

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 02039

PROPOSAL FOR DECISION

APPEARANCES

Respondent: William P. Hart, Jr.
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

Whether the Respondent Criminal Justice Education and Training Standards Commission should deny Petitioner's certification as a juvenile justice officer, and suspend Petitioner's law enforcement officer certification, on the grounds that Petitioner lacks the requisite "good moral character" required of all law enforcement officers by 12 NCAC 9A.0204(b)(2) and 12 NCAC 9B.0101(3)?

STATUTE AND RULES AT ISSUE

N.C. Gen. Stat. § 17C-10
12 NCAC 09A.0204(b)(2)
12 NCAC 09A.0205(c)
12 NCAC 09B.0101(3)

WITNESSES

For Respondent: Richard N. Squires, Deputy Director, CJ Standards Division
Capt. Danny Lloyd, CHPD
Lt. Andrew Smith, CHPD
Inv. Brandon Perry, CHPD
Inv. Paul Bell, CHPD

For Petitioner: Robert J. Roy, Petitioner
Officer James Wilde, CHPD

EXHIBITS

For Respondent:

1. CJSD's *Proposed Denial of Juvenile Justice Officer Certification; and, Proposed Suspension of Law Enforcement Officer Certification*
2. CHPD Internal Investigation File

For Petitioner:

3. Officer's Complete History
4. Form F-5B Affidavit of Separation of Law Enforcement Officer
5. Form F-3 Personal History Statement
6. Petitioner's CHPD Job Performance Evaluations 2009 - 2012
7. Petitioner's Written statement dated September 19, 2013

STIPULATED UNDISPUTED FACTS

1. On or about January 9, 2001, Petitioner was employed with the Chapel Hill Police Department (hereinafter, "CHPD") as a police officer and was awarded Probationary Certification as a Law Enforcement Officer.
2. On January 9, 2002, Petitioner was awarded General Certification as Law Enforcement Officer.
3. On or about October 5, 2005, Petitioner was awarded an Intermediate Law Enforcement Certificate.

4. On or about February 22, 2008, Petitioner was awarded an Advanced Law Enforcement Certificate.
5. On or about January 3, 2013, the CHPD commenced an internal investigation or professional standards investigation concerning Petitioner's alleged conduct unbecoming of a supervisor and fraud related to documentation of confidential informant funds.
6. Effective April 15, 2013, Petitioner resigned his position with the Chapel Hill Police Department as a sergeant with the Narcotics Unit.
7. On or about August 22, 2013, Petitioner applied for a Youth Counselor Associate position with Chatham YDC and sought certification as juvenile justice officer.
8. By letter dated December 11, 2013, Steven G. Combs, Director of Criminal Justice Standards Division, notified Petitioner that the Criminal Justice Education and Training Standards Commission Probable Cause Committee had found probable cause to (i) deny his application for juvenile justice officer certification, and (ii) suspend his justice officer certification.
9. On March 5, 2014, Petitioner timely requested an administrative hearing.

UPON DUE CONSIDERATION of the sworn testimony of each witness presented at the hearing, assessing its weight and credibility in light of the demeanor of the witness; the opportunity of the witness to see, hear, know, and recall relevant facts and occurrences; the interests, bias, or prejudice the witness might have; whether the testimony of the witness is reasonable and consistent with other credible evidence; and, taken together with the admitted documents and exhibits, weighing all the evidence of the facts and inferences alleged, or lack thereof, in the record as a whole, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause upon timely request for and notice of hearing.
2. The Petitioner requested a contested case hearing following receipt of the Respondent's December 11, 2013 notification of Proposed Denial of Juvenile Justice Officer Certification, in reference to his October 2013 application, and Proposed Suspension of Law Enforcement Officer Certification, based upon the Affidavit of Separation [of] Law Enforcement Officer, and reports and statements furnished by the Chapel Hill Police Department.
3. 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, Subchapter 9A, to certify juvenile justice officers and to revoke, suspend, or deny criminal justice officer certification.

4. 12 NCAC 09A.0204(b)(2) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer fails to meet or maintain one or more of the minimum employment standards required for certification.

5. 12 NCAC 09B.0101(3) states that every criminal justice officer employed by an agency in North Carolina shall be of "good moral character" as determined by a thorough background investigation.

6. 12 NCAC 09A.0205(c) provides that when the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period or for so long as the stated deficiency continues to exist where the cause of the sanction is failure to meet or maintain the minimum standards of employment.

7. Sgt. Robert James Roy, the Petitioner, is a 1991 graduate of Michigan State University with a bachelor's degree in criminal justice. Following graduation, he was employed as a child welfare specialist with the State of Illinois for approximately five years. Beginning in 1998, Petitioner became a probation/parole officer with the State of North Carolina. **(Exhibit 3)** He was employed by the Chapel Hill Police Department, in positions of progressively greater responsibility, from January 9, 2001 until his resignation on April 15, 2013. He is currently non-sworn school resource officer at the N.C. School of Science and Math in Durham. Petitioner is married, and the father of one adult child, and two minor children.

8. Petitioner joined the Chapel Hill Police Department on January 9, 2001, and initially served as a patrol officer. Thereafter, he worked in the Narcotics Unit for approximately six years. In approximately 2008, Petitioner was promoted to sergeant in the Patrol Division. After about six months, Petitioner was assigned to the Narcotics Unit as a sergeant.

9. Sgt. Roy returned to head the Narcotics Unit, and supervised Investigators Brendan Perry and Paul Bell, and ALE Sgt. Preston Oppegard. It was his responsibility to assigned cases to the investigators, supervised their work, and kept account of money and equipment entrusted to the unit. Normally, he was not involved with field work, but was sometimes carried out operations because the investigators did not work Friday through Sunday, or participated in operations when another officer was needed. Consequently, he did not keep a ready envelope of "confidential informant" funds as Investigators Perry and Bell did.

10. From 2010-12, Petitioner reported to Lt. Jabe Hunter. In Sgt. Roy's 2012 evaluation, Lt. Hunter noted that he "had to take on greater responsibility since one of his investigators was assigned to a task force," but had kept "the cases organized and progressing," despite being "short one investigator[]." Petitioner's supervisor particularly praised his willingness to work in the field: "Sgt. Roy showed excellent initiative by volunteering to work undercover operations to cover another investigator in this unit. These operations place both of them in very dangerous situations. Sgt. Roy's eagerness to become involved has greatly benefited this unit and our community." (Exhibit 6.)

11. All of Sgt. Roy's evaluations in the record, and going back to his work in the Patrol Division in 2009, are "excellent" or "outstanding" on each of the eight attributes in CHPD's evaluates. In his August 2012 evaluation of Sgt. Roy, Lieut. Hunter noted that, "He is always very respectful of others, both inside and outside the agency," and "He treats each employee with fairness and respect." (Exhibit 6.)

12. His Lieutenant in the Patrol Division, where he began working as a Sergeant, noted in 2009 how Petitioner adapted to his supervisory role: "Sgt. Roy maintains a positive attitude while dealing with subordinates. He does not shy away from his duties as a supervisor and deals with problems head-on." "He treats subordinates and coworkers fair and respectfull[y]. He always attempts to obtain all the information from all parties involved when dealing with personnel issues." "I am aware of several occasions where he coached subordinates in improving th[eir] work habits to better the officer and the department. He was able to take on this task without causing additional conflict." (Exhibit 6.)

13. Petitioner found it very difficult to supervise Investigators Perry and Bell, who resented and resisted his involvement with planning and directing their cases, and his attempts to oversee their activities, which was his primary responsibility. The heated confrontation that led to CHPD's investigation of Petitioner was, in part, sparked by a meeting they held with a U.S. Attorney without notifying Petitioner. Some of the ill will may have resulted from Petitioner's discipline of Bell due to the incident involving outside parties in 2010. (Exhibit 2, pp. 80 – 84, 86.)

14. As far back as the fall of 2009, Investigator Bell had directed profane and abusive language towards Sgt. Roy of the nature that has been found to be "unacceptable personal conduct" and good cause for dismissal of State employees. (Exhibit 2, pg. 83.) See, e.g., *Lay v. Durham Department of Social Services*, 05 OSP 1112, 2006 WL 2035418 (NC OAH, 22 February 2006).

15. Officer James Wilde, CHPD, testified that he had been in a meeting with Petitioner to discuss cases, when the investigator Bell came in and asked to use a particular vehicle. When Sgt. Roy directed him to use of different vehicle, Bell stomped out yelling, "F _ _ _ you! F _ _ _ you!" Bell then left in the vehicle he had asked for.

16. Petitioner felt unsupported by his superiors in his attempts to deal with problems in the narcotics unit, and consequently, had requested to be transferred to other duties on multiple occasions, without success. (Exhibit 2, p. 74).

17. On January 4, 2013, Christopher Blue, Chief of Police, initiated an administrative investigation. Petitioner remained on active duty status performing his usual duties. (Exhibit 2, p. 21). Petitioner was not advised of the specific allegations against him, and assumed that the investigation was about a December 17, 2012, Narcotics Unit meeting that included an emotional argument with Investigator Bell. Consequently, he was surprised to be questioned about most of the events that the investigation came to focus on.

18. Chief Blue assigned Capt. R.D. Lloyd to conduct the administrative investigation.

He interviewed most of the officers in the narcotics unit three times, but due to a major change in duties, did not complete the investigation, and did not offer recommendations. The investigation was completed Lieut. Kevin Gunter.

19. Respondent's December 11, 2013 notification letter states that its Probable Cause Committee had found probable cause to take the proposed adverse actions upon concluding that "your misconduct as a law enforcement officer with the Chapel Hill Police Department . . . indicative of a lack of good moral character," for reasons particularized as follows:

Specifically, an Internal Investigation was initiated due to allegations of your misconduct during a unit meeting and your participation in a narcotic buy using a confidential informant without another officer present. The Internal Investigation revealed that during a unit meeting held on or about December 17, 2012, you engaged in an inappropriate exchange with a subordinate during which witnesses said you intentionally provoked the subordinate. The investigation also revealed that on or about November 30, 2012, you failed to follow standard practice during a confidential informant drug run. Finally, the investigation revealed discrepancies in documentation of the funds transfer for the aforementioned controlled drug buy. A review of the investigation by the Assistant Chief of Police pointed to untruthfulness or dishonesty on your behalf.

In arriving at its finding of probable cause, Respondent's Probable Cause Committee relied upon the CHPD internal "professional standards investigation" report and associated documents (Exhibit 2), and CHPD's Affidavit of Separation [of] Law Enforcement Officer (Exhibit 4).

"Misconduct during a unit meeting"

20. In October 2012, Lt. Andrew Smith was assigned to supervise the Narcotics Unit, succeeding Lt. Hunter. He had been forewarned by Asst. Chief Vereen and Lieut. Hunter that there was tension between Petitioner and Investigators Brandon Perry and Paul Bell, and Preston Opegard. The Department had moved Lieut. Hunter's office in reaction to the ongoing problem.

21. On Monday, December 17, 2012, Lt. Smith called a "no rank" meeting of the Narcotics Unit to talk openly about how things were going, which he hoped would "clear the air," and together with some written guidelines and policies, would lead to a calmer and more cooperative atmosphere in the unit. (Exhibit 2, pg. 37.)

22. Lt. Smith spoke first about his desire to "hash out" any and all issues that were impeding productivity with stress and mistrust, and said that everyone be heard. Investigator Perry spoke next and said that one of the biggest problems was lack of good communication within the unit, and Smith "reinforce the positive points" in his comments. Then Sgt. Roy spoke about the need to follow the chain of command, and specifically to make sure that he was included in all meetings with officers from other law enforcement agencies, citing instances when he had been excluded. Lieut. Smith testified that he had to keep the Investigator Bell from

interrupting Petitioner. Eventually he did succeed in cutting off Petitioner, and by his account, said that the request to be included in all meetings “wasn’t fair, that Sgt. Roy wanted to run every aspect of everything for every case.” Lieut. Smith testified that, this was “when it seemed that everyone begins speaking louder all at once,” with what he perceived as “taunting” from both sides. Bell was yelling, clenching his fists, and staring at Petitioner in what he perceived as “a threatening manner ... as if he was going to attack me.” Petitioner asked Inv. Bell why he was staring at him. Inv. Bell responded “because I can,” and accused Petitioner was “bullying” him. Petitioner responded that Bell was trying to intimidate him, and asked Bell several times “do you want to fight me?” Inv. Bell said that Sgt. Opegard and Perry had to calm Bell down. Petitioner testified that he had seen Bell and that condition before and was afraid he might be “hit or shot.” “When it got calm again,” stated “how unprofessional all this stuff sounds;” discussed that he would be drafting a memo to spell out certain procedures for the unit, and highlighted a few of things” that would be in the memo, and ended the meeting. At no point did Petitioner touch or threaten Investigator Bell, verbally or physically. (Exhibit 2, pgs. 79, 132-33 & 125.)

23. It was a consensus of the other participants in the meeting, notably including Lieut. Smith, was that Sgt. Roy’s reaction exacerbated the situation. It was Petitioner who most disappointed Lieut. Smith’s expectations of professional conduct. (Exhibit 2, pg. 38.)

24. Petitioner was appalled at the lack of support as a supervisor confronted by a belligerent employee. Lieut. Smith, who may have felt constrained by the announced purpose of meeting from disciplining Investigator Bell, told Sgt. Roy that they needed to let people “get things off their chest.” Petitioner went to Asst. Chief Vereen and asked to be transferred back to Patrol Division, complaining that he should be asked to “put up with people rolling their eyes, looking at him like they wanted to fight and getting loud.” Vereen denied the request and told Sgt. Roy that he should “give Lieut. Smith the chance.” (Exhibit 2, pg. 38.) Petitioner also asked Capt. Lloyd the next day for a transfer, and was again denied.

25. In light of Respondent’s 14-year career in law enforcement, with promotions to positions with supervisory responsibilities, after extensive opportunities to evaluate his relationships with peers and subordinates; the specific evaluations commending him for his performance in those roles (Exhibit 6.); the evident frustration of a years-long history of insubordinate incidents and poor relationships with supervisees, and perceived lack of support from his supervisors; the extraordinary personal and professional insults and provocations directly undermining performance of his professional duties and responsibilities; the presence of both his immediate supervisor and his immediate subordinates as participants in the event; and, Petitioner’s own recognition of the untenable nature of his situation, reflected by his effort to leave his position, with the assent of the organization; the Court finds that Petitioner’s inappropriate behavior on December 17, 2012 was a situational reaction to the unique circumstances, rather than the product poor moral character that could be expected produce a series or pattern of incidents abusive behavior, towards subordinates in particular, and displays of disregard for the rights and well-being of others, generally.

“Discrepancies in documentation of the funds transfer for the ... drug buy.”

26. Also on December 17, 2012, Investigator Perry wrote a memo to Lieut. Smith suggesting that Sgt. Roy had been secretive during a recent audit of Perry's confidential informant cash account, and suggesting someone else should "go through my past audits and find the problem with the audit in question" -- which at that point was an overage of \$41 (or \$42, in some references). Consequently, his "CI account" became a topic of the Police Department's inquiry.

27. Originally, Investigator Perry complained that his confidential funds balance was \$70 short. Lieut. Smith asked Petitioner to review Perry's account. When he did, it quickly became clear that Perry had failed to record the \$120 transferred to Sgt. Roy when he prepared a run sheet documenting the transfer on December 3rd. With that taking into account, Perry actually had a \$42 overage in his account. (Exhibit 2, pgs. 23, 31 & 78.)

28. Sgt. Roy documented the use of money for the drug buy by filling out a "Confidential Funds Expenditure Form" -- sometimes referred to as a "transfer form" or "run form" -- stating that, "\$120 of funds were received from B. Perry by R. Roy on 11/29/12." It was signed by Petitioner as recipient of the funds, and by Investigator Perry (as acknowledged in his testimony) as the "accountable agent" or account holder. (Exhibit 2, pgs. 92.) Sgt. Roy agreed that the date of receipt should have been the 30th -- that he got the money the day of the drug buy, which occurred on the Friday, November 30, 2012 when he and Lieut. Smith attended a meeting Hillsborough together. Sgt. Roy consistently stated that he had taken \$160 from investigator Perry's desk, used \$120 and returned \$40. (Exhibit 2, pgs. 28-29 & 77.) The form correctly reflected the amount taken.

29. Capt. Lloyd testified that he was not able to confirm that any money was missing, and that Investigator Perry had a surplus of \$42 in account.

30. There were no discrepancies in the documentation of the funds transfer to Sgt. Roy for the November 30, 2012 drug buy.

31. Following Petitioner's resignation, Perry was reassigned to the CHPD's Patrol Division.

"Participation in a narcotic buy using a confidential informant without another officer present"

32. The Petitioner believed, and instructed the narcotics investigators in his unit, that the best practice when making a purchase of illegal drugs with a confidential informant was to have officers posted at the site where the transaction would occur, and as well as bringing the CI to the area. Under ideal circumstances, he preferred to have two officers in each of those roles, under ideal circumstances.

33. The Chapel Hill Police Department had not adopted any official policy or guidelines specifying this method of arranging drug buys, or setting out considerations for varying the process according to circumstances, although the Petitioner had advocated it. To the extent that the use of two or more officers was the "official" procedure, it was because Sgt. Roy

advocated it. There was no showing that CHPD would have adopted a rigid rule prohibiting what Sgt. Roy did on November 30, 2012 out of consideration for the safety of the confidential informant, had they committed the “standing policy” to writing. Obviously, his “standard policy” permitted it.

34. On Friday, November 30, 2012, the CI called Petitioner eagerly wanting to make a controlled buy in order to get his complete promised assistance to law enforcement. He said could make a purchase of illegal drugs from a specific target dealer. However, the CI later called and said he could not get in touch with the target. Petitioner attended a Project Safe Neighborhood meeting in Hillsborough during the afternoon with Lt. Smith. Petitioner informed Lt. Smith of the possible transaction, but stated that it was uncertain whether it would take place.

35. Petitioner went to his home in Hillsborough after the meeting since he had driven his personal car. While at home, the CI called Petitioner again and said that he had ordered some drugs from the dealer and that he had to do the transaction because the dealer was becoming suspicious. The CI believed the dealer was dangerous and was scared of him.

36. Petitioner met the CI at the narcotics office. Petitioner’s intention was to get a patrol officer to assist him in observing and monitoring the transaction, if arrangements were actually made for a drug sale. The dealer called the CI on his cell phone while the CI was with Petitioner’s presence in the Narcotics Unit office. The dealer gave the CI only 15 minutes to get to the location. The CI was afraid it would arouse the dealer’s suspicion if he did not go to meet him immediately. Petitioner made a judgment call to proceed with the controlled purchase right away even though the usual paperwork had not been completed, and he cannot arrange for another officer’s assistance on such short notice. Petitioner was concerned for the safety of the CI and felt it was his duty to protect him from possible physical harm.

37. Petitioner followed the procedures for executing a controlled buy. Petitioner retrieved the retrieved the drugs from the CI and logged it into the evidence locker at the Police Department. The unspent CI funds were returned to Inv. Perry’s desk drawer. Petitioner informed the CI that he would do his paperwork the following week.

38. In light of all the circumstances, Petitioner cannot be said to have violated the standard practice of CHPD during the confidential informant “drug run” on November 30, 2012. Sgt. Roy’s actions on November 30, 2012 do not call into question his good moral character.

“Untruthfulness or dishonesty” -- Transfer Form

39. The “Confidential Funds Expenditure Form” has a blank for a “Witness” signature. The form does not indicate whether the “Witness” is verifying only that the other signatures above his were affixed by the people they name; or, whether the witness is also attesting that the transaction described actually occurred and as represented. (Exhibit 2, pgs. 92 & 93.) At some point during the process of finalizing the form, Sgt. Roy became concerned that, in the toxic atmosphere of the unit at that time, someone who did not wish him well might claim that witness signed the form for the latter purpose, and accuse him of dishonestly procuring the

signature of a person who did not have personal knowledge of the financial transaction. Consequently, he ended up “whiting-out” Investigator Bell’s signature, wrote “not witnessed” in the “Witness” blank, and initialed it.

40. However, prior to that decision, Sgt. Roy had sought a witness signature from both Sgt. Opegard, who turned him down for sound technical reasons, and Investigator Bell, who signed. Sgt. Roy described soliciting their signatures in that order when Capt. Lloyd discussed the form with him. Opegard and Bell said it was the other way around. This was treated as a major controversy in the investigation.

41. In the absence of any financial discrepancy, whether Sgt. Roy first asked Sgt. Opegard or Investigator Bell to sign the form appears to be utterly inconsequential. There is no suggestion in the record that Sgt. Roy would have any reason or motivation to lie, or would have anything to gain or lose by the order in which he sought the signatures. That Petitioner was surprised by questions this and similarly trivial matters about this helped create “inconsistencies” that fueled the investigation. (Exhibit 2, pg. 73.)

42. It was clear from Sgt. Roy’s testimony, and reflected in some of his recorded statements (Exhibit 2, pgs. 67), that he did not have a thorough recollection of this transaction, but reasoned that he would not have sought Opegard’s signature after he had whited out Bell’s. However, it also appears possible that after obtaining Bell’s signature, Roy decided that relying on it might invite trouble, in light of the December 17 incident with Bell, the occasions he disciplined Bell in 2010 (Exhibit 2, pg. 83), and their contentious relationship throughout.

43. The undersigned finds that Sgt. Roy’s statements to investigators concerning the transfer form and its “witness” signature line were made on honest belief, and truthful to the best of his ability to recall the facts. Otherwise, what actually occurred has no bearing on Petitioner’s fitness to serve as a law enforcement officer.

“Untruthfulness or dishonesty” -- Patrol Officer

44. It was alleged that Sgt. Roy falsely told Lieut. Smith, after the drug buy, that he had used a patrol officer in that operation. This allegation apparently had its origin in a conversation Assistant Chief Leo Vereen had with Lieut. Smith on December 31, 2012, which Vereen came away from with the impression that Roy had made this statement to Smith. (Exhibit 2, pg. 23 & 38.) When asked, Smith directly contradicted this. (Exhibit 2, pgs. 31 & 130.)

45. The evidence shows that Sgt. Roy told Lieut. Smith, while they were together at a Project Safe Neighborhood meeting in Hillsborough on Friday, November 30, 2012, that he had been contacted by a confidential informant (“CI”) about the possibility of a drug buy that day, and would ask for the help of a patrol officer if that happened. He declined the help offered by Smith and Investigator Bell, because he did not think it would happen, and he could normally get the assistance of a patrol officer who, unlike them, was already on scheduled duty, on short notice. He had driven his personal car to the meeting, expecting to go directly to his home in Hillsborough when he left. Capt. Lloyd asked Lieut. Smith about this on January 10, 2013, and

recorded the response that when Smith had heard about Investigator Perry's complaint about money he had encouraged Roy "to get an audit together and to make sure and get the patrol officer that accompanied him November 30 to sign as a witness. At that time Roy said he went without an officer." (Exhibit 2, pg. 28.) This conforms with Asst. Chief Vereen's account of his conversation with Smith on December 31, 2012. (Exhibit 2, pg. 38.)

46. When re-interviewed in mid-January, Smith said "that following the 11/30 run he had not heard Roy specifically mention using a patrol officer." (Emphasis mine.) In his written "Memo for Narcotics IA," Smith states that after his conversation with Petitioner at the Hillsborough meeting prior to the drug buy, "I didn't hear anything else about this run until Dec. the 4th."

47. But by that time of Smith's second interview, this allegation had been discussed enough that Smith apparently thought there was another source for the story. He told Capt. Lloyd he thought "Perry and Bell may have been told this." They did not confirm that in their subsequent interviews shortly after Smith's, when logically they would have been asked. The claim does appear in a later undated statement attributed to Bell -- say he heard petitioner making the statement to Perry and Smith on December 3rd., the apparent date when Smith said Roy told him otherwise. Bell's account is not noted in the final submissions by Lloyd (Exhibit 2, pg. 23) or Vereen (Exhibit 2, pg. 19).

48. As Capt. Lloyd recorded it, Lieut. Smith also suggested that he had been misled in a manner that contradicts his prior interview, and Asst. Chief Vereen's account of his conversation with Smith on December 31, 2012. (Exhibit 2, pg. 31.) Lloyd quotes Smith as saying, "Smith said he told Roy that he would need to get the run sheet from 11/30 with the patrol officer's signature that assisted him and Roy replied 'no problem.'" Vereen's statement about his conversation with Smith on December 31, 2012 relates that, "When Lieut. A. Smith asked him for the run sheet Sgt. Roy told him he did the run alone."

49. Sgt. Roy told Lieut. Smith on December 30th that it was his intention to request the help of a patrol officer in the event -- which he thought then was unlikely -- that he would run a drug buy that evening. Events made that impractical, as related below. The greater weight of the credible evidence does not support the allegation that, after the drug buy, Roy made the untruthful statement that he had used a patrol officer in the operation.

"Untruthfulness or dishonesty" -- Obtaining funds for drug buy

50. Sgt. Roy consistently said that, because he kept no funds for drug buys, he got some of Investigator Perry's CI funds, and had to call Perry to find out where he kept the money. Investigator Perry alleged that Petitioner took some of his CI funds from his desk without his prior knowledge for the drug buy on Friday, November 30th, 2012. In his testimony, Perry acknowledged that there would be nothing wrong with that, if he was informed later. He told Capt. Lloyd that he learned about this on the following Monday, December 3, 2012.

51. When Capt. Lloyd initially interviewed Investigator Bell on January 8, 2013, he

recorded that Bell “said on 11/30/12 he got a call from Brandon [Perry] who asked if he (Paul [Bell]) had gotten a call from Rob [Roy]. According to Paul, Brandon said Rob had called asking him where his money was.” (Exhibit 2, pg. 24.) Bell confirmed this in his second interview with Lloyd. (Exhibit 2, pg. 32-33.) This comports with Petitioner’s account.

52. There were other efforts to cast doubt on this detail of Sgt. Roy’s narrative. The greater weight of the credible evidence, circumstantial and testamentary, supports the Petitioner’s account.

53. An attachment to the Affidavit of Separation [of] Law Enforcement Officer (Exhibit 4) states that the investigation of Petitioner was initiated due to allegations of “bullying subordinate officers and fraud related to documentation of confidential informant funds,” and that, “The allegations contained in the investigation were substantiated.”

54. Capt. Lloyd testified that he was not able to confirm that any money was missing, and that Investigator Perry had a surplus of \$42 is account.

55. There is no evidence in this record to support the implication that Petitioner committed fraud to obtain money.

56. There is no credible evidence in this record to support the allegation that Petitioner committed fraud.

57. “Prior to 1975, the law in North Carolina was clear that evidence relating to polygraph examinations was inadmissible at trial.” *State v. Grier*, 307 N.C. 628, 637, 300 S.E.2d 351, 356 (1983). Thereafter, our courts allowed polygraph evidence to be admitted, with cautionary instructions, if both parties stipulated and agreed to its admission. But in 1983, our Supreme Court was “disturbed by the possibility that the jury may be unduly persuaded by the polygraph evidence.” *Id.*, 307 N.C. at 643, 300 S.E.2d at 360, and ruled that, “[I]n North Carolina, polygraph evidence is no longer admissible in any trial. This is so even though the parties stipulate to its admissibility.” *Id.*, 307 N.C. at 645, 300 S.E.2d at 361. “The validity of the polygraphic process is dependent upon such a large number of variable factors, many of which are extremely difficult, if not impossible, to assess, that we feel the stipulation simply cannot adequately deal with all situations which might arise affecting the accuracy of any particular test.” *Id.*, 307 N.C. at 645, 300 S.E.2d at 360.

58. The findings of the polygraph test were unacceptable by law, and erroneous in fact.

59. Lieut. Smith testified that, prior to the December 17, 2012 meeting, he had no concerns about Sgt. Roy’s performance. He felt that “cautionary” discipline could be appropriate due to events at the meeting, although that was not done before the investigation was initiated on January 4, 2013. He had no question about Petitioner’s good moral character before the financial issues were raised.

60. The investigation caused Petitioner had become depressed and anxious to the point that it disturbed his eating and sleeping habits. (Exhibit 7). Petitioner's personal decision to resign was not an admission to any allegation, or lack of good moral character.

61. The preponderance of the evidence adduced at the hearing of this matter does not show that the Petitioner lacks the requisite "good moral character," within the meaning of 12 N.C.A.C. 10B .0301(a)(8) (2014), to obtain and retain certification as a sworn justice officer.

62. In light of the competent evidence presented at the hearing and the testimony of the witnesses, Respondent's proposed suspension of Petitioner's criminal justice officer certification and denial of his application for a juvenile justice officer certification is not supported by the preponderance of the evidence.

63. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.

2. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23.

3. The trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C.App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C.App. 545, 549 (1971).

4. 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 9A, to certify criminal justice officers and to revoke, suspend, or deny such certification.

5. 12 NCAC 09A.0204(b)(2) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer fails to meet or maintain one or more of the minimum employment standards required for certification. 12 NCAC 09B.0101(3) states that every criminal justice officer employed by an agency in North Carolina shall be of "good moral character" as determined by a thorough background investigation.

6. Good moral character is defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *In re Willis*, 288 N.C. 1, 10, 215, S.E.2d 771, 776

(1975). “Good moral character has many attributes, but none are more important than honesty and candor.” *In re Legg*, 325 N.C. 658, 386 S.E.2d 174, 182 (1989).

7. “[T]he term ‘good moral character,’ although broad, has been so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined contours[.]” *** “It can be defined in an almost unlimited number of ways[,] for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal view and predilections, can be a dangerous instrument for arbitrary and discriminatory denial[.]” *In re Willis*, 288 N.C. 1, 10-11, 215 S.E.2d 771, 776-77 (1975), *appeal dismissed* 423 U.S. 976 (1975).

8. Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents. *In re Rogers*, 297 N.C. 48, 58, 253 S.E.2d 912, 918 (1979); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174, 183 (1989).

9. “Fraud” is generally defined as intentional misrepresentation for the purpose of obtaining something of value. *See, e.g.*, N.C. Gen.Stat. § 108A-63 (Medicaid provider fraud)(2014); § 20-106.1 (2005) (rental vehicle fraud); § 14-113.13(a)(1)(2001) (financial transaction card fraud). The Petitioner did not commit fraud.

10. In North Carolina, polygraph evidence is not admissible in any trial. *State v. Grier*, 307 N.C. 628, 645, 300 S.E.2d 351, 361 (1983).

11. The preponderance of the competent evidence presented at the hearing establishes that Petitioner is truthful, honest, and possesses the personal integrity required of a North Carolina certified law enforcement officer or juvenile justice officer.

12. In light of the competent evidence presented at the hearing and the testimony of the witnesses, Respondent’s proposed suspension of Petitioner’s criminal justice officer certification and denial of his application for a juvenile justice officer certification is not supported by the preponderance of the evidence.

13. The Petitioner’s certification as a sworn justice officer is not due revocation for failure to maintain “good moral character,” within the meaning of 12 N.C.A.C. 10B .0301(a)(8) (2014).

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge respectfully recommends that Respondent grant Petitioner’s application for juvenile justice officer certification, if otherwise qualified, and that his law enforcement officer certification be permitted to remain in effect.

ORDER AND 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.

IT IS SO ORDERED.

This the 13th day of October, 2014.

Hon. J. Randolph Ward
Administrative Law Judge