BEFORE THE NORTH CAROINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION
File No. 24 DOJ 04580

MICHAEL HARVAN Petitioner v. N.C. SHERIFFS' EDUCATION & TRAINNG STARDARDS COMMISSON Respondent	)))))))))

ARGUMENT OF CATAWBA COUNTY DEPUTY SHERIFF MIKE HARVAN

This certification case was heard before Administrative Law Judge David Sutton, who issued a lengthy and well-reasoned Proposal for Decision for your consideration. Judge Sutton ruled in Deputy Michael Harvan's favor and recommended that this Commission take no disciplinary action on Deputy Harvan's certification. Sheriff Don Brown has taken care of the discipline.

Deputy Mike Harvan is employed by the Honorable Don Brown, Sheriff of Catawba County. Sheriff Brown testified in support of Deputy Harvan and plans to appear before this Commission. Sheriff Brown testified that Harvan "has done a good job as Deputy Sheriff." T229 Deputy Harvan has served for nineteen years. T157 Deputy Harvan has earned a very good record of service and conduct.

Sheriff Brown imposed discipline on Deputy Harvan by a written reprimand, a three-day suspension and a transfer.

Deputy Harvan was charged with an alleged violation of N.C.G.S. 14-230 and common law obstruction of justice. These criminal charges do not fit the facts of what happened. The conduct here was not criminal. One of the allegations involves Deputy Harvan's actions regarding

monitoring two persons on the sex offense registry. Deputy Harvan's methods of completing the offender checks were less formal but accomplished the mission of checking on the offenders.

The underlying investigation was performed by the Sheriff's Office Sex Offense Registry Investigator, Mark Higdon. His testimony made clear things that were not apparent from the investigation. The questionable less formal registry checks from a distance and without door knocks boiled down to two offenders and two instances each for a total of four instances of non-traditional checks.

The two administrative charges against Harvan are predicated upon allegations that Harvan did not comply with routine procedures in performing checks on the sex offender registry of offenders for two particular persons. Further, Harvan wrote a letter that was authorized but the letter was placed on the Sheriff's letterhead. The charges contend that these two matters constituted an obstruction of justice and the failure to properly discharge the duties of office in violation of G.S. 14-230, a criminal statute.

Deputy Harvan has taken a professional approach and has recognized that he exercised poor judgment in some aspects of the underlying events. The evidence suggests that Deputy Harvan's actions fall into categories of cutting corners to save time on the verification checks of two offenders

The allegations call into question the timing and methods of Deputy Harvan's monitoring and reporting of two persons (Parker and Monseur) on the sex offense registry. Harvan's method of performing offender checks for these two persons were more informal, by general observations rather than direct close face to face contact. However, Deputy Harvan's less informal method also accomplished the task and achieved the purpose of checking on the persons. There was no known Sheriff's Office written policy governing precisely how offender monitoring was to be performed. Deputy Harvan observed the two offenders near their homes in the small community in which Petitioner lived.

There was also a question about Deputy Harvan writing a letter on behalf of Parker, which *was authorized*, but Harvan used the Sheriff's letterhead, which the Sheriff deemed inappropriate.

Deputy Harvan did not act with any criminal intent or other improper motive and did not commit either alleged offense. Deputy Harvan is profoundly sorry for using poor judgment by using informal methods of monitoring, but his actions do not rise to the level of the two serious alleged offenses.

N.C.G.S. 14-230 contains several elements and there must be substantial evidence of proof of each element in order for there to be a violation. The elements are:

A. The defendant must be a government official as defined in the statute;
B. Who shall willfully;
C. Omit, neglect or refuse to discharge a duty of his office; and
D. That there must have been actual harm to the public caused by the willful failure.

There was no substantial and admissible evidence of any injury or harm to the public from Deputy Harvan's actions, therefore this charge fails for that reason. There was no sufficient and substantial evidence that Harvan willfully omitted, neglected or refused to discharge a duty of his office. While Deputy Harvan's isolated actions constitute an exercise of poor judgment, it does not rise to the high required level of a criminal offense, a willful failure to discharge duties of office. G.S 14-230 is not meant to criminalize poor judgment or poor performance.

When one reviews applicable legal precedent, the courts and this Commission, as well as the Criminal Justice Education and Training Standards Commission, have set a high bar before criminalizing law enforcement conduct. Sheriffs and Chiefs have ample authority to retain personnel and to impose discipline internally to correct issues.

Here, there was no evidence of criminal intent.

In *Lucas v. N.C. Sheriffs Education and Training Standards Commission*, 2015 WL 6125382 (2015), Administrative Law Judge May addressed a case involving a charge of an alleged violation G.S. 14-230. The case involved some neglect in the retention of counterfeit money evidence. However, Judge May found that "The incident was not proved to have been harmful to the public." Judge May also explained the nature of recurring mistakes by police officers and how such mistakes do not lend themselves.to rising to the high requires level to constitute an offense under G.S. 14-230:

> "Many law enforcement officers make mistakes in the completion of their duties of office, some of which are in the form of omissions and failure to act. Authorities have recognized how law enforcement officers should not be held to unrealistic standards of perfection….. E.g., *Dietrich v. N.C. Department of Crime Control and Public Safety*, 2001 WL 34055881, 00 OSP 1039 (Gray, ALJ; August 13, 2001)"

In *Lucas,* Judge May addressed an alleged 14-230 charge in a certification case. The case involved some neglect in the retention of counterfeit money evidence. However, Judge May found: "The incident was not proved to have been harmful to the public."

In *State v. Powers*, 75 N.C. 281, 1876 WL 2791 (1876), our Supreme Court observed that public officials are not criminally liable for errors or mistakes. *Powers* was cited in *State v. Shipman*, 202 N.C. 518, 163 S.E.657 (1932), where the Supreme Court observed how one is not criminally chargeable for an error of judgment or a mistake. 163 S.E. at 669. *Powers* and *Shipman* remain as valid precedent and followed by scores of cases reaffirming that officer mistakes and mistaken beliefs are not a criminal offense. See *State v. Norris*, 111 N.C. 652, 16S.E 2 (1892).

In *State v. Birdsong*, 325 N.C. 418, 384 S.E.2d 5 (1989), the Court reaffirmed an additional element of this offense to include *actual harm to the public*. This element requires proof of actual injury, not potential or speculative injury. The actual injury must be proven. Otherwise, a simple oversight in failing to perform every duty could be a crime.

Black's Law Dictionary defines "Public Injuries" as "breaches and violations of rights and duties which affect the whole community as a community." *Black's Law Dictionary* 707 (5th ed. 1979).

In *Paldino v. N.C. Criminal Justice Commission,* 2021 WL 5543516, 21 DOJ 00939, the Commission addressed a police certification case with good moral character and G.S. 14-230 charges. There, the Commission's Final Agency decision supports Harvan's position here. The CJ Commission explained:

> Petitioner did not neglect or refuse to discharge his duties, but even if he may have done them *inartfully,* that is not the crime subsumed by this statue. [Omitting citations]

In *State v. Greer*, 308 N.C. 515, 302 S.E.2d 774 (1983), the Court interpreted G.S. 14-230 in a case arising from the conviction of a magistrate. The Court addressed whether there was sufficient evidence. *Greer* defined the element of corruption as follows: "the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." *Greer*, 308 N.C. at 521. Deputy Harvan procured absolutely no personal gain here.

In *State v. Powers*, 75 N.C. 281, 1876 WL 2791 (1876), the Court addressed a case where it was alleged that an election registrar failed to discharge his duty of office by refusing to register a citizen to vote. The election registrar was charged with a predecessor but nearly identical version of the G.S. 14-230 statute. The Superior Court directed a verdict of not guilty; the State appealed. The Supreme Court affirmed and explained that the registrar could not be held "criminally liable" "for an error." See, e.g. *State v. Heien*, 366 N.C. 276, 279 (2014). aff'd 574 U.S. 54 (2014), where our Supreme Court explained that: "An officer may make a mistake, including a mistake of law, yet still act reasonably under the circumstances."

In *State v. Norris*, 111 N.C. 652, 16 S.E 2 (1892), the Court addressed a case where Wake County Commissioners were charged with willful neglect or omission to discharge their duties of office. The Supreme Court

reversed convictions. The Court explained: "it is essential, in order to sustain that charge, "to aver in the indictment, and prove upon the trial, a corrupt intent." *State v. Pritchard*, 107 N. C. 921, 12 S. E. Rep. 50."

While some of the cases summarizing the elements of a G.S. 14-230 charge do not separately address the requirement of criminal intent, however, criminal intent is required for any criminal offense. G.S. 14-230 is a criminal statute. Therefore, a violation has to be predicated upon *criminal* intent. G.S. 14-230 was not meant to criminalize poor judgment.

In conclusion, Deputy Harvan has been a long-term good deputy, who cut some administrative corners with two people for a total of four occasions. Harvan's limited poor judgment has been dealt with by Sheriff Brown. This Commission should adopt Judge Sutton's Proposal for Decision.

/s/J. Michael McGuinness
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Certificate of Service

I hereby certify that I have served a copy of the foregoing upon Respondent's counsel, Ms. Joy Strickland, North Carolina Department of Justice, 9001 Mail Service Center, N.C. 27699-9001 via email to jstrickland@ncdoj.gov and to Interim Commission Director Robin Pendergraft at rpendergraft@ncdoj.gov this 11th day of August, 2025.

/s/J. Michael McGuinness
J. Michael McGuinness