

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 03843**

PROPOSAL FOR DECISION

APPEARANCES

Respondent: Catherine F. Jordan, Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

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 makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

RULES AT ISSUE

12 NCAC 09G .0504(a)
12 NCAC 09G .0505(a)(1)
N.C.G.S. § 14-71.1 (2011)

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received Notice of Hearing, and Petitioner received the notification of Proposed Revocation of Correctional Officer Certification through a letter mailed by Respondent on March 14, 2012. (Respondent's Exhibit 16)
2. The North Carolina Criminal Justice Education and Training Standards Commission 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. 12 NCAC 09G .0504(a) states: "The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense."
4. N.C.G.S. § 14-71.1 (2011) sets forth the felony offense of possession of stolen goods, and states: "If any person shall possess any chattel, property, money, valuable security or other thing whatsoever, the stealing or taking whereof amounts to larceny or a felony, either at common law or by virtue of any statute made or hereafter to be made, such person knowing or having reasonable grounds to believe the same to have been feloniously stolen or taken, he shall be guilty of a Class H felony, and may be indicted and convicted, whether the felon stealing and taking such chattels, property, money, valuable security or other thing shall or shall not have been previously convicted, or shall

or shall not be amenable to justice; and any such possessor may be dealt with, indicted, tried and punished in any county in which he shall have, or shall have had, any such property in his possession or in any county in which the thief may be tried, in the same manner as such possessor may be dealt with, indicted, tried and punished in the county where he actually possessed such chattel, money, security, or other thing; and such possessor shall be punished as one convicted of larceny.”

5. 12 NCAC 09G .0505(a)(1) states: “When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is . . . commission or conviction of a felony offense.”

RESPONDENT’S EVIDENCE

6. On or about May 17, 2004, Respondent received a Report of Appointment Form F-5A for Petitioner for his application for certification as a correctional officer. (Respondent’s Exhibit 1)
7. On May 20, 2004, Petitioner received his probationary certification as a correctional officer with Respondent. (Respondent’s Exhibit 2)
8. On May 17, 2005, Petitioner received his general certification as a correctional officer with Respondent. (Respondent’s Exhibit 3)
9. Respondent’s Officer’s Complete History form showed that Petitioner is employed with the North Carolina Department of Corrections, and that his date of appointment was May 17, 2004. (Respondent’s Exhibit 4)
10. On September 19, 2008, Columbus County Sheriff’s Office Deputy Aaron Herring (“Deputy Herring”) responded to a call after a breaking and entering occurred at 455 Greens Mill Road in Clarkton, North Carolina, the residence of Miles Dewey Little (“Little”). (Respondent’s Exhibit 5) On September 19, 2008, Deputy Herring completed an incident/investigation report. (Respondent’s Exhibit 5) The report listed stolen property including a Browning .270 Auto with Scope Rifle with serial number 137PT06545 valued at \$1500.00 and a Browning .270 Bolt Action with Scope with serial number 12587NT8C7 valued at \$800.00. The incident report listed a total of eight stolen firearms and listed damage to Little’s dwelling’s rear door valued at \$600.00.
11. On September 19, 2008, Deputy Herring wrote in his investigation report that “On 9-19-08 I Deputy Aaron Herring responded to 455 Greens Mill Road and spoke to Miles Dewey Little he told me that while he was gone from his residence for about for [sic] hours someone entered his home without permission by breaking the window out of the door at the rear of the home and unlocked the door. Suspects entered the home and took items listed. Mr. Little stated that he does not have any serial numbers to the firearms and does not know who could have done this. No physical evidence found at the scene.”

(Respondent's Exhibit 5) The incident report also stated that "[t]he victim reported that above property as being stolen in this incident also. The fire proof box was in the victim's bedroom closet. The victim also provides serial numbers for the two 270 caliber rifles. 1st rifle Browning Semi Auto 270 caliber serial number 137PT06545. 2nd rifle Browning bolt action 270 caliber serial number 12587NT8C7."

12. On September 27, 2008, Columbus County Sheriff's Office Deputy Robbie Sellers ("Deputy Sellers") obtained a magistrate's order on Petitioner for felony Possession of a Stolen Firearm under N.C.G.S. § 14-17.1 (Respondent's Exhibit 7) The magistrate's order stated that Petitioner "has been arrested without a warrant and the [Petitioner]'s detention is justified because there is probable cause to believe that on or about the date of the offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did possess SEMI AUTO 270 RIFLE W/SCOPE (BROWNING BAR RIFLE SERIAL #137PT06545), the personal property of MILES DEWY LITTLE, which property was stolen property, knowing and having reasonable grounds to believe the property to have been feloniously stolen, taken, and carried away in that it was a SEMI AUTO 270 RIFLE W/ SCOPE (BROWNING BAR RIFLE SERIAL #137PT06545), a firearm." On September 27, 2008, Deputy Sellers also completed an arrest report for Petitioner for the felony charge of possession of a stolen firearm. (Respondent's Exhibit 6)
13. On September 30, 2008, Petitioner provided an Employee Witness Statement concerning his felony charge which stated: "Approximately one week ago I obtained a Browning .270 weapon from a man. I was told I could keep it until payday and purchase it then. At 1:30pm Sat. 9-27-08 I was approached by deputy R. Sellers of the Columbus County Sheriff's Department. Deputy Sellers ask [sic] me about the gun which was unfortunantely [sic] in my possession [sic]. I immediatly [sic] relinquished the weapon to Deputy Sellers. At this time Deputy Sellers informed me that I was in possession of a stolen fire-arm and placed me under arrest at approximately 1:45 pm. I was placed under a \$3,000.00 cash bond, and I was detained for about 3 hours. I got home at approximately 4:00 pm and contacted Captain D. Benton and made him aware of the situation. He instructed me to call the unit" (Respondent's Exhibit 8)
14. On October 1, 2008, Deputy Robbie Sellers wrote in the investigation report that he:

"[R]eceived information from Andy Edwards and VI Miles Little reference a stolen rife [sic] according to Mr. Edwards he was in Tractor Supply of Whiteville on Monday or Tuesday of this week when a [sic] employee Matthew Hayes approached Mr. Edwards and asked if he hunted when Mr. Edwards replied yes Mr. Hayes stated he had two rifle scopes he wanted to sell. Mr. Edwards and Mr. Hayes went to Mr. Hayes's vehicle and was shown the scopes one was mounted on a Browning bar rifle and told Mr. Edwards he wanted \$75.00 a piece for the scopes. Mr. Edwards stated that Mr. Hayes told him if he could sell the scopes he (Mr. Hayes) was going to buy the Browning rifle for \$100.00. Mr. Edwards told Mr. Hayes that those were \$300.00 scopes. Mr. Edwards left and Mr. Hayes was going to call him. When Mr. Edwards returned home he went next door to

Mr. Little's residence and told him about that incident that occurred at Tractor Supply. When he described the scopes and rifle Mr. Little thought that was his rifle. I/O contacted the manager Dixie at Tractor Supply and she verified his (Mr. Hayes) employment. And gave his location I/O went to 4000 block of Rough And Ready Road and spoke to Mr. Hayes (4965 Rough And Ready Road). I/O informed Mr. Hayes of a investigation and asked if he had a rifle in his possession. Mr. Hayes replied yes and returned a Browning bar 270 cal rifle without a scope. I/O ran serial #137PT06545 through 911 central and received hit confirmation. I/O questioned Mr. Hayes of his involvement and he stated '**I rather not say**' however Mr. Hayes stated he could get the scope back but would not give [sic] any information. Mr. Hayes was arrested and charged. The rifle was placed into evidence and V1 was notified. Same was also cleared from NCIC NC # G021862093 locker number 14 along with completed property evidence sheet." (Respondent's Exhibit 5)

15. On November 25, 2008, Respondent received notification from Nora Hunt, Superintendent with the Columbus Correctional Institution that Petitioner had been arrested and charged with Possession of Stolen Firearm on September 27, 2008, by the Columbus County Sheriff's Office. (Respondent's Exhibit 9) The notification stated that Petitioner admitted that "he had obtained a Browning .270 from someone and was told the [sic] he could keep it until payday and purchase the weapon then. He states that Deputy Sellers asked him about a gun in his possession and he immediately relinquished the weapon to him. He states that at that point, Deputy Sellers informed him that the gun was stolen and arrested him. He states that at no time was he aware that the weapon was stolen." (Respondent's Exhibit 9)
16. On February 21, 2011, Petitioner's criminal charge of felony Possession of a Stolen Firearm was dismissed by the prosecutor. (Respondent's Exhibit 12)
17. On April 7, 2011, Petitioner provided a statement to Respondent. He stated that "[i]n mid September 2008 I obtained a Browning BAR .270 deer rifle from Buster (Otis) Todd. I was told I could keep it til payday and purchase it then. At 1:30pm Sat. 9-27-08 I was approached by deputy R. Sellers of the Columbus County Sheriff's Dept. Deputy Sellers quistioned [sic] me about the gun in my possession, and I immediately relinquished it to him. He informed me that I was in possesion [sic] of a stolen firearm and arrested me. I was placed under a 3,000.00 cash bond. On 9-29-08 I spoke with attorney Dennis Worley. My 1st court appearance was at 9:30am 9-29-08. At no time was I aware that this gun was stolen. My case was dismissed due to 'lack of sufficient evidence' on Feb. 2, 2011 [sic]." (Respondent's Exhibit 15)
18. On February 22, 2012, Respondent's investigator Edward Zapolsky ("Zapolsky") submitted a probable cause memorandum to Respondent's Probable Cause committee for the offense of felony possession of a stolen firearm. On February 22, 2012, Respondent's Probable Cause committee found probable caused existed to revoke Petitioner's correctional officer certification because the evidence tended to show that Petitioner committed the felony offense of possession of a stolen firearm.

19. On March 14, 2012, a notice of Probable Cause was sent to Petitioner. (Respondent's Exhibit 16) Petitioner requested an administrative hearing. (Respondent's Exhibit 17)
20. At the hearing, Zapolsky, Deputy Herring, Deputy Sellers, Columbus County Sheriff's Office Deputy Scott Norris, Miles Little, and Andy Edwards testified for the Respondent. Otis Todd testified for Petitioner, and Petitioner testified on his own behalf. The witnesses were sequestered.

Zapolsky's testimony

21. Zapolsky investigates administrative rules violations for Department of Correction officers. Zapolsky collected the documents from Petitioner's criminal charge and drafted a memorandum to be submitted to Respondent's probable cause committee.

Deputy Herring's testimony

22. Deputy Aaron Herring has been employed with the Columbus County Sheriff's Office for five years and currently serves as a vice narcotics detective. His duties include investigating narcotics activity in the county, serving process, conducting criminal investigations, and enforcing traffic laws. Deputy Herring was working on September 19, 2008, as a patrol officer. He received a call for a breaking and entering on September 19, 2008, at 12:40pm, and responded within nine minutes to 455 Greens Mill Road in Clarkton, which is Miles Little's residence. He spoke with Little and learned that Little left the residence for four hours, returned home, and that the back window was unlocked from inside. Little checked his weapons and saw that firearms were missing. Deputy Herring made a report at that time and took inventory of the property stolen. The items stolen included a .270 auto Browning rifle with scope. Deputy Herring obtained an approximate value for the Browning .270 as \$1500.00. Little reported that three scopes were missing, one for each rifle stolen.
23. Deputy Herring had general knowledge of scopes from training and knew that a scope is the magnifying glass attached to a rifle. Deputy Herring had knowledge of the value of scopes in that they range from approximately \$150.00 to \$1500.00. He stated that there is one scope per rifle.
24. The Browning .270 auto rifle was found in Petitioner's possession on or about September 27, 2008. The missing scopes were never found. On March 1, 2010, Little's stolen .22 caliber pistol was found after the execution of a search warrant. No one was charged with breaking and entering Little's residence.

Deputy Sellers's testimony

25. Deputy Robbie Sellers has been employed as a Columbus County Sheriff's Office Deputy for eight years and has served for approximately twenty years in law

enforcement. Deputy Sellers obtained information that Petitioner approached Andy Edwards at Tractor Supply and asked if Edwards wanted to purchase rifle scopes. Petitioner offered a price of \$75.00 each for the scopes. Edwards thought that the retail price of a scope was \$300.00. No bill of sale for the scope was presented. Edwards did not purchase the scope before returning to his residence. Edwards contacted Little and described the scope and the rifle. Little responded that the rifle described might be his stolen rifle. Deputy Sellers contacted Petitioner's supervisor at Tractor Supply and obtained Petitioner's girlfriend's address where he could be found. On September 27, 2008, Deputy Sellers went to Petitioner's girlfriend's house, found Petitioner there, and told him that he was investigating a stolen firearm. Deputy Sellers asked Petitioner whether he had a rifle, Petitioner stated yes and retrieved the rifle from his vehicle. Deputy Sellers called Little to confirm that the rifle in Petitioner's possession was his stolen rifle, and learned that it was in fact Little's stolen Browning .270 rifle by confirming the serial number. Deputy Sellers asked Petitioner how he came into possession of the firearm and he stated that he would **"rather not say."** Petitioner said he could get the scope back, but would not have any information. Deputy Sellers obtained a warrant for Petitioner for felony possession of a stolen firearm.

Deputy Norris's testimony

26. Columbus County Sheriff's Office Deputy Scott Norris ("Deputy Norris") had been a detective with the Columbus County Sheriff's Office since June 2006. On September 27, 2008, he spoke with Petitioner at the Columbus County courthouse because he was investigating the charge of possession of a stolen firearm. Deputy Norris stated that Petitioner admitted that he bought the rifle from someone, but he would not state who he bought it from. Petitioner stated that he would give a name to him so that he could finish his report, but he would not tell him where he received the rifle. Petitioner stated that his case would be dismissed anyway and he would not advise where he received the rifle. (Respondent's Exhibit 18)
27. Deputy Norris also spoke with Otis Todd ("Todd"). (Respondent's Exhibit 18) Todd stated that "he bought the gun from Brad Blackwell's son in the Food Lion Parking Lot and [Todd] advised that he paid \$200.00." Otis Todd provided the following statement:

[Todd] advised he was at Food Lion getting two cases of Bush Beer in the can. [Todd] was talking with Brad Blackwell's son about the beer and when they walked out to the car [Todd] advised that the suspect asked [Todd] if he did any hunting and [Todd] said yes. Suspect asked if [Todd] would be interested in buying a Rifle. [Todd] said yes. Suspect said he had to go home to get the rifle. [Todd] asked how much he wanted for the Rifle. Suspect told [Todd] \$200.00. [Todd] went to BB&T bank ATM and got the money. Suspect went home to get the rifle. [Todd] and the suspect met back at Food Lion Parking Lot and [Todd] gave him 200.00 in twenty dollar bills. Suspect was driving a little blue car. Suspect had a skinny blonde headed girl with him. Suspect said he needed money for rent and swore up and down the gun was not stolen. [Todd] advised he gave the gun to [Petitioner] because [Petitioner] would always bring deer to [Todd] each

year for the past five years. [Todd] advised that he bought the gun used and thought it was a good price and [Todd] bought the gun to give to [Petitioner] out of friendship for years of brotherly love. [Todd] advised that he had told [Petitioner] every year that he would buy him a box of ammo for his rifle for the deer [Petitioner] would bring. [Petitioner] would refuse the offer and was doing it out of friendship. [Todd] advised he bought the gun and gave it to [Petitioner] as a gift and [Petitioner] did not know the weapon was stolen.

28. Deputy Norris determined that no receipt existed for the sale, no bill of sale existed, and no documentation existed to legitimate the sale.

Little's testimony

30. Little resides at 455 Greens Mill Road in Clarkton, North Carolina. He has lived in Clarkton for approximately fifty years and at the time of the theft on September 19, 2008, Edwards was his neighbor and lived approximately 400 to 500 yards away from him. Before September 19, 2008, Little had owned firearms for approximately forty or fifty years and had owned about eight or nine of them. He hunts a lot and is very familiar with guns. Little owned scopes on all of his rifles and he bought his Browning .270 in Lumberton. Little testified that he paid \$400.00 for the bolt action, and the scope on that rifle was a Nikkon scope costing \$200.00. The value of the Browning .270 on September 19, 2008, was about \$595 or \$600, not including the scope. The separate Nikkon scope was valued at approximately \$300.00, with a faceplate of \$30. In combination, the rifle, scope, and faceplate was valued at \$930.00. Little kept serial numbers of his firearms.
31. Edwards' father came to Little's residence and Little told him that his house had been broken into. Later, Edwards came over to Little's residence and asked whether his house had been broken into, and Little replied yes. Edwards asked if any guns were stolen and Little said yes. Edwards said that he may know where Little's guns were located. Edwards told Little that when he was at Tractor Supply, a man, whose name on his shirt read Matt, and who was later identified as Petitioner, approached him and asked if he hunts. Edwards replied yes, and Petitioner said that he may have something that he would be interested in. Edwards followed Petitioner to Petitioner's car in the parking lot, and Petitioner reached into the back of his SUV and pulled out a semi-automatic rifle with a mounted scope. Petitioner took out another scope and told Edwards that he wanted to sell the scopes for \$75.00 each.
32. Little and Edwards went to the Sheriff's Office together on Saturday morning and spoke with Deputy Robbie Sellers. Edwards told Sellers about the incident at Tractor Supply.
33. After Deputy Sellers retrieved the stolen rifle from Petitioner, Little asked him whether Petitioner would return the scopes. Deputy Sellers said that Petitioner said that he could return the two scopes to him, but Petitioner never returned the scopes. According to Little, one of his scopes was worth \$200.00 and the other was worth \$300.00.

Edwards's testimony

34. Edwards lives in Clarkton, North Carolina and was one of Little's neighbors in 2008. He has owned firearms, hunting rifles, pistols, and shotguns for all of his life. He had bought and sold firearms in the past and had bought a firearm from a dealer. He had knowledge of the value of firearms and scopes because he had owned about twelve to thirteen scopes and had owned about twenty to twenty-five firearms including shotguns, rifles, and pistols over the years.
35. Edwards was at Tractor Supply in Whiteville, North Carolina, on a Monday or Tuesday in 2008 when Petitioner approached him. He did not know Petitioner, but Petitioner told him that he looked like a hunter, and Edwards said he was. Petitioner said that he had a deal on some scopes that he was trying to sell. Petitioner said that the scopes were located in the parking lot, so Edwards and Petitioner walked out to the parking lot. Edwards saw two scopes in Petitioner's possession, one scope was off of the rifle and the other scope was still mounted to the rifle. Edwards did not purchase either scope because he thought that the price being offered by Petitioner was too low. Petitioner stated that he was trying to buy the rifle for \$300.00, but that he did not own it yet and was selling the scope or scopes in order to help pay for the rifle.
36. After Edwards decided that he did not want to buy a scope, he went home and his father told him that Little's house had been broken into. Edwards went to Little's residence and told him that a guy had approached him and tried to sell two scopes to him. Edwards described the rifle that he saw in Petitioner's possession.
37. Edwards described that on Monday morning Little's house was broken into; that a few days later, Petitioner approached Edwards in Tractor Supply and asked whether he wanted to purchase two scopes for \$75.00 each; and on Friday, he went to Little's house to tell him about the Tractor Supply incident. On Saturday morning, Edwards and Little went to the Sheriff's Office to tell Deputy Sellers about Petitioner approaching him in Tractor Supply to try to sell the scopes, and told Deputy Sellers that he thought that the scopes were Little's scopes. Edwards identified the rifle and scopes as Little's rifle and scopes because they had been deer hunting together and Edwards had seen Little's rifles and scopes. Because the quoted price for the scopes was so low, Edwards concluded that they had likely been stolen. After Edwards went to Little's house, he called Petitioner upon Little's instruction and offered Petitioner \$700.00 for both scopes and the rifle. Petitioner declined this offer.

PETITIONER'S EVIDENCE

Todd's testimony

38. Todd's story is that he went to Food Lion with his neighbor Tony, and that Tony began

talking with “some guy.” Tony said that the guy “was a cousin.” Tony and Brad Blackwell approached Todd and asked if he was interested in buying a rifle for \$200.00. Todd agreed and Blackwell left and returned with the rifle. The rifle had a scope on it. Todd went to the bank, withdrew the money, and gave him the money for the rifle and the scope. Todd asked whether the gun was stolen, and Blackwell said no. Todd did not get a bill of sale on the rifle, although he had obtained a bill of sale for the firearms that he had purchased in the past. Todd then went to Petitioner’s residence and gave the gun to Petitioner in exchange for the hunting and fishing meat Petitioner had previously given him, and left with the gun unpaid for. Todd also discussed with Petitioner a purchase price for the rifle around \$300, but that a deal was never fully reached. Todd left Petitioner’s residence and found out that the gun was stolen when Detective Norris came to Todd’s house and asked about the firearm. Todd was charged with possession of a stolen firearm, but the charges were dismissed for lack of sufficient evidence.

39. When Petitioner asked Todd where he got the rifle, Todd told him that he received the firearm from “a friend.” According to Todd he did not tell Petitioner that he received the rifle from Brad Blackwell because Petitioner did not ask him the name of the individual from whom he bought the firearm.

Petitioner’s testimony

40. Petitioner story was that he received the rifle and scope from Todd, that a \$300 price was discussed, but that nothing was set, and Petitioner did not give Todd any money for the rifle and scope. Petitioner could keep the rifle and pay him when he had received enough funds on payday.
41. Petitioner contends that he only offered to sell one scope to Edwards, not both scopes. He stated that he sought to sell the scope to buy the rifle and because he wanted a better scope. Petitioner offered to sell the scope for \$75.00. Edwards left without purchasing the scope because he said he needed to speak with his wife, but that he called him later to offer to buy the rifle and scope for \$700.00. Petitioner did not accept Edwards’s offer. A few days later Deputy Sellers arrived at Petitioner’s girlfriend’s house and stated that he was investigating a Browning .270 that had been stolen. Petitioner gave the rifle to Deputy Sellers at that time.
42. When asked whether Petitioner had reasonable grounds to believe that the rifle was stolen, he admitted that he thought that the price of the firearm of \$300 was low, which prompted him to ask Todd whether it was stolen. When Todd said that it was not stolen, Petitioner asked Todd where he obtained the rifle, and Todd did not tell him. Petitioner initially testified that he had the scopes in his possession for a week or more, then he testified that he had the scope and rifle for three to four days.
43. When asked whether he had been employed in the past in any capacity dealing with the purchase and sale of firearms, Petitioner stated that he had been a Sales Associate in the firearms department of Wal-Mart for an extended period. Petitioner also stated that he

owns multiple firearms himself and has bought and sold them in the past.

44. It is uncontested that on September 19, 2008, a Browning .270 rifle was stolen from Little's residence. It is uncontested that on September 27, 2008, Little and Edwards went to the Sheriff's Office to report that Petitioner had attempted to sell the scopes attached to the Browning .270 rifle to Edwards in the Tractor Supply parking lot. Petitioner knew or had reasonable grounds to believe the rifle to have been feloniously stolen when he took possession of it only a few days after the theft.

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

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 the 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 labels.
2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify correctional officers and to revoke, suspend, or deny such certification.
3. 12 NCAC 09G .0504(a) states: "The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense."
4. Petitioner performed the acts necessary to satisfy the elements of felonious possession of a stolen firearm prohibited by N.C.G.S. § 14-71.1 (2011).
5. 12 NCAC 09G .0505(a)(1) states: "When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is . . . commission or conviction of a felony offense."
6. Reasonable grounds exist for Petitioner to have known or believed that the rifle was stolen because: (i) Todd told Petitioner that he purchased the rifle from "a friend," although Todd refused to disclose the name of the friend to Petitioner; (ii) Petitioner tried to sell the scopes to Edwards for a price that was sufficiently low to prompt Edwards to decline the offer because he correctly thought that the low price indicated the scopes were stolen; (iii) as a former Sales Associate at a merchant in the business of selling new and used firearms, and as a purchaser of new and used firearms himself, Petitioner possessed the requisite expertise to believe that the \$200 and \$300 prices for the .270 rifle and

scope offered by Todd would indicate that the items were obtained illegally; (iv) Petitioner inquired of Todd whether the rifle was “legal”, due to the low prices involved; (v) Petitioner was evasive with officers about how he got possession of the rifle; (vi) his education, training, certification, and experience as a prison guard would alert him.

7. It was not erroneous for the Respondent’s Probable Cause committee to conclude that probable cause existed to revoke Petitioner’s certification based on its authority to execute such revocation under 12 NCAC 09G .0504(a).
8. 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.G.S. 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. 150B-34(a). Respondent had the burden of proof and met its burden.

PROPOSAL FOR DECISION

It is proposed that Respondent’s decision to revoke Petitioner’s certification be affirmed.

NOTICE

The Agency making the Final Decision in this contested case 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).

The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the _____ day of _____, 2012.

Fred G Morrison Jr.
Senior Administrative Law Judge

