

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 00665

Jarvis James, Petitioner, v. North Carolina Sheriffs Education and Training Standards Commission, Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on June 15, 2022, before Administrative Law Judge Linda F. Nelson in Fayetteville, North Carolina. This case was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 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

FOR PETITIONER: J. Michael McGuinness
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FOR RESPONDENT: Mr. Robert Pickett
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ISSUES

1. Did the Petitioner commit the Class B misdemeanor of cyberstalking by placing a GPS tracker on his girlfriend's car without her permission?
2. Do the facts and circumstances surrounding the placement of the GPS tracker demonstrate that Petitioner lacks the good moral character required of all justice officers?

FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses who testified at the hearing, the exhibits admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making these findings of fact, the Undersigned has weighed all of the evidence and has assessed the credibility and believability of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of the witnesses, any interests, biases or prejudices the witness may have, the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which the witnesses testified, and whether the testimony of the witnesses is reasonable and consistent with other believable evidence in the case.

1. Petitioner is an applicant for justice officer certification with the Bladen County Sheriff's Office, where he was hired in May 2020. He previously held criminal justice officer certification from the North Carolina Criminal Justice Education and Training Standards Commission through the Hope Mills Police Department (the "Department"), where he worked from February 8, 2017, until July 19, 2019.

2. Petitioner resigned from the Department following an internal investigation into his action of placing a GPS tracker on Courtney Wright's car in January 2019 and again in June 2019.

3. Respondent's Probable Cause Committee notified Petitioner, by letter dated January 21, 2022, it found probable cause to deny Petitioner certification for a period of five years for committing the offense of Cyberstalking, and to deny Petitioner certification indefinitely for lacking good moral character. Petitioner requested an administrative hearing to contest the probable cause findings. The Undersigned Administrative Law Judge presided at the hearing on June 15, 2022.

4. From 2017 to June 2019, Ms. Wright lived with Petitioner. They had a son in 2018, for whom Ms. Wright was the primary caregiver. The couple's romantic relationship deteriorated in 2019 when Ms. Wright began using drugs and ended sometime between June 17 and June 20, 2019. Ms. Wright moved out of Petitioner's home with the couple's son on June 17, 2019.

5. Sometime in January 2019, at the time that Ms. Wright was consenting to sharing location information with Petitioner by cell phone tracking, Petitioner placed a GPS tracker on her car. Petitioner removed the tracker from Ms. Wright at some point and Ms. Wright stopped allowing Petitioner to access her cell phone location.

6. Petitioner again placed a GPS tracker on Ms. Wright's car after she moved out of his house with their child, around June 20, 2019.

7. On June 23, 2019, Petitioner asked Lieutenant Sports, in the presence of other officers of the Department, if Petitioner could be in trouble for placing a GPS tracking device on his former girlfriend's car.

8. On July 1, 2019, the Department began an internal investigation of Petitioner's conduct. The investigation was conducted by Deputy Chief Dean.

9. On July 17, 2019, following the conclusion of the internal investigation, Petitioner was given the opportunity to resign from his position with the Department, which he did.

Hope Mills Police Department Testimony

10. Respondent called the following four witnesses, all of whom are employed by the Department: Deputy Chief Dean, Lieutenant Grady, Officer Connor, and Officer Marischal.

11. All officers called to testify were familiar with the facts discovered during the Department's internal investigation. Each of Respondent's witnesses also testified to Petitioner's character, as well as his work performance, conduct, police behaviors, and personal behaviors and traits. The Undersigned finds Respondent's witnesses are highly credible and believable witnesses.

12. All officer/witnesses stated that Petitioner was an outstanding police officer, person, and father.

13. Officer Cannon recalled an occasion when Petitioner had been in a verbal argument with Ms. Wright the night of June 16, 2019. Petitioner sought to be excused from work the following day complaining of fatigue and stress from the verbal fight but came in and performed properly when told he was needed at work, but was subsequently allowed to leave early.

14. Officer Daniel Marischal attended Basic Law Enforcement Education (BLET) with Petitioner and is friends with Petitioner. Officer Marischal recounted the conversation described in Finding of Fact No. 7, above, between Lieutenant Sports and Petitioner. He also related a remark from Petitioner that suggesting that Petitioner had put a GPS tracker on Ms. Wright's car.

15. Officer Marischal believed Petitioner tracked Ms. Wright solely out of concern for his son, given Ms. Wright's drug use.

16. Lieutenant Grady testified to Petitioner's texting a picture of Wright's license plate and the message "free game," on June 28, 2019, with the intention of indicating Department officers should stop Ms. Wright's car. Lieutenant Grady counseled Petitioner against this behavior and Petitioner heeded the Lieutenant's advice.

17. Deputy Chief Dean, who conducted the internal investigation into Petitioner's actions and reviewed Petitioner's work and character testified that he believed Petitioner's inappropriate actions were solely the result of by Petitioner's worry about the safety of his son.

18. In addition to the placing of a GPS tracker on Ms. Wright's car, which Petitioner freely admitted to Deputy Chief Dean, there were three other actions of Petitioner which occurred within one week in late June, which the Deputy Chief found to be out of character for Petitioner.

19. This first of the three actions occurred on June 25, 2021. Petitioner attempted to misuse the DCI database by asking Officer Munoz to run a vehicle tag number of a person whom Ms. Wright visited. Officer Munoz refused to provide Petitioner with the information when he realized the request was for personal reasons.

20. The other two actions were disregard of orders. On June 22, 2019, Lieutenant Sports ordered officers not to make unnecessary traffic stops during the day of a large community event. Petitioner made several traffic stops. When asked what he was doing, Petitioner admitted he was “being petty” and stopped the activity.

21. The other disregard of orders occurred on June 29, 2019. Petitioner attempted to meet with Officer Marischal, while on duty in an area near where Ms. Wright had moved. Petitioner had been ordered to stay away from that area by a superior at the Department. It is not clear whether Petitioner actually entered the area.

22. Deputy Chief Dean spoke with Ms. Wright during the investigation. Ms. Wright informed Deputy Chief Dean she had given her permission to the GPS tracking. Deputy Chief Dean found her claims unreliable as they contradicted Petitioner’s statements made during the investigation.

23. Ms. Wright did not appear as a witness. Her recorded interview with Deputy Chief Dean was entered into evidence as Respondent’s Exhibit 17.

Petitioner’s Witnesses’ Testimony

24. Petitioner testified and called Captain Daniel Clark, Matthew Shrauger, and Adrian Ellison as character witnesses.

25. Petitioner’s character witnesses testified regarding various components of Petitioner’s character, including various aspects of his life history, personal conduct history, relationship with his son and other facts relevant to his character. The Undersigned finds Petitioner’s character witnesses are highly credible and believable witnesses, and their testimony reinforced the good character testimony of Respondents’ witnesses. The testimony materially assisted the Undersigned in deciding this case.

26. Captain Daniel Clark of the Bladen County Sheriff’s Office testified at length about Petitioner’s character, conduct, and work performance as a Bladen County Deputy Sheriff. He stated that the Bladen County Sheriff’s Office was aware of all circumstances surrounding Petitioner’s resignation from the Department at the time of hiring Petitioner and Petitioner’s service and conduct as a Deputy Sheriff was exemplary. Petitioner has earned the respect of the Bladen County Sheriff, Jim McVicker, and his colleagues at the Sheriff’s Office. Petitioner’s service for the Bladen County Sheriff’s Office has been professional, effective, and honorable.

27. Petitioner testified that in 2019, Ms. Wright associated herself with the “wrong crowd” which included marijuana use. Ms. Wright would return home with the odor of marijuana on her person. Petitioner also discovered Ms. Wright brought marijuana into their residence on

several occasions. Petitioner also testified that Ms. Wright has since ceased this illegal activity.

28. Petitioner testified credibly that his sole motive in placing the GPS on Ms. Wright's car and requesting a fellow officer misuse the DCI database was to keep his son safe from illegal drug activity.

29. This concern caused Petitioner to experience anxiety and substantial stress, which was observed by his work colleagues.

30. Petitioner was embarrassed and contrite about his improper actions in June 2019, detailed at the hearing. The Undersigned finds convincing Petitioner's testimony that his concern about his son's wellbeing should have been addressed through legal channels and that he would not resort to abuse of his position as a police officer or engage in cyberstalking if his son's wellbeing is ever again imperiled.

31. There was a pattern of communications and actions between Ms. Wright and Petitioner that involved the authorization of tracking each other's location by cellphone, which may be characterized as implied consent by Ms. Wright to GPS tracking by Petitioner in January of 2019. However, Petitioner's decision to place a GPS tracker on Ms. Wright's car without telling her, after she had blocked his tracking of her cellphone and at the time of their breakup in June of 2019, may have appeared to him to be not unreasonable at the time. However, Petitioner's subsequent questioning of Lieutenant Sports, described in Finding of Fact No. 7, above, and his unequivocal statements during the investigation that he believed Ms. Wright was unaware of the GPS tracking shows that he believed he did not have Ms. Wright's consent to the tracking.

32. During the internal investigation, Ms. Wright said did not object to Petitioner placing a tracking device on her car. Interview of Courtney Wright, Respondent's Exhibit 17. Her statement contradicts Petitioner's statements made several times, including after being told of Ms. Wright's statement that she consented to the tracking. Petitioner reported during the investigation that Ms. Wright became enraged when she discovered the tracker on her car in June 2019, and that she kept device she found.

33. After considering the totality of the circumstances, Chief Deputy Dean's testimony, and listening to the recorded interview with Ms. Wright, the Undersigned finds it likely that Ms. Wright was aware, or at least not surprised, that Petitioner placed the tracking device on her car in June 2019. However, even if she were aware of the tracking before she confronted Petitioner about it, the Undersigned finds that Petitioner *intended* to track her without her consent.

34. All witnesses agree Petitioner's actions that form the basis for this contested case reflect aberrational decisions made during a short, discreet period of time when he was under high stress over valid concern for the well-being of his son.

35. Petitioner has been, and is presently, a person and officer of good moral character. The totality of the facts and circumstances demonstrates Petitioner's poor decisions in June 2019, described herein are an aberration from his long pattern being both a good person and a good law enforcement officer.

36. The Undersigned finds Petitioner's ability to readily and consistently admit error and to maintain cordial relationships with those who pointed out his errors to him and reported them to his superiors is further proof of his strong character.

CONCLUSIONS OF LAW

1. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The parties are properly before this Administrative Law Judge. Jurisdiction and venue are proper and both parties received proper notice of the hearing.

3. Respondent has authority 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 suspend, revoke, or deny certification under appropriate circumstances with valid proof of a rule violation.

Cyberstalking

4. The cyberstalking charge, N.C. Gen. Stat. § 14-196.3, requires proof that an electronic tracking device be placed on a vehicle "without consent."

5. Petitioner intended to track Ms. Wright's whereabouts without her consent and believed that he did so.

6. Petitioner committed the offense of cyberstalking which is a Class B misdemeanor.

7. Commission of a Class B misdemeanor by a justice officer after the date of employment requires a suspension, revocation, or denial of certification for a period of not less than five years pursuant to 12 N.C.A.C. 10B .0205(2)(a).

8. Respondent has the authority to substitute a period of probation in lieu of revocation, suspension, or denial if extenuating circumstances brought out at the administrative hearing warrant such action. 12 N.C.A.C. 10B .0205.

9. The following extenuating circumstances existed to find that a reduced sanction is appropriate in this case:

a. Petitioner placed the GPS tracker on Ms. Wright's vehicle for the sole purpose keeping his son from locations associated with drug use;

b. Petitioner was cooperative with the investigations related to this incident;

c. Petitioner was facing an extremely stressful personal situation, and his

actions appear aberrational;

d. Outside of this incident, Petitioner has an exemplary personal and professional reputation in the community;

e. Petitioner appears remorseful and to grasp the gravity of his misconduct; and

f. The Bladen County Sheriff's Office indicated Petitioner has rectified any deficiencies and performed the duties of a justice officer exceptionally well since this incident.

10. The terms of 12 N.C.A.C. 10B .0205 require that the minimum action Respondent can take against Petitioner's license is probation for five years.

Moral Character

11. Justice officers certified in North Carolina must be of good moral character. 12 N.C.A.C. 10B .0301(a)(9).

12. Respondent shall revoke, deny, or suspend the certification of a justice officer when the Respondent finds that the officer fails to meet or maintain any of the minimum employment standards required by 12 N.C.A.C. 10B .0300. 12 N.C.A.C. 10B .0204(b)(2).

13. The totality of the evidence demonstrates Petitioner has a history of outstanding character and good police service both at the Department and the Bladen County Sheriff's Office over a period of five years. Petitioner has earned and maintained the respect of his fellow officers in the Department and at the Bladen County Sheriff's Office, even as those officers acknowledge the wrongness of certain of his actions in June, 2019.

14. Petitioner is morally fit to continue to serve as a law enforcement officer in North Carolina. Petitioner has good moral character as required by Respondent's rule.

PROPOSAL FOR DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby proposed that Petitioner's justice officer certification not be denied, but placed on probationary status for five years.

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. Gen. Stat. § 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 any attorney of record. N.C. Gen. Stat. § 150B-42(a).

IT IS SO ORDERED.

This the 28th day of July, 2022.



Linda F. Nelson
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 28th day of July, 2022.



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