

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
24 DOJ 02657

Lateshia Polk Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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On November 18, 2024, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing in this matter in Raleigh, North Carolina, 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 and Chapter 17E of the North Carolina General Statutes.

APPEARANCES

Attorney for Petitioner: Daniel Meir
Meir Law Group PLLC
Durham, North Carolina

Attorney for Respondent: J. Joy Strickland
Assistant Attorney General
NC Department of Justice
Raleigh, North Carolina

ISSUES

Whether sufficient evidence exists to deny Petitioner's application for justice officer certification for the commission of:

- a. Class B misdemeanor of Simple Assault (domestic violence related) in violation of N.C.G.S § 14-33(a) on June 15, 2023.
- b. Four or more Class A or Class B misdemeanors of Simple Assault (domestic violence related) and Possession of Marijuana on June 15, 2023, 2 counts of Possession of Stolen Goods on September 10, 2009 and November 20, 2012 respectively; and
- c. Felony offense of Obtaining Property by False Pretenses in violation of N.C.G.S § 14-100 on September 10, 2009.

STATUTES AND RULES AT ISSUE

Article 3A, N.C.G.S. § 150B-38 *et seq.*
N.C.G.S. § 14-33(a)
N.C.G.S. § 90-95(d)(4)
N.C.G.S § 14-71.1
N.C.G.S § 14-100

12 NCAC 10B .0103(17)(a)-(b)
12 NCAC 10B .0204(a)(1),(d)(1), and (d)(5)
12 NCAC 10B .0205(1)(a), (2)(a), and (3)(d)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent:

- Exh 1 - Report of Appointment with Durham County Sheriff
- Exh 2 - Simple Assault & Possession of Marijuana - Magistrate Order and Dismissal of Charges - 6/15/2023 (Wake County 23CR334776-910)
- Exh 3 - Raleigh Police Incident Report for 6/15/2023 Simple Assault and Possession of Marijuana
- Exh 4 - Stanley County File 09053706 - 9/10/2009 Possession of Stolen Goods/Obtain Property by False Pretenses - Warrant for Arrest, Indictment, Voluntary Dismissal, Dismissal Order, Restitution Worksheet Notice and Order, Deferred Prosecution Agreement, and Order
- Exh 5 - Albemarle Police Incident Report for 9/10/2009 Possession of Stolen Goods/Obtain Property by False Pretenses
- Exh 6 - Guilford County File 12CR 733617 - 11/10/2012 Possession of Stolen Goods (license plate)
- Exh 7 - UNCG Police Incident Report # 1211-021532 - 11/10/2012 Possession of Stolen Goods (license plate)
- Exh 8 - Petitioner's Statement - 2/13/2023
- Exh 9 - Investigator Bowman's Interviews with Petitioner - 10/27/23 and 10/30/23
- Exh 10 - Probable Cause Letter - 5/24/2024
- Exh 11 - Petitioner's Request for Administrative Hearing
- Exh 12 - Excerpts from Class B Misdemeanor Manual

WITNESSES

For Petitioner: None

For Respondent: Petitioner, Investigator Melissa Bowman, Raleigh Police Officer William Jackson

PROPOSED FINDINGS OF FACT

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

Background

1. Respondent, North Carolina Sheriffs' Education and Training Standards Commission ("Respondent" or "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 officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

2. On or about April 3, 2023, Respondent received Petitioner's Report of Appointment applying for certification with Respondent as a detention officer with the Durham County Sheriff's Office. The Report of Appointment included information on Petitioner's criminal history. (Respondent's Exhibit #1)

3. Melissa Bowman, Investigator with the Sheriffs' Standards Division ("Division"), reviewed Petitioner's application for certification and investigated the criminal charges. The Durham County Sheriff's Office timely notified Respondent that Petitioner had been arrested for Simple Assault and Possession of Marijuana. (T p 10)

4. Respondent also received an Order Dismissing the Simple Assault and Possession of Marijuana charges in Wake County District Court on August 23, 2023. (T p 10)

5. As part of her investigation, Ms. Bowman obtained records from the Stanly and Guilford County Clerks of Court Offices, the Raleigh Police Department, UNCG Police Department, and the Albemarle Police Department. (Respondent's Exhibits # 3-9)

6. During her investigation, Investigator Bowman did not identify any criminal charges against Petitioner since 2012 that warranted additional investigation other than the June 15, 2023 assault charge. (T p 30)

7. At the conclusion of the investigation, Ms. Bowman presented Petitioner's application and the investigation results to Respondent's Probable Cause Committee ("the Committee") for consideration. The Committee found probable cause to believe that Petitioner's certification should be denied for the commission of:

- a. Class B Misdemeanor of simple assault (domestic violence related) in violation of N.C.G.S § 14-33(a) on June 15, 2023,
- b. Four or more Class A or Class B misdemeanors of simple assault (domestic violence related) and possession of marijuana on June 15, 2023, and 2 counts of stolen goods on September 10, 2009 and November 20, 2012,
- c. Felony offense of obtaining property by false pretenses in violation of N.C.G.S § 14-100 on September 10, 2009.

(Respondent's Exhibit #10)

June 15, 2023 Simple Assault and Possession of Marijuana (less than 1/2 ounce)

8. On June 15, 2023, Raleigh Police Officer William Jackson and other officers responded to a domestic disturbance call at Petitioner's home between Petitioner and her spouse Kitsi Mahasi. Officer Jackson testified in this contested case hearing. The police separated Mahasi and Petitioner by taking Petitioner outside the home. Mahasi showed a video from her cell phone to Officer Jackson which showed Petitioner trying to push or slap Mahasi's phone away. Petitioner showed the officers a video from her cell phone showing Mahasi (the "victim") trying to slap Petitioner's cell phone away. (T pp 38-41). Officer Jackson characterized both videos as looking "like it was an attempt to stop whatever cell phone use was being done." (T p 84)

9. When the officers were placing Petitioner under arrest, Petitioner asked a police officer to retrieve her bag from inside the home so she could study. With Petitioner's consent, an officer searched Petitioner's bag before giving it to her and found a small amount of marijuana in the bag. Petitioner denied knowing marijuana was in her bag but indicated that she knew Mahasi smoked marijuana and thought Mahasi planted marijuana in her bag. Petitioner claimed ownership of all other items in her bag.

10. Officer Jackson acknowledged that Petitioner was fully cooperative and compliant and told them she had been studying for her BDOT exam when this incident occurred. Jackson's notes from the incident indicated that Petitioner seemed surprised when marijuana was found in her bag. (T p 80) Officer Jackson thought Mahasi could not have put the marijuana in the Petitioner's detention bag after the police arrived on the scene, because Mahasi was supervised by an officer the entire time. Yet, he could not say if the marijuana was placed in Petitioner's bag before the police arrived on scene. He explained that but for the Raleigh Police Department's policy requiring arrests be made if there is any evidence of domestic violence during a domestic situation, he would not have taken out the assault charges against Petitioner. (T pp 80-81)

11. Raleigh Police charged Petitioner with misdemeanor Simple Assault in violation of N.C.G.S. § 14-33(a) and Possession of Marijuana less than ½ ounce in violation of N.C.G.S. § 90-95(d)(4). On August 23, 2023, both charges against Petitioner were dismissed in criminal court. (Respondent's Exhibits # 2, 3)

12. The June 15, 2023 Raleigh Police Incident Report (PA23-033044) was admitted into evidence in this case. (Respondent's Exhibit #2) The Report documented that Petitioner told the police that Mahasi had gotten drunk, was acting crazy, and

swinging at her. Petitioner informed the police that Mahasi knocked Petitioner's phone out of Petitioner's hand. Petitioner acknowledged she knocked Mahasi's phone out of her hand. When asked about the marijuana found in her bag, Petitioner said that Mahasi must have put it in there. Mahasi did not testify at hearing to refute Petitioner's testimony. The Incident Report corroborated Jackson's testimony that Petitioner was polite and cooperative, while Mahasi was yelling, extremely agitated, and noncompliant with the police. (Respondent's Exhibit #2)

13. Raleigh Police also charged Mahasi with assaulting Petitioner and with resist, obstruct and delay a police officer. (Respondent's Exhibits # 2, 3) The criminal charges against Mahasi were also dismissed.

14. On October 27, 2023, Investigator Bowman interviewed Petitioner. Petitioner advised Bowman that she was married to Kitsi Mahasi. "Their relationship was on and off again at the time, but Mahasi had been back in their home for four days." On June 15, 2023, Petitioner was studying for her [basic detention officer training or BDOT] exam to obtain detention officer certification. Mahasi went out to a bar and came back intoxicated. They had an argument and Mahasi was trying to record her with her phone. Petitioner "tried to smack the phone out of [Mahasi's] hand to stop her from recording. . . [but she] was unsuccessful in knocking the phone out of Mahasi's hand and did not have any physical contact with her." (Respondent's Exhibit #9) Petitioner denied damaging Mahasi's phone. Petitioner denied that she smoked marijuana but said that Mahasi did. Petitioner told Investigator Bowman that the next day [June 16, 2023], the Sheriff's Department investigated the incident, and Captain Lane made her take a drug test. She passed the drug test. (Respondent's Exhibit #9; T p 57) Petitioner's responses to Ms. Bowman's questions were consistent with her statement in the Raleigh Police Report.

15. Investigator Bowman was unable to contact Ms. Mahasi and interview her regarding the June 15, 2023 incident. (T p 26) Neither did Ms. Bowman receive any notice from the Durham Count Sheriff's Office that Petitioner had tested positive for marijuana around June 15, 2023.

16. At hearing, Petitioner elaborated on the incident but otherwise testified consistently with the Police Report and her interview by Ms. Bowman. Petitioner explained that she and Mahasi began arguing on June 15, 2023 because Petitioner had taken down a picture of Mahasi from the refrigerator and Mahasi couldn't find her wedding dress. Mahasi left the house to go to a bar. (T pp 36-37) When Mahasi returned home, they continued fighting. Mahasi stood in the doorway shouting bad things about Petitioner. Mahasi started recording Petitioner with her cell phone. Because they lived in an apartment, their neighbors could hear Mahasi. Petitioner "did try to get her phone out of her hand like -- but was not successful in knocking the phone out of her hand at all." It was not a vicious slap, and Petitioner did not intend to assault Ms. Mahasi. Petitioner just wanted Ms. Mahasi to stop recording her and to get Mahasi's phone out of her face. (T pp 57-58) Petitioner then started recording Mahasi with Petitioner's phone. (T p 39) Petitioner called 911 because she wanted Mahasi to leave the house so that Petitioner could study for her detention exam. (T p 40) Petitioner was aware that Mahasi smoked marijuana and kept it in the house when she was there. (T p 36) Petitioner didn't smoke marijuana. (T pp 19, 36) Petitioner believed Mahasi put the marijuana in her bag while

Petitioner was outside the house with officers. Petitioner passed a drug test on June 16, 2023.

September 10, 2009 Misdemeanor Possession of Stolen Property and Felony Obtaining Property by False Pretenses (2 Weed Eaters)

17. Petitioner was charged in Stanly County, file number 09 CR 053706, with misdemeanor Possession of Stolen Property and felony Obtaining Property by False Pretenses for offenses that occurred on or about September 10, 2009. The warrant alleged that Petitioner possessed two John Deere weed eaters, the property of Paul Thompson, knowing they were stolen and that she pawned the weed eaters at Check Point pawn shop for \$40.00. (See Albemarle Police Department Incident Report, Respondent's Exhibit # 5)

18. On August 10, 2010, Petitioner entered into a deferred prosecution agreement and was placed on probation for both offenses. As part of the deferred prosecution agreement, Petitioner completed a handwritten statement as follows:

I did knowingly obtain or attempt to obtain currency from the person of Check Point Pawn Shop, Albemarle, NC which was calculated to deceive and did deceive by pawning items without permission from the owner, Paul Thompson.

Additionally, I did possess 2 John Deere weed eaters, the personal property of Paul Thompson, knowing or having reasonable grounds to know that said property was stolen.

Petitioner signed the deferred prosecution agreement on August 3, 2010. (Respondent's Exhibit #4) The agreement noted that Petitioner agreed to pay \$40.00 restitution to Check Point Pawn, LLC jointly and severally liable with Kendra Polk, Petitioner's sister. (Respondent's Exhibit #4, p 6)

19. On August 3, 2011, the charges of misdemeanor Possession of Stolen Property and felony Obtaining Property by False Pretenses were dismissed after Petitioner complied with the terms of the deferred prosecution agreement. (Respondent's Exhibit # 4, T p 27).

20. As part of her application for certification, Petitioner submitted a typewritten statement, dated February 13, 2023, describing the circumstances surrounding her being charged with misdemeanor Possession of Stolen Goods and Obtaining Property by False Pretense. Petitioner acknowledged that on January 6, 2010, she was charged with Possession of Stolen Goods by Albemarle Police Department in Stanly County. She explained, in summary, that:

I was living with my grandmother. I was lying in bed one morning when my cousin woke her up and asked her to pawn some merchandise he had. When she asked why he couldn't do it, her cousin said he didn't have an ID. Being naïve, I went with him to show my ID, so he was able to pawn the

merchandise. A couple days later, the police were looking for me. I was charged with the two offenses. I take full responsibility for this charge because I should have thought this through. I have definitely learned from that mistake, and I have yet to do something as foolish since then. By the court's decision, I received deferred prosecution and did probation for 12 months and community service for four weeks. I paid a probation fee of \$360.00 and community service fee of \$225.00.

(Respondent's Exhibit #8)

21. On October 27, 2023, Investigator Bowman interviewed Petitioner by telephone. Petitioner told Investigator Bowman that she did not ask her cousin where he got the two weed eaters because he and her boyfriend were working in lawn care at the time. Petitioner explained that she got into trouble because she signed the documents at the pawn shop. Petitioner denied that she was involved in any way with the stealing of the John Deere weed eaters. (Respondent's Exhibit # 9)

22. At hearing, Petitioner testified that she was asleep on September 10, 2009 when her cousin, who was 17 or 18 years old, came to her house, woke her up, and asked her to go with him to pawn some items because he did not have an ID. Petitioner was 20 years old at the time and had not previously pawned any items. (T pp 44-45) She did not ask her cousin any questions before going with him to the pawn store. Petitioner went with her cousin to a pawn shop and pawned the items. Her cousin handed two John Deere weed eaters to the clerk and Petitioner signed for them. (T p 46) The clerk gave the money for the items directly to her cousin. Petitioner told the clerk that she was merely signing for her cousin because he didn't have an ID. (T pp 45-47)

23. Petitioner indicated that even though she didn't know the weed eaters were stolen, she still entered a deferred prosecution agreement on the advice of her court-appointed lawyer. (T pp 48, 49, 67) Petitioner testified that this was her first time getting in trouble, she was scared, and naïve. As part of the deferred prosecution agreement, Petitioner wrote a statement admitting she "knowingly" obtained or attempted to obtain currency from the person at the pawn shop. In that "Admission," she wrote what her lawyer told her to write even though she didn't fully understand what she was doing. She was told her signature was required for a deferral. She thought she was getting a guaranteed dismissal as long as she stayed out of trouble, and that she wouldn't be charged with a felony. (T pp 48-49, 64)

24. Petitioner successfully completed the terms of the deferred prosecution agreement; completing 225 hours of community service and repaying the pawn shop \$40.00 in restitution. She does not have a felony conviction or a misdemeanor conviction for those charges. (Respondent's Exhibit #4; T pp 48-49, 64-66).

November 20, 2012 Possession of Stolen Goods (License Plate)

25. On November 20, 2012, Petitioner was charged by the UNCG Police Department with misdemeanor Possession of Stolen Goods of a license plate in violation

of N.C.G.S. § 14-71.1, file number 12 CR 733617. (UNCG Police Department Incident Report, Respondent's Exhibit 6)

26. The UNCG Police Department Incident Report documented that an UNCG police officer conducted a traffic stop of Petitioner's vehicle on November 20, 2012. Tahesha Scott was driving the vehicle while Petitioner was a passenger in the car. A license tag was in the window of the car. Petitioner told the officer she owned the vehicle, that her license tag had been stolen, and she acquired the tag in the car from her sister. There was also another tag in the car that was stolen. Petitioner told the officer she had active insurance on the vehicle, but the officer learned through UNCG Communications that the car had an insurance stop termination date of 7/22/2011. (Respondent's Exhibit #7) The Guilford County File indicated that the Possession of Stolen Goods charge against Petitioner was voluntarily dismissed on September 24, 2014. (Respondent's Exhibit #6)

27. When Investigator Bowman interviewed Petitioner about the misdemeanor Possession of Stolen Goods charge related to the license tag, Petitioner denied having any knowledge about the charge. She was struggling financially and emotionally during that time period, had no family support system, and had issues maintaining tags and insurance for her car. She suggested it may have been some mix up over a tag, but she could not recall. Petitioner also advised Investigator Bowman that she had separated herself from the negativity of her past. (Respondent's Exhibit #9)

28. On October 30, 2023, Investigator Bowman conducted a follow-up interview with Petitioner. Initially, Petitioner advised Investigator Bowman that she did not recall the 2012 Possession of Stolen Goods/Property incident. After Investigator Bowman informed Petitioner that the police report indicated she had a stolen tag on her vehicle, Petitioner acknowledged that she remembered her tag getting stolen and she explained this to the police. She thought that was the end of it and didn't think she had to go to court. She did not recall going to court and did not remember any other details other than she thought it was not an offense. At the time, she lived in a neighborhood where many cars had their tags stolen. Petitioner did not remember telling the officer that her sister gave her a license tag. (Respondent's Exhibit #9)

29. At hearing, Petitioner did not recall why she had two license plates in her car when the police officer stopped the car. Her explanation was that "someone stole my tag and replaced my tag with a different tag." (T p 54) Neither could she recall telling the police officer that she got the license tag from her sister and if her sister was involved in this incident. Petitioner indicated she was having financial difficulties and trouble keeping her insurance up to date at that time. (T pp 52-53) Respondent's Exhibit # 6 showed that the Possession of Stolen Goods charge, a license plate, was voluntarily dismissed on September 24, 2014. Neither the arresting officer from UNCG nor any other police officer testified at the hearing regarding this charge.

30. After the November 20, 2012 incident, Investigator Bowman did not identify any other charges in Petitioner's criminal history that Respondent was required to review. (T p 30) Shortly after 2012, Petitioner moved to Raleigh, N.C. "to get out of this." (T p 70) After moving, Petitioner obtained her Certified Nursing Assistant (CNA) and worked in a

group home taking care of patients with dementia. She also worked as private security on mobile patrol for Securitas. Eventually, she stopped working as a CNA and worked full-time for Securitas as a mobile patrol guard.

31. In April of 2023, Petitioner began working for the Durham County Sheriff's Office as a detention officer. If she receives her certification, she plans to continue employment with the Durham County Sheriff's Office. Petitioner maintained that Durham County Sheriff's Office has offered to move her to the law enforcement side of the Sheriff's Office if her detention officer certification remained valid. (T p 72) She acknowledged that such career path would be contingent upon receiving a law enforcement certification. (T p 72)

32. In summary, the 2023, 2009, and 2012 criminal charges against Petitioner were all dismissed.

PROPOSED CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case and therefore, the parties are properly before the undersigned Administrative Law Judge. The parties received proper notice of the hearing.

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. *Matter of V.M.*, 273 N.C. App. 294, 848 S.E.2d 530 (2020).

3. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171, 54 N.C. App. 571 (1981).

4. 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 justice officers and to revoke, suspend, or deny such certification.

5. N.C.G.S. 17E-4(3) specifically authorizes Respondent to "certify, pursuant to standards that it may establish for the purpose, persons as qualified under the provisions of this Chapter who may be employed at entry level as officers."

6. N.C.G.S. 17E-7 directs and authorizes Respondent to set certain standards for appointment of justice officers, and Respondent "may fix other requirements, by rule . . . and regulations, for the employment and retention of justice officers...." N.C.G.S. 17E-7(c).

7. Respondent's authority to impose standards for certification of justice officers is recognized by our Supreme Court. *Britt v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n*, 348 N.C. 573, 501 S.E.2d 75 (1998). Respondent may not perform its certification or revocation role in a manner that is arbitrary and capricious. *Devalle v.*

N. Carolina Sheriffs' Educ. & Training Standards Comm'n, 289 N.C. App. 12, 887 S.E.2d 891 (2023), *rev. granted*, 386 N.C. 279, 900 S.E.2d 664 (2024).

8. Since this contested case is heard under Article 3A, N.C.G.S. § 150B(e), the undersigned Administrative Law Judge sits in place of the agency and presides over the hearing. In that role, the presiding Administrative Law Judge "shall have the authority of the presiding officer in a contested case under this Article." N.C.G.S. § 150B-40(e). The Administrative Law Judge makes a "proposal for decision" to the agency containing proposed Findings of Fact and Conclusions of Law. N.C.G.S. § 150B-40(e).

9. Article 3A does not designate which party has the burden of proof in a contested case heard under that Article. Neither does the Commission's governing statute, Chapter 17E of the North Carolina General Statutes, nor the Commission's rules in Title 12 of the North Carolina Administrative Code, Chapter 10B allocate which party has the burden of proof in an Article 3A contested case hearing.

Commission of Class B Misdemeanor after Appointment (June 15, 2023)

10. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may deny the certification of a justice officer when it finds the applicant for certification has committed or been convicted of "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."

11. 12 NCAC 10B .0103(17)(b)(i) defines "Class B Misdemeanor," in pertinent part, as:

an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the "Class B Misdemeanor Manual" as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. . .

12. Respondent's Class B Misdemeanor Manual includes N.C.G.S. § 14-33 as a Class B misdemeanor when an offense is domestic violence related. (Respondent's Exhibit # 9) N.C.G.S. § 14-33(a) provides that any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

13. While the elements of a Simple Assault under N.C.G.S. § 14-33 are not explicitly defined within the statute itself, case law provides a general definition of assault. *State v. Corbett*, 196 N.C. App. 508, 675 S.E.2d 150 (2009) defines "assault" as generally: (1) an overt act or an attempt, or the unequivocal appearance of an attempt, (2) with force and violence, (3) to do some immediate physical injury to the person of another, (4) which would have put a person of reasonable firmness in fear of immediate bodily harm.

14. An assault is an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person

of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm. *State v. Gilley*, 135 N.C. App. 519, 522 S.E.2d 111 (1999).

15. In this case, sufficient evidence at hearing proved that on or about June 15, 2023, Petitioner committed the misdemeanor offense of Simple Assault (domestic violence related) in violation of N.C.G.S § 14-33(a), when Petitioner struck Kitsi Mahasi's hand while trying to slap a phone out of Mahasi's hand and prevent Mahasi from recording Petitioner. At hearing, Officer Jackson characterized both videos of Petitioner and Mahasi's actions as merely "an attempt to stop whatever cell phone use was being done." Not only was this charge dismissed in criminal court, but Officer Jackson credibly testified that if not for Raleigh Police's policy requiring arrests be made if there is any evidence of domestic violence during a domestic situation, he would not have taken out the assault charge against Petitioner. Petitioner's testimony at hearing was consistent with her statement to the Raleigh police that Mahasi came home drunk and reinitiated their earlier argument. Mahasi did not appear at this hearing to refute Petitioner's statements.

16. 12 NCAC 10B .0205(2)(a) provides :

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be . . . not less than five years where the case of sanction is . . . commission . . . of offenses as specified in 12 NCAC 10B .0204(d)(1) (Class B Misdemeanor).

However, under 12 NCAC 10B .0205(2), the Commission may either reduce or suspend the periods of sanctions or substitute a period of probation in lieu of revocation, suspension or denial when extenuating circumstances brought out at hearing warrant such a reduction or suspension.

17. The Undersigned concludes that extenuating circumstances justify substitution of a period of probation in lieu of revocation.

Commission of the Combination of Four Class A and B Misdemeanors

18. 12 NCAC 10B .0204(d)(5) provides:

The Commission **may** revoke, suspend or deny the certification of a justice officer when the Commission finds that the . . . certified officer has committed or been convicted of:

[A]ny combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(17)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(17)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

19. 12 NCAC 10B .0205(3)(d) provides that the sanction for the commission of a combination of four or more Class A and Class B Misdemeanors is:

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be . . . for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4) and (5).

Class A Misdemeanor Possession of Marijuana

20. 12 NCAC 10B .0103(17)(a)(i) defines Class A Misdemeanor, in pertinent part, as follows:

[A]n act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (17)(b) of this Rule.

21. N.C.G.S. § 90-95(d)(4) makes it unlawful for any person to possess a controlled substance classified in Schedule VI. Possession of less than one-half ounce of marijuana is a Class A misdemeanor.

22. Sufficient evidence at hearing proved that moments after Petitioner was arrested for Simple Assault of her spouse on June 15, 2023, Petitioner requested officers retrieve her clear detention bag from her apartment and consented to a search of her bag. During the inventory search of Petitioner's bag, police officers found less than one-half ounce of marijuana in Petitioner's bag. Petitioner denied knowing the marijuana was in her bag but confirmed ownership of all other items in the bag. Petitioner knew Mahasi smoked marijuana in the home, but she didn't smoke. By being in the home, Mahasi had access to Petitioner's bag. Passing a drug test the day after the June 15, 2023 incident showed Petitioner had not used marijuana.

23. There was sufficient evidence presented at hearing to support a reduction in the period of sanction or substitution of probation in lieu of denial of Petitioner's certification. After 2012, Petitioner moved away from her life in the Albemarle area, and began anew in Raleigh, North Carolina. She had no other criminal charges from 2012 until June 15, 2023 when she got into a domestic dispute with her spouse. If not for the Raleigh PD's policy of arresting parties involved in a domestic dispute if there's any evidence of violence, Raleigh PD would not have arrested and charged Petitioner with simple assault.

Class A Misdemeanor Possession of Stolen Goods

24. N.C.G.S. § 14-71.1 criminalizes the Possession of Stolen Goods, a Class B misdemeanor, as: (1) possession of personal property; (2) which has been stolen; (3) the possessor knowing or having reasonable grounds to believe the property to have been stolen; and (4) the possessor acting with a dishonest purpose. *State v. Jester*, 249 N.C. App. 101, 790 S.E.2d 368 (2016); *State v. Sellers*, 248 N.C. App. 293, 789 S.E.2d 459 (2016). The possession of stolen goods can be either actual or constructive, meaning the defendant does not need to have physical possession but must have the intent and capability to maintain control over the property. *State v. Szucs*, 207 N.C. App. 694, 701

S.E.2d 362 (2010) . The dishonest purpose element requires that the possessor's actions demonstrate an intent to benefit from the stolen property or to deprive the rightful owner of it. *State v. Tanner*, 364 N.C. 299, 695 S.E.2d 97 (2010); *Id.*

25. There was insufficient evidence produced at hearing to prove that on September 10, 2009, Petitioner committed the Class B misdemeanor of Possession of Stolen Goods/Property, in violation of N.C.G.S. § 14-71.1. The evidence at hearing showed that Petitioner's cousin, not Petitioner, approached Petitioner about pawning two weed eaters and handed the weed eaters to the pawn shop employee. There was no evidence proving that Petitioner knew or should have known the weed eaters were stolen. Neither was there any evidence that Petitioner intended to benefit from the stolen weed eaters or intended to deprive the rightful owner of such property. Therefore, there was insufficient evidence that Petitioner constructively possessed and had control over the two John Deere weed eaters in violation of N.C.G.S. § 14-71.1. Moreover, these charges were dismissed in criminal court.

26. In addition, there was insufficient evidence produced at hearing to prove that on November 20, 2012, Petitioner possessed a stolen license plate, knowing or having reasonable grounds to believe the license plate was stolen; or that Petitioner acted with a dishonest purpose in possessing such property.

27. Based on the foregoing Findings of Fact and Conclusions of Law, there was insufficient evidence to establish that Petitioner committed a combination of the four or more Class A and B misdemeanors.

Commission of Felony Obtaining Property by False Pretenses

28. 12 NCAC 10B .0204(a)(1) provides, in pertinent part, that the Commission shall deny the certification of a justice officer when the Commission finds that the applicant for certification has committed a felony. When the Commission denies the certification of a justice officer, the period of sanction shall be permanent where the cause of sanction is commission of a felony. 12 NCAC 10B .0205(1)(a)

29. N.C.G.S. § 14-100(a) defines "Obtaining Property by False Pretenses" as:

If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony.

30. Circumstantial evidence is crucial in proving intent in cases of obtaining property by false pretenses in North Carolina. Intent, being a mental state, is rarely provable by direct evidence and must typically be inferred from the circumstances surrounding the defendant's actions. The jury is allowed to consider the defendant's acts, conduct, and the general circumstances at the time of the alleged offense to determine

intent. *State v. Holanek*, 242 N.C. App. 633, 776 S.E.2d (2015); *State v. Horton*, 903 S.E.2d 870, 903 S.E.2d 870 (2024). In *State v. Street*, 254 N.C. App. 214, 802 S.E.2d 526 (2017), the defendant was convicted of obtaining property by false pretenses after pawning stolen hedge trimmers at a pawn shop. The court found that the defendant's actions met the criteria for false pretenses because he sold the stolen items to the pawn shop under the false representation that he had the right to sell them. *Id.*

31. In this case, there was insufficient evidence at hearing establishing that Petitioner committed the felony offense of Obtaining Property by False Pretenses in violation of N.C.G.S. § 14-100 on September 10, 2009. That is, there was insufficient evidence that Petitioner actually or constructively possessed the two John Deere weed eaters, knew the weed eaters belonged to Paul Thompson or that they were stolen. Petitioner's cousin approached Petitioner about pawning the weed eaters and he, not Petitioner, handed the weed eaters to the pawn shop employee. The clerk gave the money for the items directly to Petitioner's cousin, and Petitioner told the clerk that she was merely signing for her cousin because he didn't have an ID. Petitioner didn't question her cousin about the weed eaters as the cousin and Petitioner's boyfriend worked in lawncare at the time.

32. While Petitioner agreed and signed a deferred prosecution agreement to resolve the Possession of Stolen Goods and Obtaining Property by False Pretenses charges against her, Petitioner did so upon advice of her attorney who explained that the agreement would make the criminal charges go away. Petitioner was young and didn't fully understand what she was signing. Therefore, there was insufficient evidence proving that Petitioner knowingly and designedly engaged in false pretenses to obtain money from the pawn shop, with an intent to defraud or cheat.

33. When a defendant enters a deferred prosecution agreement, he typically admits to the facts of the crime alleged and defers prosecution of the crime admitted to enable the defendant to demonstrate good conduct. If the defendant fails to comply, the prosecutor may reinstitute the proceedings by filing written notice with the clerk. See N.C.G.S. §§ 15A-932, 15A-1341. Our North Carolina Court of Appeals held in *State v. Ross*, 173 N.C. App. 569, 573, 620 S.E.2d 33, 37 (2005) that while a defendant acknowledges his guilt in a deferred prosecution agreement, this does not equate to a formal plea of guilty.

34. Even though Petitioner signed a deferred prosecution agreement "admitting" she possessed 2 stolen John Deere weed eaters and obtained such property by false pretenses, the deferred prosecution agreement was not an actual plea of guilty. Without sufficient evidence to prove Petitioner committed the elements of Obtaining Property by False Pretense, and without a guilty plea, the Commission lacks sufficient evidence to deny Petitioner's detention officer certification based on the commission of a felony of Obtaining two John Deere weed eaters by False Pretenses.

35. Pursuant to its authority in 12 NCAC 10B .0205 and extenuating circumstances presented at hearing, the Commission may reduce a sanction against Petitioner for committing a simple assault and possessing marijuana in 2023 and/or issue

a period of probationary certification to Petitioner in lieu of denying her application for certification as a detention officer.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned proposes Respondent:

- (1) DENY Petitioner's justice officer certification for five years pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a) for the commission of the misdemeanor of Simple Assault (domestic violence related); and
- (2) Pursuant to 12 NCAC 10B .0205, substitute and issue a 12-month period of probationary certification, in lieu of a denial of certification, to Petitioner on the grounds that Petitioner abide by Respondent's laws and rules without any violations for that probationary period.

NOTICE

The North Carolina Sheriffs' Education and Training Standards Commission will make the Final Agency Decision in this matter. That agency 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).

That agency shall serve copy of the Final Agency Decision or Order on each party upon each party by one of the methods for service of process under G.S. 1A-1, Rule 5(b), addressed to the party at the latest address given by the party to the agency. The agency shall furnish a copy to any attorney of record and the NC Office of Administrative Hearings. N.C.G.S. 150B-42(a).

SO ORDERED, the 13th day of February, 2025.



Melissa Owens Lassiter
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 which subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 13th day of February, 2025.



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