

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 07-3431PL
)
BRUCE E. TAYLOR,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 2, 2007, in Bonifay, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Linton B. Eason, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: Thayer M. Marts, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 943.1395(6), 943.1395(7), and 943.13(7), Florida Statutes (2005),¹ and Florida Administrative Code

Rules 11B-27.0011(4)(a),² 11B-27.0011(4)(b), and 11B-20.0012(2)(f),³ and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On August 2, 2006, Petitioner, Department of Law Enforcement, Criminal Justice Standards and Training Commission (Commission), filed an Administrative Complaint against Respondent, Bruce E. Taylor (Mr. Taylor), alleging that Mr. Taylor violated Subsections 943.1395(6), 943.1395(7), and 943.13(7), Florida Statutes, and Florida Administrative Code Rules 11B-27.0011(4)(a), 11B-27.0011(4)(b), and 11B-20.0012(1)(f). Mr. Taylor requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 24, 2007, for assignment to an Administrative Law Judge to conduct the final hearing. The case was originally assigned to Administrative Law Judge Charles C. Adams, but was reassigned to Administrative Law Judge Susan B. Harrell.

At the final hearing, the Commission called Michelle Taylor, James Taylor, and Michael Raley. Petitioner's Exhibits 1 through 12 were admitted in evidence. At the final hearing, Mr. Taylor testified in his own behalf. Mr. Taylor offered no exhibits for admission into evidence.

The one-volume Transcript of the final hearing was filed on October 16, 2007. At the final hearing, the parties agreed to

file their proposed recommended orders within ten days of the filing of the Transcript. On October 22, 2007, the parties filed a Joint Motion to Extend Filing Date, requesting that the date for the filing of the proposed recommended orders be extended to November 12, 2007. The motion was granted by Order dated October 23, 2007. The parties filed their Proposed Recommended Orders on November 13, 2007, and the submittals have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Mr. Taylor was certified by the Commission on March 21, 1990 and was issued Correctional Certificate No. 75624. On May 12, 1999, Mr. Taylor was issued Instructor Certificate No. 212961.

2. On August 7, 2005, Mr. Taylor went to the house where his sister, Michelle Taylor (Ms. Taylor), and her boyfriend, Dean Radney (Mr. Radney), were living. Mr. Taylor owned the house and was allowing his sister to live in the house. Mr. Taylor had been drinking heavily and was intoxicated when he went to his sister's home. An argument ensued between Mr. Taylor and Ms. Taylor. Ms. Taylor called 911 and requested the Holmes County Sheriff's Department to intervene. Ms. Taylor felt that if she called the sheriff that Mr. Taylor would leave.

3. Mr. Taylor did leave the house. Deputy Michael Raley came to the residence in response to Ms. Taylor's call. When Deputy Raley arrived, James Taylor, the brother of Mr. and Ms. Taylor, was at the home. James Taylor told his sister not to press charges against Mr. Taylor. Deputy Raley asked James Taylor to leave, and James Taylor complied with the request.

4. When Deputy Raley arrived at the home of Ms. Taylor, she was upset and told him that there had been a family dispute. Deputy Raley asked Ms. Taylor to walk him through the house, and she did. At the back door, Deputy Raley observed that the back door facing had been damaged. He saw a nine millimeter shell casing lying on the floor of a rear room. There was a bullet hole in the bathroom door and a fragmented bullet in the laundry hamper. Ms. Taylor told Deputy Raley that there was a bullet hole in the living room/kitchen area. He went to that part of the house and saw a nine millimeter shell casing lying on the kitchen floor and a hole in the window.

5. Deputy Raley took a sworn statement from Ms. Taylor, but the statement was not submitted for introduction into evidence. Although Ms. Taylor called 911 to summon assistance, the tape of the 911 call was not submitted for introduction into evidence.

6. At the final hearing, Ms. Taylor stated that she had just come home from a drug rehabilitation facility when

Mr. Taylor came to her home, that she was under a lot of stress, and that she did not remember what happened except that she and her brother argued, and she called 911 for assistance. At the final hearing, Mr. Taylor testified that on the day of incident in question, he was too drunk to remember what happened.

7. Other than hearsay testimony, there is no evidence to support the allegations that Mr. Taylor committed assault and battery against his sister or Mr. Radney or that he fired a gun in his sister's home.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

9. The Commission has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

10. The Commission has alleged that Mr. Taylor violated Subsections 943.1395(6) and (7), Florida Statutes, which provides:

(6) The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), 943.133(2), or s. 943.139(2).

* * *

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

(a) Revocation of certification.

(b) Suspension of certification for a period not to exceed 2 years.

(c) Placement on probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.

(d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.

(e) Issuance of a reprimand.

11. The Commission also alleged that Mr. Taylor violated Subsection 943.13(7), Florida Statutes, which provides that all correctional officers must "[h]ave a good moral character as determined by a background investigation under procedures established by the commission." The Commission also alleged that Mr. Taylor violated Florida Administrative Code Rules 11B-27.011(4)(a), 11B-27.011(4)(b), and 11B-20.0012(1)(f).

12. Florida Administrative Code Rules 11B-27.011(4)(a) and 11B-27.011(4)(b) provide:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

(a) The perpetration by an officer of an act that would constitute any felony offense, whether criminally prosecuted or not.

(b) The perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal acts whether criminally prosecuted or not:

1. Sections . . . 784.03 . . . F.S.

13. The Commission alleged that Mr. Taylor failed to maintain good moral character by violating Subsection 784.021(1)(a) and Sections 784.03 and 790.19, Florida Statutes. Subsection 784.021(1)(a), Florida Statutes, defines "aggravated assault," a third degree felony, as "an assault [w]ith a deadly weapon without intent to kill." "Assault" is defined in Subsection 784.011(1), Florida Statutes, as "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent."

14. Subsection 784.03(1)(a), Florida Statutes, defines "battery," as "[a]ctually or intentionally touch[ing] or stik[ing] another person against the will of the other; or [i]ntentionally caus[ing] bodily harm to another person."

15. Section 790.19, Florida Statutes, provides:

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

16. The only testimony submitted for the purpose of establishing that Mr. Taylor committed aggravated assault against Ms. Taylor and Mr. Radney, committed battery against Ms. Taylor, and shot a firearm in Ms. Taylor's home was the hearsay testimony of Deputy Raley concerning statements made by Ms. Taylor when he responded to her 911 call. Ms. Taylor testified at the final hearing that all she remembered about the incident was that she and Mr. Taylor had an argument, and she called 911 for assistance.

17. Hearsay testimony is admissible in an administrative hearing "for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." § 120.57(1)(c), Fla. Stat. (2007). The testimony of Deputy Raley concerning Ms. Taylor's statements was admitted to supplement or explain the finding of shell casings and bullet holes by Deputy Raley. However, Ms. Taylor's statements only supplemented Deputy Raley's findings by showing that shots had been fired in the house. The finding of the shell casings and the bullet holes did not establish who fired the shots.

18. The Commission argues that Ms. Taylor's statements to Deputy Raley were exceptions to the hearsay rule and, thus, admissible. First, the Commission argues that Ms. Taylor's statements to Deputy Raley were excited utterances, an exception to the hearsay rule pursuant to Subsection 90.803(2), Florida Statutes (2007), which defines "excited utterance" as "[a] statement or excited utterance relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition." The elements necessary for an excited utterance to be admissible were set out in Stoll v. State, 762 So. 2d 870, 873 (Fla. 2000).

[I]n order for an excited utterance to be admissible, the following requirements must be met: (1) there must have been an event

startling enough to cause nervous excitement; (2) the statement must have been made before there was time to contrive or misrepresent; and (3) the statement must have been made while the person was under the stress of excitement caused by the startling event.

The statements made to Deputy Raley were made after the incident and were made in response to questions by the deputy. It is the Commission's burden to show that Ms. Taylor did not engage in reflective thought before she made the statements to the deputy. All the Commission demonstrated was that at the time Ms. Taylor made the statements she was upset. In Charlot v. State, 679 So. 2d 844, 845 (Fla. 4th DCA 1996), the court stated, "A statement as to what occurred does not become admissible merely because the victim is still in an excited state." Ms. Taylor's statements are not admissible as excited utterances.

19. The Commission's second argument on the admissibility of Ms. Taylor's statement is that the statements were not hearsay because Ms. Taylor testified at the final hearing and was subject to cross examination, and the statements were of identification of Mr. Taylor made after perceiving the person. Subsection 90.801(1), Florida Statutes (2007), defines "hearsay" as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Subsection 90.801(2), Florida Statutes (2007), provides: "A statement is not hearsay

if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is . . . one of identification of a person made after perceiving the person."

20. In Swafford v. State, 533 So. 2d 270, 276 (Fla. 1988), the Florida Supreme Court stated that "[a]n 'identification of a person after perceiving him,' subsection 90.801(2)(c), is a designation or reference to a particular person or his or her photograph and a statement that the person is the same as the person previously perceived." In the instant case, Ms. Taylor testified at the final hearing that she could not recall what happened at her home just prior to the deputy arriving. She did not testify that anyone had shot a gun in her home or that anyone had assaulted her or Mr. Radney or that anyone had committed a battery against her. Although Deputy Raley found bullet holes in the house and found empty shell casings, it does not prove when the bullets were fired nor does it prove that battery or aggravated assault occurred. In order for Ms. Taylor's identification of Mr. Taylor to be admissible to prove that he is the person who committed the crimes alleged, there must be evidence that the crimes occurred. There is no non-hearsay evidence to establish that an aggravated assault, battery, or the firing of a firearm in a private building

occurred. At best, Ms. Taylor's identification is that Mr. Taylor was at her home prior to the deputy arriving.

21. The Commission has failed to establish the allegations in the complaint that formed the basis for the alleged lack of good moral character.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Taylor did not violate Subsections 943.1395(6), 943.1395(7), and 943.13(7), Florida Statutes, and Florida Administrative Code Rules 11B-27.0011(4)(a), 11B-27.0011(4)(b), and 11B-20.0012(1)(f), and dismissing the Administrative Complaint.

DONE AND ENTERED this 3rd day of January, 2008, in Tallahassee, Leon County, Florida.

S

SUSAN B. HARRELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of January, 2008.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2005 version.

^{2/} The Administrative Complaint alleged that Mr. Taylor violated Florida Administrative Code Rule 11B-27.0011(4)a,a,b,b. Reading the Administrative Complaint as a whole, it is apparent that the reference to Florida Administrative Code Rule 11B-27.0011(4)a,a,b,b is a scrivener's error, and the correct citation is Florida Administrative Code Rules 11B-27.0011(4)(a) and 11B-27.0011(4)(b).

^{3/} The Administrative Complaint alleged that Mr. Taylor violated Florida Administrative Code Rule 11B-20.0012(1)(f). Reading the Administrative Complaint as a whole, it is apparent that the reference to Florida Administrative Code Rule 11B-20.0012(1)(f) is a scrivener's error, and the correct citation is Florida Administrative Code Rule 11B-20.0012(2)(f).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.