

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 DOJ 02144**

PROPOSED FINAL AGENCY DECISION

1

1. Both parties ~~are~~ were properly before this Administrative Law Judge, the jurisdiction and venue ~~are~~ were proper, and both parties received notice of hearing.

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

3. Petitioner is an applicant for detention officer certification with the Nash County Sheriff's Office. On September 20, 2023, Petitioner received a probationary appointment (F5 form) to the position of a telecommunicator. (Resp. Ex. 2)(Trans. pgs. 6-7).

4. In the personal history section of her application (F3 form) for the telecommunicator position, Petitioner was required to list previous criminal charges and convictions. Ms. Cupp listed a felony fraud conviction and misdemeanor petit theft conviction from Orange County, Florida dated 2005 and 2003, respectively. (Resp. Ex. 1)(Trans. pgs. 7-8).

5. At the hearing, when asked by Respondent's counsel to explain the felony and misdemeanor charges Petitioner stated:

I was working for JCPenney at the time. I had a friend that was in need, and I was trying to figure out a way to help them. They had a court date coming up, but I mean the reasoning behind it is more along the lines of I have a soft heart, but also, I was kind of gullible at the time. You know, friendship, stuff like that, kind of mattered back then. So, I had tried to figure out a way that I could beat the system, so to say. So, I had – in between customers, I had rang up a gift card, didn't put any money in the register, and then took those gift cards and gave them to a friend of mine. My hope was that I would be able to put money in the drawer another day to cover it so that one it's short, one day it's over, and that it would work out, but that is not how it happened.

(Trans. pg. 9).

6. Petitioner obtained two separate gift cards – one in the amount of \$50, the other in an amount of \$20, for a total of \$70. (Resp. Ex. 5)(Trans. pgs. 9-10).

7. Petitioner was arrested and charged with felony scheme to defraud (FL Statute 817.034(4)(a)). (Trans. pg. 11 & 19)(Resp. Exs. 1, 3B, 5 & 6).

8. Petitioner's felony fraud charge was reduced to two counts of misdemeanor petit theft, to which Petitioner pled Nolle Contendere on one count and adjudication was withheld on the other. (Resp. Exs. 3A and 3B). Additionally, Petitioner paid \$210 in restitution - the entire amount petitioner was ordered [to] pay. (Resp. Ex. 6).

9. On June 10, 2024, Petitioner provided a notarized statement to the Sheriffs' Standards Division where she explained:

In September of 2005, I, Michila Cupp (formerly Michila Statton), was arrested at JC Penny on a felony fraud charge. The charge was based off shoplifting at the store and my refusal at the time to cooperate with law enforcement. . In September of 2005, I was notified by the DA's office explaining that the felony charge would be dropped down to two counts of misdemeanor petit theft...the judge found that having 2 charges was excessive and dismissed 1 count misdemeanor, only convicting me of the other count misdemeanor petit theft...I completed my probation, paid the restitution, and completed my community service hours.

(Resp. Ex. 7)

10. In February of 2025, Petitioner was informed via certified mail that she would have the opportunity to present her case before the Probable Cause Committee of the Respondent in Kitty Hawk, North Carolina on March 20, 2025. Petitioner attended that PC Committee hearing. (Resp. Ex. 4)(Trans. pgs. 12-13).

11. On April 28, 2025, in a letter sent through certified mail the NC Sheriffs' Training Standards Commission informed Petitioner that probable cause existed to deny her justice officer certification for felony commission in violations of rule 12 NCAC 10B .0204 (a)(1). (Resp. Ex. 8).

12. In a letter received by Respondent on May 15, 2025, Petitioner requested an administrative hearing to challenge the denial of her justice officer certification. (Resp. Ex. 9).

CONCLUSIONS OF LAW:

1. The Office of Administrative Hearings ~~has~~ had -personal and subject matter jurisdiction over this contested case, pursuant to Article 3A, N.C. Gen. Stat. § 150B-40(e), and the parties received proper notice of the hearing in this matter.

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

3. N.C. Gen. Stat. §150B-40(e) provides that “[w]hen a majority of an agency is unable or elects not to hear a contested case,” the agency is to apply to the Office of Administrative Hearings (“OAH”) for a designation of an Administrative Law Judge (“ALJ”). In such case, “[t]he provisions of [Article 3A], rather than the provisions of Article 3, shall

govern a contested case...” N.C. Gen. Stat. §150B-40(e).

4. In Article 3A cases, OAH, through an ALJ, presides over the hearing in place of the agency, and makes a “proposal for decision” back to the agency. N.C. Gen. Stat. §150B-40.

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

~~In *Peace v. Employment Sec. Comm’n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998), the North Carolina State Supreme Court addressed the burden of proof. Although Peace is an Article 3 case, the discussion of burden of proof is instructive in this instant case. *Peace* states:~~

~~In the absence of state constitutional or statutory direction, the appropriate burden of proof must be “judicially allocated on considerations of policy, fairness and common sense.” 1 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* §37 (4th. Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal context: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on the party with peculiar knowledge of the facts and circumstances. *Id.*~~

5.6. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. *Overcash v. N.C. Dep’t. of Env’t & Natural Resources*, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that “the burden of proof rests on the petitioner challenging an agency decision”). Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. Applying the statutory law along with “considerations of policy, fairness and common sense,” the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to deny an individual’s justice officer certification based upon its investigation into that individual.

6.7. The burden of proof is the preponderance of the evidence standard. See N.C. 5 Gen. Stat. §§ 150B-23(a); 29(a); and 34(a).

7.8. 12 NCAC 10B .0204(a)(1) states that Respondent shall deny certification of a justice officer when the Commission finds the applicant or certified officer has committed a felony. Furthermore, the sanction for such a violation under .0204(a)(1) is a permanent denial pursuant to 12 NCAC 10B .0205(1)(a)(“When the Commission suspends, revokes, or denies

the certification of a justice officer, the period of sanction shall be: permanent where the cause of sanction is: commission or conviction of a felony.”)

~~8-9.~~ 9-10. Petitioner was charged pursuant to Florida Statute Section 817.034(4)(a) Scheme to Defraud which is classified under Florida Law as a felony of the third degree. See FL Statute 817.034(4)(a)(“a) Any person who engages in a scheme to defraud and obtains property thereby commits organized fraud, punishable as follows: 3. If the amount of property obtained has an aggregate value of less than \$20,000, the person commits a felony of the third degree.”) (Resp. Exs. 3A, 3B and 5). Additionally, it is recognized that Petitioner’s felony fraud charge was reduced to a petit theft misdemeanor. (Trans. 9-11, 18-19)(Resp. Exs. 1, 3A, 3B, 5, 6).

~~9-10.~~ 10-11. Based on the full evidentiary hearing, the evidence demonstrates that Petitioner did not commit the felony offense as the Florida Statute in question requires a “scheme to defraud” which is defined as a “systematic, ongoing course of conduct.” FL. St. 817.034(3)(d). Petitioner’s conduct here was not a systematic ongoing course of conduct, but rather two instances of bad judgment in an attempt to help a friend. This conclusion is further supported by the decision of the prosecuting attorney’s office to eliminate the felony charge.

~~10-11.~~ 11-12. The preponderance of the evidence is that Petitioner did not commit the felony offense alleged.

~~11-12.~~ 12-13. The findings of the probable cause committee were not arbitrary and capricious. The preponderance of the evidence is that Petitioner did **not** commit the felony offense alleged.

PROPOSAL FOR DECISION ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ~~proposed~~ ordered that Petitioner’s justice officer certification should be **GRANTED**.

SO ORDERED.

This the 4th day of December, 2025.

Alan Norman, Chair

North Carolina Sheriffs' Education and
Training Standards Commission

CERTIFICATE OF SERVICE

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

**Michila S. Cupp
3992 Flat Rock Road
Terrell NC 28682**

This the 13th day of November, 2025.

JOSHUA H. STEIN
Attorney General

/s/ Ian L. Courts

Ian L. Courts
Assistant Attorney General
ATTORNEY FOR THE COMMISSION