

STATE OF NORTH CAROLINA
COUNTY OF CLEVELAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 00710

<p>Jeslynn Ryan Hill Petitioner,</p> <p>v.</p> <p>NC Sheriffs Education and Training Standards Commission Respondent.</p>	<p style="text-align: center;">PROPOSED DECISION</p>
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THIS MATTER PRESENTS under authority of the North Carolina Constitution, Art. III, Sec. 11, *accord*, Art. IV, Sec. 3; G.S. 7A-750; and G.S. 150B (“APA”); following hearing on the merits before Jonathan Scott Dills, Administrative Law Judge (“ALJ”) with the Office of Administrative Hearings (“OAH”); for proposed decision per Art. 3A of the APA. The ALJ sits for the agency to establish facts, apply law, and issue proposal. G.S. 150B-40(e).

APPEARANCES

Petitioner: Jeslynn Ryan Hill, *pro se*

Respondent: J. Joy Strickland, Assistant Attorney General
Department of Justice

ISSUE

Whether justice officer certification should be denied.

ANSWER: Certification should continue, but conditionally.

FINDINGS¹

Procedural History

1. Respondent appears in its delegated role of oversight and maintenance of minimum standards for justice officer certification. G.S. 17E-4(a)(6) & 7(c) and 12 NCAC 10B.
2. Petitioner is an applicant for Detention Officer certification with the Rutherford County Sheriff’s Office. Her Report of Appointment was executed on 03 March 2023. (R Ex 1).

¹ The Tribunal need only find facts material to resolution. *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).

3. Petitioner was previously certified with the Shelby Police Department. (R Ex 3). It is the circumstances surrounding her separation which form the basis of this contested case.

4. On 01 November 2022, the Chief of Shelby PD completed an Affidavit of Separation (Form F-5B); it indicated potential misconduct. (R Ex 4).

5. In the current application (Form F-3), Petitioner noted pending charges. (R Ex 2).

6. Melissa Bowman was assigned to investigate for Respondent. Based on her findings, certification was denied. Petitioner appealed here.

Relevant Background

7. Petitioner testified that while backing another Shelby officer, she had a gun placed to her head. The other officer fled to safety.

8. Following this traumatic event, she leaned on her then supervisor, Donald Bivens. Their relationship became personal and eventually turbulent.

9. Petitioner moved in with Bivens; she assisted with remodeling, home purchases, and shared expenses. Largely encouraged by Bivens, Petitioner believed they were committed.

10. Petitioner suggested transparency re their relationship, but Bivens discouraged it.

11. By all accounts, Bivens was a schmuck; though notably, he was not present to defend himself.

The Incident

12. On 30 October of 2022, Petitioner was attending a party hosted by a coworker. Bivens was expected to be at the party but never showed.

13. While at the party and after consuming alcohol, Petitioner was told that Bivens was at home with another woman. Petitioner had someone drive and drop her off.

14. Petitioner saw two vehicles at the home; one belonged to Bivens and the other, to the woman inside.

15. Petitioner, upset and tipsy, broke a house window and vandalized both cars. Bivens hid inside, called for deputies, and yelled admonishments. Petitioner awaited law enforcement, and with them, was polite, cooperative, and admitted her wrongdoings.

16. On 22 August 2023, Petitioner pled to one count of injury to personal property. She was placed on unsupervised probation, fined, and assigned community service. (R Ex 5).

Post-Incident

17. Petitioner successfully completed her sentence.

18. Reportedly, both property victims apologized for the part they played. Neither sought restitution nor otherwise interfered in the state's approach/plea agreement.

19. Bivens did attempt to continue romantically with Petitioner, but she rebuffed him. Petitioner continues to maintain her distance.

20. Petitioner is flourishing in her new position. She was promoted to Sergeant.

21. Sheriff Ellenburg testified for Petitioner. Without reservation, he indicated a high level of performance and described her as irreplaceable.

22. The High Sheriff recounted Petitioner saving an inmate's life; routinely going above and beyond; and being a stickler for policy, code, and good moral standing.

23. Patrick Staggs testified for Petitioner. With 39 years in law enforcement, he retired from the Highway Patrol. Staggs undertook a background investigation. His only concerns were the matters *sub judice* and a DUI that occurred when Petitioner was 16 years old.

24. Investigator Staggs found that Petitioner has overcome significant adversity. He relayed that Petitioner's father was an addict. In his custody, she became pregnant (again at 16) by a much older cohort of the father. Staggs opined that Petitioner much deserves a second chance. He had zero concern that the mistakes here highlighted would be repeated.

25. Petitioner's direct supervisor, Lieutenant Laura Grasser, also testified on her behalf. She has zero issues with Petitioner's work and spoke glowingly of her abilities, performance, and character. She committed to accountability and close supervision.

Mitigation

26. Extenuating circumstances include: (1) Petitioner had an unhealthy relationship with the male *victim* who shared some culpability; (2) has good leadership support; (3) was forthright, honest, and accepted responsibility; (4) fully complied with her sentence; (5) was remorseful; (6) voluntarily sought counseling; (7) has abstained from alcohol; and (8) has overcome significant adversity.

CONCLUSIONS²

1. Respondent is authorized to certify law enforcement officers and to revoke, suspend, or deny certification in proper circumstances. G.S. 17E; 10 NCAC 10B.

2. Though Article 3A of the APA is silent re the applicable standard of evidence, it is undisputedly by preponderance. *In re Rogers*, 297 N.C. 48, 59, 253 S.E.2d 912, 919 (1979).

3. As the Tribunal has repeatedly concluded, the State generally bears the burden of proof when it proposes to restrict certification. *See, Russell v. Commission*, 2022 NC OAH LEXIS

² To the extent Findings contain Conclusions or vice versa, they should be appropriately considered regardless of labeling. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

55; *cf.*, *Graves v. Commission*, 2022 NC OAH LEXIS 374 (new applicant); *see also*, *Canty v. Commission*, 2014 NC OAH LEXIS 127. These analyses are incorporated by reference.

4. Regardless, the uncontroverted evidence here supports that Petitioner pled to one count of injury to personal property. Such is a misdemeanor. G.S. 14-160.

5. Petitioner is subject to revocation, suspension, or denial. 12 NCAC 10B .0204(d)(1); *cf.*, 12 NCAC 10B .0103(10)(b)(i), 12 NCAC 10B .0205(2)(a), *and* (Ex 10).

6. Notwithstanding, the Commission has discretion. 12 NCAC 10B .0205(2); *cf.* 12 NCAC 10B .0204(c) (“may” presents choice). It is appropriate to exercise such here.

7. There is substantial evidence justifying the following proposal. G.S. 150B-42.

PROPOSAL

WHEREFORE, certification should be **GRANTED**, conditioned upon (1) a two-year period of probation, (2) during which time she will remain alcohol free, and (3) her compliance with reasonable monitoring by leadership at her employer.

NOTICE

The agency captioned and addressed herein will make the final decision in this contested case. G.S. 150B-38 *et seq.* (Art.3A).

The parties must be given opportunity in advance “to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.” G.S. 150B-40(e).

The agency or its counsel will timely file a copy of the final decision referencing the case number specified herein with the Office of Administrative Hearings.

ORDERED 25th July 2024.



The Honorable Jonathan S. Dills
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 by electronic service as defined in 26 NCAC 03 .0501(4) and/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 which thereafter places the foregoing document into an official depository of the U.S. Postal Service, as follows:

Jeslynn Ryan Hill
3667 Polkville Road
Shelby NC 28150
Petitioner

J. Joy Strickland
NC Department of Justice
jstrickland@ncdoj.gov
Attorney For Respondent

This the 25th day of July, 2024.



Karen L Rust
Karen L Rust
Law Clerk
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