

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 00394

<p>Argentina Rojas, Petitioner, v. North Carolina Department of Justice Campus Police Officer Commission, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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In accordance with North Carolina General Statute § 150B-23, Petitioner requested the designation of an Administrative Law Judge to preside at an Article 3, North Carolina General Statute § 150B, contested case hearing of this matter. Based upon the Petitioner’s request, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina on June 1, 2012. At the end of the hearing, the undersigned ruled for Petitioner, and requested Petitioner’s attorney file a proposed Decision within ten days. After Petitioner’s counsel failed to file a proposed Decision with the Office of Administrative Hearings, Respondent’s counsel filed a proposed Decision on November 1, 2012.

APPEARANCES

For Petitioner: Alan T. Briones, Jr.
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For Respondent: Catherine F. Jordan
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ISSUE

Was there substantial evidence in the record to show Petitioner committed felony breaking and entering of a motor vehicle and larceny to deny Petitioner’s application for commissioning with Saint Augustine’s College Campus Police?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 14-56
12 NCAC 02J .0209(a)(1)
12 NCAC 02J .0104(5)
12 NCAC 02J .0104(11)
12 NCAC 02J .0210(a)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: 1 - 10

FINDINGS OF FACT

Procedural Background

1. By letter dated and mailed on November 17, 2011, Respondent’s Administrator, Marvin Clark, notified Petitioner that he had found probable cause to deny Petitioner’s application for a Campus Police Officer Commission to work with Saint Augustine’s College Campus Police. Mr. Clark found probable cause to deny Petitioner’s application for committing the felony offense of breaking and entering, and larceny of a motor vehicle on December 26, 2009 in violation of N.C. Gen. Stat. § 14-56. Specifically, Respondent found Petitioner broke into Cameron Hunter’s assigned Wake County Sheriff’s car, and took uniform shirts, pants, duty belt containing weapon holster, and weapon magazine holders issued to Cameron Hunter. (Respondent’s Exhibit 10)

2. On January 17, 2012, Petitioner appealed Respondent’s decision by filing a contested case petition with the Office of Administrative Hearings, contesting Respondent’s finding that she has committed a felony. (Petition)

Basis of Respondent’s Final Agency Decision

3. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received Notice of Hearing.

4. Respondent has the authority granted under Chapter 74G of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 2J, to commission campus police officers and to revoke, suspend or deny such commission.

5. An “Officer Complete History” document showed that Petitioner’s date of appointment for employment with Saint Augustine’s Campus Police was February 18, 2011. (Respondent’s Exhibit 5) The “Officer Complete History” document also showed that Petitioner was employed with Shaw University from February 4, 2008 through February 19, 2010, and

employed with Durham Police Department from February 3, 2006 through March 14, 2007.

6. On January 7, 2010, Respondent received a Raleigh Police Department incident report wherein Raleigh Police responded to a dispatched call involving a domestic dispute between Petitioner and Cameron Hunter on December 26, 2009. (Respondent's Exhibit 7)

7. On February 18, 2010, Respondent received an application for Campus Police Officer Commission, a Form F-3 Personal History Statement, and a Form F-8 Mandated Background Investigation from Petitioner for commissioning with Saint Augustine's Campus Police. (Respondent's Exhibits 1, 3, 4)

8. On February 24, 2010, Respondent also received a Form F-5B Report of Separation from Shaw University Campus Police on behalf of Petitioner. (Respondent's Exhibit 6) The Report of Separation showed that Petitioner was dismissed from employment as a police officer with Shaw University on February 19, 2010. The Report of Separation also indicated that the agency would not consider the individual for reappointment, and that the agency would not recommend employment elsewhere as a criminal justice officer.

9. Acting Department Head for Shaw University Campus Police attached the following to his Report of Separation:

On September 9, 2009, [Petitioner] was placed on paid suspension from work pending an investigation from allegations of marijuana found at her residence reported by the Johnston County Sheriff's Office. The marijuana was seized evidence from a case that Shaw University Police investigated and was assigned to her [Petitioner's] custody.

On October 6, 2009, [Petitioner] was issued a Performance Warning, and placed on six month probationary status due to her frequent failure to punch in and out, unresponsiveness to calls/missing on duty, and failure to complete reports and/or submit reports on time.

On December 26, 2009, Raleigh Police Department responded 2616 Adcox Place in reference to a domestic dispute. It was found by Raleigh Police Department the domestic dispute was between Ms. Rojas and her boyfriend. No charges were filed; however, Ms. Rojas was trespassed from this address, per the owner's request (2616 Adcox Place is the residence of her boyfriend's parents).

During the probationary period, [Petitioner] failed to comply with required actions for continued employment and was dismissed on February 19, 2010.

(Respondent's Exhibit 6, p. 2)

10. On March 23, 2011, Respondent received the following letter from Petitioner

explaining why she was terminated from Shaw University Campus Police:

In February 2010, I was terminated from the Shaw University Police Department with No explanation except that I had failed to work on 3 days and those days were not excused. I had the leave request forms with my supervisors [sic] signature excusing me for the dates but they refused to accept them stating that Chief T Lee (my immediate supervisor) was out on medical leave and could not verify that the information was correct. They stated that their decision was final and paper work was already in place.

(Respondent's Exhibit 11)

11. On April 11, 2011, Respondent received a Report of Appointment Form F-5A submitted by Saint Augustine's Campus Police on Petitioner's behalf. (Respondent's Exhibit 2)

12. Respondent also received the following statement by Cameron Hunter about the December 28, 2009 incident involving Petitioner and his belongings:

On December 26, 2009 at approx. 21.15 hours, I arrived at my parent's residence located at 2616 Adcox Pl. Raleigh N.C. I noticed a black neck tie lying on the ground beside the drivers [sic] side passenger door where my county vehicle was parked. I exited my personal vehicle and retrieve the black neck tie off the ground. I looked into the county vehicle and noticed items were missing from my county vehicle. I went to the door of my parents residence where my father came to the door. I stated to my father that some items were taking from my county vehicle and for my father to call 911. I called my girlfriend Tina Rojas and asked if she had removed items from my county vehicle. Miss Rojas replied that she had removed those items and that those items are in a safe location at the home of Miss Rojas and myself. RPD arrived on the scene approx. 10 mins later. RPD followed Miss Rojas to her residence and at that time Miss Rojas retrieved those times gave the items to RPD. There were no charges filed and there were no incidents to report from RPD or Wake County. No further at this time. [sic]

(Respondent's Exhibit 9)

13. Based on Raleigh Police Department report about the December 26, 2009 matter, Respondent's administrator, Marvin Clark, determined that Petitioner broke into and took items from Mr. Hunter's vehicle, committed felony breaking and entering, and larceny. Based on that determination, Clark issued Respondent's Exhibit 10 to Petitioner, denying her application for commission as a Campus Police officer.

Adjudicated Facts at Contested Case Hearing

14. Raleigh Police Department Officer Robert Wagner ("Officer Wagner") has been employed for five years with the Raleigh Police Department, and serves as a patrol officer and a

community officer. At 22:31 pm on December 26, 2009, Officer Wagner responded to a dispatch call regarding a domestic issue at 2616 Adcox Place, Raleigh NC. He arrived at 2616 Adcox Place shortly thereafter, and saw Petitioner, Cameron Hunter, and Hunter's father, Donzell Hunter, standing in the front yard of the residence. Officer Wagner spoke with Cameron Hunter. Mr. Hunter told Wagner that Petitioner entered Hunter's patrol vehicle with a wireless remote, and took items including a vest and a duty belt from the car. Hunter advised that he wanted his belongings returned to him.

15. Hunter also advised Wagner that Petitioner is his girlfriend, that they have a nine-month-old baby together, and that she was upset because he was spending time with his separated wife. Hunter stated that she took items without his permission, and took his vest, duty belt, work shirts, and pants. Officer Wagner thought Petitioner was uncooperative, as she would not give him a statement. Wagner reported that Petitioner told Wagner, "Whatever he [C. Hunter] said is true. I'm not going to say anything. I ain't tell you nothing." (Respondent's Exhibit 7, p. 3) Hunter told Officer Wagner that Petitioner did not have permission to enter the vehicle for the purpose of obtaining these items.

16. Officer Wagner also spoke with Donzell Hunter, who stated that around 9:00 am, a dark colored car drove up and down the street, and parked behind Hunter's patrol vehicle.

17. Officer Wagner and another law enforcement officer followed Petitioner to her residence, and retrieved Hunter's items. Officer Wagner followed Petitioner inside the residence. Wagner described Petitioner as being extremely nervous as if she was trying to hide something. (Wagner testimony) Petitioner went upstairs to obtain items, and returned with a shirt, black pants, duty belt, and magazine holder. The other law enforcement officer asked if they could go upstairs to make sure they had all of Hunter's items, but Petitioner refused to allow them to go upstairs. Petitioner signed a receipt to return the property.

18. Officer Wagner returned the items to Cameron Hunter. After Cameron Hunter told Wagner that he was still missing the keyless remote for the vehicle, Officer Wagner returned to Petitioner's residence to obtain the keyless remote, and returned it to Hunter. Officer Wagner noted that Cameron Hunter was very clear that Petitioner was not allowed to take any property, that Hunter wanted his property back, and that he did not give her permission to take his property. However, during cross-examination, Officer Wagner also noted that Cameron Hunter did not say that Petitioner didn't have authority to go into his vehicle. (Wagner testimony)

19. Officer Wagner did not criminally charge Petitioner, because the Sheriff and Raleigh Police Department Watch Commander would make that decision. As of the date of this hearing, Petitioner has not been criminally charged with the commission of a felony.

20. On December 26, 2009, Officer Robert Wagner completed an incident report regarding the December 26, 2009 incident involving Petitioner and Cameron Hunter. In his report, Wagner wrote that he:

responded to a domestic issue where one of the female subject took the male

subject's work uniform from his vehicle. Most of the items were located and returned to the male subject. All subjects were negative on warrants. A receipt of returned property was completed and the female subject was trespassed from 2616 Adcox Pl. The receipt for returned property was placed into RPD evidence at the southeast district in Locker #9.

(Respondent's Exhibit 7)

21. Officer Wagner wrote that Cameron Hunter advised him that:

Argentina is my girlfriend. We have a 9-month-old baby together. Well she is upset because I spent some time with my other child I had with my wife. Me and my wife are currently legally separated. Well she is just acting childish and she went into my patrol car and took my bullet proof vest, duty belt, work shirts and pants. I just want her to know that she cant [sic] be taking my stuff.

(Respondent's Exhibit 7, p. 3) Wagner also noted on the report that Cameron Hunter is a Wake County Deputy Sheriff, and Petitioner is a Shaw University Police Officer. (Respondent's Exhibit 7, p. 3)

22. Officer Wagner wrote the following narrative in the incident report:

Mr. Hunter told me that Mrs. Rojas-Williams went into his Wake County Deputy Sheriff patrol car with a wireless key remote. Mrs. Rojas-Williams took Mr. Hunters uniform, bullet proof vest, and duty weapon from the car. Mr. Hunter told me that all he wants police to do it tell Mrs. Rojas-Williams that she can not take his work property.

(Respondent's Exhibit 7, p. 3)

23. Cameron Hunter has been employed with the Wake County Sheriff's Office for fifteen years. He met Petitioner in 2007, and began a romantic relationship in October 2007. They are currently in a dating relationship, and have a three-year-old daughter together. From 2002 through 2008, Hunter resided at 5009 Casland Drive, Raleigh with his ex-wife. 5009 Casland Drive is still listed at his address on his driver's license. In 2008, Hunter moved to 2141 Ventana Lane in Raleigh, with Petitioner. He and Petitioner currently reside at that address. In 2009, Hunter resided at his parents' address at Adcox Place for four to five months while he and Petitioner were broken up.

24. On December 26, 2009, Hunter and Petitioner were at their home on Ventana Lane. Hunter told Petitioner that he had to go to his ex-wife's residence to drop off some items for his 10 year old child. Hunter and Petitioner argued about that, Hunter left home, and drove his patrol vehicle to his parents' residence approximately 10 minutes away. There were gifts in the back seat of his patrol vehicle. Hunter drove his parents' vehicle to his ex-wife's home, and left his patrol vehicle at their residence. When he returned to his parents' residence around 10:15 pm,

he noticed a neck tie on the ground. He noticed that his uniform shirt, pants, bulletproof vest, and the gifts that had been in his patrol car, were now missing. The uniform shirt and pants were old and worn. He was planning to turn them into the property [department] at work. He knew that he had locked the car. He went inside his parents' residence, and asked his father to call the police. Hunter's father called the police.

25. Hunter thought that the items were taken, but he did not see any evidence of forced entry. He "figured out" that Petitioner had taken the items since there were no signs of forced entry, and because Petitioner, and Hunter's parents, were the only ones who could obtain entry into the vehicle. Petitioner had a key to Hunter's car, and had permission to enter his vehicle to get her gun. Hunter and Petitioner kept their service weapons locked in the trunk of his deputy vehicle, because they had kids.

26. Hunter called Petitioner, and Petitioner said that she had taken the items. Petitioner agreed to return the items to him by bringing them to the Adcox Place residence, but she did not bring them back. Hunter did not call the police to let them know that the items had been found. Hunter did not give Petitioner permission to take the items. Hunter opined that his items were entangled with the gifts in the back seat, and that they were on the bag with gifts. He was disappointed that this matter "had gotten so petty, and blown well out of proportion." (Hunter testimony) Hunter did not think Petitioner intended to deprive him of his duty items, especially since she was in law enforcement. The next day, Hunter and Petitioner talked and spent the day together with their daughter.

27. Petitioner currently resides at 2141 Ventana Lane address with her six children and Hunter. On December 26, 2009, Petitioner was upset that it was her daughter's birthday, and that Hunter was going to leave to spend time with his other child. After a few hours, Petitioner tried to get in touch with Hunter, because he had their daughter's birthday gifts with him in his patrol vehicle. After Petitioner was unable to get in touch with Hunter, she drove over to Hunter's parents' residence between 2:00 pm and 4:00 pm. She saw his patrol vehicle parked at his parents' residence. She used a remote key to enter the vehicle, grabbed a hefty black bag with gifts inside, and left his parents' residence. She returned to her residence, celebrated her daughter's birthday, and went to work at Shaw University around 8:00 pm or 9:00 pm.

28. That night, Petitioner received a call from Hunter that he had just called the police, because someone had broken into his patrol vehicle, and he was hoping that it was she. Petitioner told Hunter that it was she, and that she had taken the gifts. Petitioner noticed that she had Hunter's old uniforms in the black bag when she opened the bag. She took the items upstairs, and hung them up.

29. Petitioner was upset that Hunter called the police, especially since she had a key to his vehicle. She had possessed a key and remote to Hunter's vehicle, with Hunter's permission, since 2008. She did not retrieve Hunter's uniform, because she was at work. Hunter did not ask for the items to be brought back to him when he was at his parents' residence. Petitioner drove to Hunter's parents' residence. She told a female officer that Hunter's uniform was at home. She went to her residence with the police, and asked them to come in. Her girls were sleeping. The

police did not ask to go upstairs at her residence. She went to her closet, grabbed the shirt, pants, and a worn out belt, and gave the items to the police. When the police returned to her home later, she gave them the key and remote to Hunter's vehicle. She explained Hunter's uniform was in the bag with the gifts when she picked up the bag. Petitioner did not remember making the statement that "she ain't telling them nothing," and "whatever you say is true." She did not want to talk to the police, and wished Hunter had called her before he called the police.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. 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.

2. Respondent has the authority granted under Chapter 74G of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 2J, to commission campus police officers and to revoke, suspend or deny such commission.

3. NCAC 02J. 0209(a)(1) states that:

[A] campus police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of . . . any felony (unless pardoned by the President of the United States or a state Governor)[.]

4. 12 NCAC 02J .0104(5) provides:

'Commission' as it pertains to criminal offenses, means a finding by an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

5. 12 NCAC 02J .0104(11) states, "'Felony' means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred."

6. N.C. Gen. Stat. § 14-56 (2011) provides:

If any person, with intent to commit any felony or larceny therein, breaks or enters any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or, after having committed any felony or larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value, that person is guilty of a Class I felony. It is prima facie evidence that a person entered in violation of this section if he is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft.

7. 12 NCAC 02J .0210(a) states: “When the Attorney General, or his designee, suspends or denies the commission of a campus police officer, the period of sanction shall not be less than three years.”

8. The gravamen of the offense [in N.C. Gen. Stat. § 14-56] is the breaking and entering with intent to commit larceny. *State v. Harrington*, 15 N.C. App. 602, 190 S.E.2d 280 (1972) It is only necessary to establish the intent to commit larceny in order to establish a felonious breaking and entering of the motor vehicle under N.C. Gen. Stat. § 14-56. *State v. Kirkpatrick*, 34 N.C. App. 452, 238 S.E. 2d 615 (1977)

9. Petitioner has the burden of proving by a preponderance of the evidence that Respondent improperly denied her campus police officer commission.

10. In this case, Petitioner proved by a preponderance of the evidence that she did not commit the offense of breaking and entering and larceny of Cameron Hunter’s vehicle on December 26, 2009 in violation of N.C. Gen. Stat. § 14-56. Petitioner had permission to access Hunter’s vehicle as Hunter had given Petitioner a key and remote to his vehicle since 2008. On December 26, 2009, Petitioner used her key and remote to enter Hunter’s vehicle to retrieve their daughter’s birthday gifts. Petitioner accidentally took Hunter’s old uniform items when she retrieved her daughter’s gifts. She established that she did not break and enter Hunter’s car with the intent to commit larceny.

11. Based on a preponderance of evidence, Respondent’s denial of Petitioner’s campus police officer commission was not supported by substantial evidence in the record.

12. Based on the foregoing, Respondent erred when it denied Petitioner’s application for a Campus Police Officer Commission to work with Saint Augustine’s College Campus Police.

DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby **REVERSES** Respondent’s denial of Petitioner’s campus police officer application, and orders Respondent to issue a Campus Police Commission to Petitioner.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission will make the Final Decision in this case. That agency is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C. Gen. Stat. §150B-40(e)

This the 2nd day of November 2012.

Melissa Owens Lassiter
Administrative Law Judge