

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 05506**

## PROPOSAL FOR DECISION

## APPEARANCES

## ISSUE

## EXHIBITS ADMITTED INTO EVIDENCE

For Respondent: 1 - 2

## **STATUTORY LAW AND RULES AT ISSUE**

Virginia Code 18.2-57.2  
Virginia Code 18.2-460  
12 NCAC 09G .0102(9)(g), (vvv), (www)  
12 NCAC 09G. 0504(c)  
12 NCAC 09G. 0505(b)(1)

## **FINDINGS OF FACT**

### **I. Procedural Facts**

1. On September 13, 2012, Respondent notified Petitioner that Respondent's Probable Cause Committee had found probable cause to suspend Petitioner's correctional officer certification for committing the "DAC Misdemeanor" Offenses of "Assault: On Family Member," in violation of Virginia Code 18.2-57.2 and "Obstruct Justice Official Victim, Threat/Force in violation of Virginia Code 18.2-460. (Resp. Exhs. 1, 2)

2. By letter dated July 22, 2014, Respondent requested the Office of Administrative Hearings designate an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the NC General Statutes.

### **II. Probable Cause Information**

3. Respondent has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

4. On November 16, 2009, Respondent awarded a probationary correctional officer certification to Petitioner. On November 16, 2010, Respondent awarded a general correctional officer certification to Petitioner. On December 10, 2012, Pasquotank Correctional Center dismissed Petitioner from employment for unacceptable personal conduct. (Resp. Exh. 1)

5. On December 20, 2012, Petitioner was found not guilty of the "Assault: On Family Member" charge with prejudice in Suffolk County (Va.) Juvenile and Domestic Relations District Court. (Resp. Exh. 1)

6. On February 6, 2013, the Suffolk Circuit Court (Va.) dismissed the "Obstruct Justice Official Victim, Threat/Force" charge against Petitioner, upon appeal from a November 15, 2012 guilty verdict in Suffolk General District Court in Virginia. (Resp. Exh. 1)

7. On March 19, 2013, Respondent's Standard's Division received a Report of Offense and Disposition memorandum from the Division of Adult Correction indicating that Petitioner was charged on September 13, 2012 with the criminal offenses of "Assault: On Family Member" in violation of Va. Code 18.2-57.2, and "Obstruct Justice Official Victim, Threat/Force" in violation of Va. Code 18.2-460 in Suffolk Virginia. The warrant for arrest for "Assault: On

Family Member” charge alleged that on September 13, 2012, Petitioner “did unlawfully . . . assault and batter Dawn Boone (wife) who is a family or household member. The warrant for arrest for “Obstruct Justice Official Victim, Threat/Force” alleged that on September 13, 2012, Petitioner “did unlawfully . . . knowingly attempt to intimidate or impede by threats or by force a law-enforcement officer lawfully engaged in duties as such. . .” (Resp. Exh. 1) Respondent’s Investigator Kevin Wallace initiated an investigation based on such report.

8. On March 19, 2013, Respondent received two statements from Petitioner concerning the criminal charges.

a. In the September 19, 2012 statement, Petitioner acknowledged that he was charged with the above-cited charges on September 13, 2012.

b. In a second statement, Petitioner explained that on September 13, 2012, he and his wife argued after he exchanged a few words with his mother-in-law who had become upset, left the house, and slammed the door. He was so angry he turned over the dining room table and chairs. When his “wife attempted to leave, I grabbed the back of her shirt, she was pulling against me, and it left red marks on her neck.” (Resp. Exh. 1, p. 3) Petitioner’s mother-in-law called the police. When the police arrived, Petitioner was sitting on the front porch. He invited the police officer inside his home. The police questioned Petitioner about the incidents, and accused him of assaulting his wife. He denied those accusations, and started to get upset. Petitioner explained that he would not sit down when the police told him, the police tasered him, handcuffed him, and took him to jail. His wife did not press charges against him, but the police did. His wife told the police that all he did was grab her shirt. (Resp. Exh. 1, p. 3)

9. On October 23, 2013, the Division of Adult Correction requested to “withdraw the separation” of Petitioner from employment, and reinstated Petitioner (not certified) to a Correctional Officer position, effective that day.

10. On January 27, 2014, Respondent received copies of Incident/Investigation Reports, officer narrative, and warrants from Suffolk (Va.) Police concerning the subject charges filed against Petitioner on September 13, 2012. On March 24, 2014, Respondent received copies of photos taken at Petitioner’s home where the alleged September 13, 2012 assault and obstruction of justice occurred. (Resp. Exh. 1)

11. On March 27, 2014, Respondent received a third statement from Petitioner explaining that he and his wife have been together since 1999, are happily married, have never been separated, and planned to stay together. (Resp. Exh. 1) On March 31, 2014, Respondent received Mrs. Dawn Boone’s statement, dated March 28, 2014, that her husband “never assaulted me. All charges were dismissed. I would like to know why this investigation continues.” (Resp. Exh. 1)

12. Investigator Wallace compiled the results of his investigation in a memorandum, and presented it to Respondent’s Probable Cause Committee. (Resp. Exh. 1)

### III. Contested Case Hearing

#### A. Investigator Wallace

13. At hearing, Wallace explained that an “Assault: On Family Member” charge/offense in Virginia is equivalent to an “Assault on a Female” charge/offense in North Carolina. The Virginia “Obstruction of Justice” charge/offense is equivalent to the common law “Obstruction of Justice” charge/offense in North Carolina.

14. Petitioner (African American, age 57) and Dawn Boone (Caucasian, age 38) have been together for 15 years, and married for 7 years. On September 13, 2012, Petitioner his wife lived in the first story of a duplex they own in Suffolk, Virginia, while his mother-in-law lived, at the time, in the second story duplex.

15. Petitioner has been employed as a Correctional Officer at Pasquotank Correctional Facility in Elizabeth City, NC since 2009.

#### B. Petitioner

16. On September 13, 2012, Petitioner worked in the yard all day before his three-year old daughter’s birthday party. He is not a big drinker. At 2:00 pm that day, Petitioner drank one drink containing one shot of tequila, and drank another tequila drink either before or during the party, which started at 3:00 or 4:00 o’clock that afternoon. During the party, someone asked his stepson if his girlfriend was pregnant. After arguing with Petitioner, Petitioner’s mother-in-law left the house, and slammed the door. Petitioner and his mother-in-law had both built up animosity towards each other. Petitioner became mad and flipped over the table. The table injured Petitioner’s private area.

17. After Petitioner’s wife started walking toward the door, to go talk to her mother, Petitioner grabbed the back of Mrs. Boone’s shirt, and told her “don’t go,” and “hold on.” Mrs. Boone continued to pull away from Petitioner, and eventually, left the house and walked upstairs to her mother’s home. Petitioner walked outside and sat down on the porch.

18. Petitioner’s mother-in-law called the police. Petitioner described how his mother-on-law used to call the police frequently, even when birds flew too close to her house. Officers Blair and Rosario arrived first on the scene. Many police officers arrived after that. Petitioner invited Officers Blair and Rosario inside to talk. Petitioner became upset after the police accused him of assaulting his wife, because he did not assault her. The officers told Petitioner to sit down many times, but Petitioner did not. Petitioner paced between the living room and dining room. He told the officers that he was a retired Virginia Correctional Officer. At hearing, Petitioner explained that he did not sit down, because he was injured from being hit by the dining room table. After Petitioner failed to comply with the officer’s request to sit down again, Officers Blair and Rosario grabbed Petitioner, used taser on him, and forced his arms behind his back. The officers tased him again. Petitioner felt like he was having a heart attack. He had a prior heart attack. After being tased a second time, Petitioner calmed down, and complied with the police. A police detective took Petitioner to the hospital, where he stayed for three days for a hematoma in his

private area. (Pet. Exh. 1)

19. At hearing, Petitioner acknowledged that he was loud, angry, and yelled at his mother-in-law on September 13, 2012. He does not drink in front of his kids. September 13, 2012 is the first and only time the police have been called to Petitioner's house.

20. He was found not guilty of "Assault on a Family Member," but guilty of "Obstruction of Justice" at a trial in Virginia District Court. On appeal, the District Attorney dismissed the "Obstruction of Justice" conviction, because Petitioner had never been in trouble before. Petitioner gave a statement to the Pasquotank Correctional Facility Warden for his file, and such statement is accurate. (Resp. Exh. 1, Attachment p. 19-20)

21. Petitioner wants to put the incident behind him and get back to his job. As of this hearing, Petitioner had not asked for the charges to be expunged from his record.

C. Officer Cheryl Blair and Officer Hector Rosario, Jr.

22. On September 13, 2012 at 6:00 pm, Suffolk Virginia Police Officers Cheryl Blair (now Abrigo) and Hector Rosario, Jr. responded to a possible domestic disturbance call at Petitioner's home. Upon Officer Blair's arrival, Petitioner's mother-in-law approached Blair, advised Blair that she had called the police, and that she heard yelling and loud noises coming from the downstairs apartment. The mother-in-law pointed to a black male sitting on the front porch of the house.

23. The officers approached Petitioner, and smelled alcohol coming from Petitioner's person. The officers saw a small bloody scratch or cut on Petitioner's cheek. Petitioner informed the officers he had cut his cheek shaving. Petitioner told the officers his wife was upstairs, and everything was all right. The officers advised Petitioner about the public intoxication law. Petitioner appeared agitated, and defensive.

24. Petitioner invited the officers inside his home, where the officers observed a loveseat, table, and food overturned in the dining room. The officers asked Petitioner to sit down. When Petitioner's stepson came to the door, Petitioner became angry, and began yelling at the stepson. The stepson left per the officers' request. Petitioner continued walking around the house. The officers asked Petitioner, approximately 10 to 15 times, to calm down and to be seated. Petitioner informed the officers that he was a Lieutenant with North Carolina Correctional Facility, and continued pacing around the house. Rosario advised Petitioner that since they were unsure of any weapons in the house, they needed him to stay seated while they conducted their investigation. Petitioner advised them that he did not have to sit in his own home, and began yelling and screaming obscenities.

25. Both officers informed Petitioner he was being detained until they concluded their investigation into the possible assault. When the officers tried to handcuff Petitioner, Petitioner pulled away from the officers, and cursed at them. Rosario pulled his taser, and told Petitioner to put his hands behind his back. Petitioner continued being aggressive, and pulled away from the officers, without obeying the officer's orders. Officer Rosario deployed his taser on Petitioner,

and told Petitioner to place his hands behind his back. When Petitioner continued to resist and sat down on the couch. Officer Rosario used his taser again on Petitioner, and Officer Blair handcuffed Petitioner. Petitioner fell to the floor, yelling that he was having a heart attack. The officers called the paramedics, but Petitioner was uncooperative and declined medical treatment. Officer Rosario took Petitioner to the magistrate for processing, where he secured a warrant against Petitioner for obstructing justice, because Petitioner would not let them investigate the possible assault. A detective drove Petitioner to the hospital.

26. Officer Blair interviewed Mrs. Boone, and observed slight red marks on Boone's neck. Mrs. Boone was crying. Mrs. Boone explained that Petitioner had been drinking tequila, and asked her son if his girlfriend was pregnant. Mrs. Boone's son, his girlfriend, and her mother left the residence, while Boone's daughter took her sisters onto the back porch. Petitioner and Mrs. Boone began arguing, and Petitioner turned over the kitchen table. Mrs. Boone told Blair that Petitioner did not hit her, but just grabbed her shirt several times. Mrs. Boone guessed that the red marks on her neck came from Petitioner pulling the back of her shirt as she tried to leave.

27. Officer Blair also interviewed Boone's daughter, and took photos of Mrs. Boone's neck. Blair obtained an arrest warrant for Petitioner for assaulting his wife, ("Assault: On Family Member"), because of the red marks on Mrs. Boone's neck, and the statement by Mrs. Boone's daughter. Based on the statements, Blair thought Petitioner was the aggressor, but was unsure if Mrs. Boone was afraid. (Blair's testimony)

#### D. Dawn Boone

28. Petitioner and Dawn Boone have two kids together. Mrs. Boone has two kids from her prior marriage, while Petitioner has one daughter with his first wife. At hearing, Dawn Boone explained that September 13, 2012 was her daughter's third birthday. On September 13, 2012, Boone fixed Petitioner an [alcoholic] drink while they were getting ready for the party. She thought the drink affected Petitioner more that day, because he had not eaten. That afternoon, Petitioner asking Boone's son if his girlfriend was pregnant. Her son and his girlfriend left the house, and her mother stood at the door. Her mother was being an asshole. Petitioner started to jump up from the table, but caught his groin area on the table. He turned the dining room table over, but not the sofa in the living room.

29. After Mrs. Boone's mother left, Mrs. Boone and Petitioner argued over her mom. Mrs. Boone was mad at her mother, and started walking towards the door. Petitioner grabbed the back of Boone's shirt and said, "Don't go talk to her." Mrs. Boone pulled away from Petitioner to go upstairs and talk to her mom. She guessed the low red marks on her neck were from Petitioner pulling the back of her shirt. Mrs. Boone went upstairs to her mother's house, and did not see the interaction between the police and Petitioner. She was shocked the police had used a taser on her husband, and told the police that Petitioner had a heart attack. Mrs. Boone was crying, while Officer Blair questioned her, due to the stress of everything between her mom, her son, Petitioner, and the events that day. Mrs. Boone felt like the police wanted her to say that Petitioner assaulted her that day.

30. Officer Blair questioned Boone's 14-year-old daughter outside Mrs. Boone's

presence. The daughter told Blair she walked into the house, and saw Petitioner on top of Mrs. Boone, choking her. Boone explained that her daughter later admitted her statement to the police was a lie, and that Petitioner did not choke Mrs. Boone.

31. The police got a protective order issued to keep Petitioner away from Mrs. Boone, even though Boone told them she did not need it. Due to the protective order, Mrs. Boone could not visit her husband in the hospital. Petitioner stayed in the hospital for three days because he suffered a hematoma to his groin area. (Pet. Exh. 1- medical records) They thought Petitioner might require surgery for his groin injury, but he did not. From September 2012 until December 2012, Petitioner missed work due to his groin injury.

32. Mrs. Boone described her mother as "very manipulative." Boone's mother and Petitioner had an ongoing feud, due to her mother having issues with Petitioner's age and race. Petitioner is 15 years older than Mrs. Boone. Her mother has issues with Petitioner disciplining her son, and her mother resents Petitioner when he disciplines Boone's son. Mrs. Boone's mother told Boone's son he did not have to listen to Petitioner, because Petitioner was not the son's father.

33. Normally, Petitioner does not talk back to her mother, and keeps his mouth closed. However, that day, the alcohol made Petitioner angry, and he questioned her son. Petitioner had "had it" with her mother, and the alcohol made him not take it. At hearing, Mrs. Boone opined that Petitioner always has a mean hateful look on his face. She stated that Petitioner cut his face shaving on September 13, 2012, and used Plavix on the cut. Her mom has moved out of the upstairs apartment, but there is still ongoing animosity between her mother and Petitioner. Mrs. Boone opined that the police interpreted the September 13, 2012 incident the wrong way. They have never had any issues with, and have never called, law enforcement.

#### E. Other Evidence

34. Mrs. Boone's 14-year-old daughter did not testify at the contested case hearing. There was no evidence presented at hearing to corroborate the daughter's statement to Officer Blair that Petitioner choked Mrs. Boone on September 13, 2012.

35. There was no forensic evidence presented at hearing regarding the source or cause of the red marks on Mrs. Boone's neck on September 13, 2012.

36. There was no evidence presented at hearing that Petitioner grabbed his wife's shirt on September 13, 2012 with the intent to commit an assault on his wife, or grabbed her shirt with such force to cause Mrs. Boone to fear she'd be physically harmed.

37. The preponderance of the testimony at hearing showed that Petitioner grabbed the back of Mrs. Boone's shirt to prevent Mrs. Boone from going upstairs to talk with her mother. The red marks on Mrs. Boone's neck resulted when Petitioner grabbed the back of Mrs. Boone's shirt, and Mrs. Boone pulled away from Petitioner, and towards the door.

## **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, and the preponderance of the evidence, the Undersigned concludes:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. Respondent has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09G .0504(b)(3) provides that the North Carolina Criminal Justice Education and Training Standards Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer: (3) has committed or been convicted of a misdemeanor occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (www) of this rule, to wit "Assault on a Female." 12 NCAC 09G.0102(9)(g).

4. 12 NCAC 09G .0505(b)(1) provides that when the North Carolina Criminal Justice Education and Training Standards Commission suspends or denies the certification of a correction officer pursuant to 12 NCAC 09G.0504 of this Section, the period of sanction shall be 3 years where the cause of sanction is: (1) the commission or conviction of a misdemeanor as defined in 12 NCAC 9G.0102(9).

### **Assault On Family Member or Assault on a Female**

5. 12 NCAC 09G.0102(9)(g) defines "assault, battery with circumstances" as a Class B Misdemeanor.

6. Under Virginia law, the common law offenses of assault and battery have been merged and codified under the Code of Virginia (Va.). Va. Code §18.2-57.2 states that "any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor." The definition of "family and household member defined in Va. Code § 16.1-228 applies to that statute, and is defined as "the person's spouse, whether or not he or she resides in the same home with the person." The criminal charge of "Assault: On Family Member," in violation of Va. Code § 18.2-57.2, is a "DAC misdemeanor" as defined in 12 NCAC 09G .-102(9)(g) and 12 NCAC 09G .-1-2(9)(www).

7. "Assault on a Female," in violation of N.C.G.S. § 14-33(c)(2), is a Class A1 misdemeanor. A person is guilty of "Assault on a Female" if that person:

- (1) Commits any assault, assault and battery or affray
- (2) Against a female



(3) With the defendant being a male at least 18 years of age or older.

8. On December 20, 2012, Petitioner was not found guilty of the "Assault On: Family Member" charge in Suffolk County (Virginia) Juvenile and Domestic Relations District Court.

9. In this case, a preponderance of the evidence showed that on September 13, 2012, Petitioner did not commit a misdemeanor criminal offense of "Assault On: Household Member," an offense comparable to an "Assault on a Female" offense in North Carolina. While Petitioner grabbed his wife's shirt as she pulled away from him, there was insufficient, credible evidence at hearing proving, by a preponderance of evidence, that Petitioner grabbed his wife's shirt with the intent to assault her. Neither was there adequate evidence to prove that Petitioner grabbed his wife's shirt with sufficient show of force to place Mrs. Boone in reasonable fear of physical harm, regardless of Petitioner's intent to harm.

#### Obstruction of Justice

10. 12 NCAC 09G .0504(b)(3) provides that the North Carolina Criminal Justice Education and Training Standards Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

has committed or been convicted of a misdemeanor occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvv) of this rule, to wit 'Common Law Obstruction of Justice.'

12 NCAC 09G.0102(9)(vvv).

11. Virginia Code § 18.2-460 "Obstruct Justice Official Victim, Threat/Force" states:

Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or an animal control officer employed pursuant to 3.2-6555 who is in the course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

12. The criminal charge of "Obstruct Justice Official Victim, Threat/Force" is a "DAC misdemeanor" as defined in 12 NCAC 09G .0102(9)(vvvv) and 12 NCAC 09G .0102(9)(www) of Respondent's Rules.

13. Our Court of Appeals, in *State v. Wright*, 206 N.C. App. 239 (2010), provided:

In *In re Kivett*, 309 N.C. 635, 670, 309 S.E.2d 442, 462 (1983), our Supreme Court confirmed that '[o]bstruction of justice is a common law offense in North Carolina' that was not abrogated by Article 30 of Chapter 14 of the General Statutes, which sets out statutory 'obstruction of justice' offenses. The Court then adopted the following definition of the common law offense: 'At common law [,] it is an offense to do any act which prevents, obstructs, impedes, or hinders public or legal justice.'

The common law offense of obstructing public justice may take a variety of forms.’  
*Id.* (quoting 67 C.J.S. Obstructing Justice §§ 1, 2 (1978)).

14. N.C. Gen. Stat. § 14-223 "Resisting officers" provides:

If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a Class 2 misdemeanor.

15. In this case, a preponderance of the evidence showed that on September 13, 2012, Petitioner committed the offense of "Obstruction of Justice," Virginia Code § 18.2-460, by impeding the investigation of two police officers into a possible assault at Petitioner's home, by being argumentative with and refusing to comply with the officer's request, and by resisting detention by pushing himself away from the officer.

16. By violating the criminal offense of "Obstruction of Justice," Virginia Code § 18.2-460, Petitioner committed a "DAC misdemeanor" as defined in 12 NCAC 09G .0102(9)(vvvv) and 12 NCAC 09G .0102(9)(www) of Respondent's Rules.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent SUSPEND Petitioner's correctional officer certification based upon Petitioner's commission of an "Obstruction of Justice" misdemeanor. The undersigned further recommends Respondent consider the circumstances of this case in determining whether to suspend that suspension, and place Petitioner on probation for a term certain.

### **NOTICE AND ORDER**

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 9th day of February, 2015.

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Melissa Owens Lassiter  
Administrative Law Judge