

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 01536

Joseph Larry Wyatt Petitioner,  v.  N C Sheriffs' Education And Training Standards Commission Respondent. Respondent.	<b>PROPOSAL FOR DECISION</b>
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This case came on for hearing on November 11, 2015 before Administrative Law Judge Selina M. Brooks in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), 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.

**APPEARANCES**

Petitioner: Daniel P. Roberts, Esq.  
Goodman, Carr, Laughrun, Levine & Greene  
301 S. McDowell Street, Suite 602  
Charlotte, North Carolina 28204

Respondent: Matthew L. Boyatt  
Assistant Attorney General  
N.C. Department of Justice  
Law Enforcement Liaison Section  
P.O. Box 629  
Raleigh, N.C. 27602-0629

**ISSUE**

Is the proposed revocation of Petitioner's certification supported by the preponderance of the evidence presented at the administrative hearing?

**APPLICABLE RULES**

12 NCAC 10B .0204(a)  
12 NCAC 10B .0204(b)(2)  
12 NCAC 10B .0301(a)(8)

## WITNESSES

For Petitioner: Joseph Larry Wyatt, Petitioner  
Sergeant Steven Buchanan, Mecklenburg County Sheriff's Office  
Captain C.S. McGee, Mecklenburg County Sheriff's Office

For Respondent: Special Agent Derek G. Wiles, NC Office of the Secretary of State  
Captain Kevin Bullard, Sanford Police Department  
Special Agent Thomas DeAngelo, NC Office of the Secretary of State

## EXHIBITS

Petitioner's Exhibits (hereinafter "P Ex \_") 1 through 4 were admitted into evidence.

Respondent's Exhibits (hereinafter "R Ex \_") 1 through 11 were admitted into evidence.

**BASED UPON** careful consideration of the sworn testimony of the witnesses present at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in the proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Finding of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors by judging credibility, including, but not limited to the demeanor of the witnesses, 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. In the absence of a transcript, the Undersigned relied upon her notes to refresh her recollection.

## FINDINGS OF FACT

1. Petitioner currently holds certification through the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Respondent Commission" or "Sheriffs' Commission") as a detention officer with the Mecklenburg County Sheriff's Office (hereinafter "MCSO"). Petitioner has held certification since approximately 2002.

2. Petitioner began his work as a detention officer in 2000 and worked as a juvenile detention officer at Gatling Juvenile Center from 2000 through 2009. Petitioner became employed by the Mecklenburg County Sheriff in 2002 when the MCSO took over operations at the juvenile detention center. (P Ex 3)

3. In 2009, Petitioner transferred from Gatling Juvenile Center to Jail North, where he currently works as a detention officer with the MCSO. (P Ex 3) Petitioner's performance reviews from 2001 through 2014 have all been characterized as either "successful", "exemplary", or "meets expectations". (P Ex 1)

4. On January 5, 2015, Respondent sent Petitioner a Notification Of Probable Cause To Revoke Justice Officer Certification on the ground that Petitioner had engaged in unlawful conduct while he was off-duty. (R Ex 1)

5. Petitioner timely appealed and a contested case hearing was held before the Undersigned on November 11, 2015. (R Ex 2)

6. Petitioner testified that he learned of a sports jersey website in China from a friend in 2007.

7. From 2007 to 2013, Petitioner would access this website once a month and would order numerous sports jerseys from China at the cost of \$20.00 to \$25.00 per jersey. Petitioner's typical monthly order would cost approximately \$850.00. For example, in July 2013, Petitioner purchased seven Clowney #7 Gamecock jerseys and three Bryant #88 Dallas Cowboys jerseys among other items for a total cost of \$869.00. (R Ex 4)

8. Petitioner knew when he was purchasing these jerseys for \$20.00 and \$25.00 a piece that they sold individually at retail for between \$100.00 and \$150.00, and that certain jerseys could be valued as high as \$300.00.

9. Petitioner testified that he was only purchasing the jerseys for himself and for his family and friends.

10. Petitioner denies that he was selling the jerseys for profit or that he was trafficking in counterfeit jerseys.

11. On cross-examination, Petitioner admitted that he had sold jerseys he obtained from China for a profit on at least two (2) occasions.

12. The first occasion occurred when Petitioner was in a bar and another patron kept inquiring about Petitioner's jersey. Petitioner admittedly sold this jersey to the stranger for \$100.00. Petitioner had purchased the jersey from his Chinese source for \$25.00.

13. Petitioner also admitted to selling a jersey to a friend of his for a profit. His friend continually asked him for a specific jersey, so Petitioner sold it to him for \$35.00. Petitioner had obtained the jersey from China for \$20.00 or \$25.00.

14. Petitioner testified that he believed that the jerseys were damaged goods and did not know that the jerseys were counterfeit, claiming that during a telephone call someone in China told him that the jerseys were "seconds".

15. Petitioner testified that he would not purchase the sports jerseys with a credit card but, rather, he would wire-transfer money to China through a Western Union office. The jerseys would then be shipped to Petitioner at his residence in Mecklenburg County. (R Ex 4)

16. Petitioner testified that he discarded invoices and erased invoices from his email account.

17. Special Agent Derek Wiles (hereinafter "Agent Wiles") is currently employed at the North Carolina Department of the Secretary of State, has been involved in counterfeit interdiction since approximately 2005 and handles approximately 500 counterfeit cases annually. Agent Wiles has been a sworn law enforcement officer since 1989.

18. On July 29, 2013, Agent Wiles was conducting a counterfeit interdiction at the DHL international hub located on Yorkmont Road in Charlotte, North Carolina. Agent Wiles identified a suspicious package from China that had been addressed to Petitioner Larry Wyatt at his home address.

19. Agent Wiles inspected the contents of the package, and immediately identified and seized 35 counterfeit sports jerseys. The jerseys contained fake or imitation marks of corporations, such as Nike and Adidas, to make the jerseys appear to be authentic sports jerseys from teams such as the Dallas Cowboys, Carolina Panthers, Miami Dolphins, and the Kansas City Royals. (R Ex 11)

20. Agent Wiles opined that authentic sports jerseys from companies such as Nike and Adidas can cost \$150.00 and even more for the rarer jerseys.

21. On July 29, 2013, Agent Wiles met Petitioner at a neutral location. Petitioner appeared at their meeting wearing a sports jersey. Agent Wiles advised Petitioner that counterfeit sports jerseys addressed to him from China were seized. Petitioner denied knowing that the sports jerseys were counterfeit. (R Ex 11)

22. Petitioner voluntarily surrendered the seized jerseys to Agent Wiles. (R Ex 11)

23. Petitioner told Agent Wiles that he had been importing sports jerseys for approximately two years and suggested that a MCSO Sergeant was also involved in purchasing the jerseys. (R Ex 6)

24. Agent Wiles opined that it is a local policy to give a verbal warning to first offenders rather than charge them with a crime.

25. Agent Wiles told Petitioner that he was not criminally charged because this was Petitioner's first offense but that he would be charged in the future for a second offense. (R Ex 6)

26. Captain McGee informed his chain of command and the Respondent of the allegation of misconduct by Petitioner via email on July 30, 2013. (R Ex 6 & 7) He interviewed Petitioner on July 31, 2013 concerning the allegation. (R Ex 10)

27. Captain McGee also interviewed Sergeant Buchanan on August 2, 2013 concerning his purchase of jerseys from the Petitioner. Sergeant Buchanan had purchased two jerseys in a two-year period and did not know that they were counterfeit. (R Ex 8)

28. On August 13, 2013, Petitioner forwarded an invoice dated July 20, 2013 to Captain McGee. (R Ex 4)

29. Captain McGee prepared a Case Summary of his interviews of Petitioner and Sergeant Buchanan. (R Ex 8)

30. On August 23, 2013, Captain McGee sent a memorandum to Major Pummell concerning the allegation of misconduct against Petitioner stating that although the incident “did not result in an arrest [] his conduct brings disrepute and reflects unfavorably as a member of the Mecklenburg County Sheriff’s Office.” He requested that Petitioner receive a documented general counseling “to make him aware that this is a serious issue and future occurrences of this nature will result in further Administrative Action which could result in Termination of his Employment.” (P Ex 4 & R Ex 9)

31. On August 27, 2013, Petitioner received a Verbal Reprimand by the Mecklenburg County Sheriff’s Office regarding his conduct in ordering counterfeit goods from China which was memorialized in writing. (P Ex 2)

32. On June 16, 2014, Agent Tom DeAngelo with the Sanford Police Department conducted an undercover operation in an attempt to purchase counterfeit jerseys. Agent DeAngelo posed as a woman named LaTasha Williams and corresponded with Petitioner via Petitioner’s email address, [jerseymanwyatt@yahoo.com](mailto:jerseymanwyatt@yahoo.com). (P Ex 3 & R Ex 5)

33. Through email correspondence, “Ms. Williams” indicated that she obtained Petitioner’s information from a guy who knew Petitioner and that she was looking to sell jerseys at a flea market booth in Miami, Florida and inquired whether Petitioner could help her. Petitioner responded to Ms. Williams’ email, stating “I can. How many you looking for?” (P Ex 3 & R Ex 5)

34. Petitioner continued to correspond with Ms. Williams via email, inquiring as to who told her about Petitioner and asking whether Ms. Williams had a Facebook page. Petitioner then advised Ms. Williams that “I usually don’t deal with people unless I know who referred them to me.....I might be able to help you but I have to be cautious because of issues I have had in the past.” (P Ex 3 & R Ex 5)

35. Petitioner further advised Ms. Williams that “I’m not going to be able to help you unless I know who told you about me. If you are selling anything like jerseys at flea markets in NC just be careful. State is really starting to crack down.” (P Ex 3 & R Ex 5)

36. Agent DeAngelo opined that it was apparent that Petitioner was engaged in the trafficking of counterfeit goods, but that Petitioner was attempting to verify Ms. Williams’s connection to Petitioner by asking repeatedly how she got Petitioner’s name and also by seeking to view Ms. Williams’s Facebook page.

37. Petitioner claims that he thought Ms. Williams was really a friend who was just playing a practical joke on him.

38. Petitioner's testimony is not credible or believable that Petitioner ordered these counterfeit items for 6 years without any idea that they were fake.

39. Petitioner's testimony is not credible or believable in that at least as of July 2013, Petitioner knew that the jerseys were counterfeit. It is clear from Petitioner's testimony at the hearing and from the email exchange that Petitioner was attempting to verify Ms. Williams's identity in an attempt to traffic in counterfeit jerseys in June 2014.

40. Based on the evidence presented at the administrative hearing, it is clear that Petitioner intentionally purchased counterfeit sports jerseys from a company in China for the purpose of selling them for profit.

### **CONCLUSIONS OF LAW**

1. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. Similarly, to the extent that some of these Conclusions of Law are Findings of Fact, they should be so considered without regard to the given label.

2. 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 Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on January 5, 2015.

3. The North Carolina Sheriffs' Education and Training Standards Commission 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 certification.

4. 12 NCAC 10B .0204(a) provides that the Sheriffs' Commission shall revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a felony, or a crime for which the authorized punishment could have been imprisonment for more than two (2) years.

5. In order to establish a violation of 18 U.S.C. § 2320, trafficking in counterfeit goods, there must be a showing that the individual 1) trafficked or attempted to traffic in goods; 2) the trafficking was intentional; 3) there was a counterfeit mark in connection with the goods; and 4) the individual knew the mark so used was counterfeit. Trafficking is defined in 18 U.S.C. § 2320 (d)(2) to mean "transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer or dispose of." A violation of 18 U.S.C. § 2320 carries with it a maximum penalty of 10 years. 18 USC 2320 (b)(1).

6. The evidence presented at the administrative hearing established that Petitioner was engaged in the trafficking of counterfeit goods within the meaning of 18 U.S.C. § 2320.

7. A preponderance of the evidence establishes Petitioner violated this criminal statute and Petitioner's certification is therefore subject to revocation pursuant to 12 NCAC 10B .0204 (a).

8. The unlawful conduct Petitioner engaged in which gave rise to the proposed revocation of his certification occurred while Petitioner was off-duty. Nevertheless, 12 NCAC 10B .0204(a) of the Respondent's rules prohibits a sworn justice officer from engaging in felonious activity at any time or from committing a crime for which the authorized punishment could have been imprisonment for more than two (2) years, whether on or off-duty.

9. Petitioner's actions also exhibited a lack of honesty and integrity and a lack of respect for the law.

10. Pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriff's Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

11. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288 N.C. 1, 10 (1975).

12. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this state.

13. Petitioner engaged in acts of trafficking in counterfeit sports jerseys at a time when Petitioner held a justice officer certification through the State of North Carolina. Based on the evidence presented at the administrative hearing, Respondent's proposed revocation of Petitioner's justice officer certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is supported by a preponderance of the evidence.

### **PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends the Petitioner's certification as a justice officer be revoked.

### **NOTICE AND ORDER**

The N.C. 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.

**IT IS SO ORDERED.**

This the 2nd day of February, 2016.

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Selina M Brooks  
Administrative Law Judge