period ends 3/28/2022: Dispositive motions period ends	Week of 4/11/2022 Fayetteville	12/3/2021: Case opened 12/6/2021: Initial docs

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
NEW CASES: 2 (Cases opened from 9/7/2021 to 12/6/2021): CLOSED CASES: 6 (Cases closed from 9/7/2021 to 12/6/2021): TOTAL ACTIVE CASES: 20					

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
PJR FILED CASES					
David, Joshua Orion Counsel: Barry K. Henline 115 N. 6th Street Wilmington, NC 28401 barryhenline@outlook.com	Sampson 19 DOJ 01622 Ward PJR 20 CVS 695 Duplin County Andrew Heath	<u>0301(a)(8)</u> : LGMC			08/05/2020: Civil Summons, PJR and Stay of FAD 8/6/2020: Calendar request and proposed NOH 8/10/2020: Motion for Stay granted 8/28/2020: R-Response to PJR (filed 9/2020) PETITIONER HAS NOT YET SCHEDULED HEARING
Brian Kenneth Wayne	Vance 18 DOJ 05183 Overby (reassign. 11/21) Wake 19 CV 011339	<u>0301(a)(8)</u> : LGMC <u>0204(b)(2)</u> : Failure to notify <u>0204(a)(1)</u> : COMM felony			8/20/2019: PJR filed 9/10/2019: Response to PJR PETITIONER HAS NOT YET SCHEDULED HEARING
Zughbi, Mahmoud Omar (AH) Counsel: David H. Harris, Jr. Linck Harris Law Group 2530 Meridan Parkway Suite 300 Durham NC 27713 dharris@linckharris.com	Durham 19 DOJ 01617 Overby Nash 20 CVS1066	<u>0204(d)(1)</u> : COMM Class B misd. <u>0204(a)(1)</u> : COMM felony		TENTATIVE 11/29/2021 Nash County	8/1/2020: Filed FAD 8/31/2020: P-PJR filed 10/30/2020: R-Response to PRJ filed in Nash County

Petitioner	County OAH Case No. ALJ	Violation(s)	Scheduling Order	Hearing Date	Status
<p>DeValle, Maurice (AAC)</p> <p>Counsel: J. Michael McGuinness P.O. Box 952 Elizabethtown, NC 28337 910-862-7087 jmichael@mcguinnesslaw.co m</p>	<p>Columbus 20 CVS 1273 Judge James Bell</p>			<p>10/29/2021</p>	<p>12/8/2020: Served PJR (unfiled) 1/15/2021: R-Response to PJR 10/29/2021: Hearing 11/12/2021: Proposed Orders 11/22/2021: Order issued</p>