

BEFORE THE GEORGIA
PEACE OFFICER STANDARDS AND TRAINING COUNCIL
STATE OF GEORGIA

In the matter of:

DANIEL LINDSAY,

Respondent.

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Case No. 005-527-07-00

CONSENT ORDER

By agreement of the Georgia Peace Officer Standards and Training Council and Daniel Lindsay, Respondent, the following disposition of this matter is entered pursuant to the provisions of the Georgia Administrative Procedure Act, codified as O.C.G.A. § 50-13-13(a)(4).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties agree to waive any and all Findings of Fact and Conclusions of Law.

ORDER

The Georgia Peace Officer Standards and Training Council hereby Orders, and Respondent hereby agrees, to the following terms:

1.

The revocation of Respondent's certification to act as a peace officer in the State of Georgia is withheld. Respondent's certification is hereby placed on probation for a period of

sixty (60) months upon the date Respondent is employed in a capacity requiring this certification. Additional conditions are as follows: Complete of a course in Professionalism and Ethics through POST within 12 months of being employed in a capacity requiring this certification.

This Order shall serve as a reprimand to Respondent's certification.

2.

During the period of probation, Respondent shall not violate any law of this State or of the United States, any rule or policy of the Georgia Peace Officer Standards and Training Council or any employing agencies Standard Operating Procedures.

3.

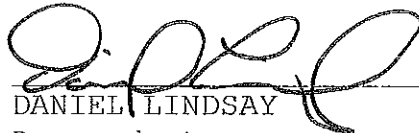
Respondent acknowledges that he has read this Consent Order, and understands the terms and conditions described herein. Respondent further understands that he has the right to a hearing in this matter, and waives such right by freely, voluntarily, and knowingly entering into this Consent Order.

4.

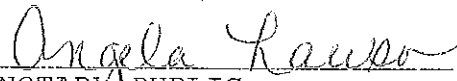
As evidenced by his signature affixed below, Respondent agrees to abide by all laws of the State of Georgia, the rules and regulations of the Georgia Peace Officer Standards and Training Council, and the provisions of this Consent Order. Respondent's probation may be vacated and his certification

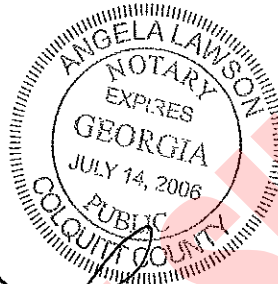
Act, upon noncompliance with the terms and conditions of this
Consent Order.

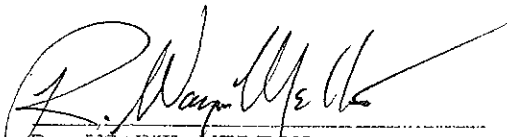
SO ORDERED, this 5th day of December, 2003.


DANIEL LINDSAY
Respondent

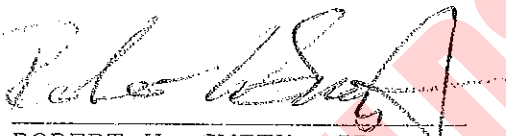
Sworn to and subscribed
before me this 5th day
of December, 2003.


NOTARY PUBLIC




R. WAYNE MELTON
Acting Executive Director
Ga. POST Council


SHERIFF NEAL WALDEN
Chairman
Ga. POST Council


ROBERT W. SMITH, JR.
Assistant Attorney General

CASE SUMMARY

Companion Case # 005-528-07-00

The officer is multi-certified (Basic 10/21/98, Jailer 10/30/98 and Radar 11/09/98) and was first employed by a law enforcement agency on 02/10/97. The officer voluntarily resigned from employment on 05/08/00. The officer of this investigation (Officer A) and the companion case officer (Officer B) were members of a county wide Drug Task Force. On 05/07/01, Officer A was indicted for charges of Perjury and False Statements.

On 11/23/99, Officers A and B, along with three other officers executed a search warrant at a residence and arrested one offender for weapons violations and a second offender for possession of marijuana. In the official written police incident report, Officer A wrote "during the search of the residence, I located a quantity of marijuana inside the pockets of this offender (name withheld)." Also, the official report did not mention the presence of any other officers at the search, only Officers A and B.

On 04/26/00, a hearing was held in Superior Court concerning the criminal case. Before this hearing began, counsel for the defendant advised the Assistant District Attorney (ADA) that there were other officers present during the search on 11/23/99. The ADA privately questioned both Officer A and Officer B regarding the presence of other officers during this search and both officers insisted that only the two of them were present on 11/23/99. During the court hearing, both officers testified that no other officers were present during the 11/23/99 search. In addition, Officer A testified that he/she found the marijuana. The defendant's wife testified that there were three other officers present during the search besides Officers A and B.

The Superior Court Judge called a recess and personally called for an officer (Officer C), who was allegedly present during the search on 11/23/99. Officer C told the Superior Court Judge that he/she was present during this search, along with two other officers in addition to Officers A and B. Officer C also informed the Judge that he/she was the person who found the marijuana involved in this case. The Judge informed the ADA of this interview with Officer C. Officer C was then interviewed by the ADA and repeated the same facts as he/she told the Judge. The criminal case was then dismissed by the ADA.

On 05/05/00, the Senior Superior Court Judge requested the G.B.I. to investigate Officers A and B and their failure to disclose all relevant information in case reports, along with their possible false testimony during the hearing on 04/26/00.

On 08/07/00, the investigation was completed and presented to the requesting Judge. On 08/23/00, the Judge requested the Governor of Georgia to appoint the Attorney General to further investigate and prosecute Officers A and B. On 09/21/00, the Governor of Georgia ordered the Attorney General to investigate and prosecute the matter involving these two officers.

On 12/11/00, the cases were scheduled to be presented before the local Grand Jury. O.C.G.A. § 17-7-52 allows law enforcement officers charged with crimes arising out of the performance of their duties to be present during all of the Grand Jury proceedings. In December 2000, persons no longer employed as law enforcement officers at the time of the grand jury were not allowed to be present during all of the Grand Jury proceedings. Therefore, Officers A and B were denied an opportunity to be present during all of the proceedings.

Prior to the Grand Jury hearing this case, Officer A contacted the Grand Jury foreman and requested an opportunity to testify. On the morning of 12/11/00, Officers A and B both arrived at the Grand Jury and asked to testify. The Grand Jury decided to hear Officers A and B testimony. However, neither Officer A or Officer B were allowed to hear the other witnesses testimony or each other's testimony. Officer A testified that he/she and Officer B were the officers present during the 11/23/99 search and that he personally found the marijuana. Officer A further stated that Officer C was lying. Officer B's testimony is protected by the secrecy provisions of the Grand Jury laws but the State of Georgia believed Officer A's testimony to be perjurious. The State of Georgia later obtained a court order authorizing Officer A's testimony to the Grand Jury be exempted from the secrecy laws.

Officer A was indicted for the offense of perjury and making a false statement. Officer B was indicted for perjury.

On 02/16/01, in Dudley v. State, 273 Ga. 466 (2001), the Georgia Supreme Court held that law enforcement officers were entitled to be present during all grand jury proceedings even though they are not employed as such at the time of indictment. Therefore, under this ruling Officers A and B should have been allowed to hear all of the Grand Jury evidence before giving their testimony. Additionally, Officers A and B could have heard each other's testimony, and they should not have been subject to examination by the prosecutor. On 04/10/01, the State dismissed the indictment due to the Dudley ruling against Officers A and B, with the intention of re-presenting the case to another Grand Jury.

On 05/07/01, Officer A was indicted by a Grand Jury for the offense of Perjury for testimony he/she gave to the Grand Jury on 12/11/00. This is related to Officer A's

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testimony in which he/she swore that no other officers were present during the 11/23/99 search and that he/she found the marijuana.

On 11/27/01, the local superior court judge granted Officer A's motion to suppress his/her testimony to the 12/11/00 Grand Jury on the grounds that the testimony was not freely given. This is based on the previously discussed Dudley ruling. On 05/21/02, the Court of Appeals upheld the granting of Officer A's motion to suppress his/her 12/11/00 Grand Jury testimony. The State did not appeal the Court of Appeals' ruling.

On 06/17/02, the original perjury and false statement indictment against Officers A and B were presented to a Grand Jury. Officers A and B testimony are protected by Grand Jury secrecy laws. The Grand Jury returned a no-bill of indictment. On 06/18/02, the State informed all parties and the superior court that the State would not be re-presenting the Officer A and B indictment to any more Grand Juries.

Because the testimony in question has been suppressed, the State dismissed the May 2001 perjury indictment against Officer A due to the lack of evidence.

Officer A submitted a response to this investigation. See Attachment A.

Officer A is not currently employed in law enforcement.

DISCIPLINARY HISTORY

None noted.

Recommendation to Council:
pursuant to O.C.G.A. 35-8-7.1 (2,6,7,8)

Council Action:

Revoke Certification

Revoke Certification

Ken Vance
PCC Chairman
Date: January 9, 2003

Neal Walden
Council Chairman
Date: March 12, 2003