

STATE OF NORTH CAROLINA  
COUNTY OF SWAIN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14DOJ07718

Billy Vance Waldroup Petitioner,  v.  N C Sheriffs' Education And Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on April 9, 2015 in Waynesville, North Carolina, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

#### **APPEARANCES**

Petitioner: David A. Sawyer  
Attorney at Law  
Bryson City, North Carolina

Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
Raleigh, North Carolina

#### **ISSUES**

Did Petitioner commit the acts constituting the offense of obtaining/attempting to obtain property by false pretenses, within the meaning of N.C. Gen. Stat. § 14-100, a felony, evidencing a lack of the good moral character that is required of sworn justice officers, and justifying the denial of Petitioner's application to Respondent for justice officer certification?

#### **STATUTES AND RULES CITED**

N.C. Gen. Stat. § 14-100, 150B-23(a), 150B-29(a), 150B-34(a), and 150B-40(e); and 12 NCAC 10B .0204(a)(1), 12 NCAC 10B .0204(b)(2), 12 NCAC 10B .0205, and 12 NCAC 10B .0301(a)(8).

## **EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner's Exhibits ("P. Exs.") 1 - 6.

Respondent's Exhibits ("R. Exs.") 1 - 10.

## **WITNESSES**

For Petitioner: Ms. Jeana Hardin, Interim Supt., Cherokee County Schools  
Sgt. Billy V. Waldroup, Swain Co. Sheriff's Office, Petitioner  
Capt. Brian Aker Kirkland, Swain Co. Sheriff's Office  
Sheriff Curtis Cochran, Swain Co. Sheriff's Office

For Respondent: Mr. Jeremy Scott Milman, Walt's Electric Motors, Hayesville  
Ms. A. Haley Evans, Head Cashier, Lowes Home Improvement  
Mr. S.P. ("Skip") Laszlo, Head Cashier, Lowes Home Improvement  
Chief Justin Jeffrey Jacobs, Murphy Police Department

**UPON DUE CONSIDERATION** of the arguments of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

## **FINDINGS OF FACT**

1. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter, "Commission" or "Respondent") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code to certify justice officers and to deny, revoke, or suspend such certifications.
2. On the date of the hearing, Petitioner Billy Vance Waldroup was employed with the Swain County Sheriff's Office as a detention officer, holding the rank of Sergeant. He applied to Respondent for justice officer certification through this employer on February 22, 2014.
3. Petitioner has extensive training and experience in law enforcement, having served as a sworn officer for approximately 20 years. Petitioner had previously held law enforcement certifications from both the North Carolina Criminal Justice Education and Training Standards Commission and Respondent. He began his law enforcement career with the Andrews Police Department, serving as a patrol officer. He was then a road deputy and detention officer with the Cherokee County Sheriff's Office before returning to the Andrews Police Department as Assistant Chief of Police. On the date of the incident in controversy, March 19, 2013, he was in his eighth year as a School Resource Officer ("SRO") with the Cherokee County School System Police Department, serving as that

organization's Assistant Chief of Police.

4. On March 19, 2013, Petitioner went to the Lowes Home Improvement Store in Murphy, North Carolina ("Lowes") to obtain a power cord for a clothes dryer he had recently purchased. His initial visit to the store was late in the workday, after he had completed his usual duties, but before the release from after-school detention of a student that he had agreed to drive home, and he was wearing his SRO uniform at the store.
5. Petitioner was unable to find a cord of the length he needed on the shelves at Lowes. When he inquired about longer ones, he was directed to Jeremy Milman, manager of the store's electrical department. There was no cord of the needed length in stock, but Mr. Milman agreed to fabricate a longer cord from materials on hand. They discussed that the cord was for a new clothes dryer that Petitioner was installing at his home and looked at the machine online with Mr. Milman's computer. Petitioner did not tell Mr. Milman that the cord was for the Cherokee County schools. Petitioner left the store to take the student home from detention, and then returned to get the cord and picked up a few other items. Mr. Milman gave Petitioner a note on scrap paper with the information the cashier needed to ring up the fabricated cord. The note did not indicate that Petitioner was due a discount, and Mr. Milman did not discuss the possibility of Petitioner getting a discount with him. Mr. Milman's recall was inexact on the date of the hearing. His best account of his interaction with Petitioner was elicited by Murphy Police Department Chief Justin J. Jacobs on April 5, 2013 for his "Incident/Investigation Report," and recorded at pages 6-8 of its "Investigation Narrative" section. (See R. Ex. 6)
6. Petitioner took the power cord and other items to a register operated by Haley Evans. Petitioner made statements to Ms. Evans representing that he was purchasing the power cord for the use and benefit of the Cherokee County school where he worked as an SRO and, as a consequence, that Mr. Milman had told him there would be a 50% discount on the purchase of the cord. Ms. Evans began ringing up the purchase accordingly. Lowes had a special relationship with the schools, encouraged by its location adjacent to school property, and routinely gave the schools discounts that varied according to the store's markup on the items. Fifty percent was an unusual amount, but Ms. Evans did not realize that because she was in her first month working at the store.
7. Ms. Evans needed her supervisor's assistance to override the cash register's programmed price and give Petitioner the discount he sought. Mr. Skip Laszlo was the head cashier/front end manager on duty. When he heard that the alleged discount was 50%, he picked up the phone to question Mr. Milman, and specifically asked Petitioner whether the power cord was for the school. Petitioner shrugged. Mr. Laszlo and Ms. Evans understood Petitioner's response to mean that he was affirming his statement to Ms. Evans that the cord was being purchased for the school. Consequently, the Lowes employees proceeded to ring up the charge for the drier cord with the 50% discount. (See R. Ex. 7)
8. Shortly thereafter, Mr. Milman arrived at the checkout area. When asked, Mr. Milman denied in front of Petitioner and Mr. Laszlo that he had authorized any discount, and said that he was told the electrical cord was for Petitioner's personal use, not for the school.

Mr. Laszlo took the transaction paperwork and Petitioner to the customer service counter to reverse out the discounted payment, and rebilled Petitioner for the full price, which he paid. The difference was \$13.83. Petitioner took Mr. Laszlo aside and stated that what he did was wrong and apologized, and said that he would like to speak with the store manager about it. Mr. Laszlo responded that this would be fine, but that he had already reported the incident to the store's assistant manager. After leaving the store, Petitioner unsuccessfully tried to call his direct supervisor, the Chief of the Cherokee County School Police. With his second call, he did reach Chief Jacobs, in whose jurisdiction the store was located, and told him that the incident arose from a misunderstood joke he made about getting a discount.

9. Petitioner contends that when he approached Ms. Evans, he handed her the note that Mr. Milman gave him, and jokingly said, "This is my 50% coupon." He testified that he was so shocked and worried when he realized that the Lowes employees perceived him as dishonest, that he "froze" and could not respond properly when asked by Mr. Laszlo whether his purchase was for the school. Petitioner provided the Commission with a written statement dated July 9, 2014, wherein he states that when Ms. Evans asked Mr. Laszlo to override the register to allow the discount, he was so shaken that, "My knees were shaking and I was unable to speak," and, "I was frozen, so to speak, and could not express my thoughts ..... [Mr. Laszlo] attempted to ask me if it was for the school and I could not respond verbally, I shrugged my shoulders." (See P. Ex. 4)
10. Mr. Laszlo and Ms. Evans denied being told by Petitioner, at any point on March 19, 2013, that his statement about a discount to Ms. Evans was a joke. Ms. Evans, who had been promoted by Lowes to head cashier/front end manager by the date of the hearing, testified that Petitioner specifically explained to her that the 50% discount was due to the cord being purchased for the school. When Mr. Laszlo directly sought confirmation from Petitioner that the purchase was for the school, it is undisputed that Petitioner shrugged, and the result was that Mr. Laszlo gave him the discount. As Petitioner re-enacted the shrug on the witness stand, it could be interpreted as communicating acquiescence, or mild surprise at being questioned. The register tapes make plain that the Lowes employees understood that Petitioner, when directly asked, claimed the purchase was for the school.
11. In Petitioner's account of the incident, he makes no mention to Ms. Evans of either Mr. Milman or the schools. Petitioner does not dispute that Mr. Laszlo asked him if he was purchasing the power cord *for the school*. That information came to Mr. Laszlo from Ms. Evans, who testified that Petitioner told her Mr. Milman authorized the discount because he was buying the cord for the school. The only apparent alternative explanation for how Ms. Evans came to believe this, which might be inferred from the evidence, is that she simply assumed that because she knew Petitioner to be an SRO officer and that Mr. Milman was working in the electrical department. Within two weeks after the incident, Chief Jacobs obtained Ms. Evans' hand written statement about the incident that Lowes management asked her to prepare immediately after the event. It reads:

Bill Waldroup brought item to register. Told me that he was purchasing the items for the schools and that the dept. manager (Jeremy Millman [*sic*])

offered him 50% off since it was for schools. I called Skip [Lazlo] because I required an override. He lied to both our faces and said it was for schools. Skip went and got Jeremy who then told us that the customer was lying. It was for personal use and he had not authorized discount.

Ms. Evans' more contemporaneous recollection supports her testimony that Petitioner *stated* to her that the cord was *discounted by Mr. Milman* because it was being purchased *for the schools*.

12. The preponderance of the competent and credible evidence of record shows that on March 19, 2013, Petitioner made false representations of subsisting facts to employees of Lowes Home Improvement of Murphy which were calculated to, and did in fact deceive them, in an attempt to obtain something of value; and, that these acts constituted a violation of N.C. Gen. Stat. § 14-100, a felony.
13. Lowes did not seek criminal charges against Petitioner. Mr. Laszlo testified that this was Lowes' position in other incidents he regarded as thefts, and that he had never been to court during his eight years with the company for such a prosecution. Chief Jacobs closed his investigation for the Murphy Police Department when Lowes' manager notified him that, "Lowes will not pursue further legal action." The Swain County Sheriff's Department did not do an independent investigation of the matter at the time Petitioner was hired because no charges were brought.
14. Prior to her employment with Lowes, Ms. Evans managed a service station, and was aware that Petitioner used a school gas card there to fuel his personal vehicle on a couple of occasions. Ms. Jeana Hardin, Interim Superintendent of the Cherokee County Schools, testified that it was not unusual for employees, including Petitioner, to utilize their personal vehicles for the schools' benefit when school vehicles were unavailable, and that they were authorized to purchase gasoline for their vehicles at school expense on such occasions. The preponderance of the evidence of record tends to show that Petitioner's purchase of gasoline at school expense for his personal vehicle was authorized.
15. The parties stipulated that there is no competent evidence in the record that Petitioner deceptively obtained a discount from Lowes on a mower purchased for his personal use.
16. Petitioner received Respondent's *Proposed Denial of Correctional Officer Certification*, which included due notice of his right to appeal, on September 19, 2014. Petitioner timely requested a contested case hearing by a letter received by the Commission on or before October 8, 2014. The parties were timely served with notice of this hearing on March 11, 2015.
17. Extenuating circumstances were brought out in the course of this administrative hearing that the Commission may consider in determining an appropriate disposition, particularly in the testimony of Chief Jacobs (Tr. Pgs. 69-70), Interim Supt. Hardin (73-82), Capt. Kirkland (161-63), and Sheriff Cochran (167-70). Sgt. Waldroup has established an admirable reputation of service to law enforcement and the community, and particularly to

the schools due to his interpersonal skills. The letter from the Superintendent accepting his resignation invited Sgt. Waldroup to reapply. (See P. Ex. 1, R. Ex. 4) He appeared truly remorseful about the situation he caused, and apologetic towards the Lowes employees, although his inability to admit he truly tried to deceive them is disconcerting. The trivial amount involved (\$13.83) suggests that he acted on a juvenile impulse rather than out of greed or a purpose to harm others. The consequences he has experienced make a recurrence unlikely.

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

### **CONCLUSIONS OF LAW**

1. The parties and the subject matter of this hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).
2. Pursuant to 12 NCAC 10B .0204(a)(1), the “Commission shall ... deny the certification of a justice officer when the Commission finds that the applicant for certification ... has *committed* or been convicted of a felony[.]” In addition, 12 NCAC 10B .0204(b)(2) provides that the “Commission shall ... deny ... the certification of a justice officer when the Commission finds that the applicant fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300[.]” Among the “Minimum Standards for Justice Officers” set out in that section is the requirement at 12 NCAC 10B .0301(a)(8) that, “Every Justice Officer employed or certified in North Carolina shall be of good moral character,” as defined by specified North Carolina case law. Among the offenses identified in those cases as exemplifying lack of good moral character is “obtaining goods by false pretense.” *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924).
3. “Obtaining property by false pretenses,” as prohibited by N.C. Gen. Stat. § 14-100, is defined as (1) a false representation of a past or subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which the defendant obtains or attempts to obtain anything of value from another person. *State v. Compton*, 90 N.C. App. 101, 103, 367 S.E.2d 353, 354 (1988). The preponderance of the evidence shows that Petitioner committed the offense of “Obtaining property by false pretenses,” a felony, on or about March 19, 2013.
4. The party with the burden of proof in a contested case must establish the facts required by G.S. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. §§ 150B-29(a); 150B-34. A disappointed applicant for justice officer certification bears the burden of proving that the Commission erred in denying certification. Petitioner failed to show that the Commission erred in denying his February 2014 application for justice officer certification on September 12, 2014.
5. The Commission may substitute a period of probation in lieu of denial following this administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the

administrative hearing warrant such a reduction or suspension. 12 NCAC 10B .0205.

### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0204(a)(1) & (b)(2), the decision of the Commission to sanction Petitioner is found to be substantiated by the evidence and AFFIRMED.

In light of the petty value involved and the extenuating circumstances noted in Finding of Fact 17, the undersigned respectfully recommends the Commission consider substituting a period of probation in lieu of denial.

### **NOTICE AND ORDER**

The North Carolina Sheriffs' 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 hereby is 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 the 24<sup>th</sup> day of August, 2015.

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J. Randolph Ward  
Administrative Law Judge