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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
24 DOJ 04580

Michael Harvan Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	**PROPOSAL FOR DECISION**

This law enforcement occupational licensing case was heard on March 3, 2025, in Morganton, North Carolina, before Administrative Law Judge David Sutton. The parties have submitted proposed decisions, and this matter is ripe for disposition.

APPEARANCES OF COUNSEL

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THE TWO ADMINISTRATIVE CHARGES

On October 16, 2024, Deputy Michael Harvan was served with a charging document by the Respondent Commission, a *Notification of Probable Cause*, where it was alleged that Deputy Harvan committed a violation of N.C.G.S. 14-230 and common law obstruction of justice. This appears as Respondent's Exhibit 8.

The two administrative charges against Petitioner Harvan are predicated upon criminal law allegations that Petitioner did not comply with traditional procedures in performing checks on two offenders on the sex offender registry. Further, it is alleged that Petitioner wrote a letter that was authorized but Petitioner issued the letter on the Sheriff's letterhead.

The key facts are substantially undisputed, but the parties disagree about whether the actions in issue and the evidence rise to the level of proving the two alleged charges with underlying criminal law predicates.

The parties are properly before the Office of Administrative Hearings and the Office of Administrative Hearings has jurisdiction. The parties had adequate notice of the hearing and were prepared to proceed with the hearing. All parties have been correctly designated, and jurisdiction and venue are proper to decide this occupational licensing case.

THE PARTIES

Petitioner Michael Joseph Harvan is a Catawba County Deputy Sheriff. T157. Petitioner Harvan earned a law enforcement certification by the N.C. Sheriffs Education and Training Standards Commission (hereafter Commission). Respondent's Exhibits 1, 2; T158.

The Commission is a state occupational licensing agency that certifies North Carolina deputy sheriffs for service. *See* Chapter 17E of the General Statues and Title 12 of the North Carolina Administrative Code. The Commission has limited authority to impose occupational licensing discipline on law enforcement officers under appropriate circumstances with valid proof of a rule violation.

ISSUES

A. Whether the Respondent Commission proved that Deputy Harvan committed two Class B misdemeanors in his service as a Deputy Sheriff in his actions regarding performing sex offense registry checks on two offenders with two instances for each and writing a letter on department letterhead?

B. Whether the Respondent Commission proved that Deputy Harvan willfully violated N.C.G.S. 14-230?

C. Whether the Respondent Commission proved that Deputy Harvan willfully committed common law obstruction of justice and had the specific criminal intent to commit such as offense?

D. Whether Respondent proved each element of each of the two alleged charges?

E. Whether there was any evidence of criminal intent by Petitioner?

F. Whether the charges against Deputy Harvan are sufficient and were established with a preponderance of admissible evidence?

G. Whether there are any mitigating factors or circumstances?

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the

credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. This Tribunal finds the following facts based on a preponderance of admissible evidence:

1. Petitioner Michael Harvan is a Catawba County Deputy Sheriff and has served in law enforcement service for nineteen years. T157

2. Petitioner Harvan was born on March 15, 1981; he is forty-three years of age. T154 Petitioner grew up in Hickory, North Carolina. Id. The Petitioner is married and has two children. T155 Petitioner graduated from high school in 1999. T146 He thereafter attended Catawba Valley Community College for a year and a half. T156 He attended his Basic Law Enforcement Training at Caldwell Community College and graduated from that program in 2002. Id. Petitioner is presently assigned to serve in transportation in the Detention Center. T157 Petitioner has served in detention, as a bailiff and on patrol. T158

3. According to Sheriff Don Brown and several management officials of the Catawba County Sheriffs' Office, Petitioner has earned a very good record of service and conduct. T73, 115, 229-231, 242-243, 246, and other evidence hereinafter specified. Petitioner has never had any previous discipline imposed on his law enforcement certification. T158. Petitioner was not criminally charged in connection with any of the facts or circumstances of this case. T40,158-59 Petitioner has no prior criminal convictions except a speeding ticket. T158-59

4. Sheriff Don Brown is the Sheriff of Catawba County. T226. Sheriff Brown employs Deputy Harvan and testified that Harvan "has done a good job as Deputy Sheriff." T229

5. Sheriff Brown imposed discipline upon Deputy Harvan by imposing a written reprimand, a three-day suspension without pay and a transfer. Respondent's Exhibit 6.

6. Investigator Melissa Bowman conducted the investigation concerning Petitioner. T11 Investigator Bowman had not previously handled an investigation involving the sex offense registry. T46

7. Investigator Bowman testified that Petitioner's certification is in good standing with the Commission. T34 She testified that Petitioner entirely cooperated with the Commission and was "very forthcoming." T35 Investigator Bowman testified that Petitioner told her that he was not "shirking his duties." T26.

8. Of the possible charges submitted for consideration by the Probable Cause Committee, the Committee declined to charge Petitioner with a lack of good moral character. T36

9. Investigator Bowman was unaware whether sex offense registry verification procedures were taught in Basic Law Enforcement Training or not. T52

10. Investigator Bowman testified that she was told that the Sheriff's office had no written policy on how sex offense registry checks are to be performed. T53

11. Investigator Bowman testified that a goal of a sex offense registry check is to determine whether the offender lives at his listed address. T54-55 Investigator Higdon testified the same: the goal in an offender check is to determine if the offender is residing at the listed address. T110.

12. Deputy Harvan testified about his background and experience generally. T154-159. Deputy Harvan became an Eagle Scout. T163. He has served for nineteen years in law enforcement service.

13. Deputy Harvan testified how he met Jimmy Parker long ago in elementary school. T161 Harvan was a limited acquaintance with Mr. Parker but did not associate with him or do things with him over the years. T161-163

14. Jimmy Parker lives approximately two miles from where Deputy Harvan lives. T164 Deputy Harvan travels the road that goes by Parker's house almost daily. T164

15. Jimmy Parker and his wife have three children. T165-66 Deputy Harvan's sons played high school football with the Parker's children. T166 Deputy and Mrs. Harvan would often sit with Mrs. Parker at the football games. T166

16. Mr. Monseur also lives very close to Deputy Harvan, approximately three miles. T186-88 Petitioner's Exhibit 1 includes maps showing the distance and driving times among Parker, Monseur and Deputy Harvan. T188

17. Deputy Harvan met Mr. Monseur through a friend, Eric Flowers. T191-92 Deputy Harvan did not have personal contact with Mr. Monseur over the years. T192-93 However, Deputy Harvan was able to identify Mr. Monseur including when seeing him in his yard. T194

18. As to sex offense registry checks, Deputy Harvan typically used the "traditional way" for verification checks including with a door knock, seeing the offender and having minimal conversation. T168 With regard to Mr. Parker and Mr. Monseur, Deputy Harvan deviated from the traditional method of verification. T168 There were four instances of the deviated procedure. T119, 150

19. The procedure used by Deputy Harvan for Mr. Monseur and Mr. Parker on two occasions each involved observing the offenders from the road at a distance. T168, 169 This procedure involved "cutting a corner". T170 This procedure was used to save time. T171 Deputy Harvan had no ulterior motive other than to save some time. T171

20. Mr. Joe Reason previously held a position in the Sheriffs' Office where he was responsible for some training. T159 Deputy Harvan testified that the occasion when Joe Reason provided information to him and others about verification checks was not "a class" and was only

"one" occasion. T160-61 Deputy Harvan did not receive any instruction to conduct additional questioning during the "one class" with Mr. Reason. T161

21. There was no "class" on how to perform a verification check. T201 There was no Sheriffs' Office or other written policy to further direct or advise Deputy Sheriffs on what if anything was specifically required in a sex offense registry verification. T112

22. Deputy Harvan was not trained by Mr. Reason that the traditional way was the only way that a Deputy could verify an offender. T171 There was also no requirement of immediately reporting an offender verification. T172-73

23. The reason for deviating from the traditional verification procedure was that Deputy Harvan knew Mr. Parker and Mr. Monseur and lived in close proximity to both of them. T219 The physical proximity to the two offenders was a basis for Deputy Harvan using the less formal method of verification. T175

24. Deputy Harvan sought and obtained permission from Captain Penley to write a letter for Jimmy Parker. T177-78 Deputy Harvan accessed Google to find a form letter to use as a "go by" model. T178-79. Deputy Harvan had never written a similar letter. T179 When Harvan checked on Jimmy Parker, he did not have any violations. T182 Mr. Parker never engaged in any conduct that warranted any complaint. T183

25. Captain Kerry Penley testified that he knew Deputy Harvan for as long as he had been employed with the Sheriffs' Office. T72 Deputy Harvan is both a good deputy and a good guy. T72-73

26. As to the letter written by Deputy Harvan for Jimmy Parker, Captain Penley observed that Deputy Harvan did not realize the significance of using the Sheriff's' Office letterhead for the letter. T74-75 Deputy Harvan had sought permission to write the letter. T74

27. Captain Penley testified how Petitioner has continued to serve as a Deputy Sheriff and he has served well. T76 Deputy Harvan is "doing a fantastic job." T76

28. Captain Penley testified that Deputy Harvan explained how the situation and circumstances with Parker and Monseur were different in that they lived very close to Deputy Harvan and Harvan knew them. T76-77

29. Investigator Higdon testified about various aspects of the sex offense registry verification process. Investigator Higdon testified that it was permissible for a deputy to place an entry into the Sex Offense Registry Parametrium at a later time when they had earlier performed the offender check. T100, 117

30. Investigator Higdon testified that there is no specific written policy as to how to carry out a sex offense registry check. T112

31. Investigator Higdon observed both good performance and good conduct by Deputy Harvan. T115

32. Investigator Higdon observed that he thought that there was a laziness problem with Deputy Harvan for the instances of informal verification with the two offenders in question. T116

33. Investigator Higdon testified that Deputy Harvan was honest about what happened. T105 There were only two offenders that Harvan handled that way. T105. Higdon opined that Harvan was lazy in this instance and made a mistake. T105

34. Investigator Higdon explained that Deputy Harvan was very forthcoming and cooperated in the investigation. T109

35. Sheriff Don Brown is the Sheriff of Catawba County. T226 Sheriff Brown entered law enforcement service in 1988 and served thirty-one years with the Newton Police Department; he was elected Sheriff in 2018. T227. Sheriff Brown serves on the N.C. Sheriffs Education and Training Standards Commission. T227

36. Sheriff Brown knows Deputy Harvan fairly well. T229 Deputy Harvan has done a good job as a Deputy Sheriff. T229 Sheriff Brown has heard no complaints from supervisors or staff about Harvan. T229 Deputy Harvan has earned a good reputation in the Sheriffs' Office. T231

37. Sheriff Brown imposed personnel discipline consisting of a three-day suspension without pay, a reprimand and a transfer.

38. Deputy Harvan came to Sheriff Brown after the events and apologized to him. T232 Sheriff Brown told Harvan that he wants to work through this. 232-33 Sheriff Brown wants to continue to employ Deputy Harvan if he can retain his certification. T235

39. Lieutenant Matthew Pearson serves as the Lieutenant over the Detention Section. T240 He has served with the Sheriff's Office since 2009 and has known Harvan since 2010. T241 He has worked with Harvan and supervised him. T242 Pearson describes Deputy Harvan as professional. T242 Harvan is very well respected. T242 Lieutenant Pearson trusts Harvan. He considers Harvan to be an asset to the Sheriffs' Office. T243

40. Lieutenant Brett Cody works road patrol and is over B platoon. T244 He has served since 2002. Id. Lieutenant Cody went to school with Harvan. T245 He knows Harvan real well. T246 He described Harvan as "very professional." T246 Harvan has a positive reputation and is an asset to the Sheriffs' Office. T246

41. Lieutenant Phillip Starnes served over the Internal Affairs and Transportation Units. T249 He has served in law enforcement for fourteen years. T250 He has supervised Harvan and knows him well. T251 He says that Harvan "gets the job done." T251 Harvan is very respected by his colleagues. T251. Lieutenant Starnes fully trusts Deputy Harvan. T252

42. Deputy Michael Harvan has been and is a good Deputy Sheriff and a good person. Deputy Harvan has good character and a good reputation. Deputy Harvan has earned the high respect of Sheriff Brown and others in the Catawba County Sheriffs' Office. Deputy Harvan was a very credible witness.

43. Deputy Harvan apologized for his alternative method of verification, in the four instances as determined by Investigator Higdon, Deputy Harvan's deviations from the traditional method of verification were very limited and de minimis. There was not any clear identified verification law or policy that was intentionally violated.

44. As to the letter, Deputy Harvan acknowledged that the letter should not have been placed on the Sheriffs' letterhead. There was no proof that the letter caused any harm. There was no proof that the letter proximately caused any result or effect. There was no proof of any reliance on the letter by anyone.

CONCLUSIONS OF LAW

The Commission's two charges against Deputy Harvan both involved administrative occupational licensing charges predicated upon alleged criminal offenses. Those charges include N.C.G.S. 14-230 and common law obstruction of justice. Respondent's Exhibit 8. This Tribunal makes the following Conclusions of Law:

1. Occupational licensing agencies adjudicate perhaps the most important interest that citizens possess: *the right to earn a living*. "Loss of a professional license is more than a monetary loss; it is a loss of a person's livelihood and loss of a reputation." *Johnson v. Bd. of Governors of Registered Dentists of State of Oklahoma*, 1996 Ok. 41, 913 P.2d 1339, 1345 (1996). In *Johnson*, the Court further explained:

> This Court has consistently recognized 'where it is necessary to procure a license in order to carry on a chosen profession or business, the power to revoke a license, once granted, and thus destroy in a measure the means of livelihood, is penal and therefore should be strictly construed.' [Omitting citations] *Id.*

Hearing Under the Administrative Procedures Act

2. Sheriff Brown imposed personnel discipline consisting of a three-day suspension without pay, a reprimand and a transfer. This occupational licensing dispute is a separate, distinct and independent proceeding arising under the North Carolina Administrative Procedure Act, N.C.G.S. 150B, et.seq.

3. Personnel decisions and internal matters in the Sheriff's Office are not binding on this Tribunal in this occupational licensing case.

4. Respondent must prove each element of each charge with substantial evidence and by a preponderance of the evidence. E.g. *Caudill v. N.C. Sheriffs' Education and Training Standards Commission*, 2022 NC OAH LEXIS 9, 21 DOJ 01689 (Dills, ALJ) (Conclusions of Law 6-10; addressing issues of evidence)

5. This Tribunal's decision is predicated upon and limited to evidence that is admissible and probative under the Due Process Clauses of the North Carolina and Federal Constitutions, N.C.G.S. 150B-23, 29, 40, 41, 42; 26 NCAC 3.0122, and the North Carolina Rules of Evidence.

Scope of Admissible Evidence

6. N.C.G.S. 150B-41(a) provides that: "In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded." G.S. 150B-40(a) provides: "Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy."

7. N.C.G.S. 150B-29(a) provides that: In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a decision or by the court on judicial review."

8. Hearsay is ordinarily inadmissible absent an exception. E.g., *McNair v. N.C. HHS*, 22 NC OAH LEXIS 90, 22 DHR 04948 (Byrne, ALJ). The parties are ordinarily entitled to confront and cross-examine adverse witnesses and adverse evidence. The hearsay contained within the District Attorney's letters (Respondent's Exhibit 3) and the Sheriffs' Office Report (Respondent's Exhibit 6) shall not be relied upon and is inadmissible. Investigator Bowman's phone interview with Deputy Harvan in Respondent's Exhibit 7 is non-hearsay. That, along with Deputy Harvan's testimony provides the material admissible evidence.

9. This Tribunal therefore shall consider the relevant, probative and admissible evidence from this occupational licensing proceeding and is not influenced by the personnel action taken by Sheriff Brown.

Constitutional Underpinnings to Occupational Licensing Law

10. North Carolina occupational licensing law is predicated upon important constitutional underpinnings to ensure that the constitutional rights of licensees are appropriately protected. In a line of cases construing Article I, Section I of the North Carolina Constitution, our Supreme Court has recently reaffirmed state constitutional protections for citizens to enjoy the fruits of their labor. E.g., *Kinsley v. Ace Speedway,* 386 N.C. 418, 904 S.E.2d 720 (2024); *Tully*

v. City of Wilmington, 370 N.C. 527, 810 S.E.2d 208 (2018) and *King v. Town of Chapel Hill*, 367 N.C. 400, 758 S.E.2d 364 (2014),

11. *King* explained that "[t]his Court's duty to protect fundamental rights includes preventing arbitrary government actions that interfere with the right to the fruits of one's own labor." 367 N.C. 400, 408-09, 758 S.E.2d 364, 371 (2014). As discussed in the leading case of *State v. Ballance*, 229 N.C. 764, 51 S.E. 2d 731 (1949), the right to earn one's livelihood is a fundamental part of the liberty that the Declaration of Rights was intended to affirmatively protect.

12. "The right to conduct a lawful business or to earn a livelihood is regarded as fundamental." *McCormick v. Proctor*, 217 N.C. 23, 31, 6 S.E.2d 870, 876 (1940); See also *Locklear v. N.C. Criminal Justice Education and Training Standards Commission*, 2023 WL 2711303, 22 DOJ 02965 Bawtinhimer, ALJ) (Conclusions of Law 29-31).

13. In *Locklea*r, the Honorable James Gregory Bell of the Superior Court of Robeson County issued an extensive order on judicial review of the Commission occupational licensing decision. There, Judge Bell addressed a charge under G.S. 14-230, as in this case. Judge Bell's analysis and decision is persuasive.

The Law Enforcement Presumption and the Burden of Proof

14. Settled North Carolina law provides that a Court must presume that a law enforcement officer acts lawfully and in good faith when carrying out the duties of his office. The party seeking to overcome this presumption bears a heavy burden of producing competent and substantial evidence to rebut the presumption. Every reasonable intendment must be made in favor of the presumption of lawful action and good faith. *State v. Anderson,* 40 N.C. App. 318, 324, 253 S.E.2d 48,52 (1979) ("an officer is presumed to be acting lawfully while in the exercise of his official duties."); *Huntley v. Potter*, 255 N.C. 619, 628, 122 S.E.2d 681,687 (1961) (it is presumed that officials "will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law."); *Greene v. Valdese,* 306 N.C. 79, 82, 291 S.E.2d 630,633 (1982) ("every reasonable intendment will be made in support of the presumption."). Respondent's evidence must overcome this presumption by substantial admissible evidence. G.S. 150B-29.

15. Administrative law judges have consistently placed the burden of proof on the Commission in certification cases. *E.g. McCaskill v. N.C. Sheriffs' Education and Training Standards Commission*, 2025 WL 1367808; 24 DOJ 03486 (Sutton, ALJ); *Rouse v. N.C. Criminal Justice Education and Training Standards Commission*, 2025 WL, 1367800, 24 DOJ 02779, Conclusions of Law 13-24 (Morris, ALJ). In *Price v. N.C. Criminal Justice Education and Training Standards Commission*, 2017 NC OAH LEXIS 273, 17 DOJ 02734, Administrative Law Judge Lassiter held that the burden of proof is on the Respondent agency in a police certification case. In *Covell v. N.C. Sheriff's Education and Training Standards Commission*, 2023 NC OAH LEXIS 79, 22 DOJ 03476, Administrative Law Judge Evans held that the burden of proof in a police certification case is on the agency.

The G.S. 14-230 Charge

16. N.C.G.S, 14-230 is a criminal statute that the Commission has applied administratively. 14-230 provides:

a) If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense.

17. N.C.G.S. 14-230 contains several elements and there must be substantial evidence of proof of each element in order to establish 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.

See, e.g., *State v. Hockaday,* 265 N.C. 688, 689, 144 S.E.2d 867, 868 (1965) ("if such officer, after his qualification, willfully and corruptly omits, neglects or refuses to discharge any of the duties of his office or willfully violates and corruptly violates his oath of office . . .") *See State v. Birdsong,* 325 N.C. 418, 384 S.E.2d 5 (1989); *State v. Rhome,* 120 N.C. App. 278, 462 S.E.2d 656 (1995); *Locklear, supra.*

18. In *State v. Shipman*, 202 N.C. 518, 163 S.E. 657 (1932), the Court addressed a case involving allegations of conspiracy to defraud Transylvania County and misapply funds. The Court defined willful to mean:

> "Proceeding from a conscious motion of the will; intending the result which actually comes to pass; designed, intentional; malicious....in common parlance, 'willful' is used in the sense of 'intentional', as distinguished from 'accidental' or 'involuntary.' But language of a statute affixing a punishment to acts done willfully may be restricted to such acts done with an unlawful intent." (internal citations omitted)

Id. at 540, 669.

19. While some of the cases summarizing the elements of a G.S. 14-230 charge do not separately address the requirement of criminal intent, 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 as explained *infra.*

20. In order for there to be a crime, there has to be both an act (actus rea) and a criminal state of mind (mens rea). The Supreme Court relies on a substantive canon of interpretation—the *mens rea canon.* Under this canon, the Court interprets criminal statutes to require a *mens rea* for each element of an offense. *Rehaif v. U.S.*, 588 U.S. 225, 231 (2019); *Ruan v. United States*, 142 S.Ct. 2370, 2376 (2022).

21. In *Lucas v. N.C. Sheriffs Education and Training Standards Commission*, 2015 NC OAH LEXIS 132, 15 DOJ 01031Administrative 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 required 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)

22. In *State v. Powers*, 75 N.C. 281, 1876 N.C. LEXIS 275 (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. *Id.* at 540,669.

23. The Supreme Court has observed the "difficulty of establishing injury to the public." *Morgan v. Public Utility District*, 554 U.S. 527, 562 (2008). The "public" means "of, relating to, or affecting all the people or the whole area of a nation or state." www.meriam-webster.com/dictionary/public. *Black's Law Dictionary* defines the public as: "Pertaining to a state, nation, or whole community … affecting the whole body of people or an entire community." *Black's Law Dictionary* 1104 (5th ed. 1979).

24. In *State v. Rhome,* 120 N.C. App. 278, 462 S.E.2d 656 (1995), the Court interpreted G.S. 14-230 and explained that "injury to the public must occur as a consequence of the omission, neglect or refusal." *Id.* at 294, 667. Here, there has been no such substantial evidence of injury to the public, or any injury caused by Deputy Harvan.

25. *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). An injury is defined as a "wrong or damage done to another." *Black's Law Dictionary* 706 (5th ed. 1979). An injury is "the invasion of any legally protected interest of another." *Id*.

26. The cases interpreting G.S. 14-230 have long required actual injury to the public –

as opposed to potential or speculative injury. Our Supreme Court made this clear in 1929 in *State v. Anderson*, 196 N.C. 771, 147 S.E. 305 (1929), where the Court stressed that "injury to the public" is absolutely required. The injury must be concrete. Just like in a civil case for damages, the injury must be real and proven. See *Locklear, supra.* As explained in *Owens v. Southern Railway*, 196 N.C. 307, 309, 145 S.E. 560, 561 (1928): "conjecture or speculation is not evidence."

27. The substantial admissible evidence of record does not establish that Deputy Harvan willfully omitted, neglected or refused to carry out any duty of his office. There was no substantial evidence identifying any specific mandatory legal duty of the Petitioner's office. In order to save time, Deputy Harvan conducted the offender verification in a less formal way for two offenders on two occasions each. T119, 150 He did not conduct the checks in four instances in accordance with the "traditional method". There was no substantial evidence that the traditional method was required by law or required by Sheriffs' Office policy.

28. There was no evidence of any criminal or improper intent. Because the statute requires willful action, and it is a criminal statute, there must be criminal intent. The worst evidence was that Deputy Harvan was being lazy. While laziness is not good, it is not a crime.

29. There was no competent, substantial and admissible evidence of any actual injury or harm to the public from the Petitioner's limited actions. While Petitioner's isolated actions may have constituted an exercise of poor judgment, it does not rise to the high required level of a willful failure to discharge duties of office. G.S. 14-230 is not meant to criminalize poor judgment, poor performance, mistakes, errors or omissions.

30. Deputy Harvan is certainly subject to personnel discipline by his employer for his alternative method of verification for the four instances, but his alternative method was not a criminal act. Law enforcement officers often deviate from routine procedures, and that sometimes gives rise to personnel discipline. Sheriff Brown was entitled to impose personnel discipline, but that does not support finding any criminal acts here.

The Common Law Obstruction of Justice Charge

31. The second charge against Deputy Harvan is also predicated upon an alleged criminal offense: common law obstruction of justice, which also requires criminal intent. The Commission also bears the burden of proof on this allegation. The previously referenced law requiring criminal intent is also applicable here.

32. Obstruction of justice is a crime that requires "specific intent." *Curington v. N.C. Sheriffs Education and Training Standards Commission*, 2017 NC OAH LEXIS 434, 17 DOJ 03118 (Overby, ALJ)

33. Both North Carolina and federal case law indicates that obstructing "justice" is limited to attempts to wrongfully influence a "judicial proceeding." *Arthur Andersen LLP v. United States*, 544 U.S. 696, 708 (2005) (quoting *United States v. Aguilar*, 515 U.S. 593, 598 (1995)) (interpreting 18 U.S.C. § 1503 as criminalizing any corrupt effort to "influence, obstruct, or impede. . . the administration of justice"); *see also State v. Eastman*, 113 N.C. App. 347, 353

(1994); *accord Henry v. Deen*, 310 N.C. 75, 88 (1984) ("Where . . . a party *deliberately* . . . *subvert[s] an adverse party's investigation*" a claim of common law obstruction of justice arises).

34. The United States Supreme Court vacated an obstruction of justice conviction for this very reason—that is, for lack of any proven nexus between the allegedly obstructive conduct and a contemplated judicial proceeding. In *Aguilar*, the defendant was convicted of violating the federal "catchall" obstruction of justice statute, which uses the following "very broad language" to criminalize efforts to obstruct justice: "[w]hoever . . . corruptly . . . endeavors to influence, obstruct, or impede the due administration of justice" commits a felony. *Aguilar*, 515 U.S. at 598 (quoting 18 U.S.C. § 1503).

35. The Court held that this "very broad language" is not met unless "[t]he action taken by the accused [is done] with an intent to influence judicial or grand jury proceedings; it is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the court's or grand jury's authority." *Id*. (citing *United States v. Brown*, 688 F.2d 596, 598 (9th Cir. 1982)). "[I]f the defendant lacks knowledge that his actions are likely to affect the judicial proceeding . . . he lacks the requisite intent to obstruct." *Id*. at 599.

36. In *Curington v. N.C. Sheriffs Education and Training Standards Commission*, 2017 NC OAH LEXIS 434, 17 DOJ 03118, ALJ Overby issued a Proposal for Decision finding that a petitioner did not commit obstruction of justice. There, Judge Overby explained: the law of obstruction of justice is a specific intent crime: "common law obstruction of justice [is a] specific intent offense.[s]". Conclusion of Law 4. Judge Overby further explained:

> "Obstruction of Justice occurs when an individual has "committed an act that prevented, obstructed, impeded or hindered public or legal justice." *State v. Cousin*, 233 N.C. App. 523, 530, 757 S.E.2d 332, 338 (2014). It is necessary for Respondent to show that there was an intentional act of misconduct on the part of the Petitioner. *State v. Eastma*n, 113 N.C. App. 347, 438 S.E.2d 460 (1994)"

37. In *Martin v. N.C. Sheriffs' Education and Training Standards Commission*, 2017 NC OAH LEXIS 69, 17 DOJ 03120. ALJ Bawtinhimer explained that the offense of obstruction of Justice requires that a defendant must "unlawfully and willfully obstruct justice." Conclusion of Law 14.

38. An essential element of common law obstruction of justice is that the defendant *in fact obstructed justice*. *See, e.g.*, *State v. Cousin*, 233 N.C. App. 523, 537 (2014). Here, there was no such evidence. Additionally, intent to obstruct justice is an essential element of the offense. See *Henry* and *Eastman*. Here, there was no evidence that justice was in any way obstructed by any act or omission of Deputy Harvan.

39. This Tribunal has weighed and balanced the totality of all the evidence. Deputy Harvan has been a good Deputy Sheriff and is a good person. His deviations from the traditional method of performing offender checks were de minimis and limited to only two persons who resided very close to Deputy Harvan and he knew them. He resorted to informal and less direct methods of offenders' checks. There was no formal policy that mandatorily required absolute use

of the traditional methods for offender checks. Deputy Harvan did not act abusively, maliciously with criminal intent or with any intent to harm the public. The public was not harmed by Deputy Harvan. The Respondent failed to prove both charges.

PROPOSAL FOR DECISION

Pursuant to N.C.G.S. § 150B-40(e), the Tribunal is to place itself in the role of the Commission, and after a just and lawful hearing; considerations of appropriate findings; applicable law; and extenuating circumstances, propose a just and final decision for due deliberation by the Commission. Mindful of these principles, this Tribunal submits the following proposal.

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based upon the foregoing findings of fact and conclusions of law, it is hereby proposed that the North Carolina Sheriffs Education and Training Standards Commission find that Respondent has failed to prove that Petitioner committed either of the two charges by a preponderance of the admissible evidence. Therefore, there is no basis for any occupational licensing discipline, and Petitioner's justice officer certification should not be subject to disciplinary action.

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.G.S. § 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.G.S. § 150B-42(a).

IT IS SO ORDERED.

This the 3rd day of July, 2025.

David F. Sutton

David F Sutton
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 3rd day of July, 2025.

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