

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 04849

<p>WILLIAM ELMORE BURWELL JR.</p> <p>Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION</p> <p>Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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On November 17, 2015, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing in Raleigh, North Carolina after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes. Petitioner had requested a hearing with Respondent to appeal Respondent's June 5, 2015 Proposed Denial of Petitioner's Law Enforcement Officer Certification.

On December 15, 2015, the undersigned issued an Order ruling that Respondent had probable cause to deny Petitioner's law enforcement certification based on Petitioner's failure to comply with the minimum standards for law enforcement certification, as required by 12 NCAC 09A.0204(b)(2) and 12 NCAC 09B.0101(3). On January 14, 2016, Respondent filed a draft Proposal for Decision with the Office of Administrative Hearings.

#### **APPEARANCES**

For Petitioner: Brian Aus, Attorney at Law, 2232 Page Road, Suite 202, Durham, North Carolina 27702

For Respondent: Lauren Tally Earnhardt, Attorney for Respondent, N.C. Department of Justice, Law Enforcement Liaison Section, P.O. Box 629, Raleigh, N.C. 27602-0629

#### **ISSUE**

Does substantial evidence exist for Respondent to deny Petitioner's law enforcement officer certification for lack of good moral character?

#### **RULES AT ISSUE**

12 NCAC 09A .0204(b)(2)  
12 NCAC 09B .0101(3)

## 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 certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on June 5, 2015.

2. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09B, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. Petitioner is an applicant for law enforcement certification with the Woodlawn Police Department, and was certified with Hillsborough Police Department until January 7, 2015. Petitioner was employed by the Hillsborough Police Department for seven (7) years, eight (8) months when he resigned, in lieu of termination, after Hillsborough Police Department found that Petitioner violated four (4) Hillsborough police department policies.

4. Petitioner was working as undercover narcotics officer when he met Ms. Lashara Bradshaw. Petitioner received information about drug dealers and other crimes from Ms. Bradshaw for several years. Petitioner asked Ms. Bradshaw to consider becoming an official confidential informant with Hillsborough Police Department during this time. However, Ms. Bradshaw declined. Ms. Bradshaw assisted Petitioner in identifying people based on their street names. Petitioner would meet Ms. Bradshaw at one of two locations, and in exchange for the information, would give Bradshaw money for gas from police department funds.

5. In 2012, Petitioner began a new drug campaign during the course of his employment. During this time, he and Ms. Bradshaw exchanged telephone numbers. In April 2013, Petitioner and Ms. Bradshaw exchanged texts about personal matters and that were also of a sexual nature.

6. In May 2013, Petitioner began having an affair with Ms. Bradshaw. Petitioner sent a text to Ms. Bradshaw asking her to meet him on a portion of Hwy 57 they called "the cave" after work. At this meeting, Petitioner met Ms. Bradshaw in his personal vehicle, and had sex with her.

7. Petitioner's sexual relationship with Ms. Bradshaw continued off and on for about one year. Petitioner continued receiving information from Ms. Bradshaw during this time, and continued paying her with money he received from the Hillsborough Police Department funds. Petitioner paid Ms. Bradshaw 7-8 times without her being enrolled in the Hillsborough Police's confidential informant program.

8. In June or July 2013, Petitioner signed Ms. Bradshaw up to become a confidential informant for the Hillsborough Police Department. Petitioner explained to Ms. Bradshaw that while she was a confidential informant they would not be able to continue their sexual relationship.

9. After a short time, Ms. Bradshaw wanted to resume their sexual relationship and in spring 2014, Petitioner started having sex with Ms. Bradshaw again. Petitioner would stop having sex with Ms. Bradshaw when she made drug buys for him, but resumed having sex with Bradshaw a few days after the buy was complete. Petitioner thought that once the drug buy was complete, and he was no longer working toward a target suspect, Ms. Bradshaw was no longer a confidential informant.

10. Petitioner and Ms. Bradshaw continued to have sex approximately once or twice a month until September 2014. During their sexual relationship, Petitioner and Ms. Bradshaw met for sex at the locations he would meet other informants (Hwy 57 or Hwy 40). Petitioner and Ms. Bradshaw had sex outside his Hillsborough Police Department vehicles, a Chevy Malibu and surveillance van. Petitioner met with Bradshaw after his shift with the Hillsborough Police Department was over, when Petitioner was on the way to return his department vehicle to the office, or when Petitioner was on his way home in his personal vehicle, a 1990 Mazda pickup truck. Petitioner admitted to having sex with Ms. Bradshaw at least 20 times, all of which was either at the Hwy 57 location or at the Hwy 40 location. Petitioner never met Bradshaw while Petitioner was wearing his Hillsborough Police Department uniform, and only twice while he was driving his department vehicle. Petitioner never disclosed his relationship with Ms. Bradshaw to the district attorney or anyone at Hillsborough Police Department.

11. In the spring of 2014, Petitioner ended the sexual relationship with Ms. Bradshaw. Bradshaw started threatening to tell the police department and Petitioner's wife about their relationship, and continued contacting Petitioner via telephone and texts. Although Petitioner had called off the relationship with Bradshaw, Petitioner still contacted Bradshaw, and asked her to meet him for sex.

12. After an argument between Petitioner and Ms. Bradshaw, Ms. Bradshaw started calling Petitioner's wife. Bradshaw told the Hillsborough Chief of Police about her relationship with Petitioner, and obtained an Ex Parte Protective Order against Petitioner. Petitioner was served with the Ex Parte Protective Order while he was in the Chief's office.

13. The Hillsborough Police Department investigated Petitioner's relationship with Ms. Bradshaw, found Petitioner to be in violation of four Department policies, and allowed Petitioner to resign in lieu of termination. Petitioner admitted there is a Department policy prohibiting officers having a personal relationship with confidential informants. Petitioner further admitted that his actions with Bradshaw were not conduct becoming of a law enforcement officer, or were not in good judgment or in good taste. Petitioner didn't know why he got involved with Ms. Bradshaw in the first place. Since then, he met with a counselor weekly until his employment with the Hillsborough Police Department ended.

14. At all times relevant to this case, Lieutenant Davis Trimmer was a uniform Patrol Commander and Investigations Division Commander at the Hillsborough Police Department. Lt. Trimmer was assigned to investigate the allegations that Petitioner had an improper personal relationship with a confidential informant, Ms. Bradshaw. During his investigation, Lt. Trimmer spoke with Ms. Bradshaw several times, and received documentation to support the allegations. Ms. Bradshaw told Lt. Trimmer the affair between she and Petitioner lasted more than 2 years, the

sexual activity occurred while Petitioner was on and off duty, and that they had sex at locations along Highways 57 and 40. Bradshaw advised Lt. Trimmer that she and Petitioner had sex outside both the Petitioner's department vehicles, to wit: a Malibu, a van, and a white jeep vehicle.

15. During Lt. Trimmer's investigation, Trimmer was unable to determine if Petitioner and Ms. Bradshaw had sex inside department vehicles. Lt. Trimmer determined that Petitioner's vehicle was an unmarked vehicle, but was well known in the community. When Lt. Trimmer interviewed Petitioner, Petitioner was cooperative, and admitted to the relationship with Bradshaw. Petitioner admitted that he drove the department vehicle to the various locations and had sex on or around the department vehicle. Lt. Trimmer determined that, at least one time, Petitioner and Ms. Bradshaw had sex while Petitioner on duty, because Petitioner and Bradshaw's communication occurred during Petitioner's shift, and the conversation about the recent sexual encounter occurred via text. (Respondent Exhibits 3-4)

16. At hearing, Lt. Trimmer explained that Ms. Bradshaw's confidential informant paperwork was signed, but not dated. Lt. Trimmer also explained that confidential informants do not need to be "signed up" with the Hillsborough Police Department as "informants," in order to be paid for their information. During his investigation, Lt. Trimmer audited Petitioner's log entries, and found ten (10) small payments to Ms. Bradshaw from Department funds.

17. Based on his investigation, Lt. Trimmer concluded that Petitioner and Ms. Bradshaw had an improper relationship in violation of Hillsborough Police Department policy, General Order 350-10, Rules of Conduct, section F. Unbecoming Conduct," Section MM, Sexual Activity, and General Order 600-05, Confidential Informants, section E. Control of Confidential Informant Activities. Section E specifically prohibits officers from having personal or romantic relationships with confidential informants.

### **CONCLUSIONS OF LAW**

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

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

3. 12 NCAC 09A .0204(b)(2) states that Respondent Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification.

4. 12 NCAC 09B .0101(3) states that every criminal justice officer employed by an agency in North Carolina shall: (3) be of good moral character pursuant to G.S. 17C-10, and as determined by a thorough background investigation.

5. The findings of Respondent's Probable Cause Committee regarding Petitioner are supported by substantial evidence, and are not arbitrary and capricious.

6. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

7. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't of Env't & Natural Resources*, 172 N.C. App. 697, 635 S.E. 2d 442 (2006).

8. In this case, Petitioner failed to show that he has complied with the minimum standards for law enforcement certification as required by 12 NCAC 09A .0204(b)(2) and 12 NCAC 09B .0101(3).

9. A preponderance of the evidence supports the conclusion that Petitioner lacks the good moral character that is required of a sworn law enforcement officer in this State. Petitioner admitted to engaging in sexual acts with Mrs. Bradshaw while she was being used as a confidential informant, and being paid with department funds. Although the majority of the sexual conduct occurred while Petitioner was off-duty, Petitioner used his undercover department vehicle to meet Ms. Bradshaw, and paid Ms. Bradshaw with department money, while never disclosing their relationship to any other law enforcement officer or the district attorney's office. Such outrageous conduct demonstrates that Petitioner does not possess the good moral character that is required of a sworn justice officer in this State. This conduct is so extreme that it constitutes a manifest indifference to Petitioner's Oath of Office, and to the public trust that it bestowed upon a sworn officer. The essence of a sworn justice officer, and what defines that officer, is complete moral integrity at all times. Where, as here, a sworn justice officer engages in sexual acts while discharging his duties, that officer has demonstrated that he does not possess the good moral character required of a sworn justice officer under Respondent's rules.

### **PROPOSAL FOR DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent **DENY** Petitioner's certification as a law enforcement officer.

### **NOTICE**

The North Carolina Criminal Justice Education and Training Standards Commission will make the final decision in this contested case. 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. N.C.G.S. § 150B-40(e).

This the 19<sup>th</sup> day of January, 2016.

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Melissa Owens Lassiter  
Administrative Law Judge