

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ08259

Waseen Abdul-Haqq Petitioner v. N C Sheriffs' Education And Training Standards Commission Respondent	PROPOSAL FOR DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on March 26, 2015, in High Point, 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. Throughout most of their proposed decisions, the parties agreed on precisely the same language, and this Proposal for Decision adopts much of their consensus language.

APPEARANCES

Petitioner: James B. Weeks, Esq.
Law Offices of James B. Weeks
Greensboro, North Carolina

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

ISSUE

Whether Petitioner, a certified Detention Officer, violated N.C. Gen. Stat. § 20-166(c)(1), "Duty to stop in event of a crash," a Class B misdemeanor.

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. §§ 20-4.01(33b) and 20-166(c1); 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a)

EXHIBITS ADMITTED INTO EVIDENCE

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

WITNESSES

For Petitioner: Detention Officer Waseen Abdul-Haqq, Petitioner
Sgt. Katherine Netter, Guilford County Sheriff's Office

For Respondent: Officer R.D. Goad, Greensboro Police Department
Deputy James Sykes, Guilford County Sheriff's Office

UPON DUE CONSIDERATION of the arguments of counsel; the documents and other 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 the witnesses may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the greater weight of the evidence from the record as a whole, in accordance with the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Upon Respondent's due notice to Petitioner of its proposed Revocation of his Justice Officer's Certification, Petitioner's timely request for a contested case hearing, and notice of hearing to both parties, this matter is properly before the Office of Administrative Hearings ("OAH") pursuant to N.C. Gen. Stat. § 150B-40(e).
2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Respondent") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certifications.
3. Petitioner obtained employment as a detention officer with the Guilford County Sheriff's Office in March 2011 and has remained employed with that agency since. Petitioner received his Detention Officer General Certification from Respondent on April 10, 2012. Petitioner is currently a certified detention officer.
4. Title 12 NCAC 10B .0204(d)(1) provides that Respondent may revoke the certification of a justice officer when Respondent finds that the officer has committed or was convicted of a crime defined as a Class B misdemeanor after the officer's date of appointment through Respondent.
5. On March 13, 2014, Petitioner was charged with failing to stop and report a crash in violation of N.C. Gen. Stat. § 20-166(c)(1). The collision occurred on March 11, 2014 in the parking deck of the Guilford County Courthouse in Greensboro. At approximately

8:54 a.m. on that date, Petitioner was operating his 2004 Yukon SUV, license plate ZNZ8825. Petitioner was on his way to court for a child custody hearing concerning his children and was accompanied by his then-fiancé, Katherine Netter, who is a sergeant with the Guilford County Sheriff's Office. Petitioner and Sgt. Netter are now married.

6. Sgt. Netter was in the front passenger seat, and Petitioner was driving his SUV when he entered the courthouse parking deck on the morning of March 11, 2014. Petitioner entered the parking area designated for employees at 201 South Eugene Street in Greensboro and proceeded to park in the space reserved for Sgt. Netter. Petitioner was "running a little behind," preoccupied with the custody hearing, and distracted by a maintenance man on a ladder installing a lightbulb near his vehicle when he was maneuvering to pull into the parking space. He struck the GMC pickup truck that was parked next to Sgt. Netter's assigned space. Petitioner and Sgt. Netter both sought to assess the damage before going to the courtroom. Petitioner was somewhat familiar with the law regarding the obligation of an at-fault driver in this situation and concluded correctly that the amount of damage did not make the accident "reportable" to law enforcement, but that the owner of the pickup truck should be informed. Sgt. Netter was familiar with the truck's owner, who parked beside her and had also taken one of the classes she taught local law enforcement officers, although she did not know his name. Sgt. Netter and Petitioner discussed that she would make contact with the truck's owner about the incident. Sgt. Netter wrote down the license plate number of the victim's truck with the intention of sending the individual an email with the necessary information, since the victim also worked in the courthouse. Petitioner and Sgt. Netter left the parking deck for the custody hearing at approximately 8:55 a.m.
7. The custody hearing continued into the following day, March 12, 2014. Petitioner testified that he never thought about the accident again until he was contacted by the police on the afternoon of March 13, 2014. Sgt. Netter was off work on March 13th and planned to "run [the owner's] plate" to obtain the contact information of the truck's owner when she returned to work on Friday, March, 14th. She contacted the truck's owner by phone on the afternoon of March 13th, after Petitioner was charged.
8. Deputy James Sykes owned the pickup truck that Petitioner struck. He did not notice the damage to his vehicle until he was called at his home about the accident. The maintenance man in the parking deck at the time of the accident reported the incident. The accident was initially investigated by a patrol officer who noted "minor damage" to the pickup truck and estimated repair costs of \$500.00. The case was then assigned to Officer R.D. Goad on March 13, 2014, who charged Petitioner later that day. Officer Goad has been a sworn justice officer for approximately 13 years and has earned his Advanced Law Enforcement Officer's Certification. Officer Goad is currently assigned to Special Operations and works exclusively with the Hit and Run Division. He investigates approximately 250 hit and run cases each year.
9. Officer Goad's investigation revealed that Deputy Sykes was alerted to the collision by courthouse personnel on the day following the accident, March 12, 2014. Officer Goad interviewed Deputy Sykes on March 13, 2014, and confirmed that his vehicle sustained a dent to the rear left quarter panel of the truck, fairly depicted in Respondent's Exhibit 9, as

a result of Petitioner striking the truck with his SUV. Deputy Sykes testified that it cost \$609.21 to repair his truck. Deputy Sykes testified that it would have been very easy for Petitioner to locate him following the collision on March 11, 2014, by notifying security at the courthouse about the collision. Deputy Sykes was first contacted on Petitioner's behalf by Sgt. Netter after 2 PM on March 13, 2014.

10. Officer Goad made contact with Petitioner via telephone on March 13, 2014. During the telephone interview, Petitioner admitted to Officer Goad that he was driving his Yukon SUV on the morning of March 11, 2014. Petitioner told Officer Goad that he was distracted when he entered the parking deck and that he overshot the parking space and struck the back of the pickup truck owned by Deputy Sykes. Petitioner told Officer Goad that he did not see much damage to the truck. Petitioner therefore entered the courthouse to attend his custody hearing. Petitioner told Officer Goad that he believed that the collision did not have to be reported to law enforcement. Officer Goad testified that the accident did not have to be reported to law enforcement but that Petitioner was obligated to notify the pickup truck's owner even if there was no damage or minor damage. He thought Petitioner should have written a note to leave on the pickup or sought out an officer to tell about the accident.
11. Officer Goad charged Petitioner with violating N.C. Gen. Stat. § 20-166(c)(1), alleging that he "[f]ailed to stop the vehicle defendant was driving at the scene of a crash resulting in property damage to a 2000 GMC Sierra when the defendant knew the crash occurred." He also charged Sgt. Netter with aiding and abetting "a hit and run." The prosecution voluntarily dismissed both charges when shown that Petitioner's insurance had paid for the damage to Deputy Sykes' pickup truck. Petitioner's employer suspended him for two days without pay when he was charged, and then reduced the suspension to one day after the charges were dismissed. The grounds for the suspension were not specified, but Sgt. Netter testified that it was because another law enforcement agency had to investigate the matter. (R. Ex. 10)
12. N.C. Gen. Stat. § 20-166 provides, in pertinent part:
 - (c) The driver of any vehicle, when the driver knows or reasonably should know that the vehicle which the driver is operating is involved in a crash which results:
 - (1) Only in damage to property; [...]
shall immediately stop the vehicle at the scene of the crash. *If the crash is a reportable crash, the driver shall remain with the vehicle at the scene of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave [...]*,
 - (c1) In addition to complying with the requirement of subsection (c) of this section, the driver as set forth in subsection (c) shall give his or her name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the crash or to any person whose property is damaged in the crash. If the damaged property is a parked and unattended vehicle and the name and location of

the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided the driver thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing the information in a conspicuous place upon or in the damaged vehicle. [. . .] A violation of this subsection is a Class 1 misdemeanor.

(Emphasis added.)

N.C. Gen. Stat. § 20-4.01(33b) provides, in pertinent part:

Reportable Crash. - A crash involving a motor vehicle that results in one or more of the following: a. Death or injury of a human being. b. Total property damage of one thousand dollars (\$1,000) or more

13. The subject accident was not a “reportable crash” within the meaning of § 20-4.01(33b). Petitioner did not fail to stop his vehicle at the scene of the accident in violation of § 20-166(c)(1). Petitioner might reasonably have believed that the name and location of the pickup’s owner was readily ascertainable. However, the statute requires that the driver at fault immediately seek to provide the required information to the owner of the parked vehicle and, failing that, to notify the “nearest available peace officer” or leave a note on the struck vehicle. While his reliance on Sgt. Netter and his distraction due to his custody case may be considered in mitigation by the Commission, Petitioner violated § 20-166(c1).
14. It is the contention of both parties that, “Petitioner has otherwise been a good detention officer,” and that, “Petitioner has the support of the Guilford County Sheriff’s Office,” and that agency would like to see Petitioner remain in his current position.
15. 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 hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).
3. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of “a crime or unlawful

act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of appointment.”

4. Violation of N.C. Gen. Stat. § 20-166(c1) is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated § 20-166(c1) by failing to promptly “give his ... name, address, driver's license number and the license plate number of his vehicle to the ... person whose property [was] damaged in the crash.”
5. Petitioner’s certification through the Commission is subject to revocation pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205(2)(a) based on Petitioner having committed the Class B misdemeanor offense in violation of N.C. Gen. Stat. § 20-166(c1). Pursuant to 12 NCAC 10B .0205, the Commission has the authority to issue a lesser sanction than revocation.

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to 12 NCAC 10B .0205(2)(a), the undersigned recommends Respondent suspend Petitioner’s certification for a period of 6 months, and that this suspension be stayed for 1 year, provided Petitioner does not violate any rules of the Commission.

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 21st day of July, 2015.

J. Randolph Ward
Administrative Law Judge