

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ05146

GLENN ALVIN BRAND Petitioner v. NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION Respondent.	PROPOSAL FOR DECISION
---	------------------------------

On September 26, 2012, this matter came on for a contested case hearing before the undersigned. This case was heard after Respondent requested, under N.C.G.S. § 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Reed N. Fountain, Attorney at Law
Respondent: William P. Hart, Jr., Assistant Attorney General

ISSUES

1. Whether Petitioner committed the offense of Impersonation of a Law Enforcement Officer.
2. Whether Petitioner lacks the good moral character required of a justice officer.
3. Whether any sanction should be imposed against Petitioner under Respondent's rules.

FINDINGS OF FACT

Stipulated Facts

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Petitioner Glenn Alvin Brand holds detention officer certification with Respondent North Carolina Sheriffs' Education and Training Standards Commission.

3. On or about April 13, 2012, Petitioner was notified that the Commission found probable cause to believe that his justice officer certification should be revoked.
4. Petitioner timely requested an administrative hearing, and the Commission thereafter requested the assignment of an administrative law judge to hear the contested case.
5. The Office of Administrative Hearings has jurisdiction over the subject matter and over both parties in this case, and venue is proper.
6. The issues presented in this contested case are as follows:
 - a. Whether Petitioner committed the offense of Impersonation of a Law Enforcement Officer.
 - b. Whether Petitioner lacks the good moral character required of a justice officer.
 - c. What sanction, if any, should be imposed against Petitioner under the Respondent's rules?
7. As defined in 12 NCAC 10B .0103(10)(b), the offense of Impersonation of a Law Enforcement Officer, in violation of N.C.G.S. § 14-277, was classified as a Class B misdemeanor when [it was alleged to have been] committed by Petitioner.
8. Upon a determination that Petitioner committed a Class B misdemeanor after the date of his appointment as a detention officer, his certification may be subject to revocation or suspension for a period of no less than five (5) years under 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a). This sanction may be reduced by the Commission upon a showing of extenuating circumstances, under 12 NCAC 10B .0205(2).
9. Upon a determination that Petitioner lacks the good moral character required of all justice officers, his certification would be subject to revocation or suspension for an indefinite period under 12 NCAC 10B .0301(a)(8), 12 NCAC 10B .0204(b)(2), and 12 NCAC 10B .0205(3)(b).

Adjudicated Facts

10. Petitioner has held a detention officer certification with the Respondent North Carolina Sheriffs' Education and Training Standards Commission and was employed by the Wake County Sheriff's Department as a detention officer for the time period of 2005 through the events in question.
11. During his period of employment with the Wake County Sheriff's office, Petitioner received positive performance evaluations. Included in his most recent evaluation in the section labeled principal strengths was the statement: "Officer Brand is a [sic] outstanding Armed Transportation Detention Officer, he is one of my go to officer [sic] when their [sic] is a high profile mission to be accomplished." (Petitioner Exhibit 7)

12. Petitioner was awarded a Detention's Certificate of Excellence in 2007 for his display of integrity, initiative, leadership, and good judgment in responding to the scene of an accident he encountered when on duty and returning from a county garage to the Public Safety Center. He assisted injured individuals and otherwise monitored the scene until the Raleigh Police Department could arrive. (Petitioner Exhibit 1; Testimony of Petitioner and Witness Dail Butler)
13. Dail Butler, Director of Detention Services for the Wake County Sheriff's Department, testified that Officer Brand was progressing as Director Butler would have wanted him to progress as an officer.
14. On August 6, 2011, Tashin "Tony" Haopshy was working a shift as a loss prevention officer (LPO) for Rugged Warehouse, a retail store located at 3901 Capitol Boulevard in Raleigh, N.C. LPO Haopshy began his employment with Rugged Warehouse in February 2011. He also worked in a similar capacity for a Target retail store in Durham, N.C. for approximately two years before taking the job with Rugged Warehouse.
15. LPO Haopshy has received formal training in loss prevention, including training on how to detain suspected shoplifters, and how to prevent escalation during these types of encounters. Before August 6, 2011, LPO Haopshy had encountered a total of at least 100 shoplifters in his role as a loss prevention officer. He also had numerous encounters with law enforcement officers. The vast majority of these encounters were with police officers with the Durham Police Department or the Raleigh Police Department during the course of LPO Haopshy's work in loss prevention. LPO Haopshy also had encountered a few deputy sheriffs with the Wake County Sheriffs' Office, and was close friends with a detention officer who was employed with the Wake County Sheriff's Office.
16. By law, LPO Haopshy was authorized to detain suspected shoplifters on behalf of his employer, Rugged Warehouse.
17. During his shift on August 6, 2011, LPO Haopshy observed via video surveillance three female shoppers inside Rugged Warehouse who were removing security tags from several items of merchandise with wire cutters and placing these items underneath a baby stroller. One of the women was carrying a baby with her.
18. LPO Haopshy telephoned the Raleigh Police Department to report this activity as it was ongoing. During this conversation, the three women proceeded toward the front of the store with the baby and the stroller. LPO Haopshy terminated his phone call in order to follow them. Once the women passed the point-of-sale and began to exit the store without paying for the merchandise, LPO Haopshy approached them, told them to stop, and asked them to return inside the store. By this time, the woman who originally was seen carrying the baby had handed the baby off to one of the other women and was pushing the stroller.

19. LPO Haopshy again confronted the women in the asphalt parking lot of the shopping center, just past the sidewalk adjacent to the Rugged Warehouse store. LPO Haopshy was able to reach the stroller and pull some of the stolen items of merchandise out of it, placing these on the ground. During this time, the woman pushing the stroller rolled it over LPO Haopshy's foot and turned it over onto the ground.
20. As this woman proceeded farther away from the store and ignored instructions to stop, LPO Haopshy followed her and physically detained her by grabbing and placing her in a hold by her wrist and arm. The woman being held began to yell. The manager and an assistant manager of the store had followed LPO Haopshy into the parking lot and observed as this took place. A few other bystanders looked on during the confrontation.
21. LPO Haopshy intended to detain the woman until officers from the Raleigh Police Department arrived at the scene as requested.
22. Petitioner, at the time was a detention officer with the Wake County Sheriff's Office who was off duty on that day. Petitioner was present at the shopping center along with his mother and children, and was planning to do some back-to-school shopping while there. Petitioner was standing in the parking lot area just outside an adjacent retail store when he noticed the confrontation between LPO Haopshy and the three women. He decided to have his mother remain with his children while he approached to assess the situation because he saw a crowd of African Americans—described by Petitioner as “saying things”—gathered around the restraining LPO who was the only Caucasian in the crowd. Petitioner was concerned that the scene was becoming racially tense.
23. As he approached the scene, Petitioner reasonably believed that there was a domestic dispute or some similar situation taking place. LPO Haopshy did not wear any uniform as part of his duties. He did wear handcuffs outside of his belt which were visible, but were not seen by Petitioner at first. Petitioner also was not wearing a uniform on this date, nor did he carry a firearm or a badge with him. Petitioner observed, as he moved to the scene of the detention, that the woman was swinging the baby around as a shield between herself and LPO Haopshy.
24. When Petitioner reached the scene, he stated that he was with the “Wake County Sheriffs' Office” and asked what was going on. He requested that LPO Haopshy let the woman go. Petitioner stated to LPO Haopshy that he was concerned that the baby would get hurt.
25. LPO Haopshy explained that he was a loss prevention officer and was detaining a suspected shoplifter.
26. Petitioner then stated his belief that LPO Haopshy could not touch the woman. LPO Haopshy disputed this and informed Petitioner that he was acting in accordance with his lawful authority as a loss prevention officer. Petitioner again said to let her go, and that if LPO Haopshy did not comply he could be arrested. Petitioner also stated that his badge

was in his car.

27. LPO Haopshy eventually complied with Petitioner's request to let the woman go. She proceeded toward a vehicle in the parking lot. LPO Haopshy followed and tried to block the woman's access to the vehicle without touching her but could not prevent her from getting into the vehicle. Petitioner told LPO Haopshy to get the license plate number.
28. The three suspected shoplifters, along with the baby, entered the vehicle and drove away from the scene at a high rate of speed. Petitioner and LPO Haopshy both took note of the license plate number of the vehicle. Petitioner phoned this information in to the Raleigh Police Department and inquired as to when officers would be arriving at the store.
29. Petitioner then entered Rugged Warehouse with his mother and children to shop.
30. A few minutes later, three officers with the Raleigh Police Department arrived at the store and took a statement from LPO Haopshy. Afterward, one of the officers approached Petitioner to speak with him. LPO Haopshy observed via video surveillance that one of Petitioner's children went out of the store and brought something back to Petitioner during this time. LPO Haopshy then observed Petitioner show what he believed to be a badge to the officer.
31. Afterward, Petitioner approached LPO Haopshy in the store to apologize, explaining that Petitioner did not realize that LPO Haopshy was a loss prevention officer and that the woman was a shoplifter until the officer explained this to him. LPO Haopshy felt confused by this explanation in light of the fact that he told Petitioner these things during the incident.
32. The shoplifters later were apprehended and criminally charged by Raleigh Police.
33. Later in August 2011, Petitioner was investigated by Wake County Sheriff's Office Internal Affairs Division, headed by Captain Jimmy Stevens. Although Petitioner was not entirely consistent in his statements during this investigation, his explanations did not vary materially, and there is no basis for the undersigned to find that Petitioner was dishonest.
34. Petitioner's employment with the Wake County Sheriff's Office was terminated at the conclusion of the internal investigation for grounds other than that he had impersonated an officer during the shoplifting incident described in this case. Petitioner was ruled eligible to receive full unemployment benefits by the Employment Security Commission following an administrative hearing at that agency.
35. Prior to August 6, 2011, Petitioner worked as a detention officer with Wake County for nearly six years. He received positive performance evaluations throughout and was awarded a Certificate of Excellence on the basis of "his integrity, initiative, leadership, and good judgment" after his efforts at the scene of a motor vehicle collision on October

29, 2007.

36. The undersigned finds that, on August 6, 2011, Petitioner did not “verbally inform” LPO Haopshy that he was a law enforcement officer merely by virtue of his announcing “Wake County Sheriff’s Office” as he approached when LPO Haopshy was detaining the shoplifter.
37. No finding with respect to extenuating circumstances is necessary in light of the undersigned’s holding. However, in the event that Respondent reaches a different conclusion with respect to the commission of Impersonation of a Law Enforcement Officer under N.C.G.S. § 14-277, the undersigned finds that Petitioner acted in good faith and without malice when he intervened with the apprehension of a shoplifter by LPO Haopshy on August 6, 2011. Petitioner took steps he reasonably believed necessary to prevent injury to the persons involved and assisted in noting the license plate number of the vehicle as the shoplifters left the scene.
38. The North Carolina Sheriffs’ Education and Training Standards Commission has authority, granted 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 deny, revoke, or suspend such certification.
39. Under 12 NCAC 10B .0204(d)(1), the Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the day of initial certification.
40. Under 12 NCAC 10B .0103(10)(b)(i), a Class B Misdemeanor is defined in pertinent part as:
 - (i) an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which is classified as a Class B Misdemeanor as set forth in the “Class B Misdemeanor Manual” as published by the North Carolina Department of Justice and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6
41. Under N.C.G.S. § 14-277, 12 NCAC 10B .0103(10)(b), and the Class B Misdemeanor Manual adopted by Respondent, the crime of misdemeanor Impersonation of a Law Enforcement Officer constitutes a Class B misdemeanor.
42. A person commits the offense of Impersonation of a Law Enforcement under N.C.G.S. § 14-277 by falsely representing that he is a sworn law enforcement officer as defined by subsection (a) of that statute. The offense is also committed if a person, while falsely representing that he is a sworn law enforcement officer as defined by subsection (a),

carries out any act in accordance with the authority granted to a law enforcement officer as defined in subsection (b) of the statute. *See* N.C.G.S. § 14-277(d1).

CONCLUSIONS OF LAW

1. Both parties properly are before the Office of Administrative Hearings.
2. Respondent has not met its burden of proof in showing that Petitioner falsely represented that he was a sworn law enforcement officer under N.C.G.S. § 14-277(a). Therefore, Petitioner did not commit the Class B misdemeanor offense of Impersonation of a Law Enforcement Officer, and his detention officer certification is not subject to revocation or suspension on this asserted basis.
3. The undersigned finds that Petitioner has the good moral character required of a justice officer.
4. Because Petitioner has the good moral character required of a justice officer, his detention officer certification is not subject to revocation or suspension for failure to maintain the employment or certification standards for a justice officer under 12 NCAC 10B .0301(a)(8), 12 NCAC 10B .0204(b)(2), and 12 NCAC 10B .0205(3)(b).

PROPOSAL FOR DECISION

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Respondent not take any adverse action against Petitioner's detention officer certification.

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, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

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

This the 8th day of October, 2012.

Beecher R. Gray
Administrative Law Judge