

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 02724

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GENE ARTHUR PULLEY, III,                    )  
  )  
      Petitioner,                                )  
  )  
      vs.   )  
  )  
NORTH CAROLINA CRIMINAL                 )  
JUSTICE EDUCATION AND                    )  
TRAINING STANDARDS                        )  
COMMISSION,                                 )  
  )  
      Respondent.                             )

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**PROPOSAL FOR DECISION**

Pursuant to N.C. Gen. Stat. § 150B-40(e), Respondent filed a request for designation of an Administrative Law Judge to preside at a hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes on April 14, 2014. Petitioner initiated this hearing to contest Respondent's March 12, 2014 decision to deny or suspend Petitioner's law enforcement certification.

On August 27, 2014, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Wilmington, North Carolina. On October 7, 2014, the undersigned issued an Order ruling that there was insufficient evidence presented at hearing to support Respondent's proposed denial or suspension of Petitioner's law enforcement suspension. Pursuant to the undersigned's request, Petitioner filed a proposed Final Decision with the Office of Administrative Hearings on October 21, 2014.

**APPEARANCES**

For Petitioner:

J. Michael McGuinness  
The McGuinness Law Firm  
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For Respondent:

William P. Hart, Jr.  
Assistant Attorney General  
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## **ISSUE**

Was there sufficient evidence to justify Respondent's decision to deny or suspend Petitioner's law enforcement certification for impersonating a law enforcement officer in violation of N.C. Gen. Stat. § 14-277?

## **STATUTES/RULES AT ISSUE**

N.C. Gen. Stat. § 14-277  
12 NCAC 9A .0204(b)(3)(A)

## **FINDINGS OF FACT**

### **Procedural Background**

1. On March 12, 2014, Respondent Commission's Probable Cause Committee found probable cause to deny or suspend Petitioner's application for continued certification as a law enforcement officer for committing the Class B misdemeanor offense of "Impersonation of a Law Enforcement Officer," in violation of N. C. Gen. Stat. § 14-277.

2. Specifically, Respondent's Probable Cause Committee alleged that on October 1, 2013, Petitioner impersonated a law enforcement officer during a traffic stop "by advising Officer Bojko you were a 'cop' and opened your wallet displaying a police identification." (Resp. Ex. 1)

### **Adjudicated Facts**

3. In 2008-2009, Petitioner began his law enforcement career by working as a detention officer for the New Hanover Sheriff's Office. On May 27, 2008, Petitioner resigned from the Sheriff's Department, and completed basic law enforcement training (BLET).

4. On May 4, 2010, Respondent issued a Probationary Law Enforcement certification to Petitioner Gene Arthur Pulley, III. (Pet. Ex. 1) On April 29, 2011, Respondent issued a General Law Enforcement Certification to Petitioner. (Pet. Ex. 2)

5. By report dated April 22, 2010, Dr. Gregory Gridley advised Wallace Police Chief Bobby Maready of the result of his psychological evaluation to assess Petitioner's fitness for employment and duty as a Wallace police officer. Dr. Gridley concluded that Petitioner was fit for employment as a law enforcement officer, and indicated that he will "be an excellent addition to your force." (Pet Ex. 10)

6. From May 2010 until September 2013, Petitioner served as a Wallace police officer under the leadership of Chief Bobby Maready. (Pet. Ex. 7)

7. Petitioner decided to pursue employment with a larger law enforcement agency, and resigned from the Wallace Police Department effective September 9, 2013. When Petitioner

resigned from the Wallace Police Department, the Police Department affirmed that as of September 9, 2013, it was not aware of any investigation in the last 18 months concerning any potential criminal action or potential misconduct by Petitioner. (Pet. Ex. 3)

8. On September 3, 2013, Petitioner passed his firearms qualification, (Pet. Ex. 5), and a required drug screen to be hired as a Shallotte Police Officer. On September 16, 2013, Respondent received the Shallotte Police Department's Report of Appointment/Application for Law Enforcement Certification for Petitioner to be certified as a law enforcement officer, and become a Shallotte Police Officer. (Pet. Ex. 6)

9. The Shallotte Police Chief issued a Shallotte Police Department uniform to Petitioner for duty. Petitioner also wore his uniform in a photograph taken with other Shallotte Police Officers. (Pet. Ex. 11) However, the Shallotte Police Chief had not yet issued Petitioner his police badge or equipment for the Shallotte Police Department.

10. On October 1, 2013, Petitioner was between service as a law enforcement officer with the Wallace Police Department and with the Shallotte Police Department. Petitioner had applied for employment with the Shallotte Police Department. The Shallotte Police Chief had accepted Petitioner's application for employment, and offered Petitioner a job to serve as a police officer. Such job offer was conditionally based on Petitioner's continued law enforcement certification. Petitioner had also accepted the Chief's conditional offer of employment.

11. For all practical purposes, Petitioner had been hired as a police officer by the Shallotte Police Department on October 1, 2013, but Petitioner could not begin actual law enforcement service until Respondent Training & Standards Commission gave its final approval. Petitioner and the Shallotte Police Department were simply awaiting final approval of the documents associated with his continuous certification from Respondent. On October 10, 2013, Shallotte Police Chief Rodney Gause wrote a letter indicating that the Shallotte Police Department was awaiting the letter of approval from the Training & Standards Commission, and as soon as that letter is received, that the hiring process [of Petitioner] would be complete. (Pet. Ex. 8)

12. There was no evidence presented at hearing that suggested there was any problem that would have precluded Petitioner's finalized hiring, certification and service with the Shallotte Police Department.

13. Before March 12, 2014, Respondent had never taken any adverse action against Petitioner's law enforcement certification.

14. On October 1, 2013, Petitioner was driving on Carolina Beach Road in Carolina Beach, North Carolina, and taking his infant son to a medical appointment. Carolina Beach Police Officer Mike Bojko stopped Petitioner for allegedly speeding. Officer Bojko approached Petitioner's vehicle, and asked Petitioner for his driver's license and registration. Petitioner opened his wallet, and retrieved his driver's license. Officer Bojko saw Petitioner's Wallace Police identification card in Petitioner's wallet. Petitioner had kept the identification card with permission of Wallace Police Chief Bobby Maready.

15. Petitioner's wallet was a two-fold black leather wallet that opened like a book. A black velvet flap covered the right side of the wallet. When the flap was opened, the flap revealed an empty space where a police badge could be kept. Petitioner used this wallet every day to carry his identification, driver's license, and other items.

16. Petitioner told Officer Bojko that he worked in law enforcement. Officer Bojko asked Petitioner what department he worked for. Petitioner explained that September 9, 2013 was his last day with the Wallace Police Department after working for them for 3 1/2 years. He told Bojko that he was awaiting his paper work "from Raleigh" for his transfer to the Shallotte Police Department.

17. After seeing the identification card, Officer Bojko requested to see the card. Per Bojko's request, Petitioner provided the identification card to Officer Bojko. The identification card was a paper document, and not an actual metal official police badge.

18. Officer Bojko took the identification card, went back to his police vehicle, and called the Wallace Police Department regarding Petitioner's Wallace Police identification card. Subsequently, Officer Bojko returned to Petitioner's care and issued Petitioner a citation for speeding, and for impersonating a law enforcement officer.

19. In the citation/charge against Petitioner for impersonating an officer, the charge failed to specify what prong or aspect of N.C. Gen. Stat. § 14-277 that Petitioner allegedly violated. The New Hanover County District Attorney dismissed the criminal charge of "Impersonating a Law Enforcement Officer" against Petitioner.

20. On April 16, 2014, Wallace Police Chief Bobby Maready wrote a letter on Petitioner's behalf, confirming that Petitioner had served as an officer with the Wallace Police Department from May 4, 2010 until September 9, 2013. Chief Maready opined, "Officer Pulley was a fine officer known for his honesty and professional demeanor." Chief Maready "had no disciplinary actions or formal complaints filed against him." (Pet. Ex. 9)

21. At hearing, several witnesses attested to Petitioner's very good character and very good work performance. Each of these witnesses was credible and believable, and provided information regarding the integrity, truthfulness, character, and work performance of Petitioner. Each of the witnesses also provided credible testimony that Petitioner has been an honest, dedicated, and successful law enforcement officer who was truthful and professional.

22. The credible testimony of several witnesses at trial, as well the exhibits admitted into evidence showed that Petitioner has the support of both his former Chief at Wallace Police Department, and Shallotte Police Chief Gause, who was in the process of completing the hiring of Petitioner. In addition, retired New Hanover County Sheriff Sidney Causey opined that when Petitioner served under his command, Petitioner "performed in a conscientious and professional manner, he is an honest, hardworking person with a high degree of integrity." (Pet. Ex. 12) Petitioner's Exhibit 12 included a number of other additional character and work performance related letters and observations from various individuals. Each of those letters reflected very

favorably upon the credibility and professionalism of Petitioner.

23. The preponderance of the evidence at hearing showed that Petitioner carried his Wallace Police identification card by "pure habit" and not for impersonating a law enforcement officer. During the October 1, 2013 traffic stop, Petitioner did not affirmatively display or use his Wallace Police identification card in connection with his communications with Officer Bojko. Petitioner's identification card was a paper identification card, not an official police badge, and was plainly visible to Officer Bojko from his position standing outside Petitioner's vehicle.

24. A preponderance of the evidence at hearing also showed that Petitioner did not misrepresent any material facts to Officer Bojko during the October 1, 2013 traffic stop. There was no evidence at hearing, which indicated or implied that Petitioner exhibited any criminal intent or other improper intent during the October 1, 2013 with Officer Bojko. In fact, Officer Bojko acknowledged at hearing that Petitioner did not state or represent to him that he was a "sworn police officer," or sworn law enforcement officer. Officer Bojko acknowledged that Petitioner did not say that he was an active duty police officer at that time, and that Petitioner stated that he was waiting on paperwork from Raleigh, i.e. a reference to Respondent Training & Standards Commission. Chief Gause's October 10, 2013 letter in Petitioner's Exhibit 8 corroborated Officer Bojko's testimony.

25. After receiving the October 1, 2013 citation, Petitioner appropriately self-reported the charge to Respondent Training & Standards Commission.

26. Petitioner was credible and believable, and was forthcoming in his testimony.

27. A preponderance of the substantial evidence supports Petitioner's position and testimony, and there is no factual basis for adverse action against Petitioner's certification.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this 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 given labels.

2. 12 NCAC 09A .0204 "SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION" provides in part:

(b) 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:

- (3) has committed or been convicted of:
- (A) a criminal offense or unlawful act defined in 12 NCAC 09A

.0103 as a Class B misdemeanor; or

3. N.C. Gen. Stat. § 14-277 makes it unlawful for any person to “falsely represent to another that he is a sworn law enforcement officer.”

4. In *State v. Church*, 242 N.C. 230, 87 S.E.2d 256 (1955), a case interpreting N.C. Gen. Stat. § 14-277, our Supreme Court explained

To constitute the offense there must be an intentionally false impersonation of the officer designated in the statute, and the offense must be consummated in accordance with the terms and meaning of the statute. To constitute the offense requires something beyond the false pretense. There must be some overt act in furtherance of the false personation. 35 C.J.S.False Personation, s 3, pp. 629, 630. And it would not be sufficient if the person charged represented himself merely as an officer but not as the particular officer specified in the statute. *Walker v. State*, 89 Tex. CR.R.180, 229 S.W. 853.

*Id.* Therefore, N.C. Gen. Stat. § 14-277 requires “an intentional representation and some overt act in furtherance of the false personation to sustain conviction.” *State v. Church*, 242 N.C. 230, 87 S.E.2d 256 (1955) (holding that “where defendant made no oral representation that he was a peace officer, but showed only a courtesy card which did not mislead anyone, and where defendant used no words or action which would indicate he intended to attempted to arrest, the statue prohibiting impersonating a peace officer had not been violated”).

5. In this case, there was insufficient evidence that Petitioner falsely represented himself or impersonated a “sworn law enforcement officer” in violation of N.C. Gen. Stat. § 14-277 on October 1, 2013. Petitioner’s Wallace Police identification card was plainly visible to Officer Bojko when Petitioner opened his wallet to retrieve his driver’s license. Petitioner did not voluntarily bring out that identification card or display it to Officer Bojko. Petitioner only retrieved his Wallace Police identification card after Officer Bojko specifically requested to see such identification card. Petitioner’s conduct did not constitute displaying a badge or identification signifying that he was a sworn law enforcement officer. Petitioner exhibited no criminal or other improper intent during the October 1, 2013 traffic stop, and did not represent or state that he was a sworn law enforcement officer.

6. Based on the foregoing Findings of Fact and Conclusions of Law, there was insufficient proof that Petitioner committed the offense of “Impersonation of a Law Enforcement Officer” on October 1, 2013 in violation of N.C. Gen. Stat. § 14-277.

7. There was insufficient evidence that Petitioner violated any of Respondent’s rules, and there is no legal basis for any adverse action to be taken against Petitioner’s law enforcement certification.

8. A preponderance of the evidence showed that Petitioner is fit to continue to hold a law enforcement certification.

## **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent Commission reverse its initial finding, find that Petitioner has not committed the alleged offense, and certify Petitioner as a law enforcement officer.

## **NOTICE**

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency 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 pursuant to N.C. Gen. Stat. § 150B-40(e). It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This 4<sup>th</sup> day of December, 2014.

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Melissa Owens Lassiter  
Administrative Law Judge