

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 8007

Kevin Lee Hullett,
Petitioner,

v.

North Carolina Criminal Justice Education and
Training Standards Commission,
Respondent.

APPEARANCES

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

Whether Respondent has sufficient cause to deny Petitioner's application for continuous certification as a law enforcement officer?

RULES AT ISSUE

12 N.C. ADMIN. CODE 9G.0102 (9)(cc)

12 N.C. ADMIN. CODE 9G.0504 (b)(3)

12 N.C. ADMIN. CODE 9G.0505 (b)(1)

N.C. GEN. STAT. § 14-223

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

- Petitioner's Exhibit #1

For Respondent:

- Respondent's Exhibits #1, 2, 3, 4, 5, 6, 7 (admitted for limited purposes), 7A and 8

WITNESSES

Richard Nelson Squires, Investigator, Criminal Justice Standards Division

Jeffrey Scott Eller, Detective, Buncombe County Sheriff's Office

Stephen Vashon Ingram, Detective, Davidson Police Department

Marty Poole, Sergeant, Davidson Police Department

Jeanne Anne Miller, Chief of Police, Davidson Police Department

Dave Jason Johnson, Lieutenant, Charlotte-Mecklenburg Police Department

Nicole Eliza Walton, Friend of Petitioner

Kevin Lee Hullett, Petitioner

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the administrative hearing, those exhibits that were admitted into evidence by express stipulation of the parties on the record or the ruling of the Undersigned on the record, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

The Undersigned has weighed all of 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 to see, hear, know or remember the facts or occurrences about which the witness testified and whether the testimony of the witness was reasonable.

The Undersigned considered whether the testimony is consistent with the witnesses' prior statement or statements, and whether the testimony is consistent with all other believable evidence in the case.

The Proposed Decision was submitted by Petitioner. Respondent did not submit comments for consideration. The Undersigned has reviewed the Proposed Decision and where she is in agreement she has incorporated it into the following:

FINDINGS OF FACT

1. Petitioner's father died when he was in the ninth grade and he graduated from East Lincoln High School in 2005. Petitioner worked at various jobs until November 2009 when he was an "early hire" for the Charlotte-Mecklenburg Police Department (CMPD). At CMPD, he worked in property control until he entered the police academy in February 2010. He graduated from the police academy and was sworn in as a law enforcement officer on July 2, 2010. T. 186-88.

2. Petitioner received his probationary certification from the North Carolina Criminal Justice Education And Training Standards Commission (the "Commission") as a law enforcement officer on June 30, 2010. R. Ex. 2.

3. Petitioner worked as a patrol officer in the CMPD's North Division under the direct supervision of Lieutenant Dave Johnson ("Lt. Johnson"). T. 135-36, 188.

4. Lt. Johnson had known Petitioner as "pretty reserved on the shift, very humble, soft-spoken, very mild-mannered, maintained a positive attitude even though ... [he received] good natured teasing and ribbing in roll call." T. 139.

5. On January 22, 2011 (and into the early morning hours of January 23, 2011), Petitioner was present at the Homestead Suites at 88 Tunnel Road in Asheville, North Carolina (the "Hotel"). He was accompanied by three others: his then-girlfriend, Nicole Walton ("Ms. Walton"); a fellow CMPD police officer, Jonathan C. Campbell ("Officer Campbell"); and Officer Campbell's fiancée, Kristin Lane ("Ms. Lane") (collectively, Officer Hullett, Ms. Walton, Officer Campbell, and Ms. Lane may be at times herein referred to as the "Guests").

6. When they checked in to the hotel, Officer Campbell informed the hotel staff that he and Petitioner were police officers. T. 211.

7. Each of the Guests had been consuming alcohol throughout the day and were intoxicated on the night in question. T. 146-47.

8. An off-duty Buncombe County Sheriff's Office deputy, Detective Jeff Eller ("Det. Eller"), was working "secondary employment" carrying out security duties on behalf of hotel management. T. 49. Det. Eller was wearing what he described as a "soft uniform" of "5.11

Tactical” brand tan-colored pants, a black “polo-type shirt” stitched with the Sheriff’s Office logo, a duty belt with his service weapon, handcuffs, handheld radio and a plain, non-uniform, black fleece jacket. T. 49, 50 & 61. The jacket did not have any Sheriff’s logo, badge, or other markings on it. T. 94.

9. Det. Eller first observed Petitioner when he and the other guests arrived at the hotel by the shuttle bus, and walked through the lobby talking loudly. It was clear that the Guests had been drinking. T. 52-54.

10. Petitioner testified that he was “very intoxicated” when he returned to the Hotel. T. 192.

11. About an hour later, Officer Campbell and Ms. Lane came down to the lobby arguing and talking loudly. Petitioner came into the lobby as well. When Det. Eller approached the Petitioner and asked the Guests to be quiet, Petitioner informed Det. Eller that he was a police officer from Charlotte. The incident in the lobby was resolved peaceably and the Guests returned to their room. T. 54-57.

12. Shortly after the encounter in the lobby, hotel management received a noise complaint regarding loud voices in the room shared by the Guests. T. 58, 79.

13. After waiting outside the door to the Guests’ room and listening to ongoing loud talking, Det. Eller knocked on the door to the room. Officer Campbell answered the door, and was belligerent and argumentative toward Det. Eller even after Det. Eller made it clear that he worked for the Sheriff’s Office. T. 59-60, 64-65.

14. Det. Eller then advised the Guests that they were no longer permitted to spend the night at the Hotel. T. 63. Det. Eller exercised the authority allowed by the hotel management to direct the Guests to vacate the room. T. 82.

15. After Det. Eller directed the Guests to pack their belongings and leave the premises, Petitioner demanded Det. Eller’s badge number which Det. Eller declined to provide. When Det. Eller demanded Petitioner’s identification, Petitioner likewise refused. T. 64, 201.

16. Petitioner testified that he pleaded with Det. Eller to reconsider and allow the Guests to stay the night at the Hotel because they were from Charlotte, had nowhere else to go, the weather was cold, and they were intoxicated. When Det. Eller refused, Petitioner then asked Det. Eller: “Does this make you feel like a man?” T. 201; R. Ex. 7A.

17. Officer Campbell and Petitioner each explicitly refused to grant consent for Det. Eller to enter their room. T. 91. Both Petitioner and Officer Campbell protested that Det. Eller was “breaking the law” by entering the Guests’ room without permission when he entered the living room area. T. 64.

18. The layout of the Guests' suite at the Hotel contains an interior bedroom that is separated from the rest of the living area by a pair of double doors. *See* Petitioner's Exhibit 1.

19. Petitioner, Officer Campbell, and Ms. Walton entered the bedroom (Ms. Lane was not in the hotel room at this point). Ms. Walton closed the bedroom doors because the luggage was behind the doors and began packing. T. 65, 157.

20. Det. Eller called out multiple times for someone to open the door, but received no response. T. 66, 89.

21. Neither Petitioner nor Ms. Walton heard Det. Eller calling to them. T. 68, 89–91.

22. Det. Eller knew that Petitioner and Officer Campbell were law enforcement officers and that many law enforcement officers carry firearms when they are off-duty. Because they had been argumentative, were intoxicated, and not responding to his commands, Det. Eller radioed for assistance from on-duty officers. T. 66, 89.

23. Sergeant Stiles of the Buncombe County Sheriff's Office and a couple of Sheriff's deputies responded to the call for back-up. T. 68. The officers entered the bedroom and placed Petitioner and Officer Campbell in handcuffs. T. 68-69. The bedroom door had not been locked. T. 94.

24. Officers with the Asheville Police Department also responded to Det. Eller's call for back-up and arrived on the scene. T. 70.

25. Det. Eller explained to Petitioner that they were placed in handcuffs because they refused to leave, refused to cooperate and were argumentative. T. 69. At that point, Petitioner "turned completely", and became "cooperative, "apologetic" and "agreed he would leave." T. 70.

26. While the Guests were in handcuffs, Det. Eller inquired whether anybody had brought a firearm. T. 70.

27. Officer Campbell said that he had given his service weapon to his fiancée, Ms. Lane, for safekeeping. Ms. Lane later panicked and hid the weapon (which was unloaded) underneath the ice machine in a public area in the hallway of the hotel. No other weapon was found. T. 71.

28. Petitioner had not brought his own service weapon on this trip and there was no evidence to suggest that he was involved in or even aware of the carelessness with Officer Campbell's service weapon. T. 190.

29. Petitioner apologized to Det. Eller after he turned in the hotel room key to the receptionist. T. 70 & 204.

30. Det. Eller and the other officers considered charges against Petitioner and Officer Campbell, specifically resist, delay and obstruction because: they refused to leave when asked by Det. Eller; refused to show identification when requested; and went into the bedroom, closed the door and did not respond to commands. T. 72-73.

31. Det. Eller did not arrest or press charges against either Petitioner or Officer Campbell. T. 74.

32. Det. Eller telephoned the CMPD to report the incident. He spoke to several people in the CMPD chain of command because he wanted CMPD to handle their own officers even though the responding officers from the Buncombe County Sheriff's Office and the Asheville Police Department wanted to arrest Petitioner and Officer Campbell and take them to jail. T. 74.

33. Lt. Johnson "was shocked" when he heard about the incident in Asheville because he "had never known [Petitioner] to portray any negative traits whatsoever." T. 139.

34. Even after hearing about the incident in Asheville, Lt. Johnson testified that he would "welcome" Petitioner "being in [Lt. Johnson's] command" at CMPD. T. 139-40.

35. Following an internal affairs investigation into this incident, Petitioner was involuntarily separated from the CMPD on March 15, 2011. R. Ex. 3.

36. Subsequently, Petitioner applied for a position with the Davidson Police Department. Detective Stephen Ingram ("Det. Ingram") was involved in screening Petitioner's application. T. 110. He discussed it with his supervisor, Sergeant Marty Poole ("Sgt. Poole"), and they conducted a background investigation concerning Petitioner's termination from the CMPD. T. 111-16, 119. The purpose of a background investigation is to eliminate candidates, to determine if there is evidence of anything that would be a continuing problem if a candidate is hired. T. 121.

37. Det. Ingram thoroughly discussed the application with Petitioner who "seemed truthful" about the incident in Asheville and who acknowledged that "his actions were foolish" and resulted in his termination from the CMPD. T. 112.

38. Det. Ingram made a recommendation to Sgt. Poole and Chief of Police Jeanne Miller ("Chief Miller") to hire Petitioner because in the investigation there was nothing that should exclude Petitioner from being a police officer, including his criminal record history, and that it was the Petitioner's probationary status at the time of the incident that resulted in his termination from the CMPD. T. 113-16.

39. The investigation did not reveal anything that concerned Sgt. Poole about offering a position to Petitioner. T. 121-22.

40. Sgt. Poole's investigation of Petitioner did not suggest that Petitioner had been less

than truthful concerning the incident in Asheville. T. 122-23.

41. The Davidson Police Department became fully accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) in 2011 under the leadership of Chief Miller. T. 126.

42. Chief Miller testified that the Davidson Police Department seeks to hire police officers who have integrity and tries to “operate in a culture that emphasizes professionalism, ethics, accountability and teamwork.” T. 128.

43. An applicant’s employment history, particularly in law enforcement, is considered and whether any prior disciplinary action was taken. Following the best practice standards for CALEA, a progressive discipline theory is followed, where factors such as the severity of the infraction, the penalty imposed, and the litigiousness of the infraction, are among the considerations. T. 129-30.

44. Chief Miller considers the age and experience of an applicant at the time of the infraction: “Don’t tell me what the boy did, tell me what the man has accomplished.” T. 130 Whether the applicant was intoxicated at the time of the infraction is considered, as well as: “what occurs during the incident, what is their conduct during the incident and what is their conduct after the incident?” T. 131.

45. According to Chief Miller, there “was a host of reasons” why Petitioner was offered employment at the Davidson Police Department even though she was aware of the incident in Asheville: Petitioner “was not criminally charged” and “[t]here was no contact on Mr. Hullett’s part towards any – towards any of the officers that arrived. He was arrested, he – my understanding was he did not resist. He never verbally threatened and never indicated any threat. That was very important to me. Consistently throughout our process, even when it was most detrimental to him and most painful, he was honest about what had occurred.” T. 132.

46. Based on the background investigation, and Sgt. Poole’s and Det. Ingram’s conversations with CMPD, Chief Miller felt that the Davidson Police Department would be a good opportunity for Petitioner and one that he would appreciate. The small size of the Davidson Police Department meant that Petitioner would be closely supervised:

A : We are in a very small environment and – and he’s closely supervised. So I felt that you know, I could very quickly make a decision. And he and I had that conversation. I mean, I looked him right in the face and said, one thing, one bad thing, one incident, and he’s gone.

Q: What was his response to that?

A: He said he understood, that there wouldn’t be any one thing, and that he would show us that he could be professional.

T. 133

47. Det. Ingram's investigation did not reveal any reason why Petitioner would need to be excluded from hiring by the Davidson Police Department. T. 115.

48. Sergeant Poole's investigation did not reveal any reason that would make him hesitate about hiring Petitioner. T. 122.

49. Chief Miller testified that she would "absolutely" hire Petitioner if his certification was reissued. T. 133.

50. In March 2012, Petitioner was offered a position as a full-time law enforcement officer with the Davidson Police Department. T. 132; R. Ex. 2.

51. On March 9, 2012, the Criminal Justice Standards Division received a Report of Appointment/Application For Certification, Form F-5A, dated March 7, 2012 (the "Application") from the Davidson Police Department, requesting that certification be re-issued to Petitioner as a full-time law enforcement officer. R. Ex. 5. A copy of the Charlotte-Mecklenburg Police Department Internal Affairs Bureau's investigation, Case #SI-11-0131, was included with Petitioner's application for certification. R. Ex. 6.

52. As a result of the information submitted along with the Application, the Petitioner's case was referred to Richard Squires, an Investigator with the Commission who "conducts administrative investigations regarding certifications and allegations of rule violations" and presented his written report to the members of the Probable Cause Committee of the Commission (the "PCC") on April 24, 2012. T. 19-20; R. Ex. 1.

53. Investigator Squires requested and received a written statement from Petitioner concerning the reasons he left the CMPD. T. 25; R. Ex. 7A.

54. Investigator Squires testified that Petitioner appeared to be "completely truthful" in the written statement and that Petitioner was "forthcoming" and "very professional" when he testified at the PCC hearing. T. 45-47.

55. The PCC held that there was probable cause to deny/suspend Petitioner's certification, based upon a finding that he committed the Class B misdemeanor, "Resisting Officers," when he "resisted the commands of Det. Eller with the Buncombe County Sheriff's Office who was discharging the duties of his office, while working at the hotel. You refused to leave the hotel when ordered to do so by the deputy prompting the deputy to call for reinforcements from the Buncombe County Sheriff's office and the Asheville Police Department." R. 8.

56. Following the PCC's decision, Petitioner requested a contested case hearing.

57. At the contested case hearing, the Undersigned had questions of her own for Petitioner. T. 215-20. The following are some of Petitioner's responses:

- "being a police officer to me now means more than anything in the world."
- Petitioner has an uncle and an older brother who are police officers.
- Petitioner desires to help others.
- Petitioner believes that police officers deserve respect from the community and should be held to a higher standard.
- Petitioner was frustrated during the incident in Asheville and did not show Detective Eller respect.
- Petitioner was 25 years old at the time of the hearing.

T. 216-19.

58. There was further exchange with the Undersigned:

THE COURT: What do you think you should do now to show that you've learned something here?

THE WITNESS: Honestly, ma'am, I would – I would be willing to do whatever it – you know, whatever it took. You know, if you – if I needed to do classes or anything like that I would be more than happy to –

THE COURT: Based on this experience, what kind of classes do you think would be helpful?

THE WITNESS: Probably some type of, you know, alcohol classes, how alcohol was a problem in this situation. Maybe, you know, offering me to do something with the police department to work alongside police officers to show them that I do show them respect and, you know, I'm sorry for even, you know – go sit with Detective Eller and tell him how sorry I am.

T. 219.

59. The Undersigned finds as fact that Petitioner's statements on the night of January 22-23, 2011 and the written and oral statements he has given since then have been consistent.

60. The Undersigned finds as fact that Petitioner's statements are consistent with all of the believable evidence in this contested case.

61. After observing the demeanor of the Petitioner, the reasonableness of his testimony and the consistency of his statements, the Undersigned finds the Petitioner to be credible.

62. The Undersigned finds as fact that every law enforcement professional who testified at the contested case hearing holds the opinion that Petitioner accepts responsibility for his actions and is remorseful.

63. The Undersigned finds as fact that Lt. Dave Johnson, Charlotte-Mecklenburg Police Department; Det. Steve Ingram, Davidson Police Department; Sgt. Marty Poole, Davidson Police Department; and Chief Jeanne Miller, Davidson Police Department, support Petitioner's application for certification as a law enforcement officer employed by the Davidson Police Department.

64. The Undersigned finds as fact that Petitioner's actions were less than prudent and certainly disrespectful toward Det. Eller and the other officers from the Buncombe County Sheriff's Office and the Asheville Police Department on the night of January 22-23, 2011.

65. The Undersigned finds as fact that Petitioner is remorseful over his conduct, that he accepts full responsibility for his actions, and that he is willing to comply with any conditions the Commission may impose to ensure that such conduct does not repeat itself in the future if his application for law enforcement officer certification is granted.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge in that jurisdiction is proper and both parties received notice of the hearing.

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 9, to certify law enforcement officers and to deny, revoke, or suspend such certification.

3. 12 N.C. ADMIN. CODE 09A .0204(b)(3)(A) allows the Commission to suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a criminal offense or unlawful act defined as a Class B misdemeanor.

4. The criminal offense of Resisting Officers, in violation of N.C. GEN. STAT. § 14-223, constitutes a Class B misdemeanor pursuant to 12 N.C. ADMIN. CODE 09G.0102(9)(cc) of the Commission's Administrative Rules, and the Class B Misdemeanor Manual as published by the North Carolina Department of Justice.

5. The North Carolina Supreme Court has considered what actions are a violation of N.C. GEN. STAT. § 150B-34 and held that:

The general rule is that merely remonstrating with an officer in behalf of another, or criticizing or questioning an officer while he is performing his duty, when done in an orderly manner, does not amount to obstructing or delaying an officer in the performance of his duties.

State v. Leigh, 278 N.C. 243, 251 (2009)).

6. Unlike a criminal proceeding where the burden of proof is beyond a reasonable doubt, in a contested case hearing the burden of proof is preponderance of the evidence. N.C. GEN. STAT. § 150B-34.

7. The weight of the evidence showed that Petitioner's conduct toward Det. Eller and the other responding law enforcement officers was mere remonstrance and that Petitioner did not resist, delay or obstruct any of them in the performance of their duties.

8. The preponderance of the evidence shows that Petitioner did not commit the criminal offense of Resisting Officers. N.C. GEN. STAT. § 14-223.

9. Accordingly, the Petitioner has met his burden of proving by a preponderance of the evidence that the Commission had insufficient grounds pursuant to 12 N.C. ADMIN. CODE 9G .0102 (9)(cc), 12 N.C. ADMIN. CODE 9G .0504 (b)(3), and 12 N.C. ADMIN. CODE 9G .0505 (b)(1), to deny Petitioner's application for law enforcement officer certification.

BASED UPON the above Findings of Fact and Conclusions of Law, the Undersigned makes the following:

PROPOSAL FOR DECISION

It is hereby proposed that Petitioner's application for certification as a law enforcement officer be granted, but that the Petitioner be placed on probationary status for a period not to exceed two years. The Undersigned further proposes that the Commission consider imposing additional conditions on Petitioner such as those suggested by the Petitioner in his testimony at the contested case hearing.

NOTICE

The agency making the Final Decision in this contested case is required to give each party an opportunity to file exceptions to this Recommended 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 is required by Section 150B-36(b) of the General Statutes to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative

Hearings.

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

This the 10th day of September, 2013.

Hon. Selina M. Brooks
Administrative Law Judge