

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ01031

DONALD LEE LUCAS PETITIONER, V. N C SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On June 10, 2015, Administrative Law Judge J. Randall May heard this case in Fayetteville, N.C. This case involves Petitioner's challenge to Respondent's finding of probable cause to deny Petitioner a law enforcement certification.

APPEARANCES OF COUNSEL

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ISSUES

1. Whether Petitioner Donald Lucas Jr. should be denied a law enforcement certification based upon an incident involving the inadequate and mistaken handling and processing of some evidence which was not submitted to the evidence custodian and lost?
2. Whether the evidence established proof of each element of N.C.G.S. § 14-230?
3. Whether the totality of all of the facts and circumstances demonstrates that the denial of a certification to Deputy Donald Lucas Jr. would be inappropriate in light of the evidence?

STATUTES/RULES AT ISSUE

N.C.G.S. § 14-230

FINDINGS OF FACT

After examining the totality of all admissible evidence, or the lack thereof, and after having considered the credibility and believability of the witnesses and evidence, and after having afforded appropriate weight to the evidence, the undersigned makes the following Findings of Fact:

1. This case arises out of a finding of probable cause by the Respondent, North Carolina Sheriffs Education and Training Standards Commission, that Petitioner Donald Lucas was involved in an incident involving the handling of some apparent counterfeit money whereby a portion was not properly processed and submitted to the evidence custodian.

Witnesses

2. The first witness called by Petitioner was Lt. Kevin Matthews of the Harnett County Sheriff's Office. T11 Lt. Matthews supervises a number of areas of the Department including the school resource officers, court house security, civil division and sex offense registry; he does all of the departmental recruiting and training. T11-12

3. Lt. Matthews has known Deputy Lucas since he served as an intern with the Harnett County Sheriff's Office which was in the senior year of his attendance at Campbell University. T12 Petitioner Lucas was well liked by the staff and got along with everyone there. T12 Lt. Matthews explained that everything that Petitioner Lucas was asked to do was done and done with a good attitude and that the Sheriff's Office found Lucas to be a fine young man. T13 Everything went well with the internship program with Lucas. T13

4 Lt. Matthews was involved in Petitioner's background investigation when he became an applicant for employment with the Harnett County Sheriff's Office. T13 Petitioner Lucas underwent a polygraph and psychological testing, and Lt. Matthews made a favorable recommendation to Sheriff Rollins regarding employing Lucas as a Deputy Sheriff. T14

5. Lt. Matthews explained that Deputy Lucas "is a professional and well- respected law enforcement officer. He carries himself well. He's well spoken. He's well respected in the department. He's well respected on his squad as well as in the community. We have had no issues, no disciplinary issue, no issue where he's concerned . . ." T14

6. Lt. Matthews explained that Sheriff Rollins was aware of the legal proceeding involving the probable cause determination by the Commission and Sheriff Rollins was aware of the incident that occurred in Wilson. T15

7. Lt. Matthews testified that Sheriff Rollins is "wholeheartedly in support of Deputy Lucas and the support of his employment with the Harnett County Sheriff's Office." T15

8. The next witness called by Petitioner was Lt. Robert James Wilson of the Harnett County Sheriff's Office, who is a patrol supervisor. T23 Lt. Wilson is a supervisor of Deputy Lucas. T24

9. Lt. Wilson described Deputy Lucas as “very, very professional.” T24 Lt. Wilson never received any derogatory calls in reference to Deputy Lucas. T24 Deputy Lucas has not received any disciplinary action with the Harnett County Sheriff’s Office. T26 Lt. Wilson described the reputation of Lucas as “very good.” T26 Lt. Wilson was aware that the Sheriff found that Lucas was a good employee and wanted to keep him. T30

10. The next witness called was Rebecca Gipson, a law enforcement officer with the Erwin Police Department. T32 Officer Gipson met Deputy Lucas four or five years ago through Campbell University and through service with the fire department. T33 Officer Gipson has been involved in some joint investigative and other law enforcement related activities with Deputy Lucas. T33

11. Officer Gipson described Deputy Lucas as “class A deputy. He is very professional in everything that he does and the way that he performs his duties and how he treats the citizens and other officers. He handles himself very professional . . .” T34 Officer Gipson described Lucas as being a “very effective” law enforcement officer. His reputation is that he is “very professional.” T34

12. The next witness called was Petitioner Donald Lucas Jr., a patrol deputy with the Harnett County Sheriff’s Office. T37

13. Deputy Lucas was born on March 8, 1990 and is 25 years of age. T37 Deputy Lucas came to Campbell University in 2008 after finishing high school. T37 Lucas has had a long term interest in becoming a professional law enforcement officer. T38 Lucas completed in his degree at Campbell University in 2012, and also undertook basic law enforcement training at Johnson Community College and completed that program in 2012. T38-39 He completed an internship program with Harnett County Sheriff’s Office while at Campbell University. T39

14. Lucas served with the Wilson Police Department and ultimately resigned his position there following this incident. T40 Lucas is eligible for rehire at the Wilson Police Department. T40; Petitioner’s Exhibit 2.

The Incident

15. At the time of the shoplifting incident and the counterfeit money, Lucas had been a law enforcement officer for approximately six months at that time. T44

16. The underlying incident arose from a shoplifting call. The shoplifting suspect was Malik Spells, who Deputy Lucas was familiar with because he had warrants in the N.C. Aware Repository for breaking and entering into motor vehicles. T45 Lucas had picked him up once or twice for those warrants. T45

17. Deputy Lucas received a call regarding a shoplifter that was already in the Loss Prevention Office at Wal-Mart. T45 Lucas responded to the scene and had a discussion with Mr. Spells regarding the investigation he was beginning. T46

18. Lucas transported Spells to the Magistrate's Office. T47 Once at the Magistrate Office, Mr. Spells indicated to Lucas that he had "some dirty money." T47 Spells had two small increments of apparent counterfeit money that he removed, which were held in rolls by a small rubber band. T48 At that point, Spells begin to rip up one of those increments and that is when Lucas seized the other increment that was in the other hand. T48

19. At the point when Lucas obtained the other increment of money, Spells indicated that he wanted to provide information regarding other vehicle breaking and entering offenses occurring in the city, and that he would give Lucas that information if Lucas did not charge him at the time with possessing the money. T48

20. There was a problem in the City of Wilson with recurring breaking and entering offenses into automobiles at that time. T49 Spells volunteered the information regarding possibly providing Lucas information about the motor vehicle break-ins. T49

21. Of the portion of the alleged money that Spells tore up, he essentially destroyed it pretty quickly. T50 It was Spells' decision to tear up the portion of money that was destroyed. T50 As to the remaining portion, Lucas grabbed it from Spells' lap. T51 Lucas put the remaining portion of the money in a brown paper bag, which was placed in the backseat of his car. T51

22. Spells cooperated and provided information to Lucas about the breaking and entering cases in Wilson. T51 Spells provided credible and helpful information to Lucas. T52

23. With regard to the apparent counterfeit money that was placed in the brown bag, Lucas acknowledged that he should have documented that in the report and submitted that as property either into evidence or some type of safekeeping. T52 Lucas believes that he inadvertently threw out the paper bag with the apparent money when cleaning out his police car. T53 Lucas forget about it after the incident. T53

24. Lucas acknowledged that he should have submitted that to the appropriate custodian at the Wilson Police Department. T53 Lucas acknowledged that he made a mistake in the handling of that matter. T53

25. With regard to the apparent counterfeit money, Lucas did not in any way receive any personal gain or benefit from it. T53 Lucas did not ever attempt to any way use the counterfeit money for any purpose. T53

26. Lucas did not act corruptly, willfully, or maliciously. T54

27. Lucas fully cooperated in the internal inquiry and investigation about this matter with the Wilson Police Department. T54 Lucas honestly overlooked submitting the seized property to the evidence custodian. T56

28. Lucas's conduct was an honest but neglectful mistake. T73 Lucas did not willfully destroy any evidence. T73 Lucas seized what was being destroyed and he inadvertently forgot to include it in a report. T73

29. Two lines from Exhibit 3 of Respondent were agreed to be redacted. T75

30. The first witness for the Respondent was Robin Weatherford of the Wilson Police Department. T78 Weatherford had a very good professional working relationship with Lucas. T96 Lucas was appropriately professional and respectful of him as a supervisor. T96 Lucas was an effective law enforcement officer. T96 Lucas earned the trust and respect of his colleague officers and with Sgt. Weatherford. T96

31. Sgt. Weatherford explained that Lucas had a very good reputation and that he worked hard. T97 Weatherford confirmed that the Wilson Chief of Police indicated would be eligible for rehire at the Wilson Police Department. T98

32. Weatherford found Lucas to be an honest person of high integrity. T100 Weatherford trusted Lucas and still trusted him at the time of the hearing. T101 Weatherford believed that Lucas had the necessary skills and abilities to be a police officer. T101

33. Weatherford testified that the type of mistake made by Lucas in this case is the type of mistake that Weatherford has seen once in a while. T102

Exhibits

34. Deputy Lucas was recalled to testify about a particular point that arose from a statement submitted by Officer Nester in Respondent's Exhibit 12. T136

34. Officer Nester did not testify in the hearing. However, a sworn statement under date of June 3, 2015 was admitted in which she describes events allegedly relating to this case. In this statement she could not remember the date that Lucas allegedly spoke with her, although this case occurred approximately 1 1/2 years previously. If this statement were accurate it would tend to show willfulness. But, as the finder of fact, it is difficult to give this statement, without the benefit of cross examination, the same weight as live testimony. Respondent's Exhibit 12.

35. Lucas testified, that he did not either hold up or show Officer Nester a wad of cash or throw a wad of cash to or at her. T136-137

35. Petitioner and Respondent admitted a number of exhibits providing relevant information. Petitioner's Exhibit 1 includes Petitioner's general law enforcement certification issued by the Criminal Justice Education and Training Standards Commission on January 14, 2014.

36. Petitioner's Exhibit 1 also included copies of Petitioner's Bachelor of Arts degree from Campbell University; Petitioner's Advanced Studies Diploma from the Loudoun County High School; Petitioner's student course completion record, August, 2012, demonstrating completion of Petitioner's basic law enforcement training curriculum completed at Johnston Community College in 2012; and Petitioner's transcript of courses completed at Campbell University.

37. Petitioner's Exhibit 2 is Petitioner's employee status change form for the City of Wilson, North Carolina, which denoted that Petitioner resigned his employment effective February 5, 2014, and that Petitioner was "eligible for rehire."

38. Petitioner's Exhibit 2 also included a performance evaluation completed on January 6, 2014 by the City of Wilson when Petitioner was serving on probationary status. This performance evaluation includes, but is not limited to, a number of substantial accolades regarding Petitioner's performance and conduct including: "Officer Lucas is extremely personable and has absolutely no problem when dealing with other officers, senior management, representatives from other government agencies and citizens. Officer Lucas always represents the Department with professionalism . . . Officer Lucas exercises the 'ten keys' by building positive relationships, working as a team, being consistent, being proactive and professional." The performance evaluation further demonstrated that his production "is bordering outstanding." Petitioner was rated as either successful or exceeds expectations in all categories of assessment. The performance evaluation concluded by stating that Petitioner has a "very bright future!"

39. Petitioner's Exhibit 3 is a performance evaluation conducted by the Office of the Sheriff of Harnett County for the period of January 1 through December 31, 2014. In that evaluation, Petitioner earned ratings of either meeting expected standards or exceeding expected standards in each category of multiple categories of assessment. Other evaluations included that "Deputy Lucas is very honest with other team members and the public;" "Deputy Lucas goes out of his way to make sure all citizens are taken care of."

40. Petitioner's Exhibit 4 is the background investigation (form F-8) from the Criminal Justice Education & Training Standards Commission. The Investigator observed that Lucas appeared "honest, very articulate." The investigative report indicated that Petitioner was "doing well."

41. Petitioner's Exhibit 5 consisted of a number of certificates demonstrating successful completion of a number of different continuing education courses by Petitioner.

42. Petitioner's Exhibit 6 is a letter from the United States Central Intelligence Agency demonstrating that the Petitioner was afforded a conditional offer of employment with the CIA as a security protective officer.

43. Respondent's Exhibit 1 consisted of the Commission's notification of a finding of probable cause to deny justice officer certification to Petitioner Lucas. The Probable Cause Notification alleged that Petitioner violated N.C.G.S. § 14-230 when Petitioner allegedly "failed to properly report or document evidence in the form of counterfeit money that you seized from an individual you arrested in the performance of your duties as a police officer with the Wilson Police Department."

44. Respondent's Exhibit 2 is Petitioner's request for an administrative hearing to challenge the probable cause determination.

45. Respondent's Exhibit 3 is Petitioner's form F-5B, report of separation from the City of Wilson, which denoted the basis for Petitioner's separation as resignation.

46. Respondent's Exhibit 4 is Petitioner's resignation letter.

47. Respondent's Exhibit 5 is a complaint form involving the underlying incident regarding counterfeit money.

48. Respondent's Exhibit 6 is a notification of internal investigation dated January 27, 2014, which alleged that Petitioner seized several counterfeit twenty dollar bills from Malik Spells and that the bills were not placed into property and were subsequently destroyed.

49. Respondent's Exhibit 7 consists of documents comprising the underlying internal affairs investigation.

50. Respondent's Exhibit 8 is an incident/investigation report involving the underlying larceny/shop lifting incident.

51. Respondent's Exhibit 9 is a statement taken from Petitioner Lucas.

52. Respondent's Exhibit 10 is an email communication from Robert Snider to Robin Weatherford dated January 26, 2014.

54. Respondent's Exhibit 12 is an affidavit of Officer Nester of the Wilson Police Department.

55. Petitioner Lucas and his witnesses were credible and believable.

56. Petitioner has earned very good ratings from supervisors and others in two police agencies. The evidence demonstrates that Lucas is much respected as a law enforcement officer by colleagues, supervisors, and Sheriff Rollins, his employer. The totality of all evidence demonstrated that Petitioner possesses the qualifications and traits necessary to successfully serve as a law enforcement officer.

57. The incident was a matter that occurred at a time when Lucas only had six months of police experience. Petitioner's youth and inexperience at the relevant time appears to be a factor in this matter.

58. The evidence does not establish any degree of willful or intentional wrongdoing, or willful or intentional neglect as to the destruction of possible contraband. There is no evidence that Lucas in any way intended to, or in fact carried out, any improper use of the apparent counterfeit money. Lucas did not benefit from his actions with any pecuniary or other personal gain or personal benefit to himself.

59. There was no evidence that established any corrupt or other improper motive by Petitioner. Petitioner made an honest but willful mistake in neglecting to process the apparent

seized counterfeit money into evidence. There was no evidence demonstrating, or even suggesting, any bad faith, improper, or malicious intent on behalf of Petitioner.

60. Petitioner's conduct as to the loss of the alleged contraband was inadvertent and mistaken. However, Petitioner did willfully neglect to discharge a duty of his office by failing to identify the "money" in his report.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administratively Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 N.C.A.C. 10B .0204(d)(1), the Respondent Commission may revoke, suspend or deny certification of a justice officer when the Commission properly finds that the applicant for certification or certified officer has been convicted of or committed a crime or unlawful act constituting a Class B misdemeanor.

3. The probable cause determination in this case initiated a charge against Petitioner of an alleged violation of N.C.G.S. § 14-230. This statute, in pertinent part, provides as follows: "... if any official of any of the state institutions, or of any county, city or town, shall willfully omit or neglect to discharge any of the duties of his office, for default whereof is not elsewhere provided that he shall be indicted, he shall be guilty of a Class I misdemeanor". This statute appears to have last been amended by session law 2009-107.

4. By the plain language of the statute, the following elements are required to be proven in order to establish a violation of this statute:

- 1) That the defendant be a public official of the type identified within the first section of the statute;
- 2) Under the first prong of the statute, there must be proof that the omission, neglect was *willful*. Under the second alternative prong, the defendant must be proven to have willfully and corruptly omitted, neglected, or refused to discharge a duty of his office, or willfully or corruptly violated his oath of office; and
- 3) A third element has been recognized by decisional law: That the conduct caused harm to the public. See *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989); *State v. Rhome*, 120 N.C. App. 278, 462 S.E.2d 656 (1995).

5. A number of cases decided by the North Carolina appellate courts have interpreted N.C.G.S. § 14-230. See, e.g., *State v. Hockaday*, 265 N.C. 688, 144 S.E.2d 867 (1965) ("if such officer, after his qualification, willfully and corruptly omits, neglects or refuses to discharges any of the duties of his office or willfully violates and corruptly violates his oath of office . . ."); *State v. McCall*, 264 N.C. 165, 141 S.E.2d 250 (1965); *State v. Hucks*, 264 N.C. 160, 141 S.E.2d 299 (1965); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965).

6. In *State v. Greer*, 308 N.C. 515, 302 S.E.2d 774 (1983), our Supreme Court interpreted N.C.G.S. § 14-230 in a case arising from a Superior Court conviction of a magistrate. The Supreme Court addressed whether there was sufficient evidence to warrant submitting the case to the jury and sustain the jury's verdict of guilty.

7. The Court in *Greer* defined the element of corruption as follows: "the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." *Greer*, 308 N.C. at 521; 302 S.E.2d at 778, citing *Blacks Law Dictionary*, 311 (Rev. 5th ed. 1979).

8. In *State v. Shipman*, 202 N.C. 518, 163 S.E. 657 (1932), our Supreme Court addressed a case involving allegations of conspiracy to defraud Transylvania County and misapply funds of the county. There, the Court explained the meaning of "willful" and "corruption". *Willful* was defined by the Court to mean: "proceeding from a continuous motion of the will; intending a result which actually comes to pass; designed, intentionally; maliciously. . . The Court went on to state in common parlance, 'wilful' is used in the sense of 'intentional', as distinguished from 'accidental' or 'involuntary.' But language of a statute affixing a punishment to acts done wilfully may be restricted to such acts done with an unlawful intent." *S. v. Falkner*, 182 N.C. 793; *West v. West*, 199 N.C. 12.

9. In *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989), the Supreme Court recognized an additional element of this offense to include harm to the public. This element has been reaffirmed in subsequent cases. In *State v. Rhome*, 120 N.C. App. 278, 462 S.E.2d 656 (1995), the Court interpreted N.C.G.S. § 14-230 and explained that "injury to the public must occur as a consequence of the omission, neglect or refusal." 120 N.C. App. at 294; 462 S.E.2d at 667.

10. The suspect, Malik Spells, quickly destroyed one portion of the apparent counterfeit money. The second portion of alleged counterfeit money was grabbed by Petitioner and he placed that in a paper bag, which he inadvertently left within his patrol car. Petitioner then simply forgot about it and did not process it into evidence. This action was a mistake and neglect on the part of Petitioner.

11. It is relevant that Petitioner, in the hearing of this case, testified that the appropriate course of action would have been to process the apparent counterfeit money into evidence. Petitioner candidly acknowledged that he made a mistake in the handling of the apparent counterfeit money. Petitioner's acknowledgment, testimony, and demeanor demonstrated that he learned from the mistake.

12. The incident was not proved to have been harmful to the public.

13. Many law enforcement officers make mistakes in the completion of their duties of office, some of which are in the form of omissions and the failure to act. Authorities have recognized how law enforcement officers should not be held to unrealistic standards of perfection, and that honest reasonable mistakes by officers occur with some frequency. E.g., *Dietrich v. N.C. Department of Crime Control and Public Safety*, 2001 WL 34055881, 00 OSP 1039 (Gray, ALJ ; August 13, 2001); *Annette Blue v. N.C. Sheriffs Education and Training Standards Commission*,

2014 WL 2529132, 13 DOJ 19151 (May, ALJ; April 28, 2014). The Supreme Court has recognized the application of qualified immunity to officers when their mistakes or mistaken beliefs are reasonable. See e.g., *Saucier v. Katz*, 533 U.S. 194, 210 (2001); *Roberts v. McSwain*, 487 S.E.2d 76 (N.C. App. 1999).

14. Petitioner's certification through the Commission is subject to denial pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205, based on Petitioner having committed the class B misdemeanor offense of willfully failing to discharge duties in violation of N.C.G.S. § 14-230, after his appointment at the Wilson Police Department on January 16, 2013.

15. Pursuant to 12 NCAC 10B .0205, the Commission has the authority to issue a lesser sanction than denial of certification. The undersigned recommends the Commission issue Petitioner certification. The basis of this recommendation is that Petitioner is regarded highly within the law enforcement community; was very "green" in his career; and, in all likelihood, will continue to be a good law enforcement officer.

16. The undersigned has examined and considered the totality of all admissible evidence in this case. All current and former supervisory and other officials of both the Wilson Police Department and the Harnett County Sheriff's Office testified consistently in strong support of Petitioner's very good traits in a number of areas that are highly relevant to serving as a law enforcement officer. That evidence, along with the evidence from Petitioner and exhibits, demonstrates that the incident in question did not involve any intentional or willfully corrupt misconduct for failing to act, or any willful and corrupt failure or refusal to carry out the duties of his office or his oath of office.

17. Willfully failing to discharge duties in violation of N.C.G.S. § 14-230 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103 (10)(b) and the Class B Misdemeanor Manual adopted by Respondent. However, had Petitioner simply reported this property, he may have passed the "willful" test. *State v. Snuggs*, 85 N.C. 541 (1881). The failure to report the seized property is more bothersome, although he never attempted to falsify the occurrence.

18. It was interesting that neither counsel in this case felt that Petitioner's loss of certification was called for. With this the undersigned agrees and recommends his certification. The Harnett County Sheriff's Office supports this educated young man; and, it is felt that with their guidance, he will remain on the right track.

19. It is the belief of the undersigned that with sufficient experience and training, this Petitioner has the potential of becoming an outstanding law enforcement officer. He did not appear to be acting for any reason other than to promote good law enforcement. However, the zeal of our law enforcement officers must be tempered and subject to the rule of law that they are attempting to enforce.

PROPOSAL FOR DECISION

Petitioner's application for certification through the Commission is subject to denial pursuant to 12 NCAC 10B .0204(d)(1) and 12 NCAC 10B .0205. The undersigned holds that there

is sufficient evidence in the record to properly and lawfully support the Conclusions of Law, and finds that Petitioner has committed a Class B misdemeanor.

However, considering the totality of the mitigating factors, including the testimony of Petitioner; his youth; and testimony from officers of both Wilson and Harnett Counties; the undersigned proposes that the Commission exercise its equitable discretion under 12 NCAC 10B .0205 and suspend any period of sanction, or substitute a period of probation in lieu of denial.

NOTICE AND ORDER

The North Carolina Sheriff's Education 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 the 16th day of September, 2015.

J. Randall May
Administrative Law Judge