

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 02069

Raymond Daryl Inman Petitioner,  v.  North Carolina Sheriffs Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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THIS MATTER was heard before the undersigned Administrative Law Judge on November 8, 2022 at 9:00 am on the Webex virtual platform, pursuant to N.C. Gen. Stat. §150B-4(e), and a 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 to hear Petitioner's appeal of the Respondent's determination that his application for justice officer certification should be denied.

**APPEARANCES**

For Petitioner: John R. Sutton, Jr.  
The Sutton Firm, P.A.  
Candler, North Carolina

For Respondent: Robert J. Pickett  
Assistant Attorney General  
North Carolina Department of Justice  
Raleigh, North Carolina

**WITNESSES**

For Petitioner: Petitioner Raymond Daryl Inman  
Lt. Kelly Ball, Buncombe County Sheriff's Department  
Megan Davis, Assistant Principal, Owen Middle School

For Respondent: Jasmine Wilkerson  
Det. Whitney Montgomery, UNCA Police Department  
Sgt. Booth, Asheville City Police Department  
Sirena Jones, NC Sheriffs' Standards  
Sgt. Casey Anderson, UNCA Police Department

## EVIDENCE

For Petitioner:                    Exhibit 1

For Respondent:                 Exhibits 1, 2, 3, 4, 9, 11, 12 and 13

Official Notice:                 N.C. Gen. Stat. §269.2

## ISSUE

Whether Petitioner's application for justice officer certification should be denied for commission of a crime or unlawful act defined as a Class B misdemeanor, pursuant to Rule .0204(d)(1) of Chapter 10B of Title 12 of the North Carolina Administrative Code.

## RULE AT ISSUE

12 N.C.A.C. 10B .0204(d)(1)

## FINDINGS OF FACT

Based upon careful consideration of the exhibits admitted into evidence, the entire record in this proceeding, the Joint Stipulations of the parties, and the credibility and believability of the witness testimony at hearing including the witnesses' credibility, demeanor, any interests, biases or prejudices, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witnesses testified, and whether the testimony of the witnesses are reasonable and consistent with other believable evidence in the case, the undersigned finds as follows:

1. Both parties are properly before this Administrative Law Judge in that jurisdiction and venue are proper, and both parties received proper Notice of Virtual Hearing for this contested case.
2. Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B authorizes Respondent to certify sheriffs and to deny, suspend, or revoke such certification.
3. Petitioner is an applicant for justice officer certification with the Buncombe County Sheriff's Office.
4. Petitioner previously held certification through the North Carolina Criminal Justice Education and Training Standards Commission as an officer with the University of North Carolina at Asheville Police Department (UNCA PD) from April 19, 2017 to December 17, 2021.
5. On November 21, 2019, the Probable Cause Committee of the North Carolina Criminal Justice Education and Training Standards Commission voted to find no probable cause that

Petitioner allegedly committed a Class B misdemeanor, “Duty to Stop in Event of a Crash”, in violation of its administrative rules.

6. In January 2020, Petitioner was offered employment with the Buncombe County Sheriff’s Office and applied for certification as a justice officer through Respondent North Carolina Sheriffs’ Education and Training Standards Commission.
7. On April 28, 2022, Respondent asserted that it found probable cause to deny Petitioner’s application for justice officer certifications. Respondent asserts that denial is proper based upon rule .0204 (d)(1) of Chapter 10B of Title 12 of the North Carolina Administrative Code, finding probable cause to believe that Petitioner committed a Class B misdemeanor on or about January 17, 2019, while on duty as a UNCA Police Officer.
8. Petitioner requested an administrative hearing pursuant to Article 3A of Chapter 150B of the North Carolina General Statutes, asking the Administrative Law Judge to make a proposal for decision to Respondent that Petitioner did not commit a Class B offense in violation of the Commission rules and a recommendation that the Commission issue a final agency decision that Petitioner did not violate Rule .0204(d)(1) of Chapter 10B of Title 12 of the North Carolina Administrative Code.

#### January 17, 2019 Incident

9. On January 17, 2019, Petitioner was employed as a law enforcement officer with the UNCA PD and working the 7:00 pm to 7:00 am shift.
10. During his shift, Petitioner was assigned to patrol the campus and respond to calls for service along with his patrol partner, Officer Barnette. Both Petitioner and Officer Barnette were assigned to operate separate UNCA PD Ford Taurus police vehicles.
11. After responding to a call for service at Founder’s Hall, both Petitioner and Officer Barnette returned to their vehicles. As Petitioner was exiting the parking lot, his vehicle backed into a parked car in the parking lot. The parked car was owned by Jasmine Wilkerson, a part-time University employee and resident of Founder’s Hall.
12. Neither Petitioner nor Officer Barnette reported the accident at the time.
13. The following day, January 18, 2019, Jasmine Wilkerson noticed the damage to her car and reported it to her supervisor who obtained surveillance video of the incident and contacted UNCA Police Department.
14. On the morning of January 18, 2019, Detective Montgomery responded to the Hit/Run call at Founder’s Hall and once it was determined from the surveillance video that the accident involved a UNCA Police vehicle, she contacted her supervisor and the Asheville Police Department.
15. Sergeant Booth (“Sgt. Booth”) of the Asheville Police Department responded to a call

regarding a Hit/Run Property damage at the UNCA campus on January 18, 2019. He visited the scene and noted the damage to the parked car, and some minor scuffing on the bumper of the police cruiser. Sgt. Booth did not speak with Petitioner that day, but the Petitioner contacted him a day or so later, was cooperative in all respects. Sgt. Booth issued Petitioner a citation for leaving the scene of an accident, in violation of N.C. Gen. Stat. §20-166 (c)(1), which is a Class 1 misdemeanor.

16. Petitioner was charged with a class 1 misdemeanor regarding the January 17, 2019, incident, however, the charge was dismissed by the District Attorney's Office and has now been expunged from the public record.
17. On the night of January 17, 2019, Petitioner did not realize that he had struck the vehicle and did not knowingly leave the scene or fail to report an accident.
18. Petitioner testified that he is 6 feet, 8 inches tall and did not fit in the Ford Taurus. He was accustomed to operating a Ford Explorer, which is a much larger vehicle; and that vehicle was not available on the night in question. In order to fit into the vehicle, Petitioner had to "fold himself into the car", so that his head was positioned against the vehicle's ceiling while he was sitting on his side and that such positioning requires some amount of situating himself as he gets into the car. He was still getting situated as he left the parking lot, and this prevented him from feeling the impact of the accident.
19. Petitioner first knew of the accident the following day and at all times cooperated with and made himself available to the investigation and process. He met with his supervisor, Sergeant Anderson and, once shown the video, he realized that he had accidentally struck the parked car.
20. Sergeant Anderson of the UNCA Police Department conducted an internal investigation into the incident, viewed the video footage and met with Petitioner. In his opinion, Petitioner was genuinely shocked upon learning of the accident. He had supervised Petitioner for a couple of years, and in his experience, Petitioner would not attempt to cover up a mistake, rather Petitioner would own up to an error and make an effort to correct it. Based on this experience and the Petitioner's shock upon being shown the video, it was Sergeant Anderson's opinion that Petitioner did not knowingly leave the scene of the accident or willfully fail to report the accident.
21. Both Lt. Ball and Megan Davis testified that they currently work with Petitioner, have no knowledge of the January 17, 2019 incident, but they find Petitioner to be a dedicated law enforcement officer committed to his role as School Resource Officer, and that his presence in the school and on the Resource Officer Team is a unique, valuable service to the students and community.

Analysis of the Evidence:

22. Respondent did not offer any direct evidence that Petitioner knew that he had struck the parked car or that he willfully failed to report the accident.

23. Respondent did not offer any evidence that Petitioner attempted to cover up or hide the accident from his supervisors or anyone else.
24. Respondent offers the following arguments to rebut Petitioner's testimony that he did not knowingly leave the scene of an accident: (1) the amount of damage incurred; (2) the visible shaking of the vehicles shown in the surveillance video; and (3) that Petitioner returned to the scene at least 4 times later that night.
25. As to the amount of damage, the undersigned finds an overwhelming majority of the damage to have incurred on the parked car and not on the police vehicle in which Petitioner was operating.
26. The undersigned further finds that the Petitioner's explanation as to his own personal size is compelling as to why he would not have noticed any movement in his vehicle at the time of the accident.
27. Officer Barnette was on the scene and did not notice the accident or report it. Had she been aware of the accident, she would have reported it immediately.
28. The Petitioner's testimony that he naturally returned to the scene several times that night as he patrolled the campus is credible and believable. Both Petitioner and Sergeant Anderson testified that the duties of Petitioner and other patrol officers is to continuously circle or patrol the campus while on duty.
29. At most, Respondent's evidence raises a mere suspicion or conjecture that Petitioner knew or should have known about the accident.
30. The Petitioner appears to be an honest and dedicated officer who mistakenly backed into a parked car. He was cooperative with the investigative process as soon as the matter was brought to his attention. None of the witnesses' testimony caused the undersigned to question Petitioner's testimony that he did not knowingly leave the scene of an accident, or that his testimony should be discounted in any way.
31. The undersigned finds Petitioner's testimony to be truthful, credible and consistent with the evidence presented.
32. Accordingly, the undersigned finds as fact that Petitioner did not knowingly leave the scene of an automobile accident, nor did he willfully fail to report an automobile accident.

### **CONCLUSIONS OF LAW**

1. The parties are properly before this Administrative Law Judge, and both parties received proper notice of the hearing. To the extent that the Findings of Facts 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.

2. The North Carolina Sheriffs' Education and Training Standards Commission has certain authority 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 suspend, revoke, or deny certification under appropriate proof of a rule violation.
3. The Commission's Notice of Probable Cause specifies its belief that Petitioner committed the Class B misdemeanor of leaving the scene or failure to report an automobile accident with property damage on January 17, 2019, in violation of N.C. Gen. Stat. §20-166, and that as a result of this misdemeanor, Petitioner's justice officer certification should be denied.
4. 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).
5. In Article 3A cases, the OAH, through an ALJ, presides over the hearing and makes a "proposal for decision" for the agency. N.C. Gen. Stat. §150B-40.
6. In *Peace v. Employment Sec. Comm'n of N. Carolina*, 349 N.C. 315, 328, 507 S.E.2d 272, (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 case:

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 (4<sup>th</sup> Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal contest: (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.* at 281.

7. 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 take some action against an applicant based upon its investigation into that individual.
8. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a). Accordingly, the Respondent Commission must prove that it is more likely than not that Petitioner committed a Class B misdemeanor to lawfully deny Petitioner's application for justice officer certification.

9. The undersigned has weighed the evidence and determined that the Respondent has not shown by a preponderance of the evidence that the Petitioner knowingly left the scene of an accident on January 17, 2019.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that the North Carolina Sheriffs' Education and Training Standards Commission render a final agency decision finding that Petitioner is **NOT** in violation of Rule .0204(d)(1) of Chapter 10B of Title 12 of the North Carolina Administrative Code, and accordingly it is proposed that the North Carolina Sheriffs' Education and Training Standards Commission **GRANT** Petitioner's application for justice officer certification.

### **NOTICE**

The North Carolina Sheriffs' Education and Training Standards Commission will make the final decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this Proposal for Decision, and to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

A copy of the final agency decision or order shall be filed with the NC Office of Administrative Hearings and shall be served 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. Gen. Stat. § 150B-42(a).

IT IS SO ORDERED.

This the 4th day of January, 2023.



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

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This the 4th day of January, 2023.



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