

summary decision, he has also failed to raise a genuine issue as to the facts the Director established in his motion. 1 CSR 15-3.446(6)(B).

Accordingly, the findings of fact are based on the allegations contained in the complaint and the documents submitted in connection with the Director's motion for summary decision: the Director's affidavit of licensure and the certified copies of criminal records from the Circuit Court of Stone County, Missouri. The following findings of fact are undisputed.

Findings of Fact

1. Ryan holds a peace officer license issued by the Director.²
2. On April 26, 2010, Ryan unlawfully entered the residence of another person, and damaged property at the residence.
3. After a bench trial in the Circuit Court of Stone County, Missouri on September 28, 2011, Ryan was found guilty of the Class B misdemeanor of trespass in the first degree, in violation of § 569.140, RSMo 2000, and the Class B misdemeanor of property damage in the second degree, in violation of § 569.120, RSMo 2000.
4. Ryan received a suspended execution of sentence and one year unsupervised probation for each offense.

Conclusions of Law

We have jurisdiction to hear this case. Section 590.080.2, RSMo Supp. 2013. The Director has the burden of proving by a preponderance of the evidence that Ryan has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates "cause" to discipline by

² The affidavit of licensure states that Ryan's license is now "and has at all times relevant" been current and active. This phrase contains a legal conclusion; in an affidavit it is preferable to say, "Ryan was issued a license on [date], and his license remains current and active." In this case, § 590.080.2(2), RSMo Supp. 2013, under which the Director proceeds, does not require that the peace officer have been licensed when he committed "any criminal offense" in order to find cause for discipline.

showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The Director alleges that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Ryan received suspended executions of sentence for both first-degree trespass and second-degree property damage. A suspended execution of sentence is a conviction. *Bowers v. State*, 330 S.W.3d 832, 836 n. 4 (Mo. App. W.D., 2011). A conviction collaterally estops the issue of whether the person committed the criminal offense. *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App., E.D. 2004) (citing *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001)). Ryan committed the criminal offenses. He is subject to discipline under § 590.080.1(2).

Summary

There is cause for discipline under § 590.080.1(2). We cancel the hearing.

SO ORDERED on July 14, 2014.

\s\ Karen A. Winn
KAREN A. WINN
Commissioner