

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 13154

Dustin Edward Wright,)	
Petitioner)	
vs.)	
NC Sheriffs' Education and Training Standards)	PROPOSED DECISION
Commission,)	
Respondent)	

In accordance with 26 NCAC 03.0127, the undersigned Administrative Law Judge enters this Proposed Decision in the above-captioned matter.

An evidentiary hearing was convened on the 11th day of June, 2012, in the Haywood County Justice Center, Waynesville, North Carolina, at which time and place the parties were permitted to attend and present evidence and argument in favor of their respective positions.

APPEARANCES

Counsel for Petitioner, Dustin Edward Wright

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Counsel for Respondent, NC Sheriffs' Education and Training Standards Commission

Matthew L. Boyatt, Esq.

Assistant Attorney General

N.C. Department of Justice

Law Enforcement Liaison Section

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Raleigh, North Carolina 27699-9001

ISSUE

Whether Petitioner's certification as a North Carolina justice officer should be denied pursuant to Rule .0204(d)(1), Chapter 10B of Title 12 of the North Carolina Administrative Code, Applicable Statutes, Rules and Legal Precedent including N.C. Gen. Stat. § 14-33, Chapter 17B of the North Carolina General Statutes, 12 NCAC 10B .0103(10)(b), 12 NCAC 10B .0204(d)(1), 12 NCAC 10B .0205(2).

APPLICABLE LAW

N.C. Gen. Stat. § 14-33

N.C. Gen. Stat. Chapter 17E

12 NCAC 10B 0204

12 NCAC 10B .0103(10)(b)
12 NCAC 10B .0205(2).

EXHIBITS ADMITTED INTO EVIDENCE

Petitioner's Exhibits 1 through 11.
Respondent's Exhibits 1 through 9.

Having conducted the above-referenced hearing, received the evidence and heard the arguments of the parties, the Court makes the following Findings of Fact:

FINDINGS OF FACT

Procedural Background

1. Petitioner, Dustin Edward Wright, is a resident of the County of Jackson, State of North Carolina.
2. Respondent, NC Sheriffs' Education and Training Standards Commission, is a component of the North Carolina Department of Justice and was created in accordance with Chapter 17E of the North Carolina General Statutes.
3. On October 3, 2011, Respondent mailed a letter to Petitioner, via Certified United States Mail, Return Receipt Requested, stating that Respondent had "found probable cause to believe your certification as a justice officer should be denied." R. Exh. 2
4. On October 24, 2011, Petitioner timely submitted a letter to Respondent requesting a hearing with respect to the above-referenced Notification of Probable Cause to Deny Justice Officer Certification.
5. The matter was scheduled for hearing before the undersigned Administrative Law Judge, said hearing to occur on June 11, 2012.
6. Both Petitioner and Respondent appeared at the date and time set for the above-referenced hearing and presented evidence and argument in support of their respective positions.

Petitioner's Background

7. Petitioner is a graduate of Cherokee High School, and a decorated veteran of the United States Army, 82nd Airborne Division. P. Exh. 1
8. In May 2008, Petitioner was hired as a Police Officer by the Cherokee Indian Police Department. R. Exh. 3

9. In August 2008, Petitioner completed a duly accredited course in North Carolina Basic Law Enforcement Training at Southwestern Community College.
10. In August 2010, Petitioner resigned his position as a Police Officer with the Cherokee Indian Police Department. R. Exh. 3
11. On November 23, 2010, Petitioner was hired as a Detention Officer by the Swain County Sheriff's Office and took his Oath of Office for this position. P. Exh. 3 & R. Exh. 3
12. On November 23, 2010, Petitioner took his Oath of Office as a Deputy Sheriff of Swain County and commenced working as a Deputy Sheriff on February 14, 2011. Petitioner has been working as a Deputy Sheriff of Swain County since that date. P. Exh. 2 & R. Exh. 3
13. Petitioner has no criminal record on file with the United States Army, the Eastern Band of Cherokee Indians, the Jackson County Clerk of Court or the Swain County Clerk of Court. P. Exh. 6

Relationship between Petitioner and Chasity Huskey and Initiation of Domestic Violence Protection Proceeding

14. The Cherokee Tribal Court was created in accordance with the Tribal Code of the Eastern Band of Cherokee Indians.
15. On September 12, 2008, Petitioner filed involuntary commitment papers against Chasity Huskey, with whom he had maintained a relationship, as a result of her making threats that she would commit suicide and drown their children. On the same date, Chasity Huskey was taken into custody by Sgt. Neil Ferguson of the Cherokee Indian Police Department and transported to a psychiatric facility. P. Exh. 8 At this point in time, Chasity Huskey had a problem with the use of alcohol and certain drugs, including xanax. She was later transported to another psychiatric facility and held for a period of several days for treatment.
16. On June 15, 2010, a Complaint and Motion for Domestic Violence Protective Order was filed by Chasity Huskey with the Cherokee Tribal Court of the Eastern Band of Cherokee Indians. P. Exh. 4 & R. Exh. 4
17. In the Complaint, Ms. Huskey alleged that Petitioner caused her "emotional distress" in May 2010 and that Petitioner "grabbed the plaintiff by the neck, held her down and placed his hands in her vagina" in April 2009, which was 14 months prior to initiation of the Tribal Court proceeding. R. Exh. 4
18. An *Ex Parte* Domestic Violence Protective Order was issued by the Cherokee Tribal Court on June 15, 2010. P. Exh. 4 & R. Exh. 5

19. At certain times prior to the filing of the June 15, 2010 Domestic Protection Action, Petitioner and Chasity Huskey had maintained a sexual relationship, lived together, and had two children together, the children being Jacelyn and Gabrill.
20. Shortly prior to the June 15, 2010 filing of the abovementioned Motion, Chasity Huskey had commenced a relationship with a third party, Lyle Schrier, and initiated efforts to distance Jacelyn and Gabrill from Petitioner, who is their father. R. Exh. 7
21. A hearing was held before the Cherokee Tribal Court and a Domestic Violence Protective Order was entered on July 23, 2010, for a period of one year. This Order did not prohibit all contact between Petitioner and Chasity Huskey and, further, did not require Petitioner to surrender his firearm. P. Exh. 4 & R. Exh. 6
22. In the above-referenced Domestic Violence Protective Order, the Cherokee Tribal Court stated that there was “uncontradicted evidence” that Petitioner sexually assaulted the plaintiff in 2009. P. Exh. 4 & R. Exh. 6 The Court did not elaborate on, or otherwise identify, the evidence.

Investigation of Allegations by Cherokee Indian Police Department and United States Department of Interior, Bureau of Indian Affairs

23. Prior to initiation of the June 2010 Domestic Violence Protective Order proceeding, Chasity Huskey made statements to her uncle, Gene Owle, regarding the alleged sexual assault and he, in turn, relayed them to officials of the Cherokee Indian Police Department, where he worked. R. Exh. 7
24. Complainant, Chasity Huskey, however, refused to cooperate with Officers of the Cherokee Indian Police Department during the course of an investigation of the matter referred to in the preceding paragraph. During this investigation, Petitioner submitted a written response denying the allegations made to the Department. The response was received into evidence in the instant matter. P. Exh. 5 & R. Exh. 7
25. Subsequent to the June 2010, filing of the Domestic Violence Protective Order proceeding, Chief Ben Reed of the Cherokee Indian Police Department requested that the matter be investigated by the United States Department of Interior, Bureau of Indian Affairs, Office of Justice Services. R. Exh. 7
26. An investigation was conducted by the United States Department of Interior, Bureau of Indian Affairs, Office of Justice Services, and a comprehensive report was prepared by the Office. During the course of the investigation, a number of interviews were conducted, including that of Chasity Huskey. P. Exh. 9
27. The investigation by the United States Department of Interior, Bureau of Indian

Affairs, Office of Justice Services determined the charge of Sexual Assault was not sustained and that the charge of harassment was exonerated. P. Exhs. 7 & 9

Additional Findings of Fact Based Upon Evidence Submitted at Hearing

28. Testimonial evidence was presented to the Undersigned by Petitioner, Swain County Sheriff Curtis Cochran, Cherokee Indian Police Department Chief Ben Reed, Lt. Ray Swayney of the Cherokee Indian Police Department and Sgt. Neil Ferguson of the Cherokee Indian Police Department. Each person stated that Petitioner is a good law enforcement officer, a credible person and a person of good character.
29. The Office of District Attorney for the 30th Prosecutorial District, and Swain/Qualla SAFE, Inc., a domestic violence shelter for women, also praised the work done by Petitioner in domestic violence cases. P. Exhs. 10 & 11
30. The date of the alleged sexual assault, referenced herein, was prior to November 23, 2010, which was the date that Petitioner took his Oath of Office as a Deputy Sheriff of Swain County.
31. Several days after the alleged sexual assault in April 2009, Chasity Huskey moved back into the residence of Petitioner.
32. No charges of assault were filed against Petitioner as a result of the allegations of an April 2009 sexual assault made by Chasity Huskey, nor was a formal complaint submitted by Ms. Huskey.
33. A subpoena was issued and served upon Chasity Huskey to appear before the June 11, 2012 administrative hearing in this matter.
34. Notwithstanding the issuance and service of the subpoena referenced above, Chasity Huskey failed to appear and testify at the June 11, 2012 administrative hearing.
35. Petitioner voluntarily submitted the Domestic Violence Protective Order to Respondent and did not attempt to conceal it.
36. Petitioner testified in the instant proceeding, under oath, and denied the allegations made by Chasity Huskey, *to wit*: that he forcibly grabbed the plaintiff by the neck, held her down and placed his hands in her vagina, against her will. He admitted that he had sexual relations with Ms. Huskey on the date in question, but stated that it was consensual.
37. There was insufficient evidence presented to the Undersigned to establish that Petitioner assaulted Chasity Huskey in April 2009.

Having conducted the above-referenced hearing, received the evidence, heard the arguments of the parties, and made the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. This matter has been properly and timely brought before the Undersigned by Petitioner, and the Office of Administrative Hearings has jurisdiction of this matter in accordance with North Carolina General Statute Chapter 17E and Chapter 10B of Title 12 of the North Carolina Administrative Code.

2. Petitioner has met his burden of proof by a preponderance of the evidence that Respondent should not deny his certification as a justice officer in accordance with Rule .0204(d)(1), Chapter 10B of Title 12 of the North Carolina Administrative Code.

NOTICE

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 and to present written arguments to the agency that will make the final decision or order. N.C. Gen. Stat. § 150B-36(a). The agency is required by N.C. Gen. Stat. § 150B-36(b3) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 7th day of August, 2012.

Selina M. Brooks
Administrative Law Judge