

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 03175

DYLAN KIMSEY TAYLOR,)
)
Petitioner,)
)
v.)
)
NORTH CAROLINA SHERIFFS')
EDUCATION AND TRAINING)
STANDARDS COMMISSION,)
)
Respondent.)
_____)

**PROPOSED FINAL AGENCY
DECISION**

THIS MATTER was commenced by a request filed August 19, 2022, with the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case and Assignment and Order for Prehearing Statements (22 DOJ 03175) were filed August 23, 2022. The parties received proper Notice of Hearing and the Administrative Hearing was held in Raleigh, North Carolina on January 24, 2023, before the Honorable Karlene S. Turrentine, Administrative Law Judge.

The Petitioner was represented by Zeyland G. McKinney, Jr. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Special Deputy Attorney General Jocelyn Wright.

On May 5, 2023, Judge Turrentine filed her Proposal for Decision. On May 10, 2023, 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 September 14, 2023.

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. The parties ~~are~~ were properly before ~~this Tribunal~~ the assigned Administrative Law Judge in that jurisdiction and venue ~~are~~ were proper and there was no objection to the ~~Undersigned~~ assigned Administrative Law Judge being the judge in this matter. Both parties

received proper notice of hearing, and Petitioner exhausted his administrative remedies following receipt of Respondent's Notification of Probable Cause to Deny Justice Officer Certification Letter mailed July 28, 2022 via certified mail. Resp. Exh 2.

2. Pursuant to Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, Respondent Sheriffs Education and Training Standards Commission ("Respondent" or "the Commission") has the authority (and responsibility) to certify justice officers and to revoke, suspend, or deny such certification when appropriate. *See* N.C.G.S. § 17E-4 and, 12 NCAC 10B .0204.

3. Petitioner completed Basic Law Enforcement Training ("BLET") in 2020, narcotics investigation school and various tactical trainings. T.14:2-9. Prior to going to BLET, Petitioner worked at the Towns County Detention Center in Georgia. T.14:10-21.

4. By the time of trial, Petitioner had been working as a Deputy and certified canine handler with the Graham County Sheriff's Office for almost two years. T.13:13-18. Thus, Petitioner applied for justice officer certification through that law enforcement agency but was denied certification by Respondent. Resp. Exh 2.

5. In its letter notifying Petitioner of its intent to deny his justice officer certification, Respondent initially asserted that its "authority for the proposed denial of certification is found in in [sic] *Rule* [12 NCAC 10B] .0204(d)(5)..." (Emphasis in original). However, Respondent's notice actually quotes 12 NCAC 10B.0204(d)(3).

6. Respondent's Notice then states that its proposed denial of Petitioner's certification is based on his (allegedly) having **committed** four (4) class B misdemeanors, *regardless of the date of commission*. Resp. Exh 2, p.1.

The Relevant Facts Leading Up to the Commission's Determination

7. On September 19, 2016, Petitioner was charged and served with warrants of theft by taking, hunting without permission and, two (2) counts of criminal trespass, in Elbert County, Georgia. *See* Resp. Exh 3-6.

8. Petitioner ~~ereditly~~ described the incident that led up to the charges as follows:

- a) At the time of the incident, Petitioner's father owned hunting land in Elbert County, Georgia. (At the time of trial, his father still owned the property). T.16:10-14.
- b) Petitioner, his father, and other family members often went there to hunt. This particular time, in September 2016, they went to hunt feral (wild) hogs¹.

¹ The State of Georgia defines a "feral hog" as "any hog which has lived any part of its life in a wild, free-ranging state and is currently in such state or has been taken." O.C.G.A. § 27-1-2(28). Feral swine, feral hog, wild hog, wild pig and wild boar are all synonyms for the same biological creature.

- c) Wild hogs may be hunted on private land year-round in Georgia and at any time, including at night. T.17:4-12.
- d) Any trap set to trap a wild hog must have a marker with the name and address of the owner on it and, any animal trapped therein must be killed or let go within twenty-four (24) hours.² O.C.G.A. § 27-3-63(a)(3) and (4).
- e) On or about September 9, 2016³, Petitioner went hunting at night with his dog on his father’s land. “[W]hen you hunt with a hound, you follow the dog. And on the GPS tracker that I had at that time, there was [sic] no property lines marked...” T.19:4-6. Petitioner let the dog loose and “the dog led [him] to a trap, being that he’s trained to smell feral pigs...” *Id.* at lines 11-13. There was no doubt this was a trap and not a hog farm. T.20:12-14.
- f) There were nine (9) wild hogs in the trap. Petitioner’s “dog being young, ...was circling the pen. The piglets inside were running, and [the dog]...stuck his snout through some chain-link and grabbed one of them. And at that point, I thought, ‘you know, we’re out hunting. He’s done his job.’” T.20:18-22. “So my dog did his job, he found the hogs, so I opened the trap door and I killed him two.” T.21:3-4.
- g) Petitioner’s dad regularly rented out their land to hunters. “And it would not be unusual for us to find a hog trap on our property at this time because we actually had some neighbors who had asked us...if they could set hog traps, and we told them that they could.” T.20:23 – 21:2.
- h) There was no name or trapping identification number on the trap and, it was clear from the condition of the ground inside the trap that the hogs had been “in there for quite some time[... the bare dirt and] quite a bit of feces...to me...indicate[d] that those pigs had been in there for...[s]everal days.” T.21:5-20.
- i) After killing the first two hogs, Petitioner called his dad and asked him to come help with the rest of the hogs, which he did. Petitioner’s dad also did not realize the two were on someone else’s land. T.22:1-8.

² Georgia Dep’t of Natural Resources Wildlife Division’s Trapping Regulations state: “It is unlawful to fail to inspect traps at least once each 24-hour period and remove any animals caught in the traps.” O.C.G.A. § 27-3- 63(a)(3). “It is unlawful to trap wildlife except with traps which are at all times legibly stamped, etched, or tagged with the owner’s name or owner’s permanent trapper’s identification number provided by the department.” O.C.G.A. § 27-3-63(a)(4).

³ Petitioner did not state the date for the incident incurred—in fact, no witness did—however, the warrants cite 9/9/16 as the date of the incident. *See Resp. Exhs 3-6.*

- j) Petitioner had no idea he was on their neighbor Mr. Guck's property until the next day when Guck came to Petitioner's family's land and spoke with Petitioner's father. T.30:4-11. Later that same day, a game warden also called Petitioner's father, as Guck had called him as well. T.22:20 – 23:3-6.
- k) Petitioner submitted a statement to the Committee detailing his wrongdoings and admitted the property he killed and removed the pigs from belonged to Mr. Guck. T.36-37. See Resp. Ex 9
- ↳ l) Several days later, the game warden called them back to tell them Guck had taken out warrants for their (Petitioner and his dad's) arrest. The two turned themselves in voluntarily and were released after processing.
- ↳ m) Only after the charges were taken out and they were able to see a plat map did Petitioner and his dad realize that their family land surrounds the Guck property "almost on three sides[.]" T.22:9-24.
- ↳ n) Petitioner was offered and entered a first offender's agreement which he understood would have him "plead to one count of criminal trespassing and the rest of [the charges] would be dismissed and...as long as [he] met the terms of [his] discharge,...there is nothing to expunge." T.25:1-7. As part of Petitioner's agreement, all charges against his father were dismissed. T.27:6-12.
- ↳ o) Petitioner did not know he was on Guck's property, nor did he intend to enter Guck's property and, Petitioner had no intent to violate any law when he was hunting that night. T.25:14-22.
- ↳ p) Guck's land had no structure on it to differentiate it from Petitioner's family's land. Guck's land was not posted—either with boundary tape or no-trespassing signs—and, Guck had never before told Petitioner or his father not to come onto his property. T.25-26.
- ↳ q) Petitioner sent all of the Elbert County, GA paperwork to Respondent with his application for certification and listed all the charges on his initial F-3 form when he applied for his current Deputy's position. T.26:22 – 27:3

9. On September 18, 2017, pursuant to Petitioner's first-offender agreement with the District Attorney, the state court in Georgia entered a Final Disposition on the two (2) charges of criminal trespass, and dismissed the other charges. The order provided that Petitioner would be subject to (up to twelve months of) probation until he paid restitution and the court's fines assessed him, at which time probated was to terminate. Resp. Exh 7, ¶11. Petitioner paid the restitution and fines that same day. T.38:4-7.

10. On September 19, 2017, an Order of Discharge was entered for the two (2) counts of criminal trespass upon Petitioner's completion of the First Offender program. The two charges

for Hunting without Permission and Theft by Taking were dismissed. Pursuant to the Order of Discharge, and in accordance with OCGA § 42-8-60,

- A. [Petitioner was] discharged without court adjudication of guilt.
- B. Th[e] discharge shall completely exonerate the [Petitioner] of any criminal purpose.
- C. Th[e] discharge shall not affect any of said [Petitioner]'s civil rights or liberties; and
- D. The [Petitioner] shall not be considered to have a criminal conviction.
- E. Th[e] discharge may not be used to disqualify [Petitioner] in any application for employment or appointment to office in either the public or private sector.”

Respondent's Exhibit 8.

11. Sirena Jones, Deputy Director of the Sheriffs' Education and Training Standards Division credibly testified that:

- a. As Deputy Director, Ms. Jones serves as staff to the Sheriffs' Commission and carries out administrative and investigative duties. One of her main responsibilities is to present cases to the Commission's Probable Cause Committee in reference to possible rule violations.
- b. Ms. Jones received notification of the charges from the Petitioner's application for certification. The Petitioner listed the charges on his personal history statement.
- c. Pursuant to her duties, Ms. Jones gathered information in this case, to include two (2) written statements from Petitioner explaining the circumstances surrounding the charges. Respondent's Exhibits 9 and 10.
- d. Ms. Jones stated that the offenses Petitioner was charged with were Class B misdemeanors under 12 NCAC 10B.

12. The Sheriff of Graham County, Brad Hoxit credibly testified that he became Petitioner's boss when he was elected in December, 2021. However, before winning his election, Sheriff Hoxit was with the NC Highway Patrol for several years starting in 1995 and, he had worked with and knew Petitioner well specifically stating: "Everything that I've saw [sic] out of Dylan, he's been forthcoming and his truthfulness has not been in question. ...He's fair and everything that he does is on the up-and-up, ...he has not had any questionable character." T.71:18 – 72:9.

13. Sheriff Hoxit further testified that he really wants to continue employing Petitioner because Petitioner "puts forth more effort than what we ask for" and is "above standards." T.73:15-16, 74:11.

14. Aside from Petitioner, no witness with personal knowledge of the facts surrounding the incident in Georgia testified.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (“OAH”) has had personal and subject matter jurisdiction over this contested case pursuant to N.C.G.S. § 150B, Article 3A, following a request from Respondent under N.C.G.S. § 150B-40(e) for an Administrative Law Judge to hear this contested case. In such cases the Tribunal sits in place of the agency and has the authority of the presiding officer in a contested case under Article 3A. The Tribunal makes a Proposal for Decision, which contains findings of fact and conclusions of law. Respondent makes the final agency decision. N.C.G.S. § 150B-42.

2. Further, the parties received the statutorily required notice of the hearing in this matter and there is no question as to joinder or misjoinder. There was no objection from either Party to the Undersigned hearing this contested case.

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. The court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the resolution 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).

4. Respondent is authorized by Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify criminal justice officers, and revoke, suspend, or deny such certification when appropriate.

5. 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). In the present contested case, Petitioner has the burden of proof to show that “he is entitled to relief from [the] agency[’s] decision[.]” to deny his justice officer certification. *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 179 N.C. App. 697, 699.

6. Respondent found that probable cause existed to deny Petitioner’s justice officer certification on the basis that Petitioner had committed: a) two (2) counts of Criminal Trespass,⁴ in violation of OCGA § 16-7-21; and, b) Hunting without Permission, in violation of OCGA § 27-3-1; and, c) Theft by Taking, in violation of OCGA § 16-8-2.

7. Respondent further asserts that all of the Georgia crimes alleged against Petitioner (and outlined in COL #6 above) are class B misdemeanors and; therefore, support Respondent’s denial of certification. 12 NCAC 10B.0204(d) reads, in pertinent part, as follows:

⁴ There is nothing in the record to support two counts of trespass against Petitioner since Petitioner only entered Guck’s property once, left with the hogs and never returned.

(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:

• • •
(3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; [or]

• • •
(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

12 NCAC 10B. 0204(d)(3) and (5). Additionally, “The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9[.]” N.C.G.S. § 17E-4 (emphasis added).

8. Our North Carolina criminal courts do not list misdemeanors in terms of class A, B or C but in terms of class A1, 1, 2 and 3. Thus, to determine what a class B (or class A) misdemeanor is as referred to by the Commission’s rules, we must look to the Department of Justice Criminal Justice Training & Standards’ Class B Misdemeanor Manual, 2022 Comprehensive Edition for the definition. See *Manual* at p.2-3. The Tribunal takes official notice of the Manual and its definition of a Class B misdemeanor therein.

9. More importantly, the Manual “sets out each misdemeanor offense occurring on or after October 1, 1994 which has ever been designated by the Commission to be a Class B Misdemeanor, along with its corresponding General Statute citation.” *Manual* at p.4.

10. Moreover, to uphold Respondent’s decision to deny Petitioner’s certification based on another state’s statutes (in this case, Georgia), this Tribunal would first determine that the Georgia statutes cited are comparable to a North Carolina misdemeanor statute. If there are comparable statutes, then the Tribunal would look to the evidence to see whether Petitioner actually committed the alleged violations of each Georgia statute.

11. Our appellate courts have addressed the issue of whether statutes in other states are comparable with a particular North Carolina statute more often than not in the process of determining criminal sentencing issues, specifically punishment. In their review, the courts ask the question of “whether petitioner’s offense [under one state’s law] was ‘comparable to or more severe than’ the offenses enumerated in” the North Carolina or federal statute. *State v. Ledbetter*, 2021-NCCOA-387, ¶ 7, 278 N.C. App. 606, 860 S.E.2d 46 (emphasis added). Further, the courts

interchangeably utilize the terms “**substantially similar to**” and “**comparable to**” such that it appears the terms define one another in these circumstances. *Id.* Thus, the laws being compared must be substantially similar to one another in order for Respondent to have authority to deny Petitioner’s certification based on Petitioner’s commission of trespass under a North Carolina statute. *See State v. Sanders*, 232 N.C. App. 262, 264, 753 S.E.2d 713, 715, *writ allowed*, 367 N.C. 324, 755 S.E.2d 48 (2014), and *aff’d*, 367 N.C. 716, 766 S.E.2d 331 (2014).

12. Moreover,

“...we are required to compare the elements of the [Georgia] offense to the elements of the North Carolina offense. ‘**Determination of whether the out-of-state [charged offense] is substantially similar to a North Carolina offense is a question of law involving comparison of the *elements* of the out-of-state offense to those of the North Carolina offense.**’ *Fortney*, 201 N.C. App. at 671, 687 S.E.2d at 525 (emphasis added); *see also Sanders*, — N.C. App. at —, 736 S.E.2d at 240 (“the trial court must compare ‘the *elements* of the out-of-state offense to those of the North Carolina offense’”); *Wright*, 210 N.C. App. at 71, 708 S.E.2d at 126.

Id. at 268, 753 S.E.2d at 717(emphasis added).

13. However, in the case at bar, the Tribunal need not determine whether Petitioner committed offenses substantially similar to North Carolina offenses nor look to see if those offenses have Class B status in the Manual because, the evidence is uncontradicted: Petitioner did not commit *any* of the asserted crimes.

14. It is important to begin by quoting the Georgia court’s Order of Discharge regarding the two (2) counts of trespass: “The defendant [Petitioner was] discharged without court adjudication of guilt[and...] exonerate[d]...of any criminal purpose.” Resp. Exh 8. As such, there is no doubt Petitioner was *convicted* of nothing. However, the order’s language: “exonerate[d]...of any criminal purpose[.]” goes to the question of commission. *Id.*

~~14.15.~~ To prove Petitioner committed the misdemeanor of Criminal Trespass as charged, we look to see how the Georgia statute defines criminal trespass. It reads in pertinent part:

- a) “A person commits the offense of criminal trespass when he...**intentionally** damages any property of another..., or;
- b) A person commits the offense of criminal trespass when he...**knowingly and without authority:**
 1. Enters upon the land or premises of another...for an unlawful [criminal] purpose;
 2. Enters upon the land or premises of another...after receiving, **prior to such entry**, notice from the owner, rightful occupant, or

upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden;

3. Remains upon the land or premises of another...**after receiving notice from the owner**....

O.C.G.A. § 16-7-21(a) and (b)(emphasis added).

~~12~~.16. The unequivocal and uncontroverted evidence of record reveals:

- a. Petitioner *did not know* he was on the Guck property *until the day after* the incident and he did not intend to enter or hunt on Guck's property;
- b. There were signs posted on Guck's property—no sign to identify the property itself and no sign to ward off trespassers;
- c. Guck had never before told Petitioner to stay off his land;
- d. Other neighbors (not Guck) had been given permission to set up hog traps on Petitioner's family land;
- e. There was no name or trapper's identification on the hog trap; and,
- f. The trapped hogs had been in the trap for greater than twenty-four hours.

~~13~~.17. Thus, the evidence clearly discloses that the element of intent and/or knowing without authorization is absent from Petitioner's actions.

~~14~~.18. Nevertheless, to support its decision, Respondent relies on Petitioner's statements made *after* he learned he had been on Guck's property. *See* Resp. Exhs 9 and 10. In Petitioner's statements to the Commission, Petitioner spelled out what happened that night with all the details he knew *by that time*—including that he had been on Guck's property when he killed the hogs. But this was *after* Guck came to see Petitioner's father to tell him they had been on his land and, *after* Guck took charges out against them and, *after* Petitioner and his father had opportunity to look at plot map or survey and see for themselves that, truly, they had been on Guck's property.

~~15~~.19. Petitioner's recalling of all the details—including ones he did not learn until *after* he was charged—cannot be held against him as if he knew them at the time of the incident. Just because Petitioner took responsibility for his actions *after* learning that he had been hunting on Guck's land, does not change the fact that **at the time he was on Guck's land, Petitioner did not know it.** The reality is, Petitioner **could not have taken such responsibility before** Guck came to see his dad because he had no knowledge of being on Guck's property. Moreover, even if there had been prior knowledge—of which, the evidence says there is not—as discussed above, the Georgia court held that Petitioner cannot be assessed criminal purpose for the trespass.

~~16~~.20. Where there is no knowledge or intent, there can be no criminal trespass under

O.C.G.A. § 16-7-21. Intent is a necessary element of the crime in the state of Georgia.

~~17.21.~~ Having resolved Petitioner did not commit the criminal trespass under the Georgia statute, though it is *unnecessary* to look to North Carolina’s statute for a corresponding trespass, it nevertheless states: “Any person who **willfully** goes on the land...of another **that has been posted in accordance with G.S. 14-159.7**, to hunt...without permission of the landowner...shall be guilty of a Class 2 misdemeanor.” N.C.G.S. § 14-159.6(a). Thus, North Carolina requires both knowledge and intent as an element of the crime of criminal trespass. Where there is no knowledge or intent, there can be no criminal trespass under N.C.G.S. § 14-159.6. Intent is also a necessary element of the crime in our State of North Carolina. Therefore, regardless of the charges or Order of Discharge (which specifically, removes any criminal intent or purpose), Petitioner cannot be held to have committed criminal trespass as defined.

~~18.22.~~ As for the charges of Hunting without Permission and Theft by Taking, both of those crimes *necessarily require* that Petitioner know he was on Guck’s property. Petitioner did not need permission to hunt on his own family land and, any hog he took on his family land would not be theft. Thus, without committing trespass, Petitioner could not have committed either of those misdemeanors either.

~~19.23.~~ A preponderance of the evidence before this Tribunal establishes that Petitioner *could not have violated* 12 NCAC 10B .0204(d)(3) or (5) despite the fact he was charged with two (2) counts of Criminal Trespass, Theft by Taking, and Hunting without Permission in Elbert County, Georgia.

PROPOSAL FOR DECISION ORDER

~~NOW, THEREFORE,~~ based Based on the foregoing Findings of Fact and Conclusions of Law, ~~the Undersigned recommends~~ it is hereby ORDERED that ~~Respondent REVERSE its decision to deny~~ Petitioner’s Justice Officer Certification is **GRANTED**.

IT IS SO ORDERED.

This the _____ day of _____, 2023.

Alan Jones, 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:

**Zeyland G. McKinney, Jr.
McKINNEY LAW FIRM, PA
135 Peachtree Street, Suite 2
Murphy, North Carolina 28906**

This the 16th day of August, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Jocelyn Wright
Jocelyn Wright
Special Deputy Attorney General
ATTORNEY FOR THE COMMISSION