

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 00654

ALVIN LOUIS DANIELS)
Petitioner,)
)
)
 v.)
)
NORTH CAROLINA CRIMINAL JUSTICE)
EDUCATION AND TRAINING STANDARDS)
COMMISSION)
Respondent.)

PROPOSAL FOR DECISION

In accordance with North Carolina General Statute § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute § 150B, contested case hearing of this matter. Based upon the Respondent's request, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Charlotte, North Carolina on June 6, 2012.

APPEARANCES

Petitioner: Kirk J. Angel, Attorney at Law
The Angel Law Firm, PLLC
P.O. Box 692
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Harrisburg, North Carolina 28075

Respondent: Lauren D. Tally, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether Respondent's finding of probable cause for suspension of Petitioner's correctional officer certification is supported by the evidence?

RULES AT ISSUE

12 NCAC 09G.504(b)
12 NCAC 09G .0102(9)(bbb)
12 NCAC 09G .0505(b)

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 6

For Respondent: 1, 2, 3, 4, 5

WITNESSES

For Petitioner: Alvin Louis Daniels, Catherine Frazier

For Respondent: Edward Zapolsky, George M. Hills III, Timothy Britt

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge finds as follows:

Background Facts

1. On January 10, 2000, Respondent awarded a probationary correctional officer certification to Petitioner. On January 10, 2001, Respondent awarded a general correctional officer certification to Petitioner. (Respondent's Exhibit 1)

2. By letter dated January 9, 2007, Respondent's Criminal Justice Standards Division received notification from the North Carolina Department of Corrections that the Petitioner had been charged with the misdemeanor offense of "Contributing to the Delinquency of a Juvenile."

a. Attached to the memorandum were copies of Petitioner's Conditions of Release and Release Order, the Arrest Warrant on the subject charge, Petitioner's witness statement addressing the allegation against him, an Officer/Detective/Investigator Information Worksheet, and a Notification form for Criminal Offense completed by Petitioner's employer, NC Department of Correction.

b. On the Notification form for Criminal Offense, Petitioner's employer commented, "Employee allowed underage driver to use vehicle and was charged with above offense. Released on written promise to appear." (Respondent's Exhibit No. 2) Petitioner's employer recommended that Petitioner's certification be continued.

3. By letter dated December 1, 2011, Respondent notified Petitioner that Respondent's Probable Cause Committee found probable cause exists to suspend Petitioner's correctional officer certification for the misdemeanor of "Contributing Delinquency of a Juvenile" in violation of N.C. Gen. Stat. 14-316.1. Respondent

proposed suspension of Petitioner's correctional officer certification for not less than three years pursuant to 12 NCAC 9G .0504(b)(3).(Respondent's Exhibit 5)

4. On January 25, 2012, after receiving Petitioner's request for such a hearing, Respondent filed a request for a designation of an Administrative Law Judge to preside at a contested case hearing in the Office of Administrative Hearings.

Adjudicated Facts

5. Sergeant George M. Hall III, hereinafter "Sgt. Hall," has been a member of the Cumberland County Sheriff's Office since 2004. In 2006, Hall was serving as a Corporal when he first met Petitioner.

6. On August 21, 2006, Sgt. Hall responded to Petitioner's residence after Petitioner placed a call regarding the unauthorized use of his motor vehicle. When Sgt. Hall arrived at Petitioner's residence, Petitioner advised Hall that he had given the keys to his red 2003 Chevrolet Trailblazer to the fourteen-year-old daughter of his ex-girlfriend around 3 o'clock p.m. on August 17, 2006.

a. Petitioner identified Catherine Juanita Frazier by name and age as the only individual to whom he presented the keys to his vehicle on August 17, 2006. Petitioner told Sgt. Hall that he had only intended for Frazier to use the vehicle to travel to the store and back.

b. Petitioner identified "the store" as one located at the end of Tippitt Trail in Fayetteville, North Carolina. Petitioner explained to Sgt. Hall that he expected Frazier to return to his residence and spend the night there after visiting the store.

c. Petitioner relayed to Sgt. Hall that despite his expectations, Frazier did not return with the vehicle that evening.

7. Throughout Hall's interview with Petitioner, Petitioner made no reference to any other individuals involved in the situation. (Respondent's Exhibit 4) Petitioner had waited four days before calling local law enforcement about his missing vehicle.

8. Because Petitioner claimed he transferred his keys to a fourteen-year-old female, Catherine Frazier, and no other suspect, Sgt. Hall contacted the Cumberland County Sheriff's Office Youth Services Division. Had Petitioner even mentioned an unknown individual while recounting the incident, Sgt. Hall would have proceeded differently with the investigation. (Respondent's Exhibit 4; Hall testimony)

9. Sergeant Timothy Britt, hereinafter "Sgt. Britt," has been a member of the Cumberland County Sheriff's Office since 1994. In 2006, Britt served as a Detective with the Cumberland County Sheriff's Office Special Victims Unit when he first met Petitioner. Youth Services referred this case to him after they determined that the minor

involved, Catherine Frazier, was a victim, not an offender, as Petitioner's actions caused Frazier to be placed in a situation where she could be adjudicated delinquent. When Youth Services referred this case to Britt, Britt viewed the incident as one in which Petitioner placed Catherine Frazier in a dangerous position. Sgt. Britt assessed the situation as stemming from Petitioner, because Petitioner himself told Sgt. Hall that he handed Frazier the keys to his vehicle on August 17, 2006. (Respondent's Exhibit 4)

10. On September 3, 2006, Petitioner contacted the Cumberland County Sheriff's Office, and informed authorities that his vehicle had been returned to him. (Respondent's Exhibit 4; Hall and Britt testimony)

11. On October 17, 2006, Sgt. Britt appeared before the Cumberland County Magistrate to secure a warrant for Petitioner's arrest for "Contributing to the Delinquency of a Juvenile." Since Sgt. Britt was aware that Petitioner worked for the Department of Corrections, Britt extended a courtesy to Petitioner by attempting to contact Petitioner on multiple occasions before serving Petitioner with the arrest warrant. From November 1, 2006 through December 4, 2006, Sgt. Britt attempted to contact Petitioner on four separate occasions by phone. On November 26, 2009, Sgt. Britt drove to Petitioner's residence, and left a business card with his information, and a note requesting Petitioner respond to Britt. Petitioner failed to respond to Sgt. Britt's attempts at contact.

12. Upon Sgt. Britt's request, Senior Sergeant Bryant of the Cumberland County Sheriff's Office located Petitioner. On December 22, 2006, Sgt. Bryant served Petitioner with the arrest warrant for the misdemeanor charge of "Contributing to the Delinquency of Juvenile" in violation of N.C.G.S. §14-316.1. (Respondent's Exhibits 2 & 4) This incident involved Petitioner unlawfully, willfully, and knowingly, causing, encouraging, and aiding Catherine Juanita Frazier, a juvenile age fourteen, to commit the act of operation of a motor vehicle on a public roadway without a driver's license, for which Frazier could be adjudicated delinquent. (Respondent's Exhibit 2)

13. On January 24, 2007, Petitioner's case came before Cumberland County District Court. On July 12, 2007, Petitioner entered into an agreement to defer prosecution on the charge of "Contributing to the Delinquency of Juvenile." (Respondent's Exhibit 3)

14. Edward Zapolsky, hereinafter "Zapolsky," has been employed as an investigator with Respondent's Criminal Justice Standards Division for twelve years. Zapolsky served as the lead investigator regarding the allegations against Petitioner. Zapolsky obtained certified copies of the court paperwork related to the Petitioner's criminal charges from the Cumberland County Clerk of District Court in file number 06CR 065705. (Respondent's Exhibit 2) Zapolsky did not contact Catherine Frazier to question her regarding the events surrounding the subject charge.

15. On November 17, 2011, Zapolsky presented Petitioner's case to Respondent's Probable Cause Committee . Petitioner also attended the hearing. The

Probable Cause Committee reviewed all of the documentation, and found probable cause to believe that the Petitioner had committed the misdemeanor offense of "Contributing to the Delinquency of a Juvenile" in violation of N.C.G.S. §14-316.1. By certified letter dated and mailed December 1, 2011, Respondent notified Petitioner of the Probable Cause Committee's findings. (Respondent's Exhibit 5)

16. At the contested case hearing, Petitioner acknowledged that on July 12, 2007, he knowingly agreed to, and signed, an agreement and order to defer prosecution. By authorizing the deferred prosecution arrangement, Petitioner approved his own "admission of responsibility...in the State's prosecution against [him] for this offense...without objection." By agreeing to this arrangement and signing the document, Petitioner overtly admitted that he was responsible for "Contributing to the Delinquency of the Juvenile" Catherine Frazier. (Respondent's Exhibit 3)

17. Petitioner admitted that in exchange for admitting his own guilt, he was able to defer prosecution for the offense of "Contributing to the Delinquency of a Juvenile" until January 10, 2008. The agreement to defer Petitioner's prosecution further stipulated that should Petitioner complete certain conditions before January 10, 2008, the case against him would be dismissed entirely. The prerequisite conditions assigned to Petitioner included a no contact order with Catherine Frazier, completion of six months of supervised probation, and twenty-four hours of community service. Petitioner successfully completed the terms of his deferred prosecution, and the charges against him were dismissed on January 2, 2008. (Respondent's Exhibits 3 & 5)

18. At the contested case hearing, Petitioner presented a series of events that neither Sgt. Hall nor Sgt. Britt corroborated in their own testimony. Petitioner explained that on the afternoon of August 17, 2006, Catherine Frazier and her boyfriend (a young male whose name Petitioner could not recall) came to his residence on Tippitt Trail in Fayetteville, North Carolina. While at his residence, Frazier and her boyfriend asked to borrow Petitioner's vehicle. Petitioner recalled that Frazier and her boyfriend acquired his keys to go to the nearby store. Petitioner further claimed that, because he knew Frazier was underage, he asked to see the boyfriend's driver's license. Petitioner maintained that after determining that the boyfriend was of age, and licensed by the state of North Carolina to drive a motor vehicle, he transferred the keys of his 2003 Chevrolet Trailblazer to Frazier's boyfriend.

19. Although Petitioner expected Frazier and her boyfriend to return to his residence with the vehicle soon after leaving, neither Frazier nor her boyfriend returned to Petitioner's residence that night or even the following day. Petitioner did not see Frazier or his vehicle for the better part of a week after transferring his keys. Petitioner contacted the Cumberland County Sheriff's Office on August 21, 2006, because he was concerned about the location of his vehicle. When prompted, Petitioner affirmed that his concern for the vehicle, rather than for Frazier, drove him to contact authorities.

20. When Sgt. Hall of the Cumberland County Sheriff's Office arrived at Petitioner's residence, Petitioner filed a police report. In this report, Petitioner conveyed

that he “gave his keys” to Catherine Frazier so she could go to the store at the end of the road he lived on, Tippitt Trail Fayetteville, North Carolina. Petitioner did not mention Frazier’s boyfriend or any other individuals in the police report he submitted to the Cumberland County Sheriff’s Office. (Respondent’s Exhibit 4)

21. During the hearing, Petitioner explained that he gave his car keys to Frazier’s eighteen-year-old boyfriend on August 17, 2006. Petitioner claimed that he informed Sgt. Hall that he gave the keys to Catherine Frazier, because he did not know the name of Frazier’s boyfriend, and he knew that Frazier would be with the car regardless of the unknown identity of the driver.

22. At the contested case hearing, Catherine Frazier admitted that on August 17, 2006, she and her boyfriend, Garrett Todd, wanted to attend a summer concert. Frazier explained that her boyfriend asked to borrow Petitioner’s vehicle, because her boyfriend’s vehicle was unreliable. Frazier recollected that Petitioner allowed her boyfriend to borrow the vehicle only after assessing that he was of age and possessed a North Carolina driver’s license. Unlike Petitioner’s recollection, Frazier claimed that Petitioner was fully aware that she and her boyfriend were using the vehicle to go to the summer concert. In fact, Frazier claimed that Petitioner loaned his vehicle to her boyfriend partially, because Petitioner did not want to transport Frazier to the concert. After the two acquired Petitioner’s vehicle, Frazier claimed she and her boyfriend attended the concert.

23. When asked what happened on the evening of August 17, 2006, Frazier did not provide the court with clear responses. First, Frazier indicated that she was present during the conversation in which Petitioner loaned his vehicle to Frazier’s boyfriend on August 17, 2006. Later, Frazier contradicted this testimony when she informed the Court that she was not present when her boyfriend and Petitioner agreed on when the car should be returned. When prompted to describe the timing of the events in question, Frazier was unable to present an accurate and coherent time line. When asked when the car was returned to Petitioner, Frazier responded “a couple of days.” Other facts showed that Petitioner’s vehicle was returned approximately two weeks later. Frazier’s responses appeared dependent upon the information included in Respondent’s questions.

24. The eighteen-year-old boyfriend referenced by both Petitioner and Catherine Frazier did not testify at the hearing.

25. Petitioner and Frazier present conflicting testimony regarding the conveyance of Petitioner’s vehicle. Petitioner claimed that Frazier and her boyfriend borrowed the vehicle to drive to the store; whereas, Frazier asserted that Petitioner lent the vehicle to her boyfriend so that Petitioner would not have to take her to a concert. The more plausible account of the facts surrounding this case is the one Petitioner first reported to police. Viewed holistically, the testimony of Petitioner, Catherine Frazier, Sgt. Hall, and Sgt. Britt, suggest that Petitioner most likely transferred

the keys to his motor vehicle to Catherine Frazier, so that she could travel to the nearby store and back.

26. Petitioner was uncooperative throughout this investigation by failing to respond to Sgt. Britt's numerous attempts to contact and talk with Petitioner. First, Sgt. Britt secured a warrant for Petitioner's arrest on October 17, 2006, and attempted to contact Petitioner at his residence and place of employment. Sgt. Britt repeatedly contacted Petitioner, but received no response from Petitioner. Even after Sgt. Britt left his business card and a note at Petitioner's residence, on November 29, 2006, asking Petitioner contact him, Britt received no response from Petitioner. After Petitioner repeatedly failed to cooperate by failing to contact Britt, Sgt. Britt requested the assistance of Senior Sergeant Bryant. The processing of Petitioner's arrest spanned approximately two months.

27. Catherine Frazier's account of the events in question is biased. At the hearing, Frazier admitted to often living with Petitioner. Frazier's testimony revealed that she visited Petitioner weekly, often spent the night at Petitioner's residence, and regularly resided with Petitioner for extended periods of time. Frazier explained that her mother, Patricia Frazier, has been largely absent, because her mom was battling drug addiction. Frazier resided with both her aunt and Petitioner during the time in question, and remained close to Petitioner's daughter. Frazier's testimony at the hearing reflects that she views Petitioner as a means of support, as well as a father figure. When balanced against the disinterested accounts of this case presented by Sergeants Hall and Britt, Frazier's account lacks credibility because of bias.

28. Petitioner's account of his interaction with Frazier's boyfriend on August 17, 2006 contradicts Frazier's testimony. Frazier indicated that it was not uncommon for her to live with Petitioner for weeks at a time. She saw her boyfriend approximately five days a week, and that he frequently visited her at Petitioner's residence. At hearing, Frazier claimed that her boyfriend frequently picked her up, and dropped her off from Petitioner's residence when his vehicle was reliable. If Frazier's testimony that Petitioner delivered his car keys to her boyfriend on August 17, 2006 is taken to be true, Frazier's other statements must be similarly accredited. Frazier's testimony that her boyfriend visited Petitioner's residence frequently, and often picked her up there with his vehicle are wholly inconsistent with Petitioner not knowing the boyfriend's name, and requesting to see his driver's license on August 17, 2006.

29. The existence and involvement of Frazier's "eighteen year old boyfriend" is uncorroborated. The young man referenced by both Petitioner and Frazier neither appeared in court nor offered a written statement for the Court's consideration.

30. Petitioner's claim that he transferred the keys of his vehicle to a young man, rather than Catherine Frazier, and that he checked the driver's license of this unknown male subject, lacks credibility when weighed against accounts of the circumstances by Sgt. Hall and Sgt. Britt, disinterested third parties. The testimony Sgt. George M. Hall III, an eight year veteran of the Cumberland County Sheriff's Office, as

well as Sergeant Timothy Britt, an eighteen year veteran of the Cumberland County Sheriff's Office, reflect that Petitioner spoke only of giving his car keys to Catherine Frazier. Sgt. Hall conceded that had Petitioner mentioned the unknown male when he made his police report to Hall, the investigation and prosecution would have proceeded in an entirely different fashion. The case at hand was referred to both the Youth Services division, and the Special Victims Unit of the Cumberland County Sheriff's Office, solely because Petitioner reported that Catherine Frazier was individual to whom he transferred his keys.

CONCLUSIONS OF LAW

BASED UPON the foregoing Findings of Fact and the preponderance of the evidence in the whole record, the undersigned concludes:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received notice of hearing. 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 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. Pursuant to 12 NCAC 09G .0504(b), Respondent Commission shall suspend the certification of a correctional officer when the Commission finds that the officer has committed or been convicted of a misdemeanor offense as defined by 12 NCAC 09G.0102.

4. Pursuant to 12 NCAC 09G.0102(9)(bbb), "Contributing to the Delinquency of a Juvenile" in violation of N.C.G.S. § 14-316.1 is a misdemeanor offense.

5. Pursuant to 12 NCAC 09G.0505(b), when Respondent suspends the certification of a correction officer pursuant to 12 NCAC 09G.0504(b) of this Section, the period of sanction shall be not less than three years where the cause of sanction is: (3) the commission or conviction of a misdemeanor offense.

6. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 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)

7. Respondent has the burden of proof in the case at bar. Respondent has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's correctional officer certification is supported by substantial evidence.

8. Respondent may properly suspend the Petitioner's certification pursuant to 12 NCAC 09G .0504(b) for the commission of a misdemeanor offense which occurs after certification.

9. "Contributing to the Delinquency of a Juvenile," in violation of N.C.G.S. § 14-316.1 is a Class 1 misdemeanor. A person is guilty of "Contributing to the Delinquency of a Juvenile" if that person:

- (1) Being or at least sixteen years of age
- (2) Knowingly or willfully
- (3) Causes, encourages, or aids
- (3) A juvenile under the age of eighteen within the court's jurisdiction
- (4) To be in a place or condition or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected

10. A preponderance of the evidence showed that Petitioner committed the misdemeanor criminal offense of "Contributing to the Delinquency of a Juvenile" when he willfully and knowingly provided the keys of his vehicle to the fourteen- year- old Catherine Frazier. Petitioner knew that the minor would subsequently operate his motor vehicle on a public roadway without a driver's license, an act that could result in the minor being adjudicated delinquent.

11. The findings of Respondent's Probable Cause Committee are supported by substantial evidence, and are not arbitrary and capricious.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent suspend the Petitioner's correctional officer certification for a period of not less than three (3) years based upon Petitioner's commission of a misdemeanor offense, after certification to wit; "Contributing to the Delinquency of a Juvenile" in violation of N.C.G.S. § 14-316.1.

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 17th day of August 2012.

Melissa Owens Lassiter
Administrative Law Judge