

COUNTY OF VANCE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 07927**

SANDY HARGROVE COWAN,
Petitioner,

V.

N.C. SHERIFFS' EDUCATION
AND TRAINING STANDARDS
COMMISSION,
Respondent.

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. Petitioner submitted two letters of reference after the hearing. The Respondent submitted proposals and argument to the Office of Administrative Hearings on July 20, 2015. The Undersigned held the record open for seven additional business days for any further submissions and was closed on July 29, 2015.

APPEARANCES

Petitioner: Sandy Hargrove Cowan, *Pro Se*
834 Foster Road Extension
Henderson, North Carolina 27537

Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
NC Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Should Petitioner be denied justice officer certification for commission of the offenses of second degree credit card forgery and criminal possession of stolen property in August of 1994?

EXHIBITS

Petitioner submitted two letters of reference dated after the hearing

Respondent's Exhibits 1-5 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact. In making the Findings of Fact, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under the North Carolina General Statutes and the North Carolina Administrative Code to certify justice officers and to deny, revoke, or suspend such certification.

3. Petitioner is an applicant for deputy certification through the Vance County Sheriff's Office.

4. 12 NCAC 10B. 0204(a) states the Sheriffs' Commission shall deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of a felony. 12 NCAC 10B. 0204(d) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted a crime or unlawful act defined as a Class B misdemeanor within the five-year period prior to the date of appointment.

5. On August 17, 1994, Petitioner was arrested and charged with the felony offenses of second degree forgery and criminal possession of stolen property in the fourth degree in White Plains, New York associated with the unauthorized use of credit card. (Respondent's Exhibit 4)

6. On August 17, 1994, Petitioner was 24 years of age. On this date, the Petitioner received a call from a Mr. Russell and Mr. Allan, who were Petitioner's acquaintances at the time. The men requested that Petitioner drive them approximately 40 minutes to the White Plains Mall in White Plains, New York, since the men did not have an automobile. Petitioner agreed to drive these individuals to the White Plains Mall.

7. Once at the Mall, Mr. Russell told Petitioner that he had his aunt's credit card and that he wanted to make purchases with the card. Mr. Russell needed a female to sign his aunt's signature. Petitioner testified at hearing that she believed Russell's aunt was allowing Russell to use the credit card by him telling her that his aunt would not care if he used the card. The Petitioner agreed to sign the signature of Mr. Russell's aunt and in return, Petitioner was allowed by Russell to purchase a new \$300.00 Ralph Lauren bubble jacket.

8. Petitioner, Mr. Russell, and Mr. Allan proceeded to each select one (1) Ralph Lauren Polo coat. Each individual jacket was valued at \$300.00. Petitioner and her acquaintances also selected a pair of jeans and two (2) T-shirts. Petitioner admits that she and her two acquaintances had selected over \$1,000.00 in clothing items. Petitioner's item(s) were around \$300.00 and no more than \$400.00. Petitioner took all the items to the register with the credit card Mr. Russell provided to her.

9. The Petitioner allowed the sales person to ring up the transaction for the three (3) Polo Jackets, jeans, and T-shirts. Petitioner then handed the sales clerk the credit card that was in the name of Mr. Russell's aunt. Petitioner signed the aunt's name on the sales slip in order to complete the transaction.

10. Prior to leaving the Mall, the police were alerted and Petitioner, Mr. Russell and Mr. Allan were stopped by the White Plains Police. Petitioner admitted that she signed the credit card slip and that she signed the credit card owner's name in order to make the purchases. Petitioner was charged with the felony offenses of forgery in the second degree and criminal possession of stolen property in the fourth degree.

11. The victim, Mr. Russell's aunt, elected not to pursue criminal charges because the victim did not want the Petitioner to end up with criminal convictions on her record. Petitioner testified that Russell's aunt knew all three individuals involved as good kids and did not want this incident to impact the rest of their lives. The Petitioner wrote the victim an apology letter for signing her name on the credit card slip and for making the purchases without the victim's permission.

12. All criminal charges against Petitioner were dismissed based on the consent of the victim. Petitioner regrets having committed these acts. Petitioner testified at this hearing that she would not blame others for her bad decision and that she had learned a valuable lesson.

13. Petitioner has not been involved in any criminal activity since the August 17, 1994 incident in White Plains, New York.

14. Petitioner has since earned a BA Degree in Biology and two (2) Masters Degrees including one Masters in Special Education, working with emotionally disabled individuals while studying. Petitioner taught for some 15 years and wanted to pursue her goal of working in law enforcement. Petitioner completed Basic Law Enforcement Training in 2012 and would like to obtain certification in order to serve the community in Vance County, North Carolina.

15. Vance County Sheriff Peter White appeared at the administrative hearing and testified in support of Petitioner's application for certification. Prior to his election as Sheriff, he retired with the rank of major with the North Carolina State Highway Patrol. Sheriff White stated that he volunteered to attend the hearing and testify on Petitioner's behalf as opposed to being asked by Petitioner. Sheriff White is impressed with Petitioner's determination and tenacity, and believes Petitioner is an excellent, highly educated employee. Sheriff White testified that Petitioner has an outstanding reputation in the community and displays a commitment to law enforcement, working extremely well with other deputies and detention officers. He knows Petitioner to be an individual of honesty and integrity and has never questioned her moral character.

16. R. Dan Brummitt, a member of the Vance County Board of Commissioners, wrote a letter of reference in which he describes Petitioner as "a woman of integrity, with strong moral values and a great deal of dedication to her career and to her family." He further relays that he has worked with her in her role as a Deputy and found her to be "most diligent in the execution of her duties as an officer..."

17. Pastor Glendora S. Hargrove of the Woodsworth Baptist Church also submitted a letter of reference in which states that Petitioner is honest and a person with a "positive attitude and pleasant demeanor," as well as an individual with the "ability to communicate to a diverse population."

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission.

2. An ALJ need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

3. Pursuant to section 170.10 of the New York Penal Code, an individual commits the class D felony offense of forgery in the second degree if that individual falsely completes a written instrument, such as a credit card slip, with the intent to defraud or deceive the cardholder. *See* NY CLS Penal § 170.10 (1994); *see also State of New York v. Babits*, 122 Misc. 2d 6, 469 N.Y.S. 2d 537 (1983)

4. Pursuant to section 165.45 of the New York Penal Code, a person commits the class E felony offense of criminal possession of stolen property in the fourth degree if that individual knowingly possesses stolen property with the intent to benefit himself or herself, and when the value of the property exceeds \$1,000.00. *See* NY CLS Penal 165.45 (1994). Possession is defined as to have physical possession or otherwise exercise dominion or control over the tangible property. *See State of New York v. Banister*, 13 Misc. 3d 764, 766, 820 N.Y.S. 2d 877, 878 (2006).

5. With such an aged matter, and no further information, one must follow the axiom that a mere charge is not evidence the crime was committed as charged. Quite possibly the commission might appropriately lie in the realm of common law forgery which in North Carolina is a Class 1 misdemeanor. As evidence was seized on the scene (it is noted in Respondent's Exhibit 4 that the "Arrest Type" was cited as "Crime in Progress"), possession attributed to this Petitioner would most likely at best be the coat intended for her use with a far less value than the charge and briefly held in the commission of a misdemeanor. .

6. In this 20 year old matter, the testimony and exhibits at this hearing reveal that the case was dismissed by consent of the victim. As such, and with no other evidence to the contrary, it appears that the victim in this matter retroactively gave her consent for the use of her credit card. The Petitioner was not convicted of any felony. Moreover, the preponderance of the evidence does not support the conclusions that Petitioner's actions rise to the level of the commission of felonies. If Petitioner's actions fall within the realm of the commission of misdemeanors, such were committed outside the five-year period prior to the date of appointment.

7. Based on the age of the single incident, Petitioner's outstanding record, and the character witness presented at the hearing and individuals attesting by letters to Petitioner's integrity and character, the Undersigned concludes that Petitioner Sandy Hargrove Cowan is the type of individual qualified and suited for work in the law enforcement community.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Proposal for Decision.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the totality of all evidence, including testimony and exhibits provided at the above-captioned case, the Undersigned proposes that the Petitioner's justice officer certification should not be denied.

NOTICE

The agency making the Final Decision in this contested case 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. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 20th day of August, 2015.

Augustus B. Elkins II
Administrative Law Judge