

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 00224

Christian Alexander Ortega Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This contested case was heard before Michael C. Byrne, Administrative Law Judge, on May 23, 2025 at the Office of Administrative Hearings in Raleigh, North Carolina following the request of Respondent NC Sheriffs' Education and Training Standards Commission ("Respondent" or "Commission") for appointment of an Administrative Law Judge to hear the case of Christian Alexander Ortega ("Petitioner") pursuant to N.C.G.S. § 150B-40(e).

APPEARANCES

Mr. Christian Alexander Ortega
553 North Parker Church Rd.
Raeford NC 28376
Petitioner, pro se

Mr. Steven Draper
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

EXHIBITS

Respondent's Exhibits 1-9 were admitted

Petitioner: none

WITNESSES

For Respondent:

Sirena Jones

Christian Alexander Ortega
(called by Respondent and designated adverse)

For Petitioner:
None

ISSUE

Whether Respondent's Probable Cause Committee correctly found probable cause to revoke Petitioner's justice officer certification based on Petitioner's "commission" of the crimes of "Common Law Forgery" and of "Assault on a Female" in violation of N.C.G.S. § 14-33(c)(2).

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

FINDINGS OF FACT

Parties, Witnesses, and Evidence

1. Sirena Jones is the Deputy Director employed by Respondent. She is instrumental in the probable cause hearing process procedure. She has been employed with Respondent for approximately 20 years. Jones was a credible witness.
2. Petitioner Christian Alexander Ortega holds a justice officer certification from Respondent. Ortega was a credible witness.
3. The alleged victim of the crimes, Jessica Dykes, did not testify at the contested case hearing.
4. No law enforcement officer investigating or responding to Petitioner's alleged crimes testified at the contested case hearing, nor was any police report entered into evidence.

Petitioner's Work and Pertinent Personal History

5. Petitioner was employed for some years with the Hoke County Sheriff's Office. He was terminated in 2023 regarding the incidents of this case. He has subsequently been rehired. Petitioner is a former service member in the United States Army.
6. The elected sheriff of Petitioner, Hoke County Sheriff Roderick C. Virgil, wrote a strong letter of support for Petitioner stating that he wished for Petitioner to remain employed as a deputy in Hoke County. (Res. Ex. 3). The Tribunal finds as a fact that the persons in the best position to determine Petitioner's fitness to serve as a deputy sheriff in Hoke County, North Carolina are the elected sheriff of Hoke County and his officers, one of whom attended the contested case hearing in support of Petitioner. See Darren Tyree Taylor v.

“Assault on A Female” Allegation

7. This incident occurred on April 14, 2023. Petitioner and the alleged victim, Dykes, had a verbal argument about the alleged victim’s drinking, and the alleged victim’s son called 911. Law enforcement responded. No arrests were made.
8. Petitioner was neither charged with nor convicted of the crime of “Assault on A Female” arising out of the incidents of April 14, 2023.
9. There was no documentary evidence admitted supporting Petitioner’s commission of the crime of “Assault on A Female”.

“Common Law Forgery” Allegation

10. Petitioner testified credibly that he rented a storage unit on behalf of Dykes to store substantial amounts of her personal possessions that Dykes had left in Petitioner’s residence. Petitioner provided receipts showing that he made numerous payments on the unit on Dykes’ behalf.
11. Petitioner testified credibly that he acted with respect to the storage unit rental pursuant to an agreement with Dykes and with her permission and agreement that he do so.
12. Petitioner was neither charged with nor convicted of the crime of “Common Law Forgery” arising out of the storage unit rental.
13. Entries on the rental document support Petitioner’s contention that he was acting on behalf of Dykes. The home address is Dykes’ then-residence, not Petitioner’s. The customer phone number is Dyke’s then-phone number.
14. Petitioner’s “signature” on the documents, based upon review of the lease documents and Petitioner’s credible testimony, is found to be an electronic scribble to complete the rental process. Petitioner’s email address appears clearly on the final page of the document.
15. There was no evidence presented of any intent to defraud any person or entity connected with the storage unit rental.

Respondent’s Investigation

16. Respondent’s investigator assigned to Petitioner’s case did not testify at the contested case hearing.

17. Respondent's Probable Cause Committee met and found probable cause to revoke Petitioner's certification for five years based on his alleged commission of the two criminal offenses cited.
18. Respondent made no allegation that Petitioner lacks good moral character required of a justice officer.

Summary

19. The Tribunal finds as a fact that the events at issue in this case were the result of a romantic relationship gone seriously wrong, and that the allegations against Petitioner, in turn, result from that circumstance.
20. There was no evidence related to Petitioner's character that in any way supports the contention that he acted criminally with respect to either of the criminal allegations made against him.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to N.C.G.S. Chapter 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 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. The parties are properly before the Tribunal, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.
3. 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).
4. 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., 273 N.C. App. 294, 848 S.E.2d 530 (2020).
5. The question presented by this case is whether Petitioner "committed" criminal offenses for which he was never convicted of or entered a guilty plea to in a court of law.
6. This case involves a proposal to revoke an occupational license or certification. It thus affects the substantive rights of the Petitioner, and he is entitled to both notice and an opportunity to

be heard. Scroggs v. N. Carolina Criminal Justice Educ. & Training Standards Comm'n, 101 N.C. App. 699, 701, 400 S.E.2d 742, 744 (1991).

Respondent's Authority Under N.C.G.S. Chapter 17E

7. The General Assembly, creating the North Carolina Sheriffs' Education and Training Standards Commission in N.C.G.S. § 17E-3, states, "The General Assembly finds and declares that the office of sheriff, the office of deputy sheriff and the other officers and employees of the sheriff of a county are unique among all of the law-enforcement officers of North Carolina. ... The offices of sheriff and deputy sheriff are therefore of special concern to the public health, safety, welfare, and morals of the people of the State. The training and educational needs of such officers therefore require particularized and differential treatment from those of the criminal justice officers certified under Article 1 of Chapter 17C of the General Statutes." N.C.G.S. § 17E-1 (condensed).
8. In N.C.G.S. § 17E-4, "Powers and Duties of the Commission," the General Assembly authorizes Respondent to make enforceable "rules and regulations" and "certification procedures" regarding such officers in several areas. Most specific to this case, N.C.G.S. § 17E-4(a)(3) authorizes Respondent to "certify. . . pursuant to the 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." N.C.G.S. § 17E-4 (effective until July 1, 2025).
9. N.C.G.S. § 17E-7, "Required standards," directs and authorizes Respondent to set certain standards for appointment of justice officers, and "by rule and regulations, may fix other qualifications for the employment and retention of justice officers... ." N.C.G.S. § 17E-7(c).
10. 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).
11. However, as recently affirmed by the Court of Appeals, Respondent may not act in a manner that is arbitrary and capricious. Devalle v. N. Carolina Sheriffs' Educ. & Training Standards Comm'n, No. COA22-256, 2023 WL 3470876 (N.C. Ct. App. May 16, 2023). This includes the Commission's operation and interpretation of its own rules and standards.

"Commission" of a Criminal Offense

12. Petitioner was not convicted of any criminal offense at issue in a court of law. Thus, it is necessary to show that Petitioner nonetheless "committed" those criminal offenses.
13. "Commission" as it pertains to criminal offenses means a finding by the North Carolina Sheriffs' Education and Training Standards Commission or an administrative body, pursuant to the provisions of N.C.G.S. Chapter 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense. 12 N.C. ADMIN. CODE 10B .0103(16); see also 12 N.C. ADMIN. CODE 10B .0307

14. The Administrative Code defines “conviction” and “commission” of a crime separately. Becker v. N. Carolina Crim. Just. Educ. & Training Standards Comm’n, 238 N.C. App. 362, 768 S.E.2d 200 (2014) (2014 N.C. App. LEXIS 1364 at *7) (unpublished). In addition, the Court of Appeals has held that Respondent “may revoke a correctional officer’s certification if it finds that the officer committed a misdemeanor, regardless of whether he was criminally convicted of that charge.” Id. at *7-8 (citing Mullins v. N.C. Criminal Justice Educ. & Training Standards Comm’n, 125 N.C. App. 339, 348, 481 S.E.2d 297, 302 (1997)). Though these cases involve the North Carolina Criminal Justice Education and Training Standards Commission, that body and Respondent serve similar functions and rules and the Tribunal presumes them to have equal regulatory authority.
15. In determining whether a person “committed” a crime, the Commission does not “attempt to interpret North Carolina’s criminal code,” but instead must “**use pre-established elements of behavior** which together constitute an offensive act. **The Commission relies on the elements of each offense, as specified by the Legislature and the courts.**” Mullins, 125 N.C. App. at 347, 481 S.E.2d at 302 (emphasis supplied). See State v. Eastman, 113 N.C. App. 347, 351, 438 S.E.2d 460, 462 (1994): “The State failed to show any instance where the defendant [a state employee at the Governor Morehead School] could exercise sovereign power at any time in the course of his employment.”

Burden of Proof

16. The burden of proof for cases under Article 3 of the Administrative Procedure Act, N.C.G.S. Chapter 150B, is allocated by statute. See N.C.G.S. § 150B-25.1. There is no statutory allocation of the burden of proof in administrative actions arising out of Article 3A of the APA.
17. The Tribunal adopts and incorporates by reference its analysis and conclusions on the burden of proof in Article 3A contested cases set forth in Alex William Aboussleman v. NC Sheriffs Education and Training Standards Commission, 23DOJ05109 (August 27, 2024); see also Malcolm T. Kennedy v. NC Criminal Justice Education and Training Standards Commission, 2024 NC OAH LEXIS 346, at *9, 24 DOJ 00515.
18. It is a general legal principle that the burden is on the party asserting a claim to show the existence of that claim. Robinson v. Univ. of N.C. Health Care Sys., 242 N.C. App. 614, 621, 775 S.E.2d 898, 903 (2015). Here, Respondent claims that Petitioner committed multiple crimes, without evidence of a conviction.
19. While at least one appellate decision in the Article 3 context suggests approval of requiring petitioners to prove a negative, no North Carolina appellate court has endorsed the State, in any form, first deciding that a citizen committed a crime and then requiring that citizen to prove that they did not. Jones v. All American Life Ins. Co., 68 N.C. App. 582, 585, 316 S.E.2d 122, 125, (1984), *9, affirmed, 312 N.C. 725, 727, 325 S.E.2d 237, 238 (1985); see also Christopher Lee Jackson v. NC Criminal Justice Education and Training Standards Commission, 2021 WL 2779127, 20 DOJ 04578.

20. Accordingly, the Tribunal placed the burden of proof on Respondent. When Respondent's proposed agency action is based on its conclusion that a citizen not convicted of a crime nonetheless "committed" a crime, the burden of proof is on Respondent to show, by (at least) a preponderance of the evidence, that the citizen's actions satisfied all elements of the crime. In re B.L.H., 376 N.C. 118, 124, 852 S.E.2d 91, 96 (2020).

"Assault On a Female" Allegation

21. The elements of the crime of Assault On a Female are: an assault upon a female person by a male person who is at least eighteen years old at the time of the charged offense. State v. Wortham, 318 N.C. 669, 669, 351 S.E.2d 294, 295, 1987 N.C. LEXIS 1741.
22. There was no evidence presented supporting the allegation that Petitioner committed this criminal offense as alleged in the probable cause documentation.
23. It is concluded as a matter of law that Petitioner did not commit the criminal offense of "Assault On a Female" as alleged in the probable cause documentation.

"Common Law Forgery" Allegation

24. An essential element of the criminal offense of "Common Law Forgery" is that the action is done with the intent to defraud. State v. McAllister, 287 N.C. 178, 182, 214 S.E.2d 75, 79 (1975). "The necessary elements of the offense of forgery include: (1) a false making or alteration of some instrument in writing, (2) **a fraudulent intent**, and (3) the instrument must be apparently capable of effecting a fraud." State v. McSwain, 277 N.C. App. 522, 526, 860 S.E.2d 36, 40 (2021) (emphasis supplied).
25. There was no evidence presented that Petitioner committed any act associated with the storage rental with the intent to defraud any person or entity. All the evidence was to the contrary. Petitioner's explanation of his actions was credible and reasonable.
26. It is concluded as a matter of law that Petitioner did not commit the criminal offense of "Common Law Forgery" as alleged in the probable cause documentation.

PROPOSAL FOR DECISION

It is proposed that Respondent take no action against Petitioner's justice officer certification.

NOTICE AND ORDER

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.

Respondent is **ORDERED** to serve a copy of its final agency decision or order 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).

Respondent is further **ORDERED** to file a copy of the its final agency decision or order with the Office of Administrative Hearings within thirty (30) days of such order being issued.

SO ORDERED.

This the 23rd day of May, 2025.



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

Christian Alexander Ortega
553 North Parker Church Rd
Raeford NC 28376
Petitioner

Steven Dale Draper
North Carolina Department of Justice
sdraper@ncdoj.gov
Attorney For Respondent

This the 23rd day of May, 2025.



Laura A Smith
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850